

1                   BEFORE THE PUBLIC SERVICE COMMISSION

2                   STATE OF MISSOURI

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4                   TRANSCRIPT OF PROCEEDINGS

5                   PUBLIC HEARING

6                   SEPTEMBER 11, 2006

7                   Jefferson City, Missouri

8                   Volume 12

9                   \_\_\_\_\_

10           In the Matter of The Empire District        )  
11           Electric Company of Joplin, Missouri,        )  
12           for Authority to File Tariffs                )Case No.  
13           Increasing Rates for Electric Service        )ER-2006-0315  
14           Provided to Customers in the Missouri        )  
15           Service Area of the Company

16                   \_\_\_\_\_

17                   COLLEEN M. DALE, Presiding  
18                   CHIEF REGULATORY LAW JUDGE.  
19                   CONNIE MURRAY,  
20                   LINWARD "LIN" APPLING,  
21                   COMMISSIONERS.  
22                   \_\_\_\_\_

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

2                               JUDGE DALE: We are here this morning on  
3       September 11th for a continuation of the Empire rate case  
4       ER-2006-0315.

5                               I've been informed by counsel that there had  
6       been a change in position from the Staff. And Mr. Dottheim  
7       will, prior to the other openings, give a brief explanation of  
8       that change. We will then have opening from the Staff and  
9       then go in the usual order.

10                              In light of this change, there may be an  
11       abbreviated cross today, but there is nothing to memorialize  
12       right now in writing, the change in position. We will reserve  
13       those witnesses who are scheduled today for additional  
14       cross-examination by the parties and also to give the  
15       Commissioners an opportunity to question those parties after  
16       the -- after there's any memorialization of any sort of  
17       agreement.

18                              In addition, we have an update on the  
19       condition of Mr. King. We are going to schedule Mr. King,  
20       Mr. Oligschlaeger and Mr. Murray to continue the return on  
21       equity issues after rate design on Thursday. We begin rate  
22       design and cost of service on Thursday morning. It is  
23       expected that that will not take all day and that we will be  
24       able to add those three witnesses in the afternoon sometime on  
25       Thursday.

1                   So is there anything else I need to add before  
2 I ask Mr. Dottheim to explain?

3                   MR. MILLS: The only thing I would add to  
4 the question of picking up on rate of return witnesses on  
5 Thursday is just, you know, we've sort of been assuming all  
6 along that the parties will have questions for Mr. King or the  
7 Bench will. And if that turns out not to be the case, then we  
8 don't have to have him travel at all.

9                   So I'd be sure to ask the parties -- make sure  
10 that they are going to ask Mr. King questions after we fly him  
11 out here on his crutches.

12                  JUDGE DALE: So if --

13                  MR. MILLS: If the parties don't have  
14 questions for him, I would just ask them to let me know that  
15 and we can take that from there.

16                  JUDGE DALE: Yes. And I will also ask the  
17 Commissioners whether they plan to have questions for him.

18                  MR. MILLS: That would be great. Thank you.

19                  JUDGE DALE: With that then, Mr. Dottheim.

20                  MR. DOTTHEIM: Thank you. Good morning. The  
21 issue in particular today is regulatory plan amortizations.  
22 The Staff, Office of Public Counsel have been working with  
23 Empire and Kansas City Power & Light Company on the regulatory  
24 plan amortization issue, in particular, what has been  
25 denominated by some as the tax gross-up issue.

1                   The Staff believes that these parties have  
2     reached a settlement in principle to resolve that issue. As  
3     is often the case with resolutions, the various parties may  
4     have gotten their different ways, they may characterize the  
5     resolution differently. There has been some movement in  
6     Staff's position.

7                   The Staff believes that there will be an  
8     additional filing with the Commission in the next couple of  
9     days that will include, in particular, an illustrative example  
10    that -- or examples that show the resolution. And, Judge  
11    Dale, I think as you've indicated, the parties will make their  
12    witnesses available again for cross-examination by the  
13    Commissioners and yourself and by all the parties.

14                  The Staff believes that the settlement  
15    involves, from the Staff's perspective, the following key  
16    points. And, again, I'd want to be clear that these are from  
17    the Staff's perspective.

18                  The entire amount of the regulatory plan  
19    amortization allowed in rates is to be treated as additional  
20    booked depre-- excuse me, is to be treated as additional  
21    booked depreciation for rate and financial statement purposes  
22    by Empire. An additional tax straight line depreciation  
23    deduction and the entire amount of the regulatory plan  
24    amortization allowed in rates will be assumed for rate  
25    purposes.

1                   As the additional tax straight line  
2 depreciation deduction will serve to reduce Empire's assumed  
3 accelerated depreciation deduction by an equal amount, this  
4 will reduce the availability of deferred tax benefits  
5 associated with the accelerated depreciation deduction to  
6 Empire.

7                   Accordingly, the regulatory plan amortization  
8 calculation will make Empire whole for the loss of its cash  
9 flow benefits from the deferred taxes. Recognizing that  
10 Empire will not receive a current tax deduction for the amount  
11 of regulatory plan amortizations received in rates, this  
12 agreement, from the Staff's perspective, provides for Empire  
13 to use its existing deferred tax benefits to offset the income  
14 tax consequences of the regulatory plan amortizations.

15                   However, since deferred taxes are sought --  
16 are a source of cash flow to Empire, this agreement also  
17 provides for recovery in the amortization calculations of cash  
18 flow otherwise lost to Empire by reducing the deferred taxes  
19 it would receive through its accelerated depreciation tax  
20 deduction.

21                   The Staff believes that the agreement that,  
22 again, the Staff believes has been reached in principle is  
23 consistent with the positions that the Staff has set out in  
24 testimony in this case and in the concurrent KCPL rate case  
25 proceeding; that is, that the entire amount of the regulatory

1 plan amortization be treated as additional booked depreciation  
2 and that the entire amount of the amortization should be  
3 reflected in Empire's tax calculation as additional tax  
4 straight line depreciation expense.

5               The Staff also believes this agreement will  
6 provide for the opportunity for full recovery of any cash flow  
7 deficiency that might otherwise lead to a credit derating for  
8 Empire.

9               Finally, the Staff would note that there is a  
10 provision in the regulatory plan that the amortization amounts  
11 in the aggregate shall not exceed the expected cost savings  
12 from the amortization mechanism and the lower costs of capital  
13 resulting from investment grade ratings.

14              Since the Commission had indicated very early  
15 on in the proceedings in this case that if there were to be  
16 any settlements, they were to occur considerably before the  
17 case went to hearing, Staff thought, with this resolution in  
18 principle, that the Staff this morning should provide, at  
19 least from the Staff's perspective, something of an  
20 explanation rather than just indicate to the Bench that  
21 various of the parties think that a settlement in principle  
22 has been reached at least on part of the regulatory plan  
23 amortizations issue.

24              The regulatory plan amortizations issue has  
25 not been resolved in entirety. And, of course, the Bench has



1 set time or will set time for the witnesses to be presented to  
2 the Commission once the additional filing is made with the  
3 Commission.

4               So even if what at this point appears to be a  
5 resolution in principle, if it doesn't happen, there still  
6 will be an opportunity for the issue to be tried before the  
7 Commission. Although it is not anticipated at the moment that  
8 the resolution will not occur.

9               But, again, there still remains part of the  
10 regulatory plan amortization issue to be heard this morning  
11 and that issue is between the Staff and Empire on one hand and  
12 the Public Counsel, on the other hand.

13              The remaining issue is between Staff, Empire  
14 and Public Counsel involving the quantification of the  
15 off-balance sheet obligations for purposes of the Empire  
16 regulatory plan amortizations. The off-balance sheet  
17 obligations are operating leases and purchased power  
18 agreements.

19              Empire and the Staff treat the Elk River Wind  
20 Farm 20-year contract held by Empire as an operating lease,  
21 while Public Counsel treats it as a purchased power agreement.

22              Credit rating agencies typically treat  
23 operating leases as 100 percent debt equivalence. Public  
24 Counsel treats the Elk River Wind Farm contract as a purchased  
25 power agreement and assigns a risk factor of 10 percent to it.

1 By assigning a risk factor of 10 percent to the Elk River Wind  
2 Farm 20-year contract, Public Counsel treats the Elk River  
3 Wind Farm 20-year contract as only a 10 percent debt  
4 equivalent.

5 The Staff is not certain what risk factor  
6 Standard and Poor's assigns to purchased power agreements.  
7 But the Staff uses the actual Standard and Poor's  
8 quantification of Empire's off-balance sheet debt and interest  
9 expense for the entirety of Empire's operating leases and  
10 purchased power agreements taken from the May 18, 2006  
11 Standard and Poor's ratings direct document, a copy of which  
12 is attached as Schedule 3-1 to Staff Witness Oligschlaeger's  
13 supplemental Direct Testimony. Thank you.

14 JUDGE DALE: Empire will be next.

15 While he's coming up, let me remind everyone  
16 to please, please, please check and make sure that all  
17 wireless communication devices are turned off at this time.  
18 If you make a call, please do it not just during break, but  
19 outside the room. Thank you.

20 MR. COOPER: Good morning. In light of  
21 Mr. Dottheim's statement, I guess, of position this morning, I  
22 would like to, for the purposes of the record, ask  
23 Mr. Dottheim a question before we move on, if that would be  
24 acceptable.

25 And, Mr. Dottheim, in your statement of I

1 think the Staff position, you referred to agreement -- I think  
2 agreement in principle, stipulation, some other similar words  
3 during the course of that. And it's my understanding that  
4 what you laid out for us here this morning was in actuality  
5 the Staff's position on this issue at this point in time; is  
6 that correct?

7 MR. DOTTHEIM: Yes. And let me be very clear  
8 on that. I didn't mean, Mr. Cooper, to characterize it as  
9 anything other than that as what I was stating is I was just  
10 stating the Staff's position. I did not mean to indicate that  
11 my statement was a statement of the terms to which any of the  
12 other parties had agreed. It was just a characterization of  
13 the Staff's position on this matter as it now stands.

14 MR. COOPER: Thank you very much.

15 There has been testimony in regard to  
16 amortization now on several aspects of these issues. And I  
17 guess I would like to start by identifying another area of  
18 agreement as to this issue. There's an area of agreement  
19 between Empire -- that Empire has with the Rebuttal Testimony  
20 of Industrial's witness, Maurice Brubaker, as to the  
21 amortization issue.

22 In response to a question as to whether  
23 Mr. Brubaker agreed with a section of Mr. Gipson's testimony  
24 indicating that the amortization vehicle resulting from the  
25 regulatory plan should not be viewed as a replacement for

1 timely recovery of prudently incurred fuel and purchased power  
2 expense, Mr. Brubaker answered as follows: I agree that they  
3 were not designed to be substitutes; however, the amortization  
4 alternative was a safety net designed to provide Empire with  
5 sufficient cash flow and credit metrics in the event that  
6 strict application of traditional rate-making principles is  
7 insufficient to achieve these results.

8                    Empire agrees that the amortization should not  
9 be considered a substitute for timely recovery of prudent fuel  
10 and purchased power costs. That issue should be decided on  
11 its own merits. Empire would go a step further and say that  
12 the amortization is also not designed to be a substitute for  
13 recovery of an appropriate level of return on Empire's  
14 investment. That issue should also be determined on its own  
15 merits.

16                    However, if after those decisions and the  
17 other issues presented to the Commission in this case have  
18 been made, the calculations called for by the Stipulation  
19 Agreement in Case No. EO-2005-0263 call for an amortization,  
20 then Empire believes the amortization should be granted.

21                    Further, if an amortization is believed to be  
22 necessary, in addition to the amortization amount, the  
23 Commission should also include in Empire's revenue requirement  
24 a gross-up for income taxes, that being the issue that  
25 Mr. Dottheim was discussing this morning.

1                   Now, again, in the testimony that's been  
2   provided by Empire, Empire believes that such a gross-up is  
3   appropriate because there's a difference between book  
4   depreciation as determined by the Commission and the tax  
5   depreciation allowed by the IRS as a deduction for income tax  
6   purposes. Now, even us non-tax specialists have a feel for  
7   that because we often hear about deferred income taxes within  
8   the context of these utility rate cases.

9                   The Commission itself has described deferred  
10   taxes as an artifact of the differing treatment accorded  
11   depreciation for federal income tax purposes as opposed to  
12   regulatory purposes. Utility rates are calculated using  
13   straight line depreciation while taxes are paid using  
14   accelerated depreciation. That comes from Missouri-American  
15   Water Company rate case from several years ago.

16                  Increasing book depreciation in this case will  
17   not increase tax depreciation. Thus, Empire believes the only  
18   way to ensure that the subject amortization has a chance to  
19   satisfy its purpose is to increase the amortization to reflect  
20   the additional income taxes due as a result of the additional  
21   book depreciation so that the revenues, less any additional  
22   current tax liability, will provide the cash flow required by  
23   the calculations.

24                  Empire did have an opportunity to see the  
25   position that Staff is now taking in regard to that issue.

1 Empire will want to see the illustrative document that  
2 Mr. Dottheim discussed earlier before it takes a final  
3 position on Staff's -- Staff's position.

4                   However, generally, Empire believes -- or  
5 would agree with the mechanics set out by Mr. Dottheim. We  
6 generally agree with the booking, the recording of those steps  
7 that Empire has been privy to and we'll just want to confirm  
8 that the illustrative numbers presented to the Commission  
9 later this week do what Empire expects they will do.

10                   As for the calculation of the amortization  
11 itself, Empire agrees generally with the calculations  
12 performed by Staff Witness Mark Oligschlaeger in regard to the  
13 amortization. The amortization, of course, continues to be a  
14 bit of a moving target and will continue to be so after today,  
15 as the Commission's decisions in this case as to other issues  
16 will have a piece of determining whether or not an  
17 amortization should be applied; and if so, what the size of  
18 that amortization should be.

19                   Public Counsel Witness Ted Robertson also  
20 performed an amortization calculation in this case. Empire  
21 specifically disputes two adjustments made by Mr. Robertson.

22                   First, as a result of inaccurate information  
23 that was provided by the company that's since been corrected,  
24 Mr. Robertson did not include Empire's Plum Point agreement in  
25 his calculation because he believed it was executed outside

1 the update period. This agreement was, in fact, executed  
2 within the update period. Empire believes it should have been  
3 included. Empire's not sure there's really a dispute, but  
4 we'll ask some questions of Mr. Robertson to sort that out.

5 Second of all, as Mr. Dottheim introduced  
6 earlier, Mr. Robertson applies a risk factor of 10 percent to  
7 Empire's off-balance sheet obligations, rather than what  
8 Empire believes to be a 30 percent risk factor that's embedded  
9 in the calculation used by Staff that Empire believes is used  
10 by Standard and Poor's as well.

11 Empire believes that it's important to utilize  
12 a methodology that mimics the rating agency methodology to the  
13 greatest extent possible for this calculation in order to work  
14 towards the purposes of the amortization. Mr. Robertson's use  
15 of the 10 percent figure Empire believes does not track the  
16 S&P methodology and would thereby improperly reduce the  
17 resulting amortization, if any is called for by the  
18 calculation.

19 Lastly, Mr. Dottheim also mentioned the Elk  
20 River Farm agreement. Empire agrees with the Staff's  
21 treatment of this issue. However, having said that, Empire  
22 also believes that it's possible that it will in true-up of  
23 this case attempt to present additional information to the  
24 Commission in regard to that issue should such additional  
25 information become available to it from Standard and Poor's.

1                   That's all I have. Thank you, your Honor.

2                   JUDGE DALE: Thank you.

3                   MR. MILLS: Good morning. May it please the  
4 Commission.

5                   Just sort of working a little bit backwards in  
6 response to what I'm not sure I understood correctly from  
7 Mr. Cooper, but it sounded as though he was talking about  
8 perhaps litigating a question of methods in the true-up. And  
9 I'm not sure that that's appropriate. But I'm not sure that I  
10 correctly understood him.

11                  If that's what he was suggesting, I think  
12 maybe the scheduling order and the parties' agreement on test  
13 year would preclude talking about what method is appropriate  
14 by the time we got to the true-up section.

15                  But turning back to the issue of amortization  
16 more generally, in my opening statement I'm going to discuss  
17 the issue sort of generally. Public Counsel doesn't disagree  
18 with the resolution of the way in which any amortization  
19 amounts are booked the way Staff counsel has described that.

20                  As Mr. Cooper did, I reserve the right to  
21 quibble with or dispute descriptions of how that's done. I  
22 think we have had several meetings and I think Public Counsel  
23 is comfortable with, in general, the way the numbers shake out  
24 taking Staff's approach. So we are in agreement in respect to  
25 that.



1                   The amortizations in this case come out of the  
2 regulatory plan that was proposed by the parties and approved  
3 by the Commission in Case No. EO-2005-0263. Many of the  
4 provisions in that agreement are similar to the regulatory  
5 plan that was agreed to somewhat before that for Kansas City  
6 Power & Light Company in Case No. EO-2005-0329. In fact, when  
7 the parties began talking about a regulatory plan agreement  
8 for Empire, the Kansas City Power & Light agreement was  
9 essentially the template for the Empire regulatory plan  
10 agreement.

11                   There are certainly some differences. One new  
12 provision in the Empire agreement, at least with respect to  
13 the original Kansas City Power & Light agreement, is found on  
14 page 14 of the Stipulation and Agreement in EO-2005-0263. And  
15 that's the very last sentence with respect to the  
16 regulatory -- well, the second-to-last sentence with respect  
17 to regulatory amortizations.

18                   And that sentence says, Notwithstanding all of  
19 the above provisions in paragraph 3D2, the signatory parties  
20 agree that the amortization amounts in the aggregate shall not  
21 exceed the expected cost savings from the amortization  
22 mechanism and the lower costs of capital resulting from  
23 investment grade ratings.

24                   And I think that's an important caveat. That  
25 means at the end of the day, the Commission has to find that

1 the amortizations are beneficial to customers in the long run;  
2 otherwise, the amortization amounts will not be allowed.

3 Another provision in the Stipulation and  
4 Agreement that created the regulatory amortizations has to do  
5 with the parties' support of amortizations. And that's found  
6 on page 13 of the Stipulation and Agreement in EO-2005-263 and  
7 it says, The signatory parties agree to support an  
8 amortization level necessary to meet the Missouri  
9 jurisdictional portion of these financial ratio targets  
10 identified in Appendix D to that stipulation and calculated in  
11 a manner consistent with Appendix D.

12 And that's important because there will be  
13 amortizations proposed in this case. The parties have done  
14 enough scenarios, enough revenue requirements to know that  
15 they will be proposing amortizations in this case and they  
16 will be big. In fact, they'll be huge.

17 The way the process is going to work is that  
18 after the Commission has decided the revenue requirement  
19 amount in this case, then the parties will run the  
20 amortization calculations based on the Stipulation and  
21 Agreement in 2005-263 and provide the Commission information  
22 on what the required amortization amount will be.

23 And that amount will be tens of millions of  
24 dollars. Somewhere in the neighborhood of \$30,000,000,  
25 perhaps more, perhaps less, somewhere around there. So that

1 means that almost regardless of what the Commission decides in  
2 terms of revenue requirement in this case, the parties will be  
3 proposing an amortization that will take the company virtually  
4 up to, perhaps even beyond, the amount of money it's requested  
5 in this case. And I don't think the Commission's ever seen a  
6 case quite like that before. I know I haven't.

7                   So the question is, why are the amortizations  
8 going to be proposed in this case? In the regulatory plan the  
9 parties try to come up with ways to ensure adequate cash flows  
10 when construction projects might squeeze cash flow enough to  
11 mean a downgrade.

12                   But here we are in the very first case in the  
13 series of cases in the regulatory plan, before construction  
14 has really gotten going very significantly on Iatan 2 or some  
15 of the other projects envisioned in the regulatory plan and we  
16 need an amortization somewhere in the neighborhood of  
17 \$30,000,000.

18                   And if we -- for example, if we look at and --  
19 I did -- I had something like this done just as sort of a  
20 sanity check. If you look at Empire's numbers at the end of  
21 calendar year 2005 before this case, doing the same  
22 amortization calculation, it looks as though Empire needed the  
23 same amortization then.

24                   So here we are before we even start  
25 construction, before we even start the rate case and Empire

1 needs an amortization that's truly gigantic. One thing this  
2 means, is that the scenarios in this case are going to be very  
3 important.

4                   The Commission needs to know that if you  
5 decide this case and decide that just based on traditional  
6 regulatory treatment, that Empire needs a rate increase of  
7 something in the neighborhood of \$5,000,000, \$10,000,000,  
8 whatever that increase is, I think it would be wise for the  
9 Commission to submit that to the parties in the form of  
10 scenarios so the parties can, before the Commission makes its  
11 final decision in this case, let you know what kind of an  
12 amortization that revenue requirement would translate into.

13                   Again, it looks as though the increase in this  
14 case could very well be the requested amount once you figure  
15 in the amortization. And in my experience, that would be  
16 pretty much the first time that that's ever happened before  
17 this Commission, that in a major rate case with a major  
18 utility, that a utility's come before the Commission, asked  
19 for a rate increase and walked away with the entire amount  
20 that it's asked for. And that's a result of the amortizations  
21 that are likely to be proposed.

22                   So that leads to the question, do customers  
23 get any benefit from these amortizations? Yes. To the extent  
24 that increased cash flows allow Empire to avoid a downgrade  
25 that otherwise would have happened, the overall cost of

1 capital will be lower. And the amortizations are treated as  
2 depreciation so rate-base is reduced.

3 And as we go through the process, we can refer  
4 back to the sentence that I read earlier that refers to  
5 benefits from the amortizations exceeding the cost so that  
6 customers in the long run are protected from undue  
7 amortizations.

8 Now, one of the things that lead to some of  
9 the inaccuracies in the amortization calculation is the way it  
10 was set up. The way that the amortization was set up is that  
11 it's based on trying to anticipate what a rating agency will  
12 do.

13 And, of course, if determining what a rating  
14 agency would do was an exact science, then there wouldn't be  
15 any need for rating agencies. Anybody who wanted to know what  
16 a utility's rating would be could simply do the calculations  
17 themselves.

18 So there's a lot of judgment and calculations  
19 that the rating agencies do that they don't share with outside  
20 parties. So to the extent that we're trying to mimic and  
21 foresee what a rating agency would do in any situation, there  
22 are some inherent inaccuracies in the process.

23 In the regulatory plan, we tried to put  
24 together calculations that would show how Standard and Poor's  
25 would look at Empire's financials. And we tried to build into

1 the metrics those particular metrics that S&P most closely  
2 watches.

3                   If these metrics -- total debt to total  
4 capitalization, funds from operations, interest coverage and  
5 funds from operations to total debt ratio, and tried to get to  
6 a certain point. If those metrics hit a certain point, then  
7 amortizations in rate cases are triggered. And as I stated  
8 earlier, we won't know if they're triggered until after the  
9 Commission makes its decision and that's where the scenarios  
10 are going to be so important.

11                   And, in fact, we will never know with absolute  
12 certainty if amortizations would truly have been needed to  
13 have avoided a downgrade because, as I said, we don't know  
14 exactly everything that it is that Standard and Poor's is  
15 considering when they're deciding whether or not to do a  
16 downgrade.

17                   Now, turning to the more specific issues with  
18 respect to calculating the amortization that you're going to  
19 be hearing this morning. While the parties appear to have  
20 reached agreement on how the calculated amortization amount is  
21 reflected in rates, there is still disagreement on how to do  
22 the calculation.

23                   Public Counsel Witness Robertson testified  
24 about -- in his pre-filed testimony and will take the stand  
25 today, about two specific calculation issues. One is which

1 particular off-balance sheet obligations to include in the  
2 calculation and the second is the valuation of those  
3 obligations.

4                   The off-balance sheet obligations at issue are  
5 operating leases and purchased power agreements. Because  
6 rating agencies treat some of these obligations as debt for  
7 the purposes of calculating the metrics, we need to try to do  
8 the same thing.

9                   And here, we're back to the problem of trying  
10 to anticipate what Standard and Poor's will do. We're trying  
11 to recreate Standard and Poor's debt equivalent evaluation of  
12 Empire's off-balance sheet obligations. To do this, we need  
13 to try to replicate the assumptions that Standard and Poor's  
14 will make regarding those obligations.

15                  Public Counsel Witness Robertson has testified  
16 that only actual binding obligations should enter into this  
17 calculation. Until a contract has been signed, there is no  
18 actual obligation. Anticipated or even likely contracts  
19 should not be in the calculation, only actual obligations.

20                  In his pre-filed testimony, the only  
21 off-balance sheet obligations that met this criteria for  
22 Public Counsel Witness Robertson are the operating lease costs  
23 for Empire's unit trains, a purchased power agreement for  
24 power from the Jeffrey Energy Center and a purchased power  
25 agreement for the Elk River Wind Farm.

1                   As Mr. Cooper alluded to in his opening  
2 statement, we initially got information from Empire that a  
3 purchased power agreement for Plum Point was not finalized  
4 before March 31st, 2006 in this case. We have since received  
5 information that it was, in fact -- that contract was, in  
6 fact, inked before that date and so our numbers were changed.  
7 And based on that updated information, we will update our case  
8 in the true-up.

9                   But once you figure out which actual  
10 obligations are to be used, the process is that they are then  
11 discounted back to their present value using a 10 percent  
12 discount rate. And the 10 percent discount rate is specified  
13 in the regulatory plan approved in EO-2005-263. Then that  
14 present value needs to be adjusted using a risk factor.

15                   The issue of what risk factor to use is  
16 another difference between the parties. The regulatory plan  
17 does not specify a risk factor and Standard and Poor's uses a  
18 range of risk factors.

19                   As far as has been identified in this case,  
20 Standard and Poor's does not state what factors lead it to  
21 apply a 10 percent risk factor and 50 percent risk factor or  
22 something in between. Therefore, the risk factor should be  
23 based on the actual risks associated with particular  
24 off-balance sheet obligations.

25                   The risk of Empire actually defaulting on an



1 obligation is virtually nonexistent. Empire stated in  
2 response to a Public Counsel data request that it has not  
3 defaulted on any contracts in the last 10 years. The data  
4 request actually requested information on whether Empire had  
5 ever defaulted, but Empire decided that ever was simply too  
6 long a period of time for them to try and research and respond  
7 to so they responded, For the last 10 years, Empire is not  
8 aware of it defaulting on any contracts.

9               As a result, there is no evidence in the  
10 record that Empire has ever defaulted on such a contract and,  
11 in fact, I would be surprised if it ever had. One could  
12 reasonably argue that 10 percent is really too high of a risk  
13 factor in light of this, but because it appears that Standard  
14 and Poor's uses 10 percent as the low end of the risk factor  
15 that it ever uses, that's what we used in our testimony.

16               In conclusion, when we get to the point in  
17 this case in which amortizations are proposed, I will support  
18 those calculations because I agreed to in the regulatory plan  
19 entered into in EO-2005-263. But the Commission needs to be  
20 aware that this issue dwarfs all the other issues in this  
21 case. That the amount of dollars at stake here literally  
22 dwarf everything else in the case.

23               Thank you for your attention. That concludes  
24 my opening statement on this issue.

25               JUDGE DALE: Thank you. Praxair?

1                   MR. CONRAD:  If your Honor please and good  
2 morning, Commissioners.

3                   We are aware of discussions that were going on  
4 at the conclusion of last week and I take it perhaps into the  
5 weekend to some extent.  There were a couple of meetings  
6 regarding the issue to which Mr. Dottheim has referred.

7                   But we are only aware of the resolution of  
8 that issue at approximately 50,000 or 51,000-foot level.  We  
9 have not seen the numbers.  We eagerly await seeing the  
10 numbers and we will eagerly await seeing a document that  
11 reflects, in acceptable form to all, that agreement.

12                  We have not specifically gotten into the  
13 amortization agreement or the amortization issue in a large  
14 measure.  In an earlier stage of this case it appeared to be  
15 setting up as to whether it applied at all.  I'm now  
16 understanding from Empire counsel's statement, that they now  
17 seem to be of the view that it does apply.

18                  And in many of those respects, I think I would  
19 find myself lining up behind what Mr. Mills has said about the  
20 importance of the issue.  I do have a question and I'm not  
21 sure that he perhaps meant to say this, but it is my  
22 understanding under Missouri law that the Commission cannot  
23 give -- lawfully give relief that exceeds the amount.  And  
24 since we have not seen the amounts, I'm not prepared to  
25 comment one way or the other on the amounts.

1                   What we have had discussed with us is a  
2 methodology, and that's what I mean when I'm referring to a  
3 50,000-foot level. We are, however, concerned that the  
4 Stipulation and Agreement which has been approved by the  
5 Commission in Case No. EO-- I believe it's 263 -- 2005-0263  
6 were filled in all its particulars, including the future  
7 benefits.

8                   I would endorse I think Mr. Mills' comments  
9 with respect to the portions of that that he's lifted out that  
10 there needs to be demonstrative ratepayer benefit.

11                  Beyond that, your Honor, and Commissioners, we  
12 would simply await and encourage the parties to, with such  
13 alacrity as circumstances permit, develop that document and we  
14 will eagerly and thoroughly review that.

15                  I would hope that the witnesses that are  
16 presented today -- at least on that issue we would probably  
17 reserve and see where that document lands. We've indicated  
18 that while we had interest in that issue, we didn't have -- we  
19 didn't really put a lot of material into it and instead have  
20 fairly well lined up behind Staff. As far as that goes then,  
21 I think I would at this point really sit down and let the  
22 proceeding go forward.

23                  JUDGE DALE: Thank you.

24                  Mr. Fischer?

25                  MR. FISCHER: May it please the Commission.

1 My name's Jim Fischer. I'm representing Kansas City Power &  
2 Light Company, which is an intervenor in this proceeding.

3 We filed the testimony of Brian Weiss on the  
4 amortization and income tax gross-up issue, as it's been  
5 shorthanded. And as he explained in his testimony, KCPL was  
6 concerned about this issue in this case because the  
7 amortization provided for in the Empire regulatory plan is  
8 very similar to the amortization approved for Kansas City  
9 Power & Light Company in its regulatory plan, Case  
10 No. EO-2005-0329.

11 It's our position that it's essential for both  
12 KCPL and Empire that the Commission consider the implications  
13 of the tax effects of the amortization appropriately.

14 In light of the statement by Mr. Dottheim and  
15 Mr. Mills indicating the change of position on the Staff's  
16 case, I think we at the Kansas City Power & Light are going to  
17 be in a position of not having to oppose the position being  
18 suggested by Staff and Public Counsel in this case, pending  
19 the finalization of the illustrations I think that they're  
20 going to be working on.

21 Brian Weiss is here today and would be  
22 available to answer any questions of the parties or the  
23 Commission on this issue. Thank you very much.

24 JUDGE DALE: Thank you.

25 Ms. Carter, will you have an opening?

1 MS. CARTER: I have no statement on this  
2 issue.

3 JUDGE DALE: Thank you.

4 With that, I believe Empire --

5 MR. SWEARENGEN: Yes, Judge. Jim Swearengen  
6 for Empire. We're prepared to call our first witness on this  
7 issue this morning, who is Mr. Steve Fetter, if that's the  
8 Commission's pleasure.

9 I would note for the Commission's benefit that  
10 he has testimony not only on the regulatory amortization  
11 issue, but also on the fuel and purchased power issue method  
12 of recovery. So he will be here today to sponsor his  
13 testimony on those topics, undergo cross-examination. He is  
14 available only today, however. Thank you.

15 JUDGE DALE: Then let's go ahead and call him.

16 MR. SWEARENGEN: Thank you. Call Mr. Fetter  
17 at this time.

18 (Witness sworn.)

19 JUDGE DALE: Thank you. Please be seated.

20 STEVEN M. FETTER testified as follows:

21 DIRECT EXAMINATION BY MR. SWEARENGEN:

22 Q. Would you state your name for the record,  
23 please?

24 A. Steven M. Fetter.

25 Q. By whom are you employed, Mr. Fetter?

1           A.       I have my own energy advisory firm called  
2 Regulation Unfettered.

3           Q.       And where is that based?

4           A.       It's based in Henderson, Nevada.

5           Q.       Thank you. Did you cause to be prepared for  
6 purposes of this proceeding certain Supplemental Direct  
7 Testimony in question and answer form?

8           A.       Yes, I did.

9           Q.       And did you also cause to be prepared for  
10 purposes of this proceeding certain Rebuttal Testimony in  
11 question and answer form?

12          A.       Yes.

13          Q.       Do you have copies of those testimonies in  
14 front of you this morning?

15          A.       I do.

16          Q.       Let me represent to you that your Supplemental  
17 Direct Testimony has been marked for purposes of  
18 identification as Exhibit 11. Are there any changes in that  
19 testimony that you wish to make at this time?

20          A.       Not that I am aware of at this moment.

21          Q.       Thank you. And with respect to your Rebuttal  
22 Testimony, Exhibit 12, are there any changes that you wish to  
23 make in that testimony at this time?

24          A.       The same answer. Not at this time.

25          Q.       So if I asked you the questions that are

1 contained in Exhibits 11 and 12, would your answers today  
2 under oath be the same as contained in those exhibits?

3 A. Yes.

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

6 A. Yes.

7 MR. SWEARENGEN: Thank you. With that, your  
8 Honor, I would offer into evidence Exhibits 11 and 12 and  
9 tender the witness for cross-examination. Thank you.

10 JUDGE DALE: Is there any objection to  
11 Exhibits 11 or 12?

12 MR. CONRAD: Yes, your Honor, there is. If  
13 you're prepared to hear that, I will make those for the  
14 record.

15 On May 2, the Commission made a decision that  
16 this company could not seek an FAC as long as its current  
17 mechanism remained in place. In that May 2 order, the company  
18 was directed to remove from its tariff filing, by striking or  
19 withdrawal, filings in the case concerning the request it had  
20 consented not to make.

21 On May 2, following our motion, the Commission  
22 took into its own hands and struck a number of items from the  
23 filing that the utility had failed at that point to comply  
24 with the Commission's order.

25 I find in Exhibit 11 that there is

1 considerable reference beginning at page 2, line 2 and  
2 continuing on through the end of that testimony exhibit down  
3 through page 13 and line 15 about an FAC, whether or not it is  
4 legally permissible and other material referring to an FAC.  
5 And that, I believe, is no longer relevant and should be  
6 removed by striking from this proceeding and I would hereby so  
7 move.

8                   In addition, on pages 7 beginning at an answer  
9 that begins partway through line 2 and continuing on through  
10 really page 11 and line 3 on that page, there is material that  
11 is also objectionable simply on the basis that it is hearsay,  
12 has not been prepared by this witness and has no -- I have no  
13 ability to cross-examine the witness with respect to the  
14 statements that are made. They're out-of-court statements  
15 offered to prove the truth of what they say.

16                   In addition, the witness has attached to  
17 Exhibit No. 11 a schedule which begins and is labeled as  
18 Schedule SMF-2 and continues thereafter for a good 21 pages in  
19 which there is an additional discussion of the FAC and various  
20 other mechanisms, which the Commission, in our view, has  
21 previously ruled are not part of this proceeding. And I would  
22 move that that schedule be struck as no longer relevant.

23                   Now, I recognize that this testimony was filed  
24 after and, in fact, makes a weak reference, your Honor, to the  
25 Commission's May 2 and May 15 orders, but it is no less



1 objectionable on the same basis and should be removed.

2                   With respect to Exhibit No. 12, which has been  
3 offered, on page 1, beginning at line 13, the question, Does  
4 this Rebuttal Testimony follow upon the Supplemental Direct  
5 Testimony you previously filed in this proceeding?

6                   And continuing with an answer through line 2  
7 on page 2, that also pertains to the fuel and purchased power  
8 recovery mechanisms that the witness had referred to and  
9 obviously is referring to his earlier testimony and portions  
10 that, under our view, should be struck and not part of this  
11 proceeding. And therefore, I would include that portion  
12 within my motion in Exhibit 12. Thank you, your Honor.

13                   MR. SWEARENGEN: If I may respond very  
14 briefly.

15                   JUDGE DALE: Yes.

16                   MR. SWEARENGEN: I think Mr. Conrad did there  
17 at the end of his objection point out that on June 20, 2006,  
18 after the Commission had issued its May 2nd order, the  
19 Commission issued another order directing the parties to  
20 respond to five specific questions.

21                   And Mr. Fetter's testimony is, as he  
22 indicates, in response to question No. 5, Is there any other  
23 relevant information you wish to provide the Commission. The  
24 question then becomes, is this information relevant.

25                   We believe it certainly is. First of all, as

1 I indicated earlier, we continue to believe the Commission in  
2 this proceeding ultimately, if it desires, can authorize this  
3 company to implement the fuel adjustment clause, which the  
4 witness explains is the preferred method for recovering of  
5 fuel expense.

6                   However, the witness goes on to state that if  
7 that doesn't happen, that the Commission using the traditional  
8 method of putting all of the fuel costs in base rates needs to  
9 be very careful because the consequence here, if the company  
10 does not recover on a timely basis its prudently incurred fuel  
11 costs, is the credit downgrade potential, which is really the  
12 thrust of his testimony on that point.

13                   With respect to the material that Mr. Conrad  
14 objected to as hearsay, I think this is the type of  
15 information that an expert witness, such as Mr. Fetter, can  
16 rely on in formulating his opinions. So it certainly should  
17 not be objectionable on that basis.

18                   Exhibit 12, his Rebuttal Testimony, I would  
19 make the same comments. And, of course, the purpose of that  
20 testimony is to talk about the fact that if the Commission  
21 views the regulatory plan amortization as a substitute for the  
22 recovery of prudently incurred fuel costs or for that matter  
23 any other legitimate operating expenses that the company has  
24 incurred, that that type of action would run the risk of  
25 bringing about a credit downgrade.

1                   So I think his testimony is relevant, it's in  
2   response to a Commission order and I think the objection's  
3   without merit. Thank you.

4                   MR. MILLS: If I may note an additional  
5   objection, the Supplement -- this is with respect to  
6   Exhibit 11. The Supplemental Direct Testimony is in response  
7   to a Commission order for which an Application for Rehearing  
8   is still pending. To the extent that the Commission rules  
9   favorably on my Application for Rehearing, then this testimony  
10  should not be allowed. Thank you.

11                  MR. DOTTHEIM: Judge.

12                  JUDGE DALE: Yes.

13                  MR. DOTTHEIM: Excuse me. And regarding  
14  Exhibit No. 12, the Rebuttal Testimony, I don't believe that  
15  Mr. Fetter anywhere in his Rebuttal Testimony indicates to  
16  which witness's Direct Testimony he is offering Rebuttal  
17  Testimony. There's no indication whatsoever to which direct  
18  witness or witnesses he is responding to.

19                  JUDGE DALE: Well, since this is a  
20  considerable amount of striking, etc., if I could ask you,  
21  please, Mr. Conrad, to go through beginning with the  
22  Supplemental Direct and we will walk through each section and  
23  I'll strike those portions that should be stricken pursuant to  
24  the previous order. And then we can talk about other issues.

25                  MR. CONRAD: Very well. I'm sorry.

1 JUDGE DALE: So the first one is on page 2?

2 MR. CONRAD: Yes, ma'am. Begins -- it appears  
3 to begin on line 2. And there begins reference to FAC and so  
4 on. That continues -- really that discussion, your Honor,  
5 continues with considerable repetition, changing  
6 terminologies, changing to ECRs in various places. That  
7 really continues through almost the end of page 13, line 15.  
8 I don't have an objection to his question and answer, Does  
9 this conclude your testimony? Answer, yes.

10 MR. SWEARENGEN: Now, your Honor, I just want  
11 to make this objection -- respond to this objection on this  
12 basis so it's pretty clear. I think what he's saying is that  
13 this witness is prohibited from mentioning the word "fuel  
14 adjustment clause" or "FAC mechanism." And I don't believe  
15 that the Commission has indicated that that's the case at all  
16 and if they did, it would clearly be improper.

17 The way --

18 MR. CONRAD: Well, counsel, I was stating my  
19 objection and jumped in in the middle of my recitation, so  
20 I'll feel free to jump in the middle of his.

21 The point I was making is it's at that point  
22 that we begin to talk about alternative mechanisms to IEC.  
23 It's not that I have particular objection to the concatenation  
24 of the letters A, C and F in any particular order or to the  
25 letters C, E and I in any particular order or to the letters

1 C, R and E in any particular order. It is the fact that at  
2 that point he begins to talk about alternative mechanisms,  
3 including without limitation an FAC.

4 Later on page 7, an ECR; Heaven knows what on  
5 page 9 and 10. Then we go to talking about the other  
6 mechanisms to recover what is characterized as a timely  
7 recovery of prudently incurred costs. That seems to be the  
8 mantra that we're using now.

9 So counsel misstates in whole the objection.  
10 It is to the fact that we are going into, again, issues there  
11 in that material that the Commission has ruled -- and by the  
12 way, have ruled by the time and at the time that this  
13 testimony was filed, was no longer relevant in this  
14 proceeding.

15 And so you could add to it is there any other  
16 relevant information that the witness wanted to supply. And  
17 if his response is in response to that question from the  
18 Commission, then the Commission built in its own limitation by  
19 using the term "relevant." And this is not relevant.

20 MR. SWEARENGEN: May I respond now?

21 JUDGE DALE: Yes.

22 MR. SWEARENGEN: There's nothing in this  
23 testimony that tells the Commission that they should in this  
24 proceeding implement a fuel adjustment clause. He clearly  
25 says on page 2, starting at line 3, I encourage the Commission

1 to authorize and implement an FAC for Empire as soon as it is  
2 possible. He recognizes that there is an issue before the  
3 Commission as to whether or not they can do it in this  
4 proceeding.

5 We have stated previously that we recognize  
6 what the Commission has said, we're hopeful -- we continue to  
7 be hopeful that they will reconsider that and recognize that  
8 the prohibition is not to requesting the implementation of a  
9 fuel clause, but requesting one to be implemented while the  
10 IEC is in effect. We think that's what the agreement says.

11 But having said all of that, this witness's  
12 testimony is not supporting the implementation of one in this  
13 case unless the Commission concludes that it is, in fact,  
14 possible for the Commission to do so in this proceeding.  
15 So I don't think any of it should be stricken.

16 JUDGE DALE: I can tell you that in light of  
17 the Commission's previous order, all testimony concerning fuel  
18 adjustment clause or energy recovery riders or name your  
19 acronym, except the present IEC have been excluded from this  
20 proceeding.

21 My question to you, Mr. Swearengen, is, is  
22 there any place in this testimony between page 2, line 2 and  
23 the very end of the testimony that you believe does not  
24 discuss a fuel adjustment mechanism?

25 MR. SWEARENGEN: Well, let me say this is the

1 first time I've been aware that that this is the breadth of  
2 the Commission's ruling on that. My understanding was that  
3 the Commission's ruling on this was simply we could not ask  
4 for something that we said we wouldn't ask for. Not that we  
5 could not provide testimony that concerned this topic.

6 So you've really caught me by surprise this  
7 morning telling me now that this Commission's ruling on that  
8 question is something other than what I anticipated. And so  
9 I'm not prepared to sit here this morning and tell you where  
10 in this testimony we may run afoul of your new ruling. I just  
11 can't do that.

12 JUDGE DALE: In that case, from page 2, line 2  
13 through the last question, the testimony will be stricken.

14 MR. SWEARENGEN: And then I would ask that it  
15 be preserved in the record under the Commission's rules.

16 JUDGE DALE: Absolutely.

17 MR. SWEARENGEN: Thank you.

18 MR. CONRAD: Then continuing, your Honor,  
19 since that ruling comprehends the hearsay objection, we then  
20 have Schedule SMF-2, which was attached as an exhibit and  
21 discusses in the very beginning development and status of fuel  
22 and purchased power cost recovery mechanisms, quote, FACs,  
23 closed quote. So we include the entirety of SMF-2 within the  
24 scope of my original objection.

25 Is your Honor finding that?

1 JUDGE DALE: I'm working on it. Okay.

2 Mr. Swearengen, again, I'll ask you the same  
3 thing. I presume your answer will be the same.

4 MR. SWEARENGEN: My response would be the  
5 same.

6 JUDGE DALE: Thank you. The entirety of SMF-2  
7 will be stricken.

8 MR. CONRAD: And if your Honor please, I think  
9 that concludes our objections.

10 JUDGE DALE: Thank you.

11 Mr. Swearengen, did you want to preserve this  
12 one as well?

13 MR. SWEARENGEN: I would.

14 JUDGE DALE: Thank you.

15 MR. SWEARENGEN: Thank you.

16 JUDGE DALE: Will do.

17 MR. SWEARENGEN: Thank you.

18 Mr. Mills, did that encompass your objections?

19 MR. MILLS: Yeah, I think so.

20 JUDGE DALE: Okay. And then there were  
21 additional objections to his Rebuttal?

22 MR. CONRAD: Yes, ma'am. And that is found --  
23 and I'm referring to Exhibit 12, which in its entirety  
24 consists of four pages. My objection to it and my Motion to  
25 Strike was directed to the material that begins on line 13 and



1 carries over to line 2 on the top of page 2. So line 13,  
2 page 1 to line 2 on page 2, I now see in looking at this  
3 further that I should have included and would thereby amend my  
4 motion to include on down on page 2 through line 8.

5 MR. SWEARENGEN: And, your Honor, I have no  
6 idea what he's talking about when he makes that objection.  
7 Clearly, timely recovery of prudently incurred fuel and  
8 purchased power expenditures is important to maintain a credit  
9 rating and the amortization mechanism should not be a  
10 substitute for that.

11 That's our position. I think, in fact, that's  
12 the position that Mr. Conrad's own client has taken, his own  
13 witness has taken in this proceeding. So I don't understand  
14 that objection at all.

15 MR. CONRAD: Well, your Honor, I would readily  
16 concede that there is not a reference directly in the material  
17 that I have noted to FAC, IEC, ECR, alphabet soup unlimited.  
18 However, at the very bottom of page 1 and the question that  
19 begins on line 13, Does this Rebuttal Testimony follow upon  
20 the Supplemental Direct Testimony? Answer, Yes, it does.

21 MR. SWEARENGEN: Well, that doesn't make it  
22 objectionable.

23 MR. CONRAD: Well, it -- I guess my view is it  
24 is bringing -- an attempt to bring back within and refer back  
25 to material which has now been, by ruling, struck. And that's

1 the limit. I would readily concede, your Honor, that it does  
2 not directly refer in the paragraphs I've mentioned to FACs or  
3 the alphabet.

4 JUDGE DALE: Mr. Mills.

5 MR. MILLS: And I'd like to turn to  
6 Mr. Dottheim's objection and support that. I mean, I'll note  
7 just for an example because I have it in front of me, the  
8 Direct Test-- the Rebuttal Testimony of Ted Robertson says,  
9 What is the purpose of your Rebuttal Testimony? To address  
10 positions taken by so-and-so and so-and-so on this issue and  
11 that issue and that issue.

12 And the Commission's rules require that  
13 Rebuttal Testimony be limited to matters that are raised in  
14 other parties' Direct Testimony. Mr. Fetter's Rebuttal  
15 Testimony neither by direct reference nor by implication  
16 addresses anyone's Direct Testimony. It's simply his position  
17 on certain issues with respect to timely recovery of fuel and  
18 purchased power costs and amortizations, but it does not rebut  
19 any other parties' testimony, so I think Mr. Dottheim's  
20 objection is well founded.

21 MR. SWEARENGEN: Your Honor, if I could speak  
22 to that, I didn't understand that it was an objection made by  
23 Mr. Dottheim. I thought it was more of a nature of an  
24 observation, which I thought we might try to clear up on  
25 cross-examination.

1                   But Staff Witness Oligschlaeger's Direct  
2     Testimony -- Supplemental Direct Testimony and Public Counsel  
3     Witness Ted Robertson's Direct Testimony all discuss the  
4     amortization and how they envision that it be utilized. And  
5     based on their testimonies, we interpreted those positions to  
6     mean that the amortization could be used as a substitute for  
7     other legitimate operating expenses.

8                   Now, if they're going to change their  
9     testimony on that, and perhaps they have, that's fine, but  
10    when it was prepared and filed, that's what it's responding  
11    to.

12                  MR. MILLS: For the record, we have not  
13    changed our position on that.

14                  JUDGE DALE: Mr. Dottheim?

15                  MR. DOTTHEIM: Yes. And my statement was  
16    intended as an objection based on the Commission's rules.

17                  JUDGE DALE: In light of Mr. Swearengen's  
18    assertion that it is in response to certain other parties'  
19    testimony, do you still have that objection?

20                  MR. DOTTHEIM: The testimony should have  
21    stated in regards to which witnesses the Rebuttal Testimony  
22    was being offered in response to. It is just -- presently  
23    just a narrative.

24                  And I think, if anything, it references the  
25    question that Mr. Conrad has noted on page 1, Does this

1 Rebuttal Testimony -- Does this rebuttal testimony follow upon  
2 the Supplemental Direct Testimony you previously filed in this  
3 proceeding? If anything, this Rebuttal Testimony references  
4 Mr. Fetter's own Supplemental Direct Testimony and not the  
5 Direct Testimony of any other witness in this case.

6 MR. SWEARENGEN: Well, your Honor, if you turn  
7 to page 2, line 3 the question, What is the purpose of this  
8 Rebuttal, he explains what the purpose is.

9 I recognize that he didn't identify what  
10 particular witnesses for the other parties in this proceeding  
11 were advancing the position that somehow the regulatory  
12 amortization amount could be used as a substitute for  
13 prudently incurred expenses on the part of Empire, but that  
14 doesn't suggest that the Commission should not hear this  
15 testimony or that it's not relevant.

16 MR. MILLS: Well, and I think that's part of  
17 the problem. The answer to which Mr. Swearngen refers, talks  
18 vaguely about the way that the amortization mechanism should  
19 be used. And perhaps you could read into some implication  
20 that this witness has misread the other parties' positions and  
21 is trying to rebut them, but without any reference to where he  
22 gets this notion that amortization should be -- could be used  
23 as a substitute for timely recovery, it's impossible to judge  
24 how he's rebutting someone because no one has said that in  
25 their testimony.

1                   So this doesn't respond to anybody's position  
2   that that is the case in this case and it can't be. And  
3   because the testimony itself doesn't provide reference, we  
4   couldn't in Surrebuttal even point out that, no, that's wrong,  
5   that's not what was said there. There's just a general  
6   statement.

7                   MR. SWEARENGEN: I think that Mr. Mills'  
8   statement that there's a \$30,000,000 amortization coming in  
9   this proceeding underscores my point. The only way you can  
10   get to that amount or anywhere close to that amount is by  
11   denying the company recovery of its otherwise prudently  
12   incurred operating costs in this proceeding. So I think  
13   Mr. Mills has made my point. Thank you.

14                  MR. CONRAD: Your Honor, at the risk of piling  
15   on, I'll be brief. I think that the reason the Commission has  
16   the rules about Rebuttal Testimony and Surrebuttal Testimony  
17   is to try to narrow the scope of the proceeding.

18                  I think we would join in Mr. Dottheim's now  
19   voiced objection as well as the basis advanced by Mr. Mills.  
20   It would appear that Mr. Fetter's Surrebuttal Testimony is  
21   rebutting no one but Mr. Fetter. That's the only testimony  
22   that's mentioned.

23                  And he apparently is aware of yet a sixth  
24   question which has been asked by the Commission that he and  
25   only he is aware of to which he appears to be responding. And

1 that is, is there anything you forgot to mention? And I don't  
2 think that is the purpose of Surrebuttal Testimony. So this  
3 could go on forever and forever. Thank you. Or it's --  
4 rather it says, Rebuttal. Excuse me, Exhibit 12.

5 JUDGE DALE: Inasmuch as the Rebuttal  
6 Testimony does not appear to rebut anything but appears to be  
7 a continuation of his Direct Testimony, it will be stricken.

8 MR. SWEARENGEN: Let me ask just as a  
9 clarification on that, are you saying that the Commission  
10 rules require the witness to identify in his Rebuttal  
11 Testimony the witness or witnesses he is rebutting? Is that  
12 the basis of your ruling?

13 JUDGE DALE: The basis of my ruling is that in  
14 the question on line 3, on page 2, Mr. Mills seems to be  
15 saying that no witness in this case has asserted that there  
16 could be such a substitution.

17 MR. SWEARENGEN: And, once again -- and I  
18 think that's a correct statement with respect to Mr. Conrad's  
19 witness. I'm not sure that that's a correct statement with  
20 respect to the Public Counsel or the Staff. But they can  
21 speak -- or any other party for that matter.

22 But if they want to take that position now on  
23 the record and tell the Commission that that's not what, in  
24 fact, they're seeking or suggesting, that's fine. I'd like to  
25 know that.

1                   MR. MILLS: I can certainly state for the  
2 record that it is not Public Counsels' position that the  
3 Commission should deliberately short change Empire on revenue  
4 requirement and then try to make it up with amortization.  
5 That is not our position.

6                   The Commission should determine revenue  
7 requirement the way it always does and offer the proper amount  
8 of revenue requirement recovery and then calculate an  
9 amortization from that point.

10                  JUDGE DALE: Mr. Dottheim.

11                  MR. DOTTHEIM: And that is the Staff's  
12 position and I think that is established in the testimony that  
13 Mr. Oligschlaeger has filed on the regulatory plan  
14 amortizations issue.

15                  JUDGE DALE: Mr. Fischer.

16                  MR. FISCHER: Your Honor, I wasn't going to  
17 weigh in on the evidentiary objection, but now we're getting  
18 into an area of policy that is very important to Kansas City  
19 Power & Light. And to the extent that the Commission needs to  
20 inquire about the differences in substance, I think it would  
21 be proper to ask this witness or other witnesses that address  
22 that particular position.

23                  We certainly believe the amortization is an  
24 important part of the regulatory plan, but it should not be  
25 used as a substitute for ROE or fuel or other legitimate

1 revenue requirement items.

2 JUDGE DALE: That appears to be the absolute  
3 consensus in this room.

4 MR. CONRAD: And we concur with what Mr. Mills  
5 and what Mr. Dottheim said with respect to the positions.

6 JUDGE DALE: As nearly as I can tell, everyone  
7 in this room agrees that amortization should not be a  
8 substitute for receiving timely recovery of prudently incurred  
9 fuel and purchased power expenses. And everyone is on the  
10 record as saying that.

11 MR. SWEARENGEN: And his testimony does go  
12 beyond that, of course, your Honor. If you look over on  
13 page 3, the failure to do that, the failure to allow timely  
14 recovery would lead to a rating agency concern and could, in  
15 turn, lead to a longer term financial drag on the company,  
16 which, in turn, could impact its credit rating. So his  
17 testimony does go beyond that narrow question.

18 JUDGE DALE: The ruling to strike will stand.

19 MR. SWEARENGEN: And, once again, I ask that  
20 all of this be preserved in the record under the Commission  
21 rule.

22 JUDGE DALE: Absolutely.

23 MR. FISCHER: KCPL would join in that proffer.

24 JUDGE DALE: Join in -- was the court reporter  
25 able to get that?



1 THE COURT REPORTER: Yes.

2 JUDGE DALE: Okay. Thank you.

3 MR. CONRAD: If your Honor please, that does  
4 conclude my objections and with that ruling, we would not have  
5 objection to the residue of Mr. Fetter's testimony.

6 JUDGE DALE: Such as it is, the remainder of  
7 his testimony will be accepted into the record.

8 (Exhibit Nos. 11 and 12 were received into  
9 evidence.)

10 MR. SWEARENGEN: And once again, I would  
11 tender him for cross-examination.

12 JUDGE DALE: Thank you.

13 MR. SWEARENGEN: Not only on what has been  
14 accepted into the record, but also pursuant to the rule that  
15 allowed preservation of that which you have not seen fit to  
16 accept at this time.

17 MR. CONRAD: Well, let's clarify that. That's  
18 an offer of proof and counsel is entirely within his rights to  
19 make that offer of proof. But that does not obligate other  
20 parties to engage in exercises in curity of admissibility  
21 dealing with cross-examination on topics that have been  
22 excluded.

23 MR. SWEARENGEN: Well, under the rule, he's  
24 entitled to cross -- the parties are entitled to cross if they  
25 want to.

1 JUDGE DALE: Ms. Carter?

2 MS. CARTER: I have no cross-examination  
3 questions.

4 JUDGE DALE: Mr. Fischer?

5 MR. FISCHER: I have no questions, your Honor.

6 JUDGE DALE: Mr. Conrad?

7 MR. CONRAD: Just a couple, your Honor. If --  
8 by your leave, if I can just do it from here.

9 JUDGE DALE: That would be fine. Please make  
10 sure that your microphone is directly in front of your mouth.

11 MR. CONRAD: Is that better?

12 JUDGE DALE: Yes.

13 MR. CONRAD: Thank you.

14 CROSS-EXAMINATION BY MR. CONRAD:

15 Q. Mr. Fetter, are you appearing here today  
16 because Empire District engaged you to provide testimony for  
17 them in this proceeding?

18 A. Yes.

19 Q. Were the terms of that engagement such that  
20 you were to be paid for that testimony?

21 A. We actually never discussed it.

22 Q. You have already submitted prepared testimony  
23 in this proceeding, haven't you?

24 A. Yes, I have.

25 Q. And you're now appearing here today at

1 Empire's ticket to stand cross-examination on that testimony,  
2 are you not?

3 A. What do you mean by "ticket"?

4 Q. Did you pay or do you expect to be reimbursed  
5 for your ticket out here?

6 A. Yes, I do.

7 Q. Is that part of the agreement that you had  
8 with them?

9 A. As I said, we never discussed any financial  
10 terms.

11 Q. Well, then I take it that Empire District has  
12 not already paid you for this activity?

13 A. No, they have not.

14 Q. So in your view, does Empire owe you something  
15 for this activity?

16 A. Yes.

17 Q. And you've performed your part of the bargain,  
18 haven't you?

19 A. As far as I can tell.

20 Q. Now that you've performed your part of the  
21 bargain, would you be upset if Empire District broke their  
22 promise to you to pay you for your services?

23 A. Well, I usually have very good relationships  
24 with my clients, which include utilities, Public Service  
25 Commissions and consumer advocates and I've never had a

1     disagreement with regard to compensation.  If there's a  
2     disagreement, we discuss it either in person or over the phone  
3     and we work out an accommodation that represents fair policy.

4             Q.       But you would be upset if they simply refused  
5     to pay you, would you not?

6             A.       As I said, I would discuss it with Empire and  
7     based on my past history, I don't think we would fail to come  
8     to a meeting of the minds.

9             Q.       But if that failed, you would be upset, would  
10    you not?

11            A.       I -- I don't know when you say "that failed,"  
12    are you saying --

13            Q.       You failed to achieve this meeting --

14            A.       Can I answer --

15            Q.       -- of the minds?

16            A.       -- the question you asked, sir?

17            Q.       Well, let me -- yeah, I'll wait for you to  
18    answer the question I asked, not something --

19            A.       Okay.  Could I have that read back, please?

20                    THE COURT REPORTER:  "Question:  But if that  
21    failed, you would be upset, would you not?"

22                    THE WITNESS:  I don't understand the use of  
23    the word "failed" there.

24    BY MR. CONRAD:

25            Q.       Well, let's just strike that question.

1                   Now that you have performed, as you previously  
2 testified, your part of this bargain, if Empire were not to  
3 pay you at all and you were not to achieve this post-hoc  
4 meeting of the minds, would you be upset about that?

5           A.       I -- I don't -- you know, I don't -- can't see  
6 the word -- what you mean by upset in that -- in that  
7 situation. I, you know -- certainly both sides would have  
8 their positions and there are various steps that each side  
9 could take.

10                   MR. CONRAD: That's all, your Honor.

11                   JUDGE DALE: Thank you.

12                   Public Counsel?

13                   MR. MILLS: No questions.

14                   JUDGE DALE: Staff?

15                   MR. DOTTHEIM: No questions.

16                   JUDGE DALE: Thank you.

17                   Are there questions from the Bench?

18                   COMMISSIONER MURRAY: No questions, thank you.

19                   COMMISSIONER APPLING: Thank you, Judge. No  
20 questions.

21                   JUDGE DALE: Thank you. Redirect?

22                   MR. SWEARENGEN: No redirect.

23                   JUDGE DALE: Thank you. Mr. Fetter, you may  
24 step down. Thank you very much.

25                   THE WITNESS: Thank you.

1 MR. SWEARENGEN: And may he be excused?

2 JUDGE DALE: Yes.

3 MR. SWEARENGEN: Thank you.

4 JUDGE DALE: Let's all take a break. Let's  
5 come back at five 'til 11:00.

6 MS. CARTER: Judge, if I may very briefly just  
7 so I'm clear, the rest of the day we'll be going back to the  
8 amortization issue; is that correct? And we won't be picking  
9 back up on IEC termination until tomorrow?

10 JUDGE DALE: I believe so, if I've understood  
11 what I've been told. It's been a lot, so --

12 (A recess was taken.)

13 JUDGE DALE: I believe that we are now ready  
14 for Mr. Gipson.

15 MR. COOPER: Yes, your Honor. And I would  
16 think that in light of the earlier unanimous agreement that  
17 the amortization vehicle is not a replacement for timely  
18 recovery of prudently incurred fuel and purchased power  
19 expense, that perhaps cross-examination would be limited, if  
20 not non-existent. So I guess I would ask whether the parties  
21 would still like Mr. Gipson to take the stand.

22 MR. MILLS: I do have some questions for  
23 Mr. Gipson.

24 MR. CONRAD: With all respect, I don't think  
25 that was the characterization of the agreement or the

1 discussion. I think that --

2 JUDGE DALE: Certainly seemed like it to me.

3 MR. CONRAD: Well, I think the point was that  
4 everyone was saying that -- which you first did, as Mr. Mills  
5 pointed out I think both in his opening and here, you first  
6 went through the process and then you came back to see whether  
7 the amortization was needed. Now, if that's what Mr. Cooper  
8 is saying, then we're in harmony.

9 JUDGE DALE: Well, in any event, it appears  
10 that Mr. Mills has some questions so if you'll come up and  
11 take the stand, please.

12 MR. COOPER: I believe that Mr. Gipson has  
13 been on the stand previously and probably was sworn at that  
14 time.

15 JUDGE DALE: I'll just remind you that you're  
16 still under oath, sir.

17 MR. COOPER: And we would tender  
18 Mr. Gipson's cross-examination on the amortization issue.

19 JUDGE DALE: I don't have his testimony marked  
20 as received into evidence. I don't know if that was --

21 MR. COOPER: I believe that's correct, your  
22 Honor. I think that we had planned to offer it. Mr. Gipson  
23 will be up another time yet this week and we plan to offer his  
24 testimony when he takes the stand.

25 JUDGE DALE: That would be fine. Thank you.

1                   MR. CONRAD: And I think, your Honor, for our  
2 part we had assumed today or at least at this time was on the  
3 amortization issue, not on fuel and purchased power. And I  
4 also think without having to go through all that, that some  
5 portions of his testimony were struck by the June 15th order.

6                   JUDGE DALE: Okay.

7                   MR. CONRAD: And to be honest with you, I  
8 haven't gone through. David was going to be involved in that  
9 I think tomorrow so we will address that at that point.

10                  JUDGE DALE: Okay. Let's see.

11                  MR. CONRAD: And I do have some -- if we're  
12 out of order, I don't want to disrupt you, but we do have some  
13 questions on this.

14                  JUDGE DALE: Mr. Fischer, do you have --

15                  MR. FISCHER: I have no questions.

16                  JUDGE DALE: Okay. Then it is to you,  
17 Mr. Conrad.

18                  MR. CONRAD: Very well.

19                  By your leave.

20 W.L. GIPSON testified as follows:

21 CROSS-EXAMINATION BY MR. CONRAD:

22                  Q.       Good morning, Mr. Gipson.

23                  A.       Good morning.

24                  Q.       Now, I believe that you have earlier stated  
25 perhaps in earlier testimony that you were the CEO or Chief



1 Executive Officer of Empire. Is that still correct?

2 A. That's correct. I'm the CEO of the Empire  
3 District Electric Company.

4 Q. And what are some of your responsibilities as  
5 CEO?

6 A. Many and broad. Oversee the entire  
7 organization in terms of setting goals, priorities, key  
8 business strategies, things of that nature.

9 Q. Are you responsible for communicating with  
10 equity and debt analysts regarding Empire's financial  
11 condition?

12 A. Yes, I am. To -- to a certain degree.

13 Q. Who are some of the debt analyst groups with  
14 which you communicate -- probably should say with whom you  
15 communicate?

16 A. Standard and Poor's, Moody's Rating Service  
17 and Fitch Ratings.

18 Q. How often do you communicate with these  
19 groups, sir?

20 A. On the order of two to three times annually.

21 Q. Do you typically keep notes of these meetings?

22 A. I make notes usually in anticipation of  
23 meetings and sometimes keep notes as we run through meetings.  
24 But it's usually the notes in anticipation of.

25 Q. Can you tell me who Greg Knapp is?

1           A.       Greg Knapp is the vice president of finance  
2     and chief financial officer for the Empire District Electric  
3     Company.

4           Q.       And I take it he would also be involved in  
5     those meetings in most cases?

6           A.       Yes.

7           Q.       Do you recall a meeting with Fitch Rating  
8     analysts on October the 15th, 2005 that occurred in Joplin?

9           A.       I do.

10          Q.       Can You tell me some of the nature of the  
11     discussions that you had with Fitch at that time?

12          A.       I don't have the -- you know, I don't recall  
13     that we put an outline together, but generally what we were  
14     trying to do was familiarize them with the organization. We  
15     had a number of our senior officers that met with Fitch that  
16     day, included a plant tower is my memory.

17          Q.       Would you typically discuss with those  
18     individuals Empire's plans regarding the filing of future rate  
19     increases?

20          A.       We were on the cusp of engaging Fitch to begin  
21     ratings services with Empire. And I'm -- like I said, I don't  
22     have that outline in front of me and so I don't know if that  
23     was a topic for the day.

24          Q.       Would you typically also provide those  
25     analysts with management's prediction for the outcome of those

1 rate cases?

2 A. Well, again, I don't know that that was a  
3 topic for the day in that -- in the meeting that you're  
4 referencing.

5 Q. Well, let me see if I have something here that  
6 may refresh your recollection.

7 A. Good.

8 MR. CONRAD: What number are we up to, ma'am?

9 JUDGE DALE: 108.

10 MR. CONRAD: And that is HC, by the way, or at  
11 least the attachment is. I don't know about the response.

12 JUDGE DALE: This is 108-HC.

13 (Exhibit No. 108-HC was marked for  
14 identification.)

15 JUDGE DALE: Mr. Conrad, do you expect that we  
16 need to go in-camera for this?

17 MR. CONRAD: It is very possible briefly. And  
18 I don't know how your Honor wants to handle that. I'll  
19 endeavor to stay out if we can, but we may need to go in for  
20 one hopefully brief exchange.

21 JUDGE DALE: Okay. Mr. Gipson, if you'll be  
22 cognizant of that and if you're about to give an HC response,  
23 stop and let me know we need to go in-camera. Thank you.

24 THE WITNESS: Yes, Judge. Thank you.

25 JUDGE DALE: Please proceed.

1 MR. CONRAD: Thank you.

2 BY MR. CONRAD:

3 Q. Mr. Gipson, I have laid before you what has  
4 been marked for purposes of identification as Exhibit 108.  
5 That document consists of a single page followed by what  
6 appears to be seven pages of a document that has been marked  
7 as highly confidential. Are you able to identify that  
8 document, sir?

9 A. It would appear that these -- that this --

10 Q. Again, let me -- without trespassing on highly  
11 confidential. I'll caution you about that.

12 A. Yeah. It would appear to me to be a  
13 response -- at least part of our response to DR 269, which I  
14 believe called for notes in anticipation of meetings with  
15 rating agencies. And these would be the notes for Greg Knapp.

16 Q. And you're able to recognize his signature,  
17 are you not, sir?

18 A. He has a very poor handwriting, so I'm able to  
19 recognize his signature.

20 Q. I will let you resolve that as a personal  
21 matter.

22 A. Well, I just wanted that on the record,  
23 Mr. Conrad.

24 MR. CONRAD: But with that acknowledgment of  
25 the witness, I would move admission of 108.

1                   MR. COOPER: Your Honor, I'll going to object  
2 for the time being here. And I don't know where Mr. Conrad's  
3 headed, but at this point I guess I don't -- I don't see the  
4 relevance to the amortization issue and I also believe it  
5 appears to be beyond the scope of Mr. Gipson's testimony on  
6 the amortization issue.

7                   JUDGE DALE: Then I will reserve ruling until  
8 we delve a little further into this and see if it is relevant.

9 BY MR. CONRAD:

10               Q.     Mr. Gipson, if you would turn, please, to --  
11 it is the third page, it is marked in the lower right-hand  
12 corner as 29, but it is the third physical page of the packet  
13 that was attached. And surprisingly at the top right you have  
14 a highly confidential stamp, but at the lower right there's  
15 29. Do you find that?

16               A.     I do.

17               MR. CONRAD: Okay. And, your Honor, at this  
18 point we may need to go secret.

19               JUDGE DALE: And I presume everyone who is in  
20 the room is entitled to be here?

21               MR. FISCHER: Judge, we'll clear the room  
22 here.

23               JUDGE DALE: Now you can go.

24               (REPORTER'S NOTE: At this time, an in-camera  
25 session was held, which is contained in Volume No. 12, pages

1 584 through 592 of the transcript.)

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1 JUDGE DALE: Thank you. Ready to go.

2 BY MR. CONRAD:

3 Q. Mr. Gipson, do you have access to the  
4 Stipulation and Agreement in EO-2005-0263, which is the  
5 regulatory plan?

6 A. I don't have it with me, Mr. Conrad.

7 Q. Well, let's see what your understanding of it  
8 is.

9 MR. COOPER: Mr. Conrad, we do have a copy  
10 that we could provide the witness if you'd like.

11 MR. CONRAD: It might be helpful. But I'll  
12 try to stay at a broad level since he has broad  
13 responsibility.

14 BY MR. CONRAD:

15 Q. Is the purpose, Mr. Gipson, of the  
16 amortizations to allow Empire to meet the financial metrics in  
17 the regulatory plan if the rate increase determined in the  
18 usual manner, that is, through traditional cost of service  
19 regulation, is insufficient to do so?

20 A. Long question, Mr. Conrad.

21 Q. Long question.

22 A. Try me again.

23 Q. Is the purpose -- I'm asking about the purpose  
24 of the regulatory plan and the specifics of the amortization.  
25 And is the purpose of the amortization to allow Empire to meet

1 the financial metrics that are specified in that plan if the  
2 rate increase determined in the usual manner, that is,  
3 traditional cost of service regulation, is insufficient to do  
4 so?

5 A. You know, I think I stated in my Rebuttal  
6 Testimony that the mechanism was designed to maintain certain  
7 S&P ratios during the construction of Iatan 2. My view is,  
8 you know, to your question, that the Commission, once it  
9 decides all of the issues with respect to the things like  
10 return and the recovery of prudently incurred costs, then  
11 would seek to determine whether any amortization was necessary  
12 through the calculation that's provided in this stipulation.

13 Q. So I'm correct then in seeing this and we're  
14 in agreement that it is at least a two-step process?

15 A. At least a two-step process. You know, I  
16 think in the Commission's last order in our last case they set  
17 out this -- what appears on the face at least to be a very  
18 simplistic formula for determining revenue requirement.  
19 That's the assets times the cost of capital plus cost of  
20 service equals revenue requirement. And I think once you  
21 finish with that, then you run through this calculation for  
22 amortization, Mr. Conrad.

23 Q. Very well, Mr. Gipson. I'd like you to assume  
24 just for our discussion here -- I know this would be  
25 disappointing to you, but just assume it with me. That the



1 increase determined in the usual manner is 5 million, but that  
2 an amortization, as we were just discussing, in the order of  
3 10 million is required in addition. Do you have that down?

4 A. The assumption --

5 Q. Yes.

6 A. -- is the revenue requirement after we've --

7 Q. Have that in mind.

8 A. That the Commission has determined by virtue  
9 of its deliberations that outside of the amortization, a  
10 \$5,000,000 rate increase in base rates is appropriate? That's  
11 the first assumption?

12 Q. That's correct.

13 A. All right. Now, what was the second  
14 assumption?

15 Q. That an amortization under the regulatory plan  
16 of 10 million then would be needed or required in addition to  
17 that.

18 A. Okay.

19 Q. Just hold those thoughts in mind.

20 A. All right.

21 Q. Now, if you would, please, look at page 15 of  
22 the document that counsel has handed you, which is the  
23 regulatory plan, that being the stipulation in EO-2005-0263.  
24 And my reference, sir, is near the top of that page. It  
25 happens to be paragraph Roman numeral III, D, in parens, if

1     you pursue it back and then 3 in parens. And I'm looking at a  
2     paragraph that is entitled, Amortization, 10-year recognition  
3     of future benefits. Are we on the same page?

4             A.       We are.

5             Q.       Would you agree with me that the \$10 million  
6     in my example -- my hypothetical example would be deducted  
7     from your rate-base under that provision for at least  
8     10 years?

9             A.       I -- you know, I'm not an attorney and I  
10    don't --

11            Q.       I understand that, sir. But you're broadly  
12    responsible for financial operations of Empire District  
13    Electric Company as you previously testified.

14            A.       I am. And it is my understanding that should  
15    the Commission determine that amortization is relevant in this  
16    case and going forward, that those amounts that would be  
17    booked would, in the future, offset rate-base. I believe  
18    that's what this paragraph is referring to.

19            Q.       And that could be through the form of a spread  
20    over the 10 years -- at least the 10 years following the  
21    effective date of the order that the Commission issued  
22    approving this stipulation. Did I also read that correctly?

23            A.       It does have a phrase for at least 10 years  
24    following the effective date of the order.

25            Q.       Now, sir, is there any doubt in your mind as

1 to the effectiveness of that provision in the stipulation?

2 A. I don't remember -- I don't understand your  
3 question.

4 Q. Do you have any unclarity or lack of clarity  
5 with respect to the provision of that stipulation -- that  
6 paragraph in that stipulation, sir?

7 A. Not as I read it today.

8 MR. CONRAD: Thank you, ma'am. That's all.

9 Thank you, Mr. Gipson.

10 MR. MILLS: Am I next?

11 JUDGE DALE: Yes.

12 CROSS-EXAMINATION BY MR. MILLS:

13 Q. Good morning, Mr. Gipson.

14 A. Good morning, Mr. Mills.

15 Q. Well, I hate to repeat this, but you're the  
16 one that brought it up. Your duties, as you say, are many and  
17 broad. As part of your duties, would you have any input at  
18 Empire on whether Empire would default on any contracts?

19 A. Yes, I would have significant input on that.

20 Q. Do you have or does Empire have any plans to  
21 default on any contracts?

22 A. No, Mr. Mills, we do not.

23 Q. Okay. Has Empire, to your knowledge, ever  
24 done so?

25 A. As -- as you said in your opening statement,

1 ever is a long time.

2 Q. To your knowledge?

3 A. To my knowledge, we've never defaulted on a  
4 contract.

5 Q. And wouldn't you expect, given your history  
6 with the company, your current position, to know if it had?

7 A. I think I'd have some knowledge of that.

8 Q. Okay. Give me an example of -- if you can, of  
9 events that would have to come to pass for Empire to default  
10 on something like a purchased power agreement.

11 A. You know, a purchased power agreement -- in  
12 that sense you're talking about a long-term purchased power  
13 agreement?

14 Q. Yeah. Something in the order of five or ten  
15 years.

16 A. Okay. You know, we would have to be at a  
17 point where we were defaulting on debt obligations, in my  
18 view. Because the long-term purchased power agreements have  
19 been, you know, generally as a result of request for proposal.  
20 And so they are generally a much better deal than what we can  
21 get on the open market in terms of costs and availability.

22 And so those would be among the last kinds of  
23 contracts that we would want to default upon because replacing  
24 the power from those contracts would be a much higher rate and  
25 limited availability.

1           Q.       So to paraphrase, you'd have to be in pretty  
2 desperate straits to default on one of those contracts?

3           A.       Those are your words, but I think any point  
4 you're at a point when you're defaulting on debt obligations,  
5 you're in pretty serious straits.

6           Q.       Now, I'm not sure that -- whether or not this  
7 is really an issue in this case, but it has been unclear and  
8 it may be that with the prehearing brief and the opening  
9 statements, that it is becoming more clear, but let me just  
10 ask you. Are you requesting an amortization in this case?

11          A.       We're not requesting an amortization in this  
12 case. And I -- you know, I've been briefed on the -- on the  
13 calculations. If you take our proposed return on equity, our  
14 proposed treatment of other costs such as fuel and purchased  
15 power, we don't believe that rises to the occasion of any  
16 additional amortization. That's the reason.

17                   If the Commission decides something less on  
18 return and something different on fuel and purchased power and  
19 other costs, that would likely trigger some -- some portion of  
20 the rates being delivered through this amortization vehicle.

21          Q.       Explain to me what you mean by having some  
22 portion of the rates delivered through the amortization  
23 vehicle.

24          A.       Well, the entire -- as I talked with  
25 Mr. Conrad, you know, you go through this process of

1 determining revenue requirement that is then, you know,  
2 reduced to tariffs that you charge the customer. If, after we  
3 determine this revenue requirement, that -- you know, normally  
4 the process would stop there, if it were not for the  
5 regulatory plan, it will go through this calculation to  
6 determine if there is any amortization necessary to maintain  
7 these financial ratios.

8                   If that proves to be a positive number,  
9 then -- then it is my understanding that that would be  
10 something that we would then add to the rates or tariffs that  
11 we would charge the customers.

12           Q.       Okay. So when you say delivering a portion of  
13 the rates through the amortization, you're not suggesting that  
14 the amortization is in any way a substitute for revenue  
15 requirement determinations?

16           A.       No. In fact, I say that in two different  
17 pieces of testimony.

18           Q.       All right. And, in fact, doesn't the  
19 regulatory plan require you to support an amortization if the  
20 calculations lead to one?

21           A.       You know, I've read some -- some discussion  
22 about whether the word "require" is in there. And I -- I've  
23 got to tell you, I --

24           Q.       Do you still have a copy of that Stipulation  
25 and Agreement?

1           A.       I do. I do.

2           Q.       Could I turn your attention to the last  
3 sentence on the first partial paragraph on page 13? The  
4 sentence states, The signatory parties agree to support an  
5 amortization level necessary to meet the Missouri  
6 jurisdictional portion of these financial ratio targets  
7 identified in Appendix D and calculated in a manner consistent  
8 with Appendix D.

9                   Do you see that language?

10          A.       No. I was -- someone else has highlighted  
11 some things on this page and I was reading those. I'm sorry.  
12 Where were you?

13          Q.       I am at the last sentence of the first partial  
14 paragraph on page 13 beginning with, The signatory parties  
15 agree to support.

16          A.       Yeah, I've read that.

17          Q.       And is Empire a signatory party to that  
18 agreement?

19          A.       We are.

20          Q.       And do you agree that that requires you to  
21 support an amortization level necessary to meet the financial  
22 ratio targets?

23          A.       We do support -- you know, in the context of  
24 what I was, you know, speaking to earlier, that -- you know,  
25 this two-step process, that Mr. Conrad talked about, we do

1 support that.

2 Q. Okay. And I thought you did. You just -- you  
3 seemed to have some issue with the word "require" and I wanted  
4 to make sure we eked that out.

5 A. I think there was some confusion with -- let  
6 me find my -- the right testimony. I think there was some  
7 confusion with my testimony on this issue.

8 Q. I think you're probably looking for page 10,  
9 lines 8 through 17 of your Direct Testimony.

10 A. No. Actually, I was -- I was looking at  
11 the -- I'm looking at the Rebuttal Testimony, page 1.

12 Q. Lines 13 through 15?

13 A. Lines 13 through 15. And I say, you know, why  
14 this should have no implication in this case. And, you know,  
15 maybe I didn't go far enough to explain this -- this two-step  
16 process and the determination of revenue requirement.

17 And if you -- if you take our numbers in terms  
18 of cost recovery and return, then the amount is -- is very  
19 limited and should have no implication in this case. But I --  
20 that -- I didn't mean that to say that we didn't believe we  
21 were required to support any amortization. We support it.  
22 It's part of the document.

23 Q. Okay.

24 MR. MILLS: Okay. That's all the questions I  
25 have. Thank you.



1 JUDGE DALE: Thank you.  
2 Mr. Dottheim?  
3 MR. DOTTHEIM: No questions.  
4 JUDGE DALE: Are there any questions from the  
5 Bench?  
6 COMMISSIONER MURRAY: I don't think so.  
7 JUDGE DALE: Thank you.  
8 Redirect?  
9 MR. COOPER: Yes, your Honor. I'd like to  
10 have a document marked if I could, at this time. Are we to --  
11 JUDGE DALE: 109.  
12 MR. COOPER: 109. This will be a Standard and  
13 Poor's document entitled Buy Versus Build: Debt Aspects of  
14 Purchased Power Agreements.  
15 (Exhibit No. 109 was marked for  
16 identification.)  
17 REDIRECT EXAMINATION BY MR. COOPER:  
18 Q. Mr. Gipson, do you have before you what has  
19 now been marked as Exhibit 109 for identification?  
20 A. I do.  
21 Q. During his cross-examination, Mr. Mills asked  
22 you several questions about whether Empire has ever defaulted  
23 on purchased power agreement, contract obligations, that sort  
24 of thing. Do you remember those questions?  
25 A. Yes.

1           Q.       And is it your understanding that Empire's  
2 history in regard to whether it has defaulted or not is the  
3 basis upon which Mr. Robertson assigns a risk factor of  
4 10 percent to the off-balance sheet obligations that were  
5 included in his amortization calculation?

6           A.       I'll admit I've not read Mr. Robertson's  
7 testimony in great detail, but that is my understanding.

8           Q.       Okay. Is it your understanding -- let me back  
9 up. Are you familiar -- well, I've started this about two or  
10 three times and redirected here so I will do it once more.

11                   Do you have before you what has been marked as  
12 Exhibit 109 for identification? You do. Correct?

13          A.       Yes.

14          Q.       Do you recognize that document?

15          A.       Yes. It's been a while since I've read it,  
16 but I do recognize it.

17          Q.       Okay. What is that document?

18          A.       It's a Standard and Poor's research paper  
19 named Buy Versus Build: Debt Aspects of Purchased Power  
20 Agreements.

21          Q.       Okay. And does that document include  
22 methodology for determining risk factors for purchased power  
23 agreements?

24          A.       It purports to, yes.

25          Q.       Okay. Would you turn to the portion of that

1 document -- I believe it's on the second page --

2 MR. MILLS: Your Honor, we haven't gotten to  
3 the point yet where Mr. Cooper offers this document, but I  
4 don't believe that it's admissible on the basis of redirect  
5 because it's well beyond the scope of the questions that I  
6 asked. And I think the questions that Mr. Cooper is getting  
7 ready to ask are going to be beyond the scope of what I asked.  
8 What this document talks about is how Standard and Poor's  
9 looks at risk factors.

10 I never asked Mr. Gipson anything about  
11 Standard and Poor's calculation of risk factors. In fact, I  
12 didn't ask Mr. Gipson anything about anybody's calculation of  
13 risk factors. I simply asked -- the closest I came was asking  
14 whether Empire plans to default on any contracts.

15 How Standard and Poor's views that risk is  
16 well beyond the scope of what I asked him. So I object to  
17 questions based on this document and I object to the admission  
18 of this document when it's offered.

19 MR. CONRAD: And, your Honor, although it has  
20 not been offered, I would also join in the objection which  
21 will doubtless be forthcoming on the basis that it is rank  
22 hearsay. I do not see Mr. Gipson's name listed as a credit  
23 analyst or any authorship of this document.

24 He has indicated that he read it at some  
25 undefined and uncertain time somewhere in the past, which

1     probably puts it in the same context as See Jack Run, which he  
2     doubtless read at some point in time in the past but it does  
3     not make it relevant and does not allow me to cross-examine  
4     Jeffrey Wolinsky, Dimitri Nikas, Anthony Flintoff or certainly  
5     Laurie Conheady, although we would be happy to go to Melbourne  
6     and take care of that.

7                     MR. COOPER: Your Honor, like it or not, the  
8     S&P methodology is relevant to the determination of the  
9     amortization and whether it exists or doesn't exist in this  
10    case.

11                    Mr. Robertson himself indicates that he is  
12    attempting to utilize an S&P methodology for determining the  
13    risk factor. Mr. Mills' questions to Mr. Gipson attempt to  
14    build upon that by asking about Empire's history in regard to  
15    defaulting.

16                    And I think that we should have the  
17    opportunity to show that that's not the test, that's not the  
18    S&P methodology and that, in fact, what this article will show  
19    is that the test is whether the company has a reasonable -- or  
20    what opportunity the company has to recover those costs  
21    through rates. It's not the risk associated with whether they  
22    will ultimately make payment to this third party or not.

23                    MR. MILLS: And if I may respond, whether or  
24    not it may be relevant is not my objection. My objection is  
25    it is beyond the scope of my cross-examination, and it's well

1 beyond the scope of my cross-examination. I didn't talk about  
2 risk factors and I didn't talk about Standard and Poor's.

3 Simply because the company has now found a  
4 document that they think bolsters their case and may or may  
5 not be relevant doesn't mean they can get it in on redirect if  
6 I didn't go down that path on my cross-examination.

7 JUDGE DALE: I have to confess that I am not  
8 able, in my mind, to draw a parameter around exactly which  
9 risk factors or riskiness -- what elements of riskiness you  
10 discussed in your cross. So for that reason, I'm going to  
11 allow it to come in. It seems relevant to me.

12 MR. MILLS: Well, I'm not going to argue with  
13 you, but that was not my objection. My objection was that it  
14 was beyond the scope, not that it was relevant.

15 JUDGE DALE: Well, okay. Sorry. That it may  
16 be within the scope as nearly as I can tell.

17 BY MR. COOPER:

18 Q. Mr. Gipson, you were asked earlier whether you  
19 participate in communications with the various rating  
20 agencies. Do you remember that?

21 A. Yes.

22 Q. As a part of those communications, have you  
23 had, in the past, the opportunity to examine the issues of  
24 risk factors as they are applied to off-balance sheet  
25 obligations?

1           A.       There's a number of risk factors, at least two  
2       that I can think of that Standard and Poor's uses.

3           Q.       Okay.

4           A.       One would be with respect to off-balance sheet  
5       obligations. The other would be the overall business risk.

6           Q.       Now, if you would turn again to page 2 of  
7       Exhibit 109 and there is a title there on that page near the  
8       top that says, Determining the Risk Factor for PPAs. Do you  
9       see that?

10          A.       Yes.

11          Q.       And then the second paragraph in that document  
12       starts, As a generic guideline --

13          A.       Yes.

14          Q.       -- do you see that?

15                    Would you read for us the first two sentences  
16       of that paragraph?

17          A.       As a generic guideline for utilities with PPAs  
18       included as an operating expense in base tariffs, Standard and  
19       Poor's believes a 50 percent risk factor is appropriate for  
20       long-term commitments; that is, tenors greater than three  
21       years. This risk factor assumes adequate regulatory  
22       treatment, including recognition of the PPA in tariffs;  
23       otherwise, a higher risk factor could be adopted to indicate a  
24       greater risk of recovery.

25          Q.       Okay. Is that consistent with your

1 understanding that the risk factor is based upon the risk of  
2 recovery as opposed to payment to the third party?

3 A. Absolutely, yes.

4 Q. Okay. Later in that same paragraph, there's a  
5 sentence that starts, Furthermore, comma, Standard and Poor's.

6 Do you see that?

7 A. Yes.

8 Q. Would you read that sentence for us?

9 A. Furthermore, Standard and Poor's will take  
10 counterparty risk into account when considering the risk  
11 factor.

12 Q. What is counterparty risk?

13 A. The risk that your counterparties will fulfill  
14 their obligations.

15 Q. And what is the consequence if they do not,  
16 for the company?

17 A. The best example I can give is, you know,  
18 the -- we have a number of counterparties that we use in our  
19 natural gas hedging program. And to the extent that we're in  
20 a position with a counterparty that is better than the market,  
21 if that counterparty fails, then we have to replace that  
22 counterparty's obligations in the market at a higher price.  
23 Significant risk.

24 Q. So the risk that you would have to pay twice,  
25 is that -- or --

1           A.       No. Just pay more --

2           Q.       Okay.

3           A.       -- in that example.

4           Q.       Now, the next paragraph on that second page  
5 starts, Standard and Poor's continues to view.

6                    Do you see that?

7           A.       Yes.

8           Q.       Would you read for us the -- oh, down  
9 through -- I'm trying to see how many sentences we're actually  
10 talking about there. But down to where you get to a sentence  
11 starting, Qualifying facility.

12          A.       Standard and Poor's continues to view the  
13 recovery of purchased power --

14                   MR. MILLS: Your Honor, I'm sorry to  
15 interrupt, but I'm going to object to this. This is talking  
16 about fuel adjustment clauses again and why a fuel adjustment  
17 clause is such a great thing.

18                   And the Commission has ruled previously today  
19 and several times previously in this proceeding that the  
20 question of a fuel adjustment clause is simply not on the  
21 table in this proceeding. So this particular paragraph is not  
22 relevant to any of the issues in this case and they're  
23 certainly beyond the scope of my redirect.

24                   MR. COOPER: I'm sorry, your Honor. I  
25 think -- and maybe we can adjust the portion of this paragraph



1     that we direct the Commission to. Our point really is not  
2     supportive fuel adjustment clause, but as we go through this  
3     testimony, I think you'll see that the point is how that  
4     figures into the risk factor that will be applied by the  
5     rating agency.

6                     JUDGE DALE: How the absence of a fuel  
7     adjustment clause is taken into account in the risk factors by  
8     the rating agency?

9                     MR. COOPER: Or vice-versa, yes. I mean, and,  
10    in fact, I could direct Mr. Gipson down to -- let's see, the  
11    sentence that begins, For utilities in supportive -- if that  
12    would -- let's try that, if that's all right and move from  
13    there and see if --

14                    JUDGE DALE: Mr. Conrad wishes to speak.

15                    MR. CONRAD: While counsel is finding his way,  
16    it occurs to me that the entire process here with respect to  
17    109 really isn't relevant to the topic that we have before us.

18                    My understanding, limited though it may be, of  
19    regulatory plan was that it designed an objective mechanism.  
20    And looking back on the cross-examination, limited though it  
21    was, of Mr. Gibson that I did -- Gipson that I did this  
22    morning, he indicated it was at least a two-step process, but  
23    I don't think any of those steps per the regulatory plan  
24    dealing with amortization referred any of the Commission's  
25    decisions to Standard and Poor's.

1                   Indeed, I think the construct of the  
2     regulatory plan that was approved by the Commission was very  
3     specific in saying these are a set of objective metrics and  
4     it, therefore, does not matter what Standard and Poor's does  
5     or how they perceive something or how anything else is  
6     perceived by Standard and Poor's. It's a simple question of  
7     mathematics, are the objective criteria met.

8                   And perhaps there's something there that I'm  
9     not understanding, but I'm not seeing how that -- what  
10    Standard and Poor's adjudges as a risk is relevant here.  
11    Certainly the Commission did not intend -- and I don't think  
12    the parties agreed to defer to Standard and Poor's to set the  
13    rates of this company. That remains within the -- within the  
14    sole prerogative of this Commission.

15                  So I don't know if that's an objection, but if  
16    I need to phrase it in that terms, I guess I would make it so.  
17    But it seems to be of passing relevancy and we may have passed  
18    the point that it was relevant.

19                  MR. COOPER: I don't think that -- well, the  
20    company certainly is not alleging that the Commission has  
21    passed this onto Standard and Poor's. That being said, we can  
22    probably tie it back a little bit again here with some  
23    additional cross-examination since there's not -- I don't  
24    think there's an objection on the table there.

25                  MR. CONRAD: Well, we would object to your

1 cross-examining your own witness.

2 MR. COOPER: Redirect.

3 JUDGE DALE: If I may be so bold, it seems to  
4 me that this document which has been accepted into evidence  
5 speaks for itself. All of us in this room can, in fact, read  
6 and I believe that the Commissioners and I are all capable of  
7 disregarding those portions of it that are irrelevant.

8 BY MR. COOPER:

9 Q. Mr. Gipson, do you still have before you the  
10 Stipulation and Agreement in Case No. EO-2005-0263?

11 A. Yes.

12 Q. Would you turn in that document to Appendix C?

13 A. Yes.

14 Q. In determining the amortization in accordance  
15 with that Stipulation and Agreement, what does that Appendix C  
16 reference to? I think it's the first line there under the  
17 title of Financial Ratios.

18 A. You mean the credit and changes definitions,  
19 Standard and Poor's business --

20 Q. Yes.

21 A. -- risk level six?

22 Q. Yes. Specific reference to Standard and  
23 Poor's --

24 A. Yes.

25 Q. -- ranges and definitions --

1           A.       Yes.

2           Q.       -- is that correct?

3           A.       Yes.

4           Q.       Okay.

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

6                   JUDGE DALE:  Just so I have this clear, that

7  was Exhibit 6 to the stipulation?

8                   MR. COOPER:  Exhibit C.

9                   JUDGE DALE:  Exhibit C.

10                  MR. COOPER:  Or Appendix C.

11                  MR. DOTTHEIM:  Appendix.

12                  JUDGE DALE:  Thank you.

13                  MR. DOTTHEIM:  Appendix C1 -- C-1.

14                  JUDGE DALE:  Thank you, Mr. Gipson.  You may

15  step down.

16                  THE WITNESS:  Thank you.

17                  JUDGE DALE:  And we're so lucky it's three

18  minutes until 12:00.  Let us break until 1:30.

19                   (A recess was taken.)

20                  JUDGE DALE:  Mr. Williams.

21                  MR. COOPER:  I believe Empire is ready to call

22  Mr. Jay Williams.

23                  JUDGE DALE:  Mr. Williams.

24                   (Witness sworn.)

25                  JUDGE DALE:  Thank you.  Please be seated.

1 L. JAY WILLIAMS testified as follows:

2 DIRECT EXAMINATION BY MR. COOPER:

3 Q. Would you please state your name for us?

4 A. My name is Jay Williams.

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

6 A. I'm employed by the Empire District Electric  
7 Company as manager of tax planning.

8 Q. Have you caused to be prepared for the  
9 purposes of this case certain Rebuttal and Surrebuttal  
10 Testimony in question and answer form?

11 A. Yes, I have.

12 Q. Is it your understanding that that testimony  
13 has been marked as Exhibits 13 and 14 for identification?

14 A. Yes, it is.

15 Q. Do you have any changes that you would like to  
16 make to that testimony at this time?

17 A. No.

18 Q. If I were to ask you the questions which are  
19 contained in Exhibits 13 and 14 today, would your answers be  
20 the same?

21 A. Yes, they would.

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

24 A. Yes, they are

25 MR. COOPER: Your Honor, I would offer

1 Exhibits 13 and 14 into evidence and tender the witness for  
2 cross-examination.

3 JUDGE DALE: Are there any objections?

4 Hearing none, then Exhibit 13 and 14 will be  
5 admitted into evidence.

6 (Exhibit Nos. 13 and 14 were received into  
7 evidence.)

8 JUDGE DALE: Let's see. I think Mr. Conrad,  
9 you're first up.

10 MR. CONRAD: And your Honor, we have no  
11 questions for Mr. Williams.

12 JUDGE DALE: Thank you.

13 Public Counsel?

14 MR. MILLS: I have no questions for  
15 Mr. Williams.

16 JUDGE DALE: Mr. Dottheim?

17 MR. DOTTHEIM: No questions for Mr. Williams.

18 JUDGE DALE: Thank you.

19 MR. CONRAD: Your Honor, I guess I should say  
20 that because of -- I'm not sure that we would anyway, but I  
21 guess I'm taking into account your earlier statement about  
22 subject to recall and so on, this thing that Mr. Dottheim did  
23 discuss. So I guess I would say no questions at this point  
24 and reserve with the expectation that we may not need to. So  
25 I just want to be clear.

1 JUDGE DALE: That's fine.

2 Well, thank you.

3 MR. DOTTHEIM: Staff would call Mark L.

4 Oligschlaeger.

5 (Witness sworn.)

6 JUDGE DALE: Thank you.

7 MR. DOTTHEIM: And I believe Mr. Oligschlaeger  
8 was scheduled to take the stand originally on rate of return,  
9 but did not do so, will be coming back later this week.

10 MARK L. OLIGSCHLAEGER testified as follows:

11 DIRECT EXAMINATION BY MR. DOTTHEIM:

12 Q. Mr. Oligschlaeger, will you please state your  
13 name for the record?

14 A. Yes. Mark L. Oligschlaeger.

15 Q. And would you state your business address?

16 A. Post Office Box 360, Jefferson City, Missouri  
17 65102.

18 Q. Mr. Oligschlaeger, do you have what has been  
19 marked as Exhibit 55, your Supplemental Direct Testimony on  
20 regulatory plan amortizations?

21 A. Yes, I do.

22 Q. Do you have a copy of what has been marked  
23 Exhibit 56, your Rebuttal Testimony on regulatory plan  
24 amortizations, return on equity?

25 A. Yes, I do.

1           Q.       And do you have a copy of what has been marked  
2 Exhibit 57, your Surrebuttal Testimony on regulatory plan  
3 amortization?

4           A.       Yes, I do.

5           Q.       Do you have any corrections at this time to  
6 either Exhibits 55, 56 or 57?

7           A.       I have one correction to my Rebuttal  
8 Testimony. I apologize. The correction I need to make is to  
9 my Supplemental Direct Testimony, not my Rebuttal Testimony.  
10 On page 3, line 6 of my Supplemental Direct Testimony, the  
11 words "Case No. EO-2006-0263" appear. That should be Case  
12 No. EO-2005-0263.

13          Q.       Mr. Oligschlaeger, could I direct you to  
14 what's been marked as Exhibit 56, your Rebuttal Testimony?

15          A.       Yes.

16          Q.       And if I could direct you really to any of the  
17 pages beginning with page 2 going to page 13, if I could  
18 direct you to the upper left-hand corner.

19          A.       Yes.

20          Q.       It says Supplemental Direct Testimony, does it  
21 not?

22          A.       Yes, it does.

23          Q.       And it should say, should it not, Rebuttal  
24 Testimony?

25          A.       That is correct.



1           Q.     Mr. Oligschlaeger, Exhibits 55, 56, 57 contain  
2 your testimony on the regulatory plan amortizations issue?

3           A.     Actually, there's a section of my Direct  
4 Testimony that pertains to that area as well.

5           Q.     Okay. And that has been marked as Exhibit 54?

6           A.     That's correct.

7           Q.     Okay. Do you have any corrections to make to  
8 Exhibit 54 at this time?

9           A.     I do not.

10          Q.     If I were to ask you the same questions that  
11 are contained in Exhibits 54, 55, 56 and 57 except as you've  
12 corrected in Exhibit 55 on page 3, would your answers be the  
13 same?

14          A.     Yes, they would.

15          Q.     Is the information contained therein true and  
16 correct to the best of your knowledge and belief?

17          A.     Yes, it is.

18          Q.     Do you adopt Exhibit 54 as your Direct  
19 Testimony in this proceeding?

20          A.     Yes.

21          Q.     Do you adopt Exhibit 55 as your Supplemental  
22 Direct Testimony in this proceeding?

23          A.     Yes.

24          Q.     Do you adopt Exhibit 56 as your Rebuttal  
25 Testimony in this proceeding?

1           A.       Yes.

2           Q.       And do you adopt Exhibit 57 as your  
3 Surrebuttal Testimony in this proceeding?

4           A.       Yes.

5                   MR. DOTTHEIM: At this time I would offer  
6 Exhibits 54, 55, 56 and 57 and tender Mr. Oligschlaeger for  
7 cross-examination. I would note that he will be coming back  
8 full intention later this week again on the regulatory  
9 amortizations -- the regulatory plan amortizations issue once  
10 a filing has been made with the Commission and he also will be  
11 returning I believe on the IEC issue and on rate of return  
12 issue.

13                  JUDGE DALE: Are there any objections to this  
14 testimony?

15                  MR. CONRAD: I don't think so, your Honor. I  
16 was seeking clarification because perhaps I've missed it. The  
17 offer is just to the part of his --

18                  MR. DOTTHEIM: Yes, I'm sorry. On the  
19 regulatory plan amortization. I'm sorry.

20                  MR. CONRAD: And not to the rest?

21                  MR. DOTTHEIM: No. Which would be offered at  
22 the time he takes the stand on those other issues. I'm sorry.

23                  MR. CONRAD: That being the understanding,  
24 your Honor, we have no objection to the portions offered.

25                  JUDGE DALE: So a portion of 54, all of 55,

1 all of 56 and all of 57? Are there any other objections or  
2 comments?

3 MR. COOPER: No, your Honor.

4 JUDGE DALE: Thank you. Then a portion of 54  
5 and 55, 56 and 57 will be admitted into evidence.

6 (Exhibits Nos. 54, 55, 56 and 57 were received  
7 into evidence.)

8 JUDGE DALE: Do you have cross?

9 CROSS-EXAMINATION BY MR. FISCHER:

10 Q. Mr. Oligschlaeger, can you see me here?

11 It was my understanding based upon the opening  
12 comments by your counsel, Steve Dottheim this morning, that  
13 the position you're taking here in the Empire case on the tax  
14 gross-up issue is also likely to be taken in the Kansas City  
15 Power & Light case that's currently pending. Is that your  
16 understanding too?

17 A. That is my understanding, yes.

18 MR. FISCHER: Thank you. That's all I have.

19 JUDGE DALE: Mr. Conrad?

20 MR. CONRAD: And, your Honor, if your Honor  
21 please, we had no questions for Mr. Oligschlaeger on his  
22 original testimony on the portions that have been offered. I  
23 would respectfully reserve the ability to ask questions after  
24 we see what the numbers on -- related to Mr. Dottheim's  
25 opening statement.

1 JUDGE DALE: Certainly.

2 MR. MILLS: No questions.

3 MR. COOPER: Around to me then?

4 JUDGE DALE: Yes.

5 CROSS-EXAMINATION BY MR. COOPER:

6 Q. I do have a few questions. Mr. Oligschlaeger,  
7 I'd like to talk for a minute about your calculation of the  
8 amortization that's contained in your Supplemental Direct  
9 Testimony. You're familiar with that, aren't you?

10 A. Yes, I am.

11 Q. And I believe you performed two calculations.  
12 One related to Staff's IEC termination scenario and one  
13 related to the Staff's IEC continuation scenario; is that  
14 correct?

15 A. That's correct.

16 Q. And those calculations would necessarily  
17 assume that the Commission finds in favor of the Staff on the  
18 various issues in this case. Correct?

19 A. Yes. These calculations assume the Staff's  
20 adoption -- or the Commission's adoption of the Staff's  
21 positions for those two scenarios.

22 Q. Okay. So they're not the only two  
23 amortization numbers by a long stretch that could result from  
24 this case. Correct?

25 A. That is correct.

1           Q.       And, in fact, probably the number of possible  
2   amortization amounts that could result is limited only by the  
3   number of issues that have been presented to the Commission  
4   and the various outcomes that the Commission could arrive at  
5   as a result of those issues. Correct?

6           A.       I would agree with the caveat that not all of  
7   the Commission issued this position -- or decisions will  
8   necessarily affect the amount of the amortization, only  
9   certain issue decisions will.

10          Q.       All right. And, for example, would you agree  
11   with me that the ROE and the fuel issues will have an impact  
12   upon the ultimate amortization calculation in this case?

13          A.       I would agree with you on ROE. If by fuel you  
14   mean the entire IEC termination versus IEC continuation  
15   scenario, I would agree with that.

16          Q.       Now, you also performed the reconciliation in  
17   this case, correct, or prepared the reconciliation in this  
18   case?

19          A.       I assisted in preparing it, yes.

20          Q.       Okay. Now, I believe this morning that in his  
21   opening statement, Mr. Mills indicated that there was a  
22   possibility that with amortization, a net amount of increase  
23   in this case might exceed the amount that was requested by  
24   Empire in its initial filing. Do you remember that?

25          A.       Yes, I do.

1 Q. Do you agree with that position?

2 A. I did some rough calculations over the noon  
3 hour. And basically assuming that the Commission were to  
4 adopt -- for purposes of the IEC termination scenario, if  
5 that's the route they go and they adopt all of the company's  
6 positions on litigated issues, that result plus the amount of  
7 the amortization in -- I believe would approximate what the  
8 company has asked for in total in this case.

9 Q. So it would be close is the way you'd describe  
10 that?

11 A. Yes. That would be accurate.

12 Q. Okay. And is that the -- looking at the  
13 reconciliation, is that the scenario that would drive the  
14 highest revenue requirement for the company or increase in  
15 revenue requirement for the company?

16 A. I -- I didn't do a thorough check to ensure  
17 that, say, Public Counsel wasn't seeking a higher revenue  
18 requirement in some area than the company. I don't believe  
19 they are. So with that modification, I believe your statement  
20 would be accurate.

21 Q. Now, one of the steps in performing the  
22 amortization calculation is to assign a risk factor to  
23 off-balance sheet obligations, isn't it?

24 A. I'm sorry. Can you repeat that?

25 Q. Yeah. Well, let me back up a little bit.

1 We've had some discussion earlier today about the risk factor  
2 that was used by Mr. Robertson in his calculation of an  
3 amortization --

4 A. Yes.

5 Q. -- amount. Correct?

6 A. Yes.

7 Q. Now, when you performed your amortization  
8 calculation, I believe you didn't try to utilize a specific  
9 risk factor, did you?

10 A. That is correct.

11 Q. Okay. How did you address that issue?

12 A. Well, I had asked the company, Empire, for  
13 their calculation of what they believed the appropriate  
14 numbers for the off-balance sheet obligations would be as of  
15 March 31st. They provided me some numbers. When I  
16 cross-checked that -- cross-checked that against some S&P  
17 documents, my belief was that S&P was indicating a lower  
18 valuation than Empire had provided me for off-balance sheet  
19 obligations in total. Given the source and that it was  
20 directly from Standard and Poor's, I chose to use the Standard  
21 and Poor's quantification.

22 Q. Now, that Standard and Poor's quantification,  
23 presumably the risk factor they're utilizing is -- it's a part  
24 of that number that you utilize. Correct?

25 A. It would be. It is not spelled out in that

1 document.

2 MR. COOPER: That's all the questions I have,  
3 your Honor.

4 JUDGE DALE: Are there questions from the  
5 Bench?

6 CHAIRMAN DAVIS: Not at this time.

7 COMMISSIONER APPLING: Judge, I sat up all  
8 night last night putting together some questions on the tax  
9 issue and they come in here and settle it this morning so that  
10 shoots my wad today. So, no, I don't have any further  
11 questions.

12 Good to see you.

13 THE WITNESS: Thank you.

14 JUDGE DALE: Is there redirect?

15 MR. DOTTHEIM: Just a question or two.

16 REDIRECT EXAMINATION BY MR. DOTTHEIM:

17 Q. Mr. Oligschlaeger, in response to some  
18 questions from Mr. Cooper, you made reference to an S&P  
19 document that I think you utilized in regards to the risk  
20 factor involved in your analysis or calculation of the  
21 off-balance sheet numbers?

22 A. Yes, I did.

23 Q. Could you direct us to that document?

24 A. Yes. It's a document attached to my  
25 Supplemental Direct Testimony as Schedule 3. And it's



1 entitled Standard and Poor's Rating Direct Research, Empire  
2 District Electric Company dated May 18th, 2006.

3 MR. DOTTHEIM: Thank you. No further  
4 questions.

5 JUDGE DALE: Thank you, Mr. Oligschlaeger.  
6 You may step down.

7 (Witness sworn.)

8 JUDGE DALE: Thank you. Please be seated.

9 TED ROBERTSON testified as follows:

10 DIRECT EXAMINATION BY MR. MILLS:

11 Q. Could you state your name and spell your last  
12 name for the record, please?

13 A. Ted Robertson, R-o-b-e-r-t-s-o-n.

14 Q. Are you the same Ted Robertson that has caused  
15 to be filed in this case Direct, Rebuttal and Surrebuttal  
16 Testimony that has been marked as Exhibits 76, 77 and 78  
17 respectively?

18 A. I am.

19 Q. Do you have any additions or corrections to  
20 make to that testimony?

21 A. No.

22 Q. If I were to ask you the same questions that  
23 are contained therein today, would your answers be the same?

24 A. Yes, they would.

25 Q. And are those answers true and correct to the

1 best of your knowledge, information and belief?

2 A. Yes.

3 MR. MILLS: With that, I would offer Exhibits  
4 76, 77, and 78 and tender the witness for cross-examination.

5 JUDGE DALE: I have a question about your  
6 exhibit numbers.

7 MR. MILLS: Okay.

8 JUDGE DALE: I thought that 76 and 77 were  
9 Meisenheimer testimony.

10 MR. MILLS: Okay. You're absolutely correct.  
11 I should have been talking about 78, 79 and 80.

12 JUDGE DALE: Okay. That's what I have on my  
13 list.

14 BY MR. MILLS:

15 Q. With that correction, would your answers be  
16 the same, Mr. Robertson?

17 A. Yes.

18 Q. Okay. Will you ever trust me again?

19 A. I have no choice.

20 MR. MILLS: Okay. Let me offer Exhibits 78,  
21 79 and 80 and tender the witness for cross-examination.

22 JUDGE DALE: Thank you. Are there any  
23 objections?

24 Then Exhibits 78, 79 and 80 are admitted into  
25 evidence.

1                   (Exhibit Nos. 78, 79 and 80 were received into  
2 evidence.)

3                   JUDGE DALE: And I believe Staff is first.

4 CROSS-EXAMINATION BY MR. DOTTHEIM:

5                   Q.       Mr. Robertson, could you quantify -- do you  
6 have a quantification for the revenue requirement value of  
7 this issue on the risk factor?

8                   A.       I'm not sure I understand the question. The  
9 risk factor --

10                  Q.       Factor, the off-balance sheet issues  
11 valuation.

12                  A.       What the revenue requirement associated  
13 directly with that is?

14                  Q.       Yes.

15                  A.       No.

16                  Q.       Okay. What quantification do you have, if you  
17 have any?

18                  A.       I believe to my supple-- or not supplement but  
19 Surrebuttal Testimony I attached a -- a schedule, a  
20 calculation that is per Exhibit D of the Stipulation and  
21 Agreement to show how it flows -- flows down to the  
22 amortization amount.

23                  Q.       And for purposes of the amortization amount,  
24 can you quantify what the value of the difference between the  
25 Office of Public Counsel on the one hand and the Empire and

1 the Staff on the other are on the off-balance sheet issue?

2 A. Well, I'm not sure I have Staff's calculation  
3 of amortization for the -- for mine, of course, with the  
4 caveat that it's going to be changed in the true-up somewhere  
5 and also assuming that the IEC continues, the amortization  
6 amount would be \$17.1 million and then potentially grossed up  
7 to 27.8 for the additional depreciation associated with that  
8 amount.

9 Q. Mr. Robertson, can you give some idea as to  
10 the magnitude of the size of the numbers you just gave as far  
11 as your quantifying the size of the issue for the size of the  
12 amortization itself? I'm trying to gauge whether, in essence,  
13 out of the potential amortization, this issue is either a  
14 small or a large component.

15 A. I don't think I understand the question.

16 Q. Okay. Mr. Robertson, you're treating the Elk  
17 River Wind Farm contract as a purchased power agreement?

18 A. I did.

19 Q. As opposed to an operating lease?

20 A. Yes.

21 Q. And on what basis did you make that  
22 determination?

23 A. In looking at the contract, it was a purchase  
24 of capacity associated with that wind farm. Based on what I  
25 know of what an operating lease is versus what a purchased

1 power contract is, we viewed it as a purchased power contract  
2 rather than an operating lease.

3 Q. Did you rely on any S&P, Standard and Poor's,  
4 documentation or any documentation provided to you by the  
5 company?

6 A. I don't know that there was an S&P  
7 documentation to -- to show what an operating lease is versus  
8 what a purchased power contract is, but there were -- is a  
9 documentation that gives the definitions of how they treat the  
10 individual contracts.

11 Q. All right. Did you have any documentation  
12 that indicated how Standard and Poor's was treating itself the  
13 Elk River Wind Farm contract?

14 A. I can't say that I haven't seen documentation  
15 that does that. I believe Mr. Oligschlaeger's reference to  
16 the May 2006 report may have some description that they're  
17 treating it as an operating lease and I believe the company in  
18 discussions with Ms. Walters also mentioned that. There may  
19 be other documentation. I can't specifically point you to it  
20 at the moment.

21 Q. I'd like to direct you to page 8 of your  
22 Surrebuttal Testimony, Exhibit 80.

23 A. I'm there.

24 Q. The first question on the page and your  
25 answer.

1           A.       Yes.

2           Q.       Okay. And your answer where you say, I  
3 utilized a risk factor ratio of 10 percent. I believe this  
4 risk factor to be appropriate because it is based on Standard  
5 and Poor's methodology for calculating debt equivalent values.

6                   When you make reference to the 10 percent  
7 being appropriate because it's based on Standard and Poor's  
8 methodology, you're not referring specifically to some  
9 document that literally says -- that's a Standard and Poor's  
10 document that literally says 10 percent is the appropriate  
11 risk factor in this instance?

12          A.       Where I got the 10 percent is a -- the company  
13 provided a document called Standard and Poor's Definitions  
14 related to how it calculates a debt equivalent value of these  
15 type of contracts. In that document they list a range of risk  
16 factors, the first factor being 10 to 20 percent, the second  
17 30 percent and the third 50 percent. I took the 10 percent as  
18 being the lowest risk from that range.

19                   MR. DOTTHEIM: Thank you for your patience,  
20 Mr. Robertson.

21                   THE WITNESS: Thank you.

22                   JUDGE DALE: Mr. Conrad?

23                   MR. CONRAD: As before, with the same  
24 reservation, we have no questions.

25                   MR. FISCHER: No questions, your Honor.

1 JUDGE DALE: Mr. Cooper?

2 MR. COOPER: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. COOPER:

4 Q. Mr. Robertson, I believe that in your  
5 Surrebuttal Testimony you indicate that you excluded the Plum  
6 Point -- Empire's Plum Point contract from your computation;  
7 is that correct?

8 A. I believe that is in the Surrebuttal, yes.

9 Q. And I think you did that because at the time  
10 Surrebuttal was filed, you believed that the Plum Point  
11 contract was executed outside the update period based upon  
12 information that had been provided by the company. Correct?

13 A. That's correct.

14 Q. Have you later had the opportunity to examine  
15 that issue more closely?

16 A. Yes. I reviewed the first quarter of the 10-Q  
17 for the company and within that document, it identified the  
18 contract had been finalized during the first quarter.

19 Q. Okay. Would you now agree, with the benefit  
20 of that information, that the Plum Point contract should be  
21 included in the amortization calculation?

22 A. Yes, I do.

23 Q. Now, again, we've talked about it more than  
24 once this morning, I think, but I believe that you applied a  
25 10 percent risk factor to the off-balance sheet obligations in

1 your amortization calculation, didn't you?

2 A. That's correct.

3 Q. Okay. And specifically, you applied that to  
4 the purchased power agreements that were deemed to be  
5 off-balance sheet obligations. Correct?

6 A. I did.

7 Q. And your process for calculating the  
8 amortization differed from Mr. Oligschlaeger's in that he used  
9 a debt equivalent number from an S&P report while you used  
10 your own 10 percent risk factor. Correct?

11 A. The entire calculations? Is that what you're  
12 referencing or just the risk factor?

13 Q. Just the risk factor.

14 A. I did use the 10 percent and I believe  
15 Mr. Oligschlaeger did use the final number from the report,  
16 May report.

17 Q. Okay. Now, if you'd turn in your Rebuttal  
18 Testimony to page 24.

19 A. Did you say Rebuttal?

20 Q. Rebuttal, yes.

21 A. I'm there.

22 Q. Okay. On line 11, you have an answer to the  
23 question, What risk factor would Public Counsel recommend be  
24 applied to the individual off-balance sheet obligations?

25 Do you see that?



1           A.       Yes.

2           Q.       And I think your statement is that it's Public  
3 Counsel's belief that the lowest risk factor available within  
4 the rating agency methodology should be utilized to determine  
5 the debt equivalent value of each off-balance sheet obligation  
6 included in the calculation of the amortization; is that  
7 correct?

8           A.       That's correct.

9           Q.       And then you sum up by saying, The lowest  
10 appears to be 10 percent. Correct?

11          A.       Yes.

12          Q.       Now, would you agree with me that the impact  
13 of utilizing the 10 percent risk factor in regard to these  
14 off-balance sheet obligations as opposed to, say, a 30 percent  
15 or 50 percent would be to lower the ultimate amortization that  
16 would be called for?

17          A.       As the calculations flow through, yes, that  
18 would be correct.

19          Q.       Would you also agree with me that if you  
20 utilize in your calculation -- or I guess more specifically,  
21 if the Commission were to order that the 10 percent risk  
22 factor be utilized and S&P were utilizing a 30 percent or a  
23 50 percent risk factor, that there would be a danger that  
24 Empire would not meet its target ratios in spite of the best  
25 of intentions by the parties and the Commission in this case?

1           A.       I don't know that I would agree with that, no.

2           Q.       Well, why is it you would not agree with that?

3           A.       Because I believe the risk factor to be part  
4 of the formula that is to be used to determine what the  
5 amortization amounts to be to meet those metrics. And whether  
6 it's 10 percent, 20 percent, 30 percent, 50 percent, the end  
7 result is -- is -- satisfaction of the metr-- the requirement.

8           Q.       Let's back up. I think you agreed with me a  
9 few moments ago that if we look on an isolated basis at the  
10 results of the calculation if you utilize the 10 percent risk  
11 factor versus utilizing the 30 percent risk factor, that the  
12 result of that is that a lower amortization amount would be  
13 called for by our formula. Correct?

14          A.       Sure.

15          Q.       Okay. Now, I believe you also state -- and  
16 maybe Mr. Dottheim referred to this earlier -- that your  
17 10 percent risk factor, you believe, is based on S&P's  
18 methodology. Correct?

19          A.       I -- I -- it's a range that they provided in  
20 their definitions that they're likely to use. We selected  
21 10 percent rather than one of the others based on what we  
22 thought the risk associated with those contracts were.

23          Q.       And when you say "the risk associated with  
24 those contracts," specifically your testimony says that you  
25 were examining the risk or offering an opinion as to the risk

1     that Empire would default on those contracts.  Correct?

2             A.       Well, the -- the data request we sent out was  
3     to ask if they had ever defaulted.  The underlying question  
4     though really is whether they would recover the costs  
5     associated with those contracts.  If they've ever defaulted,  
6     that would kind of imply that they had a problem recovering  
7     those costs.

8             Q.       Is it also possible that they could make  
9     payment on contracts and not recover their costs from  
10    ratepayers?

11            A.       That's -- that's a possibility, sure.

12            Q.       Okay.  In arriving at your 10 percent risk  
13    factor, did you review any S&P publications describing how to  
14    determine that risk factor?

15            A.       Actually, it's ironic that you ask that.  
16    We -- I tried to contact the S&P analysts that cover Empire  
17    and they apparently didn't feel that they should respond to my  
18    questions.

19            Q.       So I take it -- well, you were here this  
20    morning?

21            A.       I was.

22            Q.       And I assume you received a copy of what has  
23    been marked as Exhibit 109 in this case?

24            A.       I did.

25            Q.       And I take it that that's not a document that

1 you had the opportunity to review before you arrived at your  
2 10 percent risk factor. Correct?

3 A. The first time I saw that document was this  
4 morning -- early this morning before the hearing. Ms. Walters  
5 gave us a copy of it. But we haven't had time to review that  
6 document or determine its validity or even analyze it in any  
7 way.

8 Q. And, again, you weren't privy to any other S&P  
9 documents that would have described a methodology for arriving  
10 at a risk factor, were you?

11 A. Actually, we -- I sent the company data  
12 requests asking that specific question. And the company  
13 didn't know either. So that's when I contacted S&P to ask  
14 them and they didn't -- they didn't provide an answer.

15 Q. Now, if you would, could you turn in your  
16 Surrebuttal Testimony to page 8?

17 A. Okay.

18 Q. And then while you're there on the stand, do  
19 you also have a copy of Mr. Oligschlaeger's testimony with  
20 you, by chance?

21 A. Which one?

22 Q. Oh, I believe it's his Supplemental Direct.

23 A. I do.

24 Q. And in his Supplemental Direct, if you'd also  
25 turn to -- it's Schedule 3-1 and specifically page 2 of 4.

1           A.       Okay.

2           Q.       Now, on lines -- let's go back to your  
3   testimony, page 8, Surrebuttal, lines 12 through 15. I  
4   believe you state that Empire's a regulated public utility  
5   operating within the state of Missouri; therefore, Public  
6   Counsel believes that the risk it will default on any  
7   individual purchased power contract is almost non-existent; is  
8   that correct?

9           A.       That's correct.

10          Q.       Okay. Now, turning to Mr. Oligschlaeger's  
11   Supplemental Direct, Schedule 3-1, page 2 of 4, do you see --  
12   and I think it's probably the third paragraph there starts  
13   with the language, Empire's satisfactory business risk.

14                   Do you see that?

15          A.       Yes.

16          Q.       Near the end of -- or at the end of that  
17   paragraph there is a statement that says, Empire's business  
18   risk profile is a six, satisfactory. Correct?

19          A.       Yes.

20          Q.       And you'd agree with me that that risk  
21   profile -- or that utility risk profiles are categorized from  
22   1 on one end, being excellent, to 10 on the other end, being  
23   vulnerable. Correct?

24          A.       Based on the information I've seen, that's  
25   correct.

1           Q.       Okay. And you would agree, wouldn't you, that  
2 a business risk profile of six does represent that there is  
3 risk involved in the business. Correct?

4           A.       I believe there's risk in any business, yes.

5           Q.       Yeah.

6           MR. COOPER: That's all the questions I have,  
7 your Honor.

8           JUDGE DALE: Thank you.

9           Are there questions from the Bench?

10          CHAIRMAN DAVIS: Pass.

11          COMMISSIONER APPLING: No questions.

12          JUDGE DALE: Thank you.

13          Redirect?

14          MR. MILLS: Just a few.

15 REDIRECT EXAMINATION BY MR. MILLS:

16          Q.       Mr. Robertson, as a certified public  
17 accountant and a regulatory auditor with many years of  
18 experience, how do you distinguish an operating lease from a  
19 purchased power agreement?

20          A.       I guess the way -- the simple way I would do  
21 it is ownership -- the ownership idea is with an operating  
22 lease, you're -- you have control of the premises. As an  
23 example, you rented a house. You get to have control of that  
24 house, what occurs in the house, how the house is run during  
25 the term of your lease.

1                   With the purchased power agreement, I view  
2     that as you're buying a product from some manufacturer. So I  
3     think the main difference is buying a product versus having  
4     control of the property under the lease.

5           Q.       And how do you apply that definition to the  
6     Elk River Wind Farm?

7           A.       Well, Empire doesn't own Elk River. I don't  
8     believe they have control over its operations inasmuch as  
9     they're buying capacity. Essentially I think that's all  
10    they're getting from the contract. So any input they have on  
11    the running of the operation is fairly limited, if at all.

12          Q.       Okay. Now, I think Mr. Cooper asked you some  
13    questions about Plum Point. Even if Public Counsel does --  
14    and I think we will the next time we update the numbers,  
15    include Plum Point, there still will be a difference between  
16    Public Counsel and Staff and the company, on the other hand,  
17    because of the difference in risk factor applied; is that  
18    correct?

19          A.       That is correct, yes.

20          Q.       Okay.

21          A.       Unless they move to my 10 percent.

22          Q.       Well, all other things being equal, simply  
23    recognizing Plum Point as a debt equivalent won't eliminate  
24    the differences between the parties on the Plum Point  
25    question?

1           A.       That's correct.

2           Q.       Okay. And then you were asked some questions  
3 about the risk factor that the Staff Witness Oligschlaeger  
4 used. What risk factor did he use?

5           A.       Well, to my understanding, that  
6 Mr. Oligschlaeger used a report -- May 2006 report from S&P, I  
7 believe, which essentially gave a dollar amount for the debt  
8 equivalent values. I'm not sure exactly what detail it went  
9 into the risk factor. I think it may have used 30 percent.  
10 I'm not absolutely positive about that.

11          Q.       From that document can you determine exactly  
12 what risk factor S&P used?

13          A.       I don't know that you can. I'd have to look  
14 at it again. As far as the calculations behind it, I don't  
15 think the document provides, but it may identify the  
16 30 percent. I'm not sure.

17                   MR. MILLS: Okay. That's all the questions I  
18 have. Thank you.

19                   JUDGE DALE: Thank you. You may step down,  
20 Mr. Robertson.

21                   Before we call Mr. Weiss, are there any  
22 questions for him?

23                   MR. CONRAD: Subject to the same reservations.

24                   JUDGE DALE: Subject to the same reservation.

25 No one has any questions?



1                   MR. FISCHER:  You know, I'd just move the  
2   admission of Exhibit No. 90 then subject to those  
3   reservations.

4                   JUDGE DALE:  Are there any objections?  
5                   Then Exhibit No. 90 will be admitted into  
6   evidence.

7                   (Exhibit No. 90 was received into evidence.)

8                   JUDGE DALE:  And I see it's Weiss, not Wyse.

9                   MR. WEISS:  No offense.

10                  MR. FISCHER:  Could our witness be excused for  
11   the day then?

12                  JUDGE DALE:  Certainly.  And I believe that  
13   brings us to Mr. Brubaker.  You've not already testified?

14                  THE WITNESS:  I have not.  That was last week,  
15   different case.

16                  JUDGE DALE:  This was a different case.  
17   Sorry.

18                  (Witness sworn.)

19                  JUDGE DALE:  Thank you.  Please be seated.

20                  MR. CONRAD:  Kind of like a smallpox shot, you  
21   know.

22                  MR. COOPER:  Your Honor, I believe that  
23   depending on whether the Commission has questions, of course,  
24   that Mr. Brubaker may fit into the same category as Mr. Weiss.  
25   So I would at least pose that question to the other parties at

1    this point before Mr. Brubaker gets everything spread out up  
2    there on the table.

3                   MR. FISCHER:  I have no questions, your Honor.

4                   MR. DOTTHEIM:  Staff has no questions.

5                   MR. MILLS:  I have no questions.

6                   JUDGE DALE:  All righty then.  I --

7                   CHAIRMAN DAVIS:  I wanted to ask you where  
8    that attractive tie came from.  In the interest of the economy  
9    of time, I'll pass.

10                  JUDGE DALE:  Well --

11                  MR. CONRAD:  Well, I still do -- your Honor, I  
12    still do need to make an offering then of the exhibits.  And  
13    unless counsel has objections, I would dispense with the usual  
14    formalities and name and all of that.

15                  I would point, your Honor to what has been  
16    marked as Exhibit 87, page 2, there is a paragraph -- the  
17    paragraph is numbered 4 but the line numbers associated with  
18    18 through 21 on that page.  And then also on page 6, I  
19    believe the question and answer that begin at line 3 and end  
20    at line 20 would be the pertinent testimony that I would offer  
21    out of Exhibit 87.

22                  Exhibit 88 has both an HC and a public  
23    version.  Again, on page 2 of Exhibit 88, there is a paragraph  
24    that is in Mr. Brubaker's summary.  The paragraph is numbered  
25    6, but the line numbers are 31 through 34.  And then beginning

1 on page 12 of Exhibit 88 at a question -- well, actually, a  
2 heading that is listed at line 16 and continuing through I  
3 believe it is page 17, line 7. That out of Exhibit 88 would  
4 be the portion that I would offer. And by your Honor's leave,  
5 I would make that offer at this time.

6 JUDGE DALE: And 85 and 86 are not offered at  
7 this time?

8 MR. CONRAD: 85 and 86, as I understand it,  
9 pertain to other issues to be dealt with at a later time.

10 JUDGE DALE: Is there any objection to the  
11 offer of those portions of 87 and 88?

12 MR. COOPER: No, your Honor.

13 MR. MILLS: No.

14 JUDGE DALE: Then in that case, those  
15 pertinent sections of 87 and 88 will be admitted into  
16 evidence.

17 (Exhibit Nos. 87 and 99 were received into  
18 evidence.)

19 MR. CONRAD: And if I might be permitted just  
20 very quickly to confirm with one question of Mr. Brubaker.

21 MAURICE BRUBAKER testified as follows:

22 DIRECT EXAMINATION BY MR. CONRAD:

23 Q. It is true that the only packet of testimony  
24 that we're dealing with today is 88? And am I correct,  
25 Mr. Brubaker, that none of the schedules attached thereto have

1 anything to do with this issue today?

2 A. That would be correct, yes.

3 MR. CONRAD: Thank you.

4 JUDGE DALE: Thank you then, Mr. Brubaker.

5 You may step down.

6 THE WITNESS: Thank you.

7 JUDGE DALE: And I believe that brings us to  
8 the end of today. We will begin tomorrow then with fuel and  
9 purchased power.

10 Are there any other issues that I need to  
11 discuss? We're going to pick up rate of return, return on  
12 equity issues on Thursday and you guys will be getting me a  
13 document as soon as possible.

14 MR. DOTTHEIM: As soon as possible.

15 JUDGE DALE: Wonderful. With that, we're off  
16 the record and we will reconvene tomorrow at 8:30.

17 WHEREUPON, the hearing was adjourned until  
18 September 12th, 2006 at 8:30 a.m.

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