DEPOSITIONS OF STEPHEN RACKERS

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION,	)
	)
Complainant,	) Case No. EC-2002-1
	)
vs.	)
	)
UNION ELECTRIC COMPANY,	)
d/b/a AMEREN UE,	)
	)
Respondent.	) April 18, 2002
	) Jefferson City, Mo

DEPOSITION OF STEPHEN RACKERS
TAKEN ON BEHALF OF RESPONDENT
APRIL 18, 2002

COPY

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DEPOSITION OF STEPHEN RACKERS, produced, sworn, and examined on the 18TH day of APRIL, 2002, between the hours of eight o'clock in the forenoon of that day and six o'clock in the afternoon of that day at the offices of MISSOURI PUBLIC SERVICE COMMISSION, 200 Madison, State of Missouri, before PAIGE E. KRUSE, a Professional Shorthand Reporter and Notary Public within and for the State of Missouri, in the City of Jefferson, County of Cole, State of Missouri, taken on behalf of the Respondent.

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Gregory L. Nelson
Gary S. Weiss

ALSO PRESENT FROM THE PUBLIC SERVICE COMMISSION
Greg Meyer

STEPHEN RACKERS,

of lawful age, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says in behalf of the Respondent, as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. WOLSKI:

Q. Mr. Rackers, welcome again. I would like you to begin by stating your name for the record and when you're done we can go around the room and make sure we have all of our presence properly accounted for.

A. Stephen M. Rackers. I'm an Auditor V with the Missouri Public Service Commission.

MR. KRUEGER: I'm Keith R. Krueger. I'm the attorney for the staff for the Missouri Public Service Commission.

MR. WEISS: Gary Weiss, Supervisor Regulatory Accounting, Ameren.

MR. NELSON: I'm Greg Nelson, Vice President and Tax Counsel, Ameren.

MR. WARREN: James L. Warren. I'm a partner at Deloitte & Touche and I'm here on behalf of Ameren.

MR. WOLSKI: Victor Wolski from Cooper & Kirk representing Ameren.

MR. MEYER: Greg Meyer and I'm an Auditor V also with the Public Commission.

BY MR. WOLSKI:

Q. We have been through this procedure before, but I will ask you a few questions on the outset just to get things on the record. Mr. Krueger is here representing you today as your counsel and he may occasionally interject an objection to a question that I pose for the purpose of getting it on the record. Unless Mr. Krueger instructs you specifically not to answer a question, you will still go ahead and answer the question. Do you understand that?

A. Yes.

Q. And feel free if you don't understand any of my questions to ask for clarification of the question. You can also ask the court reporter to read back the question that's asked. If you don't ask for clarification I will assume that you understood the question as it was phrased. Is that clear?

A. Yes.

Q. Mr. Rackers, is there any reason at

all why you would not be able to give truthful and accurate testimony to the best of your recollection in today's deposition?

A. No.

Q. And do you have any medical condition or problem that might interfere with your ability to give truthful and accurate testimony to today's deposition?

A. No.

Q. Are you currently taking any drugs or other medications that might interfere with your ability to give truthful and accurate testimony to today's deposition?

A. No.

Q. Can you explain briefly the steps that you've taken to prepare today's deposition?

A. I reviewed my testimony from February. I looked over some data requests that I used to make my calculations. I reviewed the work papers that I supplied to the company to support my calculations. I reviewed my deposition from last time. I had a couple of discussions with some other staff members and my counsel, Mr. Krueger. I also had a brief discussion with Steve --.

Q. The discussions concerning your testimony, do they relate to the size of your adjustment you would be proposing to your reaching a new adjustment for the March filling?

A. No.

Q. So no one on staff has talked with you between the July filing of your testimony and the filing for your March testimony concerning the size of the adjustment that you would be proposing and how those would change prior to your reaching those conclusions on those numbers?

A. We didn't have any discussions that attempted to guide me or steer me in terms of how large an adjustment to make if that's what you're asking.

Q. Do you know the total size of the revenue reduction that's produced by staff in this case?

A. Yes, about $250 million.

Q. How did the adjustments that you are suggesting contribute to this total number? Do you know how big they are?

A. I do. I would have to consult the work papers if you want to run through that.

Q. Do you have a ball park idea of how big your adjustments are?

A. Let me look at something real quick. Well, several of the adjustments I made to the tax calculation aren't really in my opinion adjustments, they're just kind of mechanically making the calculation consistent with the way staff put together the rest of its adjustment and the rest of its case. The items that I would specifically refer to as adjustments were approximately -- I would say around $3 million.

Q. And that's primarily your tax straight line adjustment?

A. Yes.

Q. In calculating the adjustment that you are sponsoring in writing your testimony that was filed in March, had you considered the impact of the revenue reduction proposed by staff on the ability of UE to invest in infrastructure?

A. No.

Q. Or on the ability of UE to invest in generation?

A. No.

Q. Or on the stock price of Ameren UE?

A. No.
Q. Or on Ameren's attractiveness as a possible takeover target by another company?
A. No.
Q. Or on the impact of the staffs revenue reduction on economic development in the State of Missouri?
A. No.
Q. In making your own particular adjustment, had you considered the impact of those on UE's ability to invest in infrastructure?
A. No.
Q. Or on UE's ability to invest in generation?
A. No.
Q. Or the impact on the stock price of Ameren?
A. No.
Q. Or on Ameren's attractiveness as a possible takeover target by another company?
A. No.
Q. Or on economic development in the State of Missouri?
A. No.

Q. Could you briefly walk me through the steps that you took to change your testimony and your response to adjustments from where they stood in the July filing and where they resulted in the March filing?

A. I followed basically the same procedures that I did to determine my adjustments for the second filing as I did for the first. However, the company changed its calculations somewhat for credit for the third sharing period of the second earnings.

Q. In the second EARP?

A. Yes. In contrast to what it had done for the second sharing period of the second EARP. So that was my starting place in both situations was the company's tax calculations for the EARP. So since that calculation changed I had to make certain changes to my tax calculation. In addition to that staff changed its recommendation with regard to depreciation rates, so that had an effect on my tax straight line calculation. It also had an effect for instance, some of the adbacks for book depreciation and the interest expense calculation. But in general I started with the

EARP tax calculation and adjusted off of that based on other items in the case.

Q. You've been with the Public Service Commission staff for how many years now?

A. Around 23.

Q. About how many rate cases have you been involved in; do you know offhand?

A. More than 25.

Q. In making the determinations of the proper treatment of revenues and expenses in a rate case, I notice that certain terms are used by members of the staff to define certain expenses and whether they should be included or disallowed or whatnot. I want to run some of these terms by you and see if you can define those if you know there's a definition for them. First one would be abnormality, could you define abnormality for purposes of a rate case given your experience in working on the Commission for so many years?

A. I would characterize that as an expense level or an item that resulted in the cost of service -- effecting the cost of service that you would not expect to be reflecting of ongoing circumstances.

Q. What would be the proper rate making treatment of that type of expense?
A. If you thought that it was so abnormal that you would not expect it to not recur in the future, you'd probably omit it all together. If you thought there was some frequency over which it might reoccur, you might normalize it. In other words, average it over that time frame.
Q. And would you then amortize it by a portion over each year for the number of years which you thought it would occur? If you thought it would possibly occur every five years would you amortize it for five?
A. Well, not necessarily amortize it. If you thought that it might recur over five years you might put a fifth of it in. Sort of put an annual --
Q. So it would be equivalent of an amortization, but for that particular year expense you're allocating one-fifth of the cost?
A. Yes.
Q. Unreasonable item, does that have any particular definition?
A. Well, I guess I would characterize that as something that's inappropriate to be

included in the cost of service.

Q. So that's something that would be eliminated?

A. Yes. Or you might characterize the level of an expense to be unreasonable to be included all in one year. And again, you would be back to normalizing it for an annual period or including some portion of it -- some equivalent portion over some length of time.

Q. And it would be unreasonable because the company shouldn't have paid that much for that particular category expense item?

A. That's possible.

Q. Unusual item, would that be different than abnormality? Could you define what an unusual item would be?

A. I would sort of characterize abnormal and unusual as the same. Maybe abnormal is a different degree of how unusual something is.

Q. So again, with unusual items like an abnormality if it were extremely unusual and unlikely to occur again you might eliminate it, and if it was something that it was possible to recur again, you would put some percentage of it in the revenue requirement?

A. You could treat it that way. Again, it would depend on --

Q. Is there a hard and fast rule?

A. I would say there is not a hard and fast rule. It would depend on the item and the circumstance.

Q. One time nonrecurring expense, how would you define that?

A. I can say that's sort of self-explanatory. It happened once, you would never expect it to happen it.

Q. What would be the rate you would compute for that?

A. Elimination.

Q. Would that be the case even if it was prudently incurred, the company had no choice but to incur that expense in order to provide service to the rate payer?

A. Well, I guess it would depend on what your goal was. If your goal was to determine an ongoing rate level and you had an expense item that was nonrecurring, a one time expense, even if it was prudently incurred or something the company had to do, you wouldn't expect it to continue on in the future, so you wouldn't build it into ongoing rates.

Q. In that case would you consider amortizing it?

A. You could consider it, but if it's really not going to be reflective of ongoing rates you could see, you know, if any of that is not going to recur in the future you would probably eliminate it.

Q. Let me pose a hypothetical on that subject. In doing your work for a rate case it was determined that every year for the last 10 years a particular utility incurred a one time nonrecurring expense or one time nonrecurring expenses of $1 million dollars so that ever year for 10 years, you can see there are $1 million dollars worth of one time nonrecurring expenses, would that be a reason to build into the revenue requirement a level of one time nonrecurring expenses that reflect the costs of providing service to rate payers?

A. No.

Q. If that's the case then the rates that are set in a rate making proceeding wouldn't fully cover the costs of providing the service to rate payers?

A. I wouldn't agree with that.

Q. Even if $1 million dollars worth of nonrecurring expenses could be shown to be prudently incurred by the utility every year?

A. Well, I mean it's almost contradictory what you're saying to me in my mind. I tried to examine expense levels to determine what the ongoing level of expense is. So there's an item in there that I do not expect to recur in the future, it should be eliminated because it's not reflected of ongoing rates. The fact that you've had certain situations like that in the past doesn't in and of itself determine what ongoing levels are.

Q. And to your knowledge has any study ever been done by the Commission staff to determine if there's a normal amount of one time nonrecurring expense that might be seen in each year of a utility is a provision of service?

A. Not that I know of.

Q. Extraordinary expense, how would you define that?

A. That would probably fall into the abnormality category.

Q. Would there be any rate making

treatment for an extraordinary expense?

A. Well, I would say the same as what I said for abnormal. If you didn't expect it to reasonably occur over some frequency you could foresee in the future you would eliminate it.

Q. Do you agree that the test year is the starting point to set reasonable rates for the prospective rates when the rates were in effect?

A. Would you repeat that again, please?

Q. Would you agree that the test year is the starting point to set reasonable rates for the prospective period when rates are in effect?

A. I would agree it's a starting point, yes.

Q. Would you agree that the purpose of a test year is to create or construct a reasonable expected level of earnings, expenses and investments during the future period during which the rates to be determined in a rate case will be in effect?

A. I don't agree with that.

Q. Would you agree that all of the aspects of a test year operations may be adjusted upward or downward to normalize to exclude unusual or unreasonable items to arrive at a proper allowable level of all the elements of the company's operations?.

A. Could you read that one more time?

Q. Would you agree that all of the aspects of the test year operations may be adjusted upward or downward or normalized to excluded unusual or unreasonable items to arrive at a proper allowable level of all the elements of the company's operations?

A. Yes. Those are some of the adjustments you could make.

Q. Is the net operating income multiplied by the current tax multiplier?

A. Is that what?

Q. Is that equal to the revenue requirement?

A. I'm not sure I'm following your question. Maybe I can give you an answer.

Q. Let me repeat it one more time. Would you agree that revenue requirements is equal to net operating income multiplied by the current tax multiplier; is that correct?

A. You mean revenue requirement as adjusted, as normalized?

Q. So you're saying it would depend on

what context you're using revenue requirement?

A. Yes.

Q. Would you agree that revenue expenses and rate base are the key components of the rate making process and each of these components must be measured consistently in time in relation to each other or the revenue requirement result will be skewed either to the utility or to the customers detriment?

A. Yes. I would add rate of return to that list.

Q. Would you agree that the test year forms the basis for any adjustments necessary to remove abnormalities that may have occurred during the period and appropriately reflect any ongoing increase or decrease shown in the financial records of the utilities?

A. I'm going to have to hear that one more time, sorry.

Q. Sure. The test year forms the basis for any adjustments necessary to remove abnormalities that may have occurred during the period and to appropriately reflect any ongoing increase or decrease shown in the financial records of the utility?

A. Well again, I would say the test year is a starting point.

Q. In putting together the staffs recommendation of the written requirement in a rate case, the costs of providing the service to the rate payers is one of the goals that you're seeking to calculate; is that correct?

A. Yes.

Q. And one of the costs of providing service to rate payers is depreciation?

A. Yes.

Q. Could you explain what is the purpose of including depreciation as part of the costs of providing service?

A. Well, it's an asset that you place in service that provides benefits over a period longer than one year. So it's the cost of that asset depreciated and allocated over the expected service life of an asset. It's a cost the utility incurs to provide service.

Q. Because of the use of that particular asset in any given year to provide the service?

A. Yes.

Q. So the goal then is to match the costs of providing a particular service to the time period in which the service is received by the rate payer as opposed to say expensing the costs in the year in which it's acquired. If you had a machine that is going to last 10 years rather than charging all rate payers in year one for the cost of the machine, you're spreading it out for as long as the machine continues to serve them because it's continuing to benefit them in the provision of the service?

A. Yes.

Q. And these are the types of costs that a company is allowed to recover in a rate case; depreciation that is?

A. On prudently incurred or prudently contracted or purchased plans subject to the time frames that you're operating in the test year through the update period.

Q. And you haven't proposed any adjustments based on the imprudent investment or acquisition of any assets; are you?

A. No.

Q. In order for a company to receive the payments that cover the costs of providing service, if a particular cost isn't tax deductible the revenue that must be received by the company is grossed up to reflect the effective taxation; correct? Is that the standard practice?

A. Yes.

Q. So that if you had an item that the cost is prudently incurred and properly allowed as an expense in a rate case but was not tax deductible, the normal treatment would be to gross up the revenue received by the company for taxes so that after taxes they can still pay for the cost of providing that service?

A. With regard to that one item, yes. You wouldn't make a specific calculation in and of itself to gross that item up, it would be part of how you would calculate income tax to account for that item. But that would be the effect for that one item.

Q. Are there any particular items that are properly included in expenses for revenue requirement purposes that aren't tax deductible? For instance, business meals, are there business meals would be properly included the revenue requirement calculation that aren't tax deductible?

A. Some portion of them, yes.

Q. Would that portion fall in the pile of things for which effectively are grossing up for income tax?

A. Yes.

Q. If you didn't gross it up for taxes, a particular cost that was not tax deductible, when the company paid tax on the portion of revenue that they received that corresponded to that cost, they would not be fully reimbursed for the cost of that particular expense item; correct?

A. Well, I guess if you look at that item in insolation that would be true.

Q. The tax straight line adjustment you're proposing in your March testimony is based on the same methodology that we discussed in your deposition last November. You've had no change in your approach to the particular adjustment; correct?

A. That's correct.

Q. When did the Public Service Commission staff first adopt that approach to the tax straight line issue?

A. The first case that I know of that the staff proposed this adjustment was ER-9341. So it would have been in '93 or '94 time frame.

Q. Do you know at that time why the staff proposed the adjustment? For instance, was this a result of a study that was conducted by the staff that convinced them that other Commissions were doing this so that may be the proper approach to take?

A. I don't know that I think it was a result of some study based on what other Commissions were doing. I think the adjustment was made for the same reasons I proposed in my testimony.

Q. Do you know who the person was on the staff who first made this proposal?

A. I'm pretty sure it was Robert Shellenberg (phonetic).

Q. Again, you said you believed that his reason for proposing it is the same reason that you gave in your testimony as to why it's appropriate to make this kind of adjustment?

A. Yes.

Q. To your knowledge this was a novel approach taken by the Public Service Commission staff that you couldn't identify other states staffs taking?

A. To the best of my knowledge. I don't know whether Mr. Shellenberg was aware of other states that were doing this. I'm not aware of a study or what his exact knowledge is based on when he proposed the adjustment.

Q. In '93, I believe you stated it was the first time it was brought up, you mention in your testimony several companies for which this approach is reflected and the rates that are established?

A. Yes.

Q. And that's Page 8 of your testimony?

A. Yes.

Q. How many of those situations were there a commission order that specifically addressed the issue? For instance, Page 8, Line 19 though 22 you mention Missouri Gas Energy Company, Laclede Gas, Empire District Electric Company, UtiliCorp Missouri Public Service Division, UtiliCorp St. Joe's Light and Power Division.

A. To the best of my knowledge only Laclede Gas is specifically mentioned in the order.

Q. Did each of these companies have a

rate case before the Commission which resulted in this being included?

A. To the best of my knowledge that's correct.

Q. The Missouri Gas Energy Company, do you know if this issue was actually debated before the Commission in a hearing?

A. I don't believe it was.

Q. How about Laclede Gas?

A. I don't believe it was.

Q. And Empire District Electric Company?

A. To the best of my company I don't believe it was debated in front of the Commission.

Q. UtiliCorp Missouri Public Service Division?

A. I don't believe.

Q. And UtiliCorp St. Joe's Light and Power Division, is that different than St. Joe's Light and Power Company case you site earlier, ER-93 case?

A. Yes, it is.

Q. That's a subsequent case after there was a merger or something?

A. That's correct.

Q. Was that issue debated before the Commission, UtiliCorp St. Joe's case?

A. No. The case that I discussed initially ER-9341 case, I believe that case did go to hearing.

Q. As I understand it the basis for your straight line tax adjustment is that when certain machines out live their expected life all the tax deductions have already been used for the machine, if they're still included for depreciation purposes, the depreciation costs continues to fall on the rate payers; is that correct?

A. That's correct.

Q. So that what your adjustment seeks to do is to compensate for the fact that 100 percent of the tax deductions have already been taken for the machine, yet the machine is still counting as a cost of providing the service to a rate payer?

A. Well, I'm not sure it's exactly that way. The staff is seeking to continue to provide a tax deduction -- a straight line tax deduction for the investment as long as it's still in service and as long as the rate payer has to provide depreciation on it.

Q. Does this tax deduction exist in fact? Can the company take it?

A. I would say yes.

Q. So it would be your position that for an asset that lives beyond its expected life, the company can continue to receive a tax deduction for it even if 100 percent of the tax deduction has already been allocated in the deferred tax approach taken by the company?

A. Well, I think you have to look at it with maybe a little background and understand how the company uses tax straight line, how that fits into the calculation of income taxes in a regulatory frame work. But the reason I say staff adjustment is valid and can be used the way it is because I know of at least one other company that is, in fact, doing it and has set up their tax system to do it the way staffers recommend.

Q. So they're able to reduce their taxes by the amount that continues to be included?

A. Well, the way the company is tax straight line is they use it to reverse deferred income tax because of accelerated depreciation.

Q. So in other words, if you had written off for tax purposes 100 percent of the cost of the machine over five years, but the machine is expected to last for 10 years, what you do is you spread out the total tax deduction evenly over the 10 year period generally? Is that an explanation on how the tax straight line works? So that when you sum up the length of time over which the tax straight line is used, multiply it by the amount taken, that equals to 100 percent of the tax deduction that was taken during the period when the tax deductions were allocated; correct?

A. Did you say 200 percent?

Q. 100. Two, space 100. If it's 200 percent, great, we'll hire you.

A. Again, I think it gets back to my original answer. The company uses a calculation of tax straight line to reverse previously deferred taxes.

Q. But you can't reverse any more than 100 percent of the previously deferred taxes; can you?

A. Correct.

Q. And the problems that you have

identified in your testimony, at least as the staff approaches the issue, is that once the machines are fully depreciated for tax purposes and under the tax straight line that amount has been reversed down to zero. If the machine is used beyond that time period, the cost of that machine in the form of depreciation are incurred by the company and us the rate payers, but since all the tax deductions for that have been used up, the amount is traditionally grossed up for taxes so that after taxes the company has in its pocket the same amount of money that corresponds to the depreciation cost and that is what you have identified as being in your eyes the problem with the approach; isn't it, with a traditional approach?

A. Well, I'm not sure I agree with the characterization you made about having the money in their pocket or whatever that was.

Q. On the after tax basis the company has the amount of money to cover this particular cost which is a depreciation cost?

A. Again, I don't characterize it that way. The company uses tax straight line calculation to reverse deferred taxes. And as I said, I know of at least one company that is using staffs recommended treatment or calculating tax straight line. I think they set it up so that they can take advantage of staffs recommendation. I don't believe following staffs recommendations is going to necessarily cost the company any money.

Q. Do you think if the company followed the staffs recommendation they would be able to take greater tax deductions then they have been taking?

A. No.

Q. So that then on a after tax basis if the dollars that are allocated to the depreciation costs of items for which the straight line has already been reversed, they've already reversed the deferred account to zero on after a tax basis they wouldn't have the amount of money to cover the costs; wouldn't they?

A. I don't believe that's true.

Q. On Page 7 of your testimony if you could turn to it you've got a chart that those -- I'm sorry, I guess it's a table between Lines 13 and 28 that demonstrate that there is a tax conversion factor of 1.62 which means that as you say on Lines 29 to 31, every dollar of depreciation included in the cost of service with no corresponding tax straight line deduction results in approximately an additional .62 cents cash outlay from rate payer.

MR. KRUEGER: I'd just like to clarify that refers now to the direct testimony.

MR. WOLSKI: It's the March 1st testimony.

THE WITNESS: I think you accurately read the testimony.

BY MR. WOLSKI:

Q. What is the basis for the additional .62 cents cash outlay per dollar?

A. The fact that the company has stopped the calculation of tax straight line depreciation.

Q. In your example, the reason they would have stopped the calculation of straight line tax depreciation would be because 100 percent of the tax benefits have already been accounted for?

A. With regard to a vintage 100 percent of the deferred taxes have been reversed.

Q. If it were possible for a machine

that's expected to live x years and it's used in years X+1, X+2, et cetera, if the company were able to continue or to resume for purposes of taxes to deduct the cost of using that machine each year, the depreciation cost, this additional .62 cents wouldn't come about because it would be offsetting tax deduction that would be taken; correct?

A. There would be an offsetting reduction in income taxes built into the cost of service.

Q. Let me pose a hypothetical to you. What if congress were to pass a law that changed the treatment of depreciation of assets that are used in useful and necessary and prudent in the utility industry?

MR. KRUEGER: I'd object to that. There is no foundation. You can go ahead and answer.

MR. WOLSKI: You're saying he's not qualified as an expert to talk about that issue?

MR. KRUEGER: There's no foundation.

BY MR. WOLSKI:

Q. Again, posed as a hypothetical. Were Congress to reduce the depreciation that a company could take on its assets to 50 percent of the acquisition value so that the company could only write off 50 percent of the value of the machine, but it continued to depreciate it for regulatory accounting purposes at the full cost of the machine, you would have the same sort of problem that you've identified with your tax straight line adjustment wouldn't you in that there would be instances for which the 50 percent of the value of the machine that's not tax deductible the revenues going to the company to cover those costs would need to be grossed up for taxes?

A. I think you could run into that problem if we treated depreciation expense for regulatory purposes as we do today. I mean, if that situation occurred, I don't know how the regulatory frame work would respond to that.

Q. That would be a similar situation in as much as the cost of the asset to the rate payers as measured be depreciation would be greater than the amount of tax deduction that the company would have been able to take and would have necessarily floated through to the rate payers? In both instances there would be a requirement to gross up the revenue for the tax factor so that on a after tax basis the company has the money to cover the costs?

A. I think the answer to your answer is yes, if I make the assumption that we continue to calculate depreciation and treat it as we do today in a regulatory framework.

Q. And the basis for depreciation being treated as it is today in regulatory framework is to match up again the cost of acquiring the asset to the time periods in which -- and spread them throughout the time period the asset is used; correct? So that if you follow that assumption you would continue to depreciate it in a manner that would raise this gross up problem?

A. Yes.

Q. Another hypothetical. If Congress were to increase the corporate tax rate to 60 percent and you thought that that was too high of an amount of taxes to be born by the rate payers, would you propose an adjustment that would offset the increase in the corporate rate, we'll assume it's 40 percent up now to 60 percent?

MR. KRUEGER: I object to that

hypothetical for the same reason. There's no tax law like that.

BY MR. WOLSKI:

Q. Assuming that Al Gore is elected President, there is a bill passed and signed that increases the corporate rate 60 percent, you think that the taxes are too high and the rate payers shouldn't have to pay for that amount of taxes, could you as a member of the Public Service Commission staff propose an adjustment to eliminate this increase in the taxes?

A. I guess I could if someone let me. I don't know that staff would propose that adjustment.

Q. Is that because the taxes that the company has to pay are necessary costs that are -- I guess you have someone really bad in the tax department, unavoidable for providing -- I looked at Mr. Nelson in saying that, for providing the service that the taxes are essentially are a given and you can't do anything about it?

A. The increase in the tax rate would increase the company's cost of service.

Q. Because the taxes are a legitimate expense that goes to the revenue requirement?

A. Correct.

Q. Your tax straight line depreciation adjustment that you're proposing is accounted for in what way in your schedules? Is this a reduction of tax expense?

A. Yes.

Q. So the result of the tax straight line depreciation you're proposing is to disallow a portion of the tax expense to the company?

A. No.

Q. How is it different than the disallowance of the tax exempt?

A. Again, I think you have to get back to how you used deferred -- I'm sorry, tax straight line reversed income taxes. So unless you got into a situation where there's no deferred income taxes out there to be reversed, inherently I don't think you'll have a problem.

Q. Is the use of a machine in years beyond its expected life a legitimate cost to be considered in a revenue requirement calculation? Is that a legitimate cost to providing service?

A. The current regulatory framework includes depreciation on plant that's in-service as a component of cost of service.

Q. If you assume the depreciation rates are correct, I don't know if there's a proper foundation fir that or not, I might have to ask one of the witnesses from the other day, if you assume the depreciation are correct then there's no reason to think that the depreciation cost for machines that out live their expected life is incorrect? It's something that shouldn't be allowed to the company and included in the revenue requirement or rate case; correct?

A. Well, I'm not sure what you mean by are the depreciation rates correct. Ideally, the depreciable life that determines depreciation rate would match up exactly with how long assets are living, how long they're continuing to service rate payers.

Q. Let's say it's correct on average, that you have the same number of machines that live a shorter amount of time relative to the expected as there are that live longer relative to the expected, so that the average hits right on the nose of the expected life, if that's the case then the depreciation cost associated with any machine that lives longer than the expected life is a proper cost that's included in the revenue requirement for rate purposes; correct?

A. Yes.

Q. And if 100 percent of the tax deductions have been taken on that machine, in order for the company to receive an after tax basis, the cost of the use of that particular machine the item would have be grossed up to reflect taxes; correct?

A. I don't think I would agree with that.

Q. Let me give you and example and we'll see if this holds true. There's a machine and 100 percent of the tax deduction has already been reversed to the tax straight line, it's already out lived its useful life so that there was $100 of deductions and $100 of deductions have already been floated through and been taken, the machine lives another year beyond that and at the depreciation rate that you used for that machine the cost that is associated with the use of the machine of an additional year is $2 let's say, for the company to receive the $2 cost they would have to receive in revenue more than $2 because the revenue they pay taxes on their income and that amount that they receive for the use of that machine is going to be reduced by taxes; correct?

A. I don't agree with that.

Q. What is the flaw with the hypothetical?

A. Well, the company continued to calculate tax straight line.

Q. But they've already taken 100 percent of the deduction and they've already allocated 100 percent of the deduction to the rate payers. You're saying even if they continue to calculate tax straight line they're not going to increase the amount of tax deductions they got from the IRS; are they?

A. No.

Q. So that when Uncle Sam is included in the equation they're actually not then getting enough money to cover the cost of providing the service?

A. Again, I think we talked about this earlier, you have to understand how the company uses tax straight line. They use it to reverse deferred taxes.

Q. If they reverse 100 percent of the tax deduction that was taken there is no additional tax deduction benefits that can be generated; isn't that true?

A. I'm thinking.

Q. Are you talking 100 percent tax deduction, instead of being spread out say $5 a year or five percent a year over 20 years the company should spread that out to four percent a year over 25 years?

A. No. You still come out with the same amount.

Q. Then where did the extra money come from once the entire tax deduction is taken?

A. There are still deferred taxes on the company's books that have not been fully reversed.

Q. For other machines?

A. Or other vintages.

Q. What happens if a machine is retired early, do you know if the tax deferred account for that machine continues to be drawn down? Does it continue to be reversed?

A. I want to say reversal occurs all in one year, but I'm not positive of that. I would have to check to see how the company acufile system works. But I think that's what occurs.

Q. It would be your recommendation, wouldn't it, that the reversal should stop if this is going to be the mirror image of the circumstances in which a machine lasts longer than its expected life. Let's say there's a machine that costs $100 and it only lasts half as long as the company expected, so depreciation the rate payer have only paid for one half of the cost of the machine, yet for the purposes of providing a service to those rate payers the entire cost of the machine was used. The machine was used up quicker than people expected. If that's the case the depreciation costs to the rate payers would only be 50 percent of the value of the machine, under your proposal shouldn't the tax benefits be curtailed at 50 percent so they would not be able to enjoy the deductions of any more than the amount of the machine that they have covered in the depreciation?

A. I don't necessarily think the second part of your statement flows from my recommendation.

Q. Well, your recommendation says that once you reach 100 percent of the reversal you should continue for the machines that last longer than their expected life which means that you are then accounting for more then 100 percent of the tax deduction because the machine is being employed longer than the expected life. If you're taking that approach, I guess the idea is it's not fair that depreciation cost continues when the tax deduction no longer continues. Shouldn't you also curtail the tax deduction when the machine doesn't last the lifetime it's supposed to?

A. You know, I think you kind of lost me there.

Q. Let me restate it. The problem is that it's not fair that certain machines that live beyond their expected life continue to cost money in depreciation, yet, there is no longer any straight line tax depreciation associated with that. Isn't it also true then that once a machine ceases its life prior to the expected life that's when you should stop the allocation of the tax straight line depreciation for that machine as well for purposes of the rate payers receiving it. If you're stretching one out beyond a useful life because the machine lasted too long, to be consistent wouldn't you shorten the straight line period and stop it when the machine does not last the useful life?

A. Staffs recommendation is as long as the machine is in service and you continue to calculate book depreciation, you would continue to calculate tax straight. I think the answer to the question is yes.

Q. So in other words if the machine was only in service for 50 percent of the life that was expected and by sheer serendipity 50 percent of the tax reversal had occurred at that point. To be consistent with your approach the reversals for the deferred tax account for that machine should stop then, too. They should not continue beyond the life just as the straight line should continue when the life is longer than expected, it should stop when the life is shorter than expected.

A. That's correct under staffs recommendation. But again, I don't see that staffs recommendation requires the company necessarily to change its tax accounting or to design a new system. That's not my recommendation.

Q. In making this tax straight line depreciation adjustment have you tried to determine situations in which -- or have you looked for situations in which machines that didn't live their expected life continued to be reversed in the tax straight line process under the company's approach and try to stop that as well? If you looked to see if there were situations in which machines did not last their useful life, yet, the tax deductions for those machines continued and continued to count to reduce the tax expense.

A. Mr. Nelson showed be some examples of runs that he made from the company's tax system. My recollection is and I would have to go back and look at those, is that if a vintage or a machine was retired that the unreversed taxes would reverse all in one year. I haven't done any kind of independent analysis or study of that.

Q. And if they were to reverse all in one year, would they have the consequence of reducing the tax expense for the company?

A. I think you get a deduction for the remainder or the unappreciated portion all in that final year, so I would say yes.

Q. Is there any particular reason that you know that the straight line tax depreciation adjustment that you're proposing in this case and the staff has proposed in prior cases seems to focus exclusively on assets that live longer than the expected life and seem to have no discussion at all of the consequences for tax expense purposes of assets that live shorter than the expected life?

A. It's my belief that for all of these companies in the aggregate the situation you have occurring is that as more assets are living beyond their depreciable life then are offset by assets that have shorter depreciation or retired prior to the end of their depreciable life.

Q. If that's the case than the depreciable life would have been incorrectly calculated and would need to be corrected? If the depreciable life is supposed to represent on average the length of service of a machine and if there's more that are lasting too long than ones that are too short, you would think that the solution is to adjust the depreciation period; right?

A. I think that would be one solution to attempt to make an adjustment in the lives of plant to accounts for that.

Q. Even if it were the case that on net or on balance more machines lasted longer than were offset by machines that didn't last long enough, in order to make a correct adjustment under your straight line tax depreciation approach wouldn't you still need to identify the machines or the instances in which the machine didn't last as long as it was expected even if twice as many as too as don't last long enough, there's still that offset of the ones that didn't last long enough. So shouldn't those be identified?

A. Well, I don't know. There needs to be specific identification of that. The way depreciation is calculated for regulatory purposes that's sort of an inherent assumption that way you've continued to depreciate plant even beyond the life that's inherently built into the depreciation rate and the way you make retirement.

Q. I'm not sure you know the answer to this, but what is your best guess on whether it would cost more for rate payers if a company bought a new machine to replace an old machine that had reached the expected live but could still be used. Do you think it would actually cost more to replace that machine then to continue using it even though you had already reached the expected life?

A. Well, I think you would have to make some assumptions about what the maintenance cost were of the old machine and what money you would have to put into the old machine to keep it running as compared to the savings or other benefits you would get from a new machine.

Q. Earlier we were mentioning some of these cases in which the straight tax line depreciation adjustment was reflected in some way in the proceedings and you mentioned in your testimony a number of cases, the UtiliCorp St. Joe's case that you said is different than the '93 UtiliCorp case, what year was that one filed? Was that the most recent one?

A. I don't know that that response refers specifically to a case. What it says is that in the rates established for those companies. So I think UtiliCorp might be over a span of more than one case. The same for MGE.

Q. So there are no particular cases involving those that you can identify?

A. There are specific cases, I can't identify the numbers for you.

Q. Are you aware of any utilities that are subject to the jurisdiction to the Missouri Public Service Commission that have not incorporated your method of straight line tax depreciation computation of the rates?

A. Any utilities?

Q. Yes.

A. Yes.

Q. How many would there be? Do you know offhand?

A. I don't know.

Q. Would you know if there are more than Due Incorporated (sic)?

A. Well, I think if we limit our discussion and we probably should to the large utility companies, not your small water and sewer companies, I think staff has used the methodology in more of the large utility companies. The only one I'm aware of is Missouri American Water Company.

Q. And they're a company that does not use it?

A. I don't believe this adjustment has specifically been proposed in their case.

Q. Is there a particular reason why it has not been proposed in their case?

A. When you examine the relationship between tax straight line and depreciation expense -- book depreciation expense, at least for that company, there's not a significant difference between the two.

Q. Do you know of any utility in any other regulatory jurisdiction in the country that's incorporated your method and the computation of rates?

A. I don't specifically know of any companies.

Q. And to clarify something that we were discussing earlier, if 100 percent of the tax deductions for a particular vintage of assets have already been taken, visa vie Uncle Sam, and 100 percent of this amount has been reversed meaning has reduced income tax expense of the company over time, if your adjustment were to require a continued depreciation of the tax deduction you're reducing income expense by an amount -- their income tax expense rather by an amount that the company wasn't able to reduce their taxes by; is that correct?

A. I'm sorry, I'm not trying to be difficult. Maybe we can break up your question into smaller pieces. I heard a couple different things just in the premise of the question.

Q. Do you want to dissect it yourself or should I?

A. First, the assets and all the tax deductions that the company is going to get have already been taken. So if they saved a million dollars in taxes through the deductions corresponding to the cost of the machine they've already saved that million dollars in taxes. That's first.

Q. Now, as I understand it that is deferred so it's spread out in a straight line basis over the expected life of the machine; correct?

A. The idea, yes.

Q. The idea is that's what happens?

A. It's reversed.
Q. It's reversed gradually?
A. It's reversed over the remaining life of the investment.
Q. And as it's reversed year-by-year that's reducing tax expense by that amount? Is that how it works accountingly?
A. It's reversing deferred income tax expense. It's not going to reduce the amount of current income tax expense. I have reflected it it my calculations as a additional tax deduction and it flows through to current, but you could actually show it as a reduction of deferred income taxes. It was just easier in terms of the calculations to throw it in as another deduction. But the tax straight line calculation is actually used in company systems to reverse previously deferred taxes is my understanding.
Q. And as this reversal takes place for regulatory purposes the costs of taxes for the company is reduced each year by the amount of this deferred tax that's recognized? Is that how it's spread out for regulatory purposes?
A. Yes.

Q. So that built into the tax expense each year is a reduction for that years portion of the deferred account as it's drawn down?

A. Well, you could have I guess a continuous rate case that captured all this and put it into rates every year right on time, you know, I guess that could all be captured and reflected in rates. But it never works that way.

Q. Once 100 percent is reversed that means that all of the tax deductions that corresponded, in fact, to that asset have been recognized. So that continuing to keep a tax straight line item for that is not going to reduce the company's taxes at all; will it?

A. The taxes that are paid?

Q. The taxes are actually paid.

A. That's correct.

Q. But it is reducing the tax expense that's reflected in the calculation of revenue requirements; isn't it?

A. Yes.

Q. So you're reducing taxes paid by an amount that doesn't correspond to any tax savings?

A. Well, you're reducing tax referrals that the company's have.

Q. But if the tax referrals have always been 100 percent reversed, that's all the deductions they were allowed to take. So anything beyond that is reducing tax expense in a manner that doesn't match up with a tax deduction the company actually received?

A. I don't know we'll reach the day very soon when all deferred taxes have been referred.

Q. But for any particular asset vintage that would be the case; right?

A. What would be the case with regard to any specific vintage?

Q. If tax expense has already been reduced by 100 percent of the deferred tax deduction that's associated with the particular machine, any reduction of tax expense beyond that time would be a reduction of taxes that the company actually was not able to enjoy with respect to that particular machine?

A. I think that's true with regard to that particular one.

Q. Is are any changes you would have to propose to your testimony or your accounting schedule or your work papers that you're aware of that you have already identified as corrections having been made?

A. Yes. There was an adjustment to eliminate some deferred taxes that as I received additional information from the company and had further discussion with the company personnel, staff is not going to pursue that adjustment.

Q. Do you know about how much that was?

A. That was elimination from rate base of $7 million dollars.

Q. And do you know where that would appear in work papers or schedules?

A. It shows up as exclude other taxes on work papers I have given to the company.

Q. Okay.

A. As a reduction and deferred income tax balance. I'm sorry, increase in the deferred income tax balance.

Q. I know we discussed this with reference to the 1993 time period, but as we sit here today are you aware of any treatise or reports or studies that have been done that justify the tax straight line adjustment that you propose?

A. No.

Q. It's not reflected in any journal articles that you're aware of?

A. Not that I'm aware of.

Q. Or any accounting or regulatory accounting treatises?

A. Not that I'm aware of.

Q. And you said that you didn't know if there were any companies in other jurisdictions that were using this method, do you know if there are any staffs in other jurisdictions that proposed these methods?

A. There may be, I'm not aware of them.

Q. I'm going to ask you a couple of questions concerning the previous deposition that we had on November. Specifically, I want to make sure I understand some of the corrections you made to the transcript. I've got your errata sheet here. The errata entry that corresponds with Page 33 of the transcript of the November deposition, Line 16, you changed it to read as a return on equity for that. The question was and you used the 9.38 percent number because Mr. Bible decided and you now say as the return on equity for that time period and you deleted the word appropriate. Do you believe that the return on equity that Mr. Bible was suggesting was inappropriate?

A. Well, I think the line of questioning that we were getting into here was whether that's the return on equity or the rate of return that Mr. Bible would have proposed back in 1995. And I don't know what Mr. Bible would have proposed. So I don't want to characterize it as that's the appropriate rate of return that he would have determined or that staff would have recommended. So that's what I'm trying to get at.

Q. And sitting here today you remember the context of this particular discussion we were talking about the calculations you assisted Mr. Bible with in determining these excess revenue numbers that were reported in this --

A. Yes.

Q. Now, when you were asked, I guess to apply the ROE numbers to the rate base to determine how the revenues compared to the actual revenues of the company, I guess this is what you were doing; correct?

A. No. What I was doing was the original calculations were made to determine the amount of sharing for a specific period based on what the company had actually earned. And I set up the schedule to use the rate of returns that Mr. Bible supplied and that's the only thing that changed. Then I recalculated what the requirement would have been.

Q. And when you were given return on equity numbers from Mr. Bible to use for these purposes, what did you think those numbers represented? What was your understanding of what those numbers represented for your calculation?

A. Actually, it was given capital on return on equity and deferred stock.

Q. Looking at return equity portion of it, what was your understanding that represented what you were asked to calculate?

A. Well, my understanding is that Mr. Bible preformed some analysis based on that time frame. Now, whether that was designed to be what he believes the cost of capital was or what staffs recommendations might have been back then, I really don't know. I mean, I think if you read the context that goes along with that table and it discusses sort of what the intent of those returns are and those expenses.

Q. So on Page 27 of the February 1, 2002 of the Commission staff there is a table that you had said that you helped calculate listing access revenues for the first four years of the two EARP's. This table appears to represent to the Commission that there were excess revenues in each of those years. My question is excess revenue means compared to what, ROE figures you use to calculate this excess if that ROE figure did not reflect what the Commission could have adopted or at least would have recommend to or it would have had recommendation of its staff at that time period then access revenue -- I'm not really sure what the excess revenue means on this table.

A. Well, if you let me read this sentence here I think this is an attempt to explain what that table is supposed to show and that is Page 28. The table below lists excess revenue that would have been generated each year of the EARP with the actual capital deduction at that time had been -- rather than what had been agreed to in the two EARP's agreement.

Q. But in order to reach that number you must know what the rate of return should have been and in your answer to my question about what Mr. Bible was suggesting you seem to back away. On your errata sheet Number 24, Line 14 and 19 you change your statement from the 9.38 return on 25. At least it would have been a return and you're changing it on Line 19 similarly. You said you changed the return on equity that would have been recommend to return on equity that may have been recommended. And my question to you is if the staff is representing that this is an appropriate rate of return for those particular years, how could the staff claim that those excess revenue numbers that were generated using those ROE excess revenue numbers?

A. Well, if you use the record would that, in fact, have been Mr. Bible's recommendation in a case in that time frame. And I don't know what Mr. Bible would have recommended then at least in one of those situations. Mr. Bible wasn't around with the staff then.

Q. Why do you think you were asked to use his ROE number for those years?

A. The reason I was to do that was because I had those runs on my computer and I could make the calculation. I'm not the author of that report. Mr. Bible would be the proper person to ask what his recommendation may have been or what his thought process was when he provided me those numbers.

Q. As far as you're concerned this wasn't your report so you can't just plug it in and use it and I understand.

A. I calculated those numbers. I wasn't the author of that report. I would need the cooperation of Mr. Bible in terms of return on equity.

Q. Do you understand this table that was generated to represent excess revenues of the company above the company would have earned under a reasonable rate of return?

A. I don't know that I can respond to that question definitively. That's a general understanding of what that table is designed to show.

MR. WOLSKI: Mr. Rackers, I don't believe I have any other questions. I think we're finished. We thank you.

MR. KRUEGER: On the record you will waive presentment but not signature.

MR. WOLSKI: This is the same as before, this is proprietary and confidential.

(Signature was waived)

CERTIFICATE OF REPORTER

I, PAIGE E. KRUSE, Professional Shorthand Reporter, Notary Public within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

____

Notary Public within and
for the State of Missouri

My commission expires June 9, 2003

I, STEPHEN RACKERS do hereby state that I have read the foregoing questions and answers appearing in this transcript of my deposition: That this is a true and accurate report of said answers given in response to the questions appearing herein.

IT IS FURTHER STIPULATED AND AGREED, between Counsel, that this deposition may be signed before any Notary.

____
STEPHEN RACKERS

(Reported by: PAIGE E. KRUSE,)

C E R T I F I C A T E

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

Before me personally appeared STEPHEN RACKERS, known to me to be the person described in and who executed the foregoing instrument and acknowledged to and before me that he executed the said instrument in the capacity and for the purpose therein expressed.

WITNESS my hand and official seal this ____________ day of ______________, 2002,

____
NOTARY PUBLIC
State of Missouri

My Commission expires:

ERRATA SHEET

Deposition of: Stephen M. Rackers

Case Caption: EC-2001-1

Date Taken: November 20, 2001

Page	Line	Correction	Reason
4	17	The line should read "cases or complaint cases."	Typographical error
7	24	The line should read "no one besides counsel and other Staff members."	Misspoke
8	16	The line should read "Yes for safe and adequate service."	Clarification
12	8	The line should read "Yes for safe and adequate service."	Clarification
17	10	The word "reply" should be "rebuttal".	Clarification
18	1	The end of the first sentence should read "costs of the company and included in the revenue requirement."	Misspoke
18	13	The line should read "the costs of the company and included in the revenue requirement, those efficiencies would be"	Misspoke
18	21	The line should read "for an item and are reflected in revenue requirement, that will be reflected in rates."	Misspoke
20	24	The line should read "changes in the cost, you would consider it in the determination".	Typographical error
21	15	The line should read "decisions made by management, and you could capture the".	Clarification
21	16	The line should read "effect of those decisions in the costs of the company, they would be".	Clarification
23	5	The line should read "company was being well managed."	Misspoke
30	1	The line should read "none."	Clarification

Signature

ERRATA SHEET

Deposition of: Stephen M. Rackers

Case Caption: EC-2001-1

Date Taken: November 20, 2001

Page	Line	Correction	Reason
31	7	The line should read "and returns on equity for each one of those years that had".	Clarification
33	16	The line should read "As the return on equity for that".	Misspoke
34	14	The line should read "at least as Mr. Bible calculated, may have been a".	Misspoke
34	19	The line should read "It wasn't designed to be the return on equity that may".	Misspoke
35	10	The line should read "12.61% return on equity,"	Misspoke
35	11	The line should read "at which the company could earn and there"	Misspoke
36	13	The line should read "used really. One would be similar to a Staff recommendation in a rate"	Misspoke
38	15	The line should read "Well, it may have been Mr. Bible's recommendation. That's"	Misspoke
39	7	The line should read "may have been Mr. Bible's recommendation back in".	Misspoke
40	13	The line should read "I do not know what Mr. Bible considered in his calculation"	Misspoke
46	1	The line should read "procedure. They may or may not, but you still have to do the".	Typographical error
54	20	The line should read "The calculation of book depreciation starts with the".	Misspoke
55	23	The line should read "that's indicated by the depreciation rate, and as a result, you"	Clarification

Stephen M. Rackers

Signature

ERRATA SHEET

Deposition of: Stephen M. Rackers

Case Caption: EC-2001-1

Date Taken: November 20, 2001

Page	Line	Correction	Reason
57	10	The line should read "take a specific amount of tax depreciation."	Clarification
60	23	The line should read "make some adjustment so that the benefits properly flow to".	Typographical error
62	4	The line should read "vintages. It only captures the tax	Clarification
63	7	The line should read "I would not agree with that. And let me make just"	Typographical error
63	11	The line should read "testimony, once Mr. Nelson actually provided examples, it".	Typographical error
65	23	The line should read "really bears on the problem that I'm trying to address"	Misspoke
66	10	The line should read "the year."	Misspoke
66	11	The line should read "There might"	Misspoke
66	14	The line should read "yet. So the tax straight-line depreciation for the vintage may not have been zero. It may have been that it".	Misspoke
66	24	The line should read "should, although the company could set up its system that way".	Misspoke
67	7	The line should read "manner, with book depreciation. Now, whether the company actually calculates that".	Clarification
68	4	The line should read "And as you asked me earlier, it could certainly reduce the".	Typographical error.
68	15	The line should read "indicated by the depreciation rate."	Typographical error

Stephen M. Rackers

Signature

ERRATA SHEET

Deposition of: Stephen M. Rackers

Case Caption: EC-2001-1

Date Taken: November 20, 2001

Page	Line	Correction	Reason
69	14	The line should read "additional revenue requirement which is generated in the".	Typographical error
69	23	The line should read "book depreciation and tax straight-line depreciation in the calculation of".	Misspoke
69	24	The line should read "revenue requirement, and the factoring up of this book".	Clarification
70	22	The line should read "than the life indicated by the asset's book depreciation rate than is offset by the depreciation not calculated on".	Misspoke
72	3	The line should read "Ideally, I believe that's correct."	Misspoke
72	15	The line should read "Well, you can certainly set up a fixed amortization over some period	Clarification
77	14	The line should read "I would use the most recent year of data encompassed by the test year or update period, if applicable. I mean	Misspoke
77	21	The line should read "I would use the most recent year of data encompassed by the test year or update period, if applicable.	Misspoke
83	4	The line should read "item, is it actually occurring, is the company paying for it,"	Misspoke

Stephen M Rackers

Signature

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION, Complainant,

vs.

UNION ELECTRIC COMPANY, d/b/a AMERENUE, Respondent.

DEPOSITION OF STEPHEN RACKERS
TAKEN ON BEHALF OF THE RESPONDENT

NOVEMBER 20, 2001

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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION,)
)
Complainant,)
)
vs.)
)
UNION ELECTRIC COMPANY, d/b/a AMERENUE,)
) November 20, 2001
Respondent.) Jefferson City, Mo.

DEPOSITION OF STEPHEN RACKERS,

a witness, produced, sworn and examined on the 20th day of November, 2001, between the hours of 8:00 a.m. and 6:00 p.m. of that day at the offices of the Missouri Public Service Commission, Governor Office Building, 200 Madison Street, in the City of Jefferson, County of Cole, State of Missouri, before

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and Notary Public within and for the State of Missouri, commissioned in Cole County, Missouri, in the above-entitled cause, on the part of the Respondent, pursuant to agreement.

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Gregory Nelson, AmerenUE
Gary Weiss, AmerenUE
Greg Meyer, Public Service Commission
Ryan Kind, Office of the Public Counsel

INDEX

EXHIBITS INDEX

STEPHEN M. RACKERS, being sworn, testified as follows:
DIRECT EXAMINATION BY MR. WOLSKI:

Q. Okay. Could you please state your full name and address for the record.

A. Stephen M. Rackers, 815 Charter Commons, St. Louis, Missouri 63017.

Q. Okay. And are you being represented by counsel today?

A. Yes, I am.

Q. And that would be Mr. Krueger?

A. Yes.

Q. Keith Krueger.

MR. WOLSKI: And maybe we should go around the room and also get on the record everyone else who's here. I'm Victor Wolski from Cooper & Kirk. We're the counsel that represents Union Electric in the rate case.

MR. WARREN: My name is James Warren. I'm from Deloitte & Touche in New Jersey, and I'm going to be a tax witness for Ameren.

MR. NELSON: I'm Greg Nelson, Vice President and Tax Counsel for Ameren.

MR. WEISS: Gary Weiss, Supervisor of Regulatory for Ameren.

MR. MEYER: Greg Meyer with the Staff.

BY MR. WOLSKI:

Q. Mr. Rackers, have you ever been deposed before?

A. Yes.

MR. WOLSKI: Someone else is joining us. Is this another staff member?

MR. KRUEGER: No. Pubic Counsel.

MR. WOLSKI: This is Mr. Ryan Kind from the Office of the Public Counsel. Welcome.

BY MR. WOLSKI:

Q. How many times have you been deposed before?

A. I think this is the third time by UE, and I think I was deposed one other time by Southwestern Bell and another time by Arkansas Power & Light.

Q. What was the last one? I'm sorry.

A. Arkansas Power & Light.

Q. And they were all in connection with rate cases or --

A. Correct.

Q. So I take it you're familiar with the drill, but I'll go over some of the groundrules for depositions so it's understood.

As you know from being involved in depositions before, that this is a procedure for taking your testimony under oath in connection with a pending legal action in this particular case that's the rate case involving AmerenUE.

Even though we're in a relatively informal setting here in a conference room in your office building, your testimony today is being given under penalty of perjury just as if you were testifying in a court of law. Do you understand that?

A. Yes.

Q. And as you can see, the court reporter is taking down everything that's being said during the course of this deposition, at least as long as we don't talk too quickly. After the deposition, if you would like, the court reporter can prepare the transcript for you to read and sign or you might waive. I'm not sure.

MR. KRUEGER: We'll waive presentment but not signature.

BY MR. WOLSKI:

Q. Okay. I'll be asking you questions in the course of the deposition, and from time to time your counsel, Mr. Krueger, might interject an objection for purposes of getting it on the record, but you're still to answer the question unless he instructs you not to answer. Do you understand that?

A. Yes.

Q. Okay. And please feel free if you don't understand my questions to ask for a clarification, and you can also ask the court reporter to read back the question. If you don't ask for a clarification, I'm going to assume that you understand the question as it was phrased. Is that clear?

A. Okay.

Q. Now, there might be times when you don't know an exact answer to my questions but you might have some information on the subject or you can make a reasonable approximation or an estimate, and if you can do that, please provide the information that you do have. Is that clear?

A. Yes.

Q. As you probably know from doing these before, the court reporter has a difficult time transcribing two people talking at the same time. So when you're talking, I will endeavor not to interrupt, and when I'm asking a question it would be best if you would wait until the question's finished so we're not talking over each other and the transcript stays clear. Do you understand that?

A. Yes.

Q. Okay. And, of course, the transcript is of our spoken word, so that I would ask that every response be a verbal response rather than a nod or shake of the head to the questions that are asked. Do you understand that?

A. Yes.

Q. That was your chance to nod.

Now there's a few questions we ask all witnesses just for the record, so don't feel offended, but first, Mr. Rackers, is there any reason at all why you would not be able to give truthful and accurate testimony to the best of your recollection at today's deposition?

A. No.

Q. Okay. Do you have any medical condition or problems that might interfere with your ability to give truthful, accurate testimony at today's deposition?

A. No.

Q. Now, what steps have you taken to prepare for today's deposition?

A. I've reviewed my testimony. I've reviewed the admissions, interrogatories and requests for documents that the company asked the Staff. I reviewed Mr. Schwieterman's testimony on the issues that I'm adopting.

Q. Okay.

A. Last night I sat down with counsel and some other staff members and we went over some materials and discussed some questions that were being asked by some of the other witnesses in deposition. That's about it.

Q. Other than discussions with your counsel concerning the deposition, did you speak with any other people in preparing for the deposition concerning the substance of your direct -- or your prefiled testimony?

A. No.

Q. Okay. What is your current position with the

Staff?

A. I'm a Regulatory Auditor V with the accounting department.

Q. Okay. And you've been with the Staff since, was it 1978, I believe?

A. That's correct.

Q. And how many -- about how many rate cases have you testified in since then?

A. Filed testimony or actually took the stand to testify?

Q. Probably filed testimony.

A. More than 25.

Q. Now, is it your understanding that the Commission is obligated to set rates that are just and reasonable?

A. Yes.

Q. And in doing so, is it your understanding that the Commission is obligated to balance the interests of ratepayers, investors, shareholders and the public?

A. Yes.

Q. Okay. And one purpose of your job as a member of the Staff is to develop a recommendation to the Commission as to the revenue requirement for AmerenUE in this case?

A. I work with other staff members. It was a joint effort.

Q. Okay. And are you -- are you familiar with the size of the revenue reduction being proposed by the Staff in this case?

A. Yes.

Q. Okay. And have you in the course of your work for this case considered the impact of this revenue reduction on AmerenUE's ability to invest in new generation?

A. No.

Q. Okay. You've considered the impact of the proposals in the Staff's prefiled testimony on Ameren's overall revenues?

A. I don't know what you mean by consider. I mean, I understand that the Staff's proposing to reduce the company's overall revenues by the amount of the complaint.

Q. And what do you understand the range of the revenue reduction to be in total?

A. 200 million, roughly.

Q. And did you consider the impact that this overall revenue reduction would have on AmerenUE's rates?

A. Well, I think I'd give you the same answer that I gave when you asked me about the revenues.

Q. Which is?

A. I'm not sure what you mean by consider the effect. I'm aware that Staff's complaint would reduce the company's revenues and reduce the rates they're allowed to charge customers.

Q. And had you considered what impact the revenue reduction requested by the Staff would have on AmerenUE's ability to invest in infrastructure?

A. No.

Q. Had you considered what impact the revenue reduction suggested by the Staff would have on the stock price of AmerenUE?

A. No.

Q. Are you familiar with the mergers and acquisitions that have involved utilities in the United States over the last few years?

A. All utilities?

Q. Or any utilities in the United States that have been to acquisition or involved in mergers.

A. I've worked on two cases recently involving water companies that were involved in mergers, and I've read publications that discussed mergers and acquisitions of other utilities and I've read testimony that Staff has filed regarding mergers of utilities.

Q. Did any of the publications you read deal with the subject of takeovers of utilities by other companies?

A. Yes.

Q. And are you familiar with the takeover of

Louisiana Gas -- I'm sorry -- Louisville Gas & Electric by a British company?

A. No.

Q. And have you considered the impact that the revenue reduction proposed by Staff would have on the vulnerability of AmerenUE to a takeover by another company?

A. No.

Q. Had you considered the impact of the revenue reductions proposed by Staff on economic development in the state of Missouri?

A. No.

Q. Now, you're aware of the impact of the adjustments that are proposed in your testimony on the size of the revenue reductions being proposed by the Staff in this case?

A. In general, yes.

Q. And had you considered the impact of the adjustments that you've proposed in this case on AmerenUE's ability to invest in infrastructure?

A. No.

Q. Or to invest in generation?

A. No.

Q. Or on economic development in the state of Missouri?

A. No.

Q. Or on Ameren's vulnerability to a takeover?
A. No.
Q. Or on Ameren's stock price?
A. No.
Q. Now, you agree that your role is to prevent -- is to present rather the Commission with the revenue recommendation that would lead to just and reasonable rates?
A. Yes.
Q. And what is your understanding of the term just and reasonable?
A. Well, that they reflect costs, that they provide the investor a reasonable return, that they're reasonable rates to be charged customers for service, that the rates wouldn't result in UE not being able to offer safe and adequate service.
Q. I'm sorry. To offer?
A. Not being able to offer safe and adequate service.
Q. So in making the proposals in your testimony, you considered whether the revenue impact would have any effect on AmerenUE's ability to provide safe and adequate service?
A. Only in a very general sense. I didn't do a study per se or do some independent analysis.
Q. To what extent was that considered as a

factor, then? How would you describe your -- the general extent to which you considered it?

A. Would you say considered what specifically again?

Q. Considered the impact of the adjustments you were suggesting in your testimony on AmerenUE's ability to provide safe and adequate service.

A. Well, to the extent that my adjustments reflected the actual cost that the company was incurring and provided for recovery of that actual cost.

Q. And by actual cost, do you mean the cost to the company of providing service in the years in which the rates that will be adopted in this proceeding are in effect?

A. Yes, but based on the analysis of the test year as adjusted for those specific adjustments that I'm responsible for.

Q. And the test year that you used was -- what date did it end?

A. 12 months ending June of 2000.

Q. Do you have data that is more recent than that for the areas in which you've provided your testimony?

A. Yes, and I updated that test year through the end of December 2000 based on that data.

Q. And that is in your -- in the testimony that you filed?

A. Yes.

Q. Do you know if other members of the Staff have similarly updated their data through the end of December 2000?

A. That's my understanding, yes.

Q. And do you have any data that's more recent than the end of December 2000 for the areas in which you provided testimony?

A. I believe the work papers for the final sharing period would have data through June of 2001. I don't know that it would be in the correct format that I could just readily use it to update my numbers, but that information is available.

Q. How long -- about how long did it take you to update the numbers that you had from the end of the test year period to incorporate the data that you had through the end of December 2000?

A. It's hard for me to give you a specific time because I had other projects that I was working on at the same time. So I was devoting time to these other projects plus the UE project. So I worked on it through a period of probably, on and off, four or five months.

Q. At that time, how many other projects were you working on?

A. At least two rate case type projects.

Q. And can you give an estimate or at least an approximation of what percentage of your time was spent updating your testimony for this particular rate case as compared with the other work you were doing?

A. I really couldn't off the top of my head.

Q. Was there any one of the three projects you were working on, this case and the two others, that would have been the dominant one in terms of resources and time devoted during that time period?

A. Yes. *I think I'd have to go back and check* for sure, but probably the work that I was doing on the St. Louis County Water rate case.

Q. And what was the other case that you were working on at the time, the project you were working on at the time?

A. Laclede Gas Company.

Q. And that was also a rate case?

A. Yes.

Q. And were you drafting testimony for that case at the time?

A. At that time, we were getting started on the audit.

Q. And the work on the audit, would that consume more time than updating the test year numbers for the Ameren rate case?

A. Well, I probably worked on the projects simultaneously. So that's really hard to say.

Q. Would there be any way for you to determine how much time you spent on each? Do you have any recordkeeping system that would allow you to do that?

A. I could attempt to go back and look at my time sheets during the period that I was working on that, try to put something together for you.

Q. Those aren't -- are they kept in the computer form where it's --

A. Computer form.

Q. How would you determine whether rates are reasonable for the charged customers of a utility?

A. As I said before, at least for the specific adjustments that I worked on in this case, the way that I did that was I attempted to reflect the cost the company was incurring.

Q. In your testimony that you filed in this case, you included all the elements that were material to your analysis of the topics; is that correct?

A. I'm not sure I understand your question, but I discuss all the areas that I made adjustments to. I didn't actually file all the materials that I considered.

Q. But you believe you gave the Commission sufficient information and analysis to enable them to evaluate the proposal, the proposed adjustments that are contained in your testimony?

A. Yes.

Q. So there's nothing that you have left out of the written testimony that you feel would be necessary for the Commission to understand the adjustments you were proposing?

A. No, but that's not to say that there may be additional materials that I'll introduce or file in testimony in response to company reply.

Q. But as things stand right now, all the information that the Commission would need on your items in your testimony is included there?

A. I believe so.

Q. Now, is it your understanding that in setting just and reasonable rates, the Commission's required to consider any gains that might be realized through increased efficiency of the company?

A. Would you ask me that again, please?

Q. Sure. Is it your understanding that in setting just and reasonable rates, the Commission's required to consider any gains that might be realized through increased efficiency of the company?

A. Well, I think in general, to the extent the company has realized an efficiency, that's reflected in the costs of the company. Those will be built into the rates.

Q. So to the extent that a company is more efficient than other companies, it would be reflected in lower costs?

A. I'm not sure what you're -- are you asking me does the Commission take into account which is the most efficient company?

Q. No. I'm asking whether it takes into account whether a company is efficient relative to others, not necessarily the most efficient, but is the fact of the company's efficiency a consideration?

A. To the extent that efficiency is reflected in the costs of the company, those efficiencies would be reflected in rates.

Q. By reducing the costs that go into the rate case, the expense level for the company to provide the service?

A. Well, the expenses -- the expenses are what they are. To the extent that they reflect efficiencies that the company has realized and that determines a certain cost for an item, that will be reflected in rates.

Q. So then that if the company's expenses in providing its service are lower because of increased efficiency, the benefit of the increased efficiency then is passed on to the ratepayers in the rate case?

A. As part of the rate case. If the efficiency is realized and it continues and it's reflected in the expenses that are considered in the rate case, then that will be reflected in rates. If the efficiency's realized in between a rate case, the company will retain the benefits of that efficiency until it's built into rates.

Q. So that one of the purposes of rate cases, would it be fair to say, would be to make sure that the efficiencies that are realized get guilt built into the rates and are passed along to the ratepayer?

A. I don't think I'd characterize it that way.

Q. But one of the -- one of the goals of a rate case is to adjust the revenue requirement for the reduced expenses due to the efficiencies that have been realized since the last rate case?

A. Again, I don't think I'd characterize it that way. I think one of the goals of setting rates is to build in the actual costs that the company's incurring to provide service. To the extent that reflects efficiencies that have been gained since the prior rate case, those will be reflected in those costs and it will be reflected in rates.

Q. So to the extent that efficiencies reduce costs, the revenue requirement will be reduced in the rate case?

A. I'm sorry. Ask me that again.

Q. Okay. To the extent that the efficiencies are reflected in reduced costs, those reduced costs will result in reduced revenue requirement in the rate case?

A. You may have said this, but let me make sure I say it right here. To the extent those efficiencies are reflected in the costs that are used to determine rates, they'll be reflected in -- I'm sorry. The costs that are used to develop the revenue requirement, they'll be reflected in the rates that result from that.

Q. So that if a company because of efficiencies would reduce its expenses by $100,000 in providing the service, then when you're determining the revenue requirement in the rate case that revenue requirement would be reduced by that $100,000 cost savings, ignoring all other factors, just looking at one particular item in which efficiencies have been reflected?

A. Well, and again, this may be sort of a different way to phrase the same thing you're asking me, but to the extent you were considering a cost item as part of determining a revenue requirement in a rate case, if you were aware that that item was going to be reduced because of some change in operation of the company, some efficiency, to the extent you could capture that in relation to other changes in the cost, you would consider in the determination of revenue requirement.

Q. On the other hand, if a utility were managed poorly and were inefficient relative to other utilities, is it your understanding that that utility should not be permitted to pass along increased costs that were incurred due to the bad management?

A. Well, the problem I have with your question is the way you were characterizing it as relative to other utilities.

Q. If in your judgment there were poor decisions made by the management of the -- by the management of a company that raised the costs of providing service, would you include the entire amount of those costs in the revenue requirement?

A. To the extent you thought there were imprudent decisions made by management, then you could capture the effect of those decisions in the costs of the company and be disallowed.

Q. And have you in the past ever made such adjustments?

A. Yes.

Q. Is there any particular criteria that you use to determine whether the decision was imprudent?

A. Yes.

Q. Could you explain what those criteria would be?

A. What I attempted to do was examine the facts that existed and the evidence or the knowledge that existed at the time the company made its decision and whether management should have been aware of that information when it made its decision and how it treated that information and the costs that resulted from that.

Q. And in making these types of adjustments, would you agree that the Commission is encouraging good management by punishing imprudent decisions?

A. No.

Q. Would you say that one of the roles of the Commission -- of this Commission in setting rates would be to encourage good management?

A. Would ask you me that again, please?

MR. WOLSKI: Could you read back the question?

THE REPORTER: "Question: Would you say that one of the roles of the Commission -- of this Commission in setting rates would be to encourage good management?"

THE WITNESS: I would say yes, but in a general sense. I think the Commission wants the company to be managed well.

BY MR. WOLSKI:

Q. Do you think it would be important for the company -- sorry. Strike that.

Do you think it would be important for the

Commission to intentionally adopt policies that would encourage good management?

A. I would say yes to the extent that you could develop some kind of a measurement to actually see if the company was being badly managed.

Q. And what would the -- what would the factors be that you would try to measure to determine whether the utility's being well managed?

A. Well, I don't have a specific list of criteria, but if you could -- if you could design a framework where you set up baselines for performance measures, cost measures, you had some evaluation mechanism in place where you could evaluate whether the company had met certain benchmarks or performance measures that were designated as the result of good management.

Q. And would the baseline be set with reference to that particular utility's own costs or would you look at the costs of a range of utilities?

A. I'm not sure you would --

Q. Sample of utilities rather.

A. I'm not sure you would look at the exact cost. You might look at various performance measures, the amount of time it took to respond to a customer outage or availability on a certain kind of generation unit.

Q. And would there be any cost factors you would