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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

July 21, 2005
Jefferson City, Missouri
Volume 1

In the Matter of the Empire District Electric Company's Application for Certificate of Public Convenience and Necessity and Approval of an Experimental Regulatory Plan Related to Generation Plant	Case No. EO-2005-0263

RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,
CONNIE MURRAY,
STEVE GAW,
ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
COMMISSIONERS.

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P R O C E E D I N G S

JUDGE PRIDGIN: Good afternoon. This is the hearing on the Stipulation & Agreement filed in Case No. EO-2005-0263, in the matter of the Empire District Electric Company's application for a certificate of public convenience and necessity and approval of an experimental regulatory plan related to generation plant.

At this time I would like to get oral entries of appearance from counsel, beginning with Staff, please.

MR. FREY: Thank you, Judge. Representing the Staff of the Missouri Public Service Commission, Dennis L. Frey, Post Office Box 360, Jefferson City, Missouri 65102.

JUDGE PRIDGIN: Mr. Frey, thank you. On behalf of the Office of the Public Counsel, please?

MR. MILLS: My name is Lewis Mills on behalf of the Office of the Public Counsel and the public. My address is Post Office Box 2230, Jefferson City, Missouri 65102. Thank you.

JUDGE PRIDGIN: Mr. Mills, thank you. On behalf of Empire, please?

MR. COOPER: Dean L. Cooper from the law firm of Brydon, Swearengen & England, P.C., P.O. Box 456, Jefferson City, Missouri 65102, appearing on behalf of the

Empire District Electric Company.

JUDGE PRIDGIN: Mr. Cooper, thank you. On behalf of the Missouri Department of Natural Resources, please?

MR. SCHAEFER: Kurt Schaefer with the Department of Natural Resources, and my address is P.O. Box 176, Jefferson City, Missouri 65102.

JUDGE PRIDGIN: Mr. Schaefer, thank you. On behalf of Praxair, please?

MR. CONRAD: Your Honor, on behalf of Praxair and also Explorer Pipeline -- we'll cover both of those -- Stuart W. Conrad, law firm of Finnegan, Conrad & Peterson, 3100 Broadway, Suite 1209, Kansas City, Missouri 64111.

JUDGE PRIDGIN: Mr. Conrad, thank you. On behalf of AmerenUE?

MR. KURTZ: David Kurtz, 111 South Ninth Street, Smith Lewis, LLP, here for AmerenUE. We are monitoring the case and would ask leave to be excused.

JUDGE PRIDGIN: Mr. Kurtz, thank you. On behalf of Aquila, please?

MR. BOUDREAU: Appearing on behalf of Aquila, Paul Boudreau with the law firm Brydon, Swearengen & England, Post Office Box 456, Jefferson City, Missouri 65101.

JUDGE PRIDGIN: Mr. Boudreau, thank you. On behalf of KCP&L?

MR. FISCHER: Let the record reflect the appearance of James M. Fischer, Fischer & Dority, P.C., 101 Madison Street, Suite 400, Jefferson City, Missouri 65101, appearing on behalf of Kansas City Power & Light Company.

JUDGE PRIDGIN: Mr. Fischer, thank you. Did I miss anyone?

All right. A couple of housekeeping matters, and then I'd like to start taking some opening statements from counsel. Mr. Conrad, I understood that you had a previous commitment and you would need to leave roughly 2:30, 3 o'clock; is that correct? I only announce that in case the Commission has concerns --

MR. CONRAD: That's correct.

JUDGE PRIDGIN: -- they could address those with you before then.

MR. CONRAD: My intention is -- if this carries over to tomorrow, my intention is to be here the full day tomorrow, too.

JUDGE PRIDGIN: And do I understand also, Mr. Conrad, that if the Commission has any questions for Mr. Brubaker, that we would need to let you know today so you could have him here tomorrow?

MR. CONRAD: That is correct, have him here tomorrow morning.

JUDGE PRIDGIN: Mr. Conrad, thank you. Mr. Frey?

MR. FREY: Your Honor, if I may, since we're covering the topic of witness availability --

JUDGE PRIDGIN: Yes, sir.

MR. FREY: -- I would mention that Bob Schallenberg will be unavailable tomorrow, so we would respectfully ask that he be allowed to address any questions the Commission might have today.

Also, Lena Mantle will be unavailable tomorrow, tomorrow afternoon I should say. She'll be here tomorrow morning as well as today. She's prepared to handle the demand response, efficiency, affordability programs, that area, as well as resource plan monitoring. That's all I would note.

JUDGE PRIDGIN: Any other potential witnesses such as Mr. Wood, Mr. Elliott, would they be available today and tomorrow?

MR. FREY: As far as I know, your Honor, they're going to be here for the duration.

JUDGE PRIDGIN: Any other potential witness problems? Any other housekeeping matters? Mr. Cooper?

MR. COOPER: We'll address this, I guess, or I was going to address this in my opening statement, but I suppose it depends on who the Commission would like to speak to whether I have witness availability issues. However, with me today on behalf of Empire are Mr. Todd Tarter, who's the manager of strategic planning, Mr. David Gipson, who is vice president of regulatory and general services, and Ms. Sherry McCormack, who is a regulatory analyst with the company.

We hope that Mr. -- well, at least Mr. Tarter will attempt to answer the questions that were identified in the Commission's hearing Order. However, should the Commission have additional questions that the persons that are with me are unable to address, we can produce Mr. Brad Beecher, who's vice president of energy supply, and Mr. Gregory Knapp, who's vice president of finance and the chief financial officer of the company, tomorrow morning if the Commission so desires.

JUDGE PRIDGIN: Mr. Cooper, thank you. Anything further before we proceed to opening statements? Mr. Cooper?

MR. COOPER: One matter, your Honor. I believe that on June 28th we had filed a Motion for Leave to File First Amended Application, and I don't believe there's been any objection to that being filed and would ask that the Commission grant that motion if it's so inclined.

JUDGE PRIDGIN: I'm assuming we have no objections. I'll be glad to grant that motion, Mr. Cooper, and I'll follow that up with a written order for you.

Anything else? All right. At this time I'd like to get opening statements from counsel. Mr. Cooper, are you ready to proceed, sir?

MR. COOPER: Yes, your Honor. Good morning. We're here today because the parties have obviously reached a Stipulation & Agreement that, at least from Empire's perspective, will allow it to have the opportunity to participate as an owner in the Iatan 2 plant and have the opportunity to maintain its investment grade rating during the construction period.

I might point out to you that earlier today I did file through EFIS, and I have copies of this document if others don't have it yet, a corrected Appendix B to that stipulation. The only difference in that document between what was initially filed in EFIS is that if you look at your original Appendix B, there are two places on the first page of that that essentially showed an ink blob, I guess, in a mathematical formula.

The corrected appendix is set up such that you can see the greater than or equal to and the less than or equal to sign that should be present in those two formulas on Appendix B. Now -- and I would mention, I also have copies of that document with me if anybody needs those.

Having recently taken a detailed look at the KCPL Stipulation & Agreement, I don't know that you're going to find Empire's approach to be terribly novel as the stipulations are fairly similar in structure at least. Content will differ.

In terms of procedure, however, this case is postured quite differently from the KCPL case. I will tell you that this case looks a little more like a traditionally settled case. There is an application. There was an initial filing of prefiled direct testimony. That's now been followed by a Stipulation & Agreement, and all parties to this case have either signed the Stipulation & Agreement or stated that they do not oppose the stipulation and have waived their right to request a hearing on that stipulation or on the issues in this case.

Now, I realize that that doesn't make the Commission's decision any easier. However, it should significantly reduce the due process concerns that you might otherwise have if the stipulation is ultimately approved.

Now, there's a certain amount of background that I think might be helpful to place this matter in context as it relates to the Empire District Electric Company. As you will be aware, Empire recently completed a general rate case resulting in a decision issued on March 10th of this year. The tariffs resulting from that case became effective on March 27th of 2005.

Empire's capacity planning study, which has been presented during its integrated planning process, has indicated a need for coal-fired generation. Particularly significant to Empire is the fact that in June of 2010 Empire's purchased power contract with Western Resources for 162 megawatts of baseload capacity from the Jeffery Energy Center will expire.

The expiration of this contract in 2010 creates a need for coal-fired generation even in low or no load growth scenarios for Empire. Empire has explored and continues to explore various generation options, and one conclusion obviously it has come to is that its participation in Iatan Unit 2 would be beneficial as a long-term, cost-effective option for its customers.

Empire has also sought to add other alternatives to its generation mix. Empire currently has a 20-year contract with PBM Energy to purchase energy generated at a 150 megawatt wind farm being constructed in Butler County, Kansas.

Finally, in conjunction with Empire's most recent rate case, a Stipulation & Agreement was approved by the Commission wherein Empire agreed to participate in energy efficiency programs and a wind energy assessment study. The energy efficiency programs include the low-income weatherization program, Change a Light Change the World Program, the appliance and HVAC rebate program and a commercial energy efficiency audit program.

Now, at this point I think it would be helpful if I could hand out a table of contents related to the Stipulation & Agreement, if that would be all right, your Honor.

JUDGE PRIDGIN: You may.

MR. COOPER: I think when you look at the table of contents, if you'll look down to what's Roman numeral 3C, you'll see where really the substantive part of the stipulation begins, and you'll find that it's organized into four primary substantive sections. There's the infrastructure investment and monitoring section, which identifies specifically the investments to be made by Empire, as well as the process for reviewing and monitoring those investments over the next several years.

The following section, Section D, rate cases and rate recovery, addresses the treatment of various items in rate cases during the construction period, to include an agreement to support, if necessary, an amortization that will minimize the cost of the plan while seeking to provide adequate cash flow for Empire to maintain its debt at investment grade.

The third section is titled Additional Empire Commitments. Those are primarily commitments sought by other parties to protect ratepayers.

And then the fourth section is identified as Resource Plan and Customer Programs Development, which includes the processes for a detailed resource planning for feature needs process as well as possible -- the consideration of possible affordability, energy efficiency and demand response programs.

As I stated earlier, I have with me today three persons, Mr. Todd Tarter, Mr. David Gipson Ms. Sherry McCormack. Mr. Tarter will be primarily -- will be the first witness that we will offer in an attempt to address questions you may have along the lines of what was identified in yesterday's hearing order.

I will also be seeking to offer the prefiled direct testimony that Empire previously filed in this case. And once again, to the extent that we're unable to answer your questions, we are in a position to produce Mr. Brad Beecher and Mr. Gregory Knapp, respectively vice president of energy supply and vice president of -- get Mr. Knapp's exact title here so I don't mess that up -- of finance and chief financial officer for the company tomorrow morning if that would become necessary.

Thank you for your organization.

JUDGE PRIDGIN: Mr. Cooper, thank you. Mr. Frey on behalf of Staff.

MR. FREY: Thank you, your Honor. I don't have a prepared opening statement, but I would just note, in addition to Staff's full support of this Stipulation & Agreement, as you know, we filed our Suggestions in Support this morning. I hope everybody received copies of that and has had some chance to look at them.

I would just point out, first of all, call your attention to page 4 of the Stipulation & Agreement, Item 3, where it says, and I quote, if Empire does not become partner with KCPL for an ownership interest in the Iatan 2 plant corresponding to at least 100 megawatts or approximately 12 percent of capacity, then this agreement shall be null and void and have no force and effect for any purpose whatsoever.

I believe in the earlier case for KCPL there was evidence entered, a June 22nd letter to Mr. Bill Gipson of Empire from Mr. Gerald Reynolds, assistant general counsel of KCPL, indicating that a letter of intent had been signed and that the -- and that Empire would be -- their share would be 100 megawatts of capacity, and if the additional -- if there was generating capacity above the 850 megawatts, then Empire might be eligible for a share of that.

So that -- I would just note that for the record, that the agreement contemplates that Empire will be receiving at least 100 megawatts or approximately 12 percent of capacity.

I would just note, and I think we kind of have alluded to this already, Staff has made available, of course, all Staff members whom the Commission may wish to address, but for the most part I believe it will be Bob Schallenberg as well as Lena Mantle and Warren Wood, and these -- we make these witnesses available to answer the Commission's questions as necessary.

Thank you very much.

JUDGE PRIDGIN: Mr. Frey, thank you. Mr. Mills, does OPC have an opening statement?

MR. MILLS: Yes, thank you.

May it please the Commission. On behalf of the Office of Public Counsel, I want to note that we support the Stipulation & Agreement. We're a signatory to it, and we are happy to answer questions about it. To that end, I have available Mr. Ryan Kind to answer questions having to do with resource planning generally, resources, Mr. Russ Trippensee for questions having to do with more of the accounting and regulatory side of things.

Having just gone through the KCPL regulatory plan Stipulation & Agreement, a lot of the concepts in this agreement should look fairly familiar to the Commission. This agreement is largely driven by the fact that KCPL is moving forward with the Iatan 2 plant, and according to the agreement in the KCPL case, EO-2005-329, Empire is a preferred partner in that endeavor.

So the main impetus for this case and this agreement is to get Empire to a point where they have a financing plan that will enable them to show KCPL that they are not only a preferred partner but a viable partner, and that was the driving force behind this agreement.

I think rather than go through the whole agreement, I'd just like to point out one particular passage that is somewhat different than the KCPL agreement and in my view a significant improvement to the KCPL agreement, and that is on the very bottom of page 14 where it's sort of summing up the end of the amortizations, and it provides that, during the course of this agreement, the amortization amounts in the aggregate shall not exceed savings from the amortization mechanism and the lower cost of capital rate resulting therefrom.

I think that puts an overall cap on what is a fairly novel mechanism this Commission's considering both in this case and in the KCPL case that can, if used properly, achieve benefits both to the regulated utility and to the ratepayer. And capped as it is in this agreement, I think it allows those benefits to be achieved only to the extent that they benefit ratepayers at least as much as they benefit the regulated utility.

I'm happy to answer any questions if you have questions for me. If they go into more detail, I will refer them to either of the two witnesses I mentioned. Thank you.

JUDGE PRIDGIN: Mr. Mills, thank you. Any other parties wish opening?

Mr. Conrad?

MR. CONRAD: Your Honor, I'll be brief, just to mention the two clients that I have in this proceeding are Praxair. Praxair operates a gas liquifaction facility near Neosho, Missouri, and is served electrical power by Empire. Its load there is approximately 7 megawatts. It is an interruptible customer.

My other client is Explorer Pipeline Company. At an earlier point, I think, in perhaps this proceeding or in another one Explorer was associated with being a natural gas pipeline. That is not correct. They are a petroleum products pipeline, and their pipeline runs from basically the Gulf Coast area up through Missouri on into the Chicago area and terminates there. At various trucking terminals along the way, petroleum products, that includes gasoline, No. 2, No. 6, I take it other weight petroleum type products that can be moved through a pipeline are taken off and put into trucks for delivery to retail selling establishments.

They utilize electrical power for their pumping. They have three stations in the Empire area, and they have a combined load that is a little less than Praxair, but both clients operate at a fairly high load factor. By high load factor I mean somewhere in the range of 80 to 85 percent, give or take small change.

We support this package. We spent a good bit of time in working through it with Empire and the other parties. As has been previously mentioned I think very well by Mr. Mills, it should not be -- it should not contain concepts foreign to the Commission after going through the KCPL package. There are many similarities. He's pointed out a significant difference.

I would simply say that, like any compromised package, it represents a series of tradeoffs. It gets Empire obviously where they felt they needed to go, and the other parties were satisfactory -- satisfied with the outcome.

The Commission has been understandably concerned about moving this case along and getting it before you. I think to that end I would conclude my remarks by acknowledging, I think, some good efforts on the part of some of your staff that worked hard to bring this before you, both keeping parties focused and in keeping things scheduled. Those parties include Mr. Schallenberg previously mentioned, Mr. Henderson. Mr. Frey has been instrumental in that process.

And I would list up, frankly, both Mr. Mills in his short tenure as Public Counsel and Ryan Kind, who's been very attentive to customer-related issues. I think all those people should -- deserve and should receive some commendation in sticking to the process and bringing it to the conclusion that we have here before you.

On behalf of my client, we recommend your favorable consideration for the package. Thank you.

JUDGE PRIDGIN: Mr. Conrad, thank you. Do any of the other parties wish opening statement?

(No response.)

JUDGE PRIDGIN: All right. Seeing none. I think what I'd like to do is verify witness availability. Do I understand that the only witness who's here today that will not be available tomorrow is Mr. Schallenberg? All right. I'm seeing a nod. I think what I'd like to do, then, is go ahead and go out of order just to begin things and get Mr. Schallenberg on the stand to make sure that the Commission has plenty of time to ask him questions. So Mr. Schallenberg, if you'll come forward to be sworn.

(Witness sworn.)

JUDGE PRIDGIN: If you would please have a seat and, Mr. Frey, whenever you're ready.

MR. FREY: Your Honor, we have an exhibit here, the experience, education of Mr. Schallenberg. We'd like to offer that as an exhibit, if we could.

JUDGE PRIDGIN: Have that marked as Exhibit No. 1 for identification purposes.

(EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION BY THE REPORTER.)

ROBERT SCHALLENBERG testified as follows:

DIRECT EXAMINATION BY MR. FREY:

Q. Please state your name, sir.

A. Robert E. Schallenberg.

Q. And your business address?
A. Box 360, Jefferson City, Missouri 65101.
Q. And are you familiar with this document which we have marked as Exhibit 1 entitled Experience and Education of Robert Schallenberg?
A. Yes, I am.
Q. Is that an accurate representation of your experience and education?
A. Yes, it is.
MR. FREY: With that, your Honor, I would offer this into -- this document, Exhibit 1, into evidence and offer the witness for cross-examination -- for examination by the Commissioners.
JUDGE PRIDGIN: Thank you. Any objections?
(No response.)
JUDGE PRIDGIN: Hearing none, Exhibit No. 1 is admitted into evidence.
(EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)
JUDGE PRIDGIN: Let me see what kind of questions we have from the Bench. Mr. Chairman?
CHAIRMAN DAVIS: Pass.
JUDGE PRIDGIN: Thank you. Commissioner Murray?
COMMISSIONER MURRAY: I'm going to pass right now. Thank you.

JUDGE PRIDGIN: All right. Thank you. Commissioner Gaw?

COMMISSIONER GAW: Thank you, Judge.

QUESTIONS BY COMMISSIONER GAW:

Q. Good afternoon, Mr. Schallenberg.

A. Good afternoon.

Q. Let me start first with Public Counsel's comment about the provision on page 14 regarding the language which is evidently not in the KCP&L stip on the amortization amounts in aggregate not exceeding the expected cost savings from the amortization mechanism and the lower costs of capital resulting from investment grade ratings. I'm not sure if that's what he's referring to. Do you know?

A. That would be my understanding of the section that he referenced in his opening statement.

Q. Can you tell me the significance of this provision?

A. From the Staff's view, I think it puts or codifies that concept that the amortization cannot exceed an amount that would not meet this criteria.

Q. What does that mean? Can you explain how the concept works?

A. As I understand it, what would happen is in the framework of the amortization, there's a mathematical calculation that will come out and say you'll have X dollars that comes from applying the criteria and putting the inputs through the criteria.

To the extent that a party believes that that amortization amount no matter -- that's what the formula produces does not meet the criteria of exceeding expected -- that costs savings and the lower cost of capital is not greater, the resulting benefit is not greater than any additional amortization, that amortization could be lowered to an amount that would meet that criteria.

Q. Can you tell me how that would work? Maybe you have to go to a fairly basic level of how the amortization proposal in these stips work to get an explanation over to me.

A. One is that someone would look at what would be the result in rates over time of having this additional amortization put in rates at the time that it's being proposed.

And then you look at what would be the reduction in capital cost, which will probably require some kind of an estimate, but there are spreads that are available from various sources that could give fairly definitive estimates of interest benefits of being investment grade versus being downgraded to the next level. And you would be able to impute against how much debt you think the company would need in interest savings by being able not to be downgraded by virtue of the amortization.

Second of all, you can also look at to the extent you have the amortization, that would result in a lower rate base used to calculate rates in future cases, and you could calculate based on what the rate of return requirements and taxes would be on the higher rate base and see what that level of benefits were, add those two numbers together, and then compare that to the amount being requested and see if the amount requested in the amortization is less than or at least equal to those amount of savings.

Q. Okay. How is it to be determined what is the appropriate amount for the additional amortization? How is that calculated?

A. If you look at -- well, probably Appendix D is the better source. There is language in the main body, but Appendix D to the Stipulation is the description of the process, and Appendix -- especially on Appendix D3, you'll see some of the details that goes to make that calculation. Basically --

Q. I forgot to bring my glasses down. I apologize. But I can't make out anything on page 3 of D.

A. Well, a summary to it as I've been asked by people who wanted to understand it but didn't want to go through all the details --

Q. Yes.

A. -- is that in rate cases under this agreement, the parties would need not only to put in their costs and their investment and their return components to come up with a revenue requirement, but there's a second tier analysis that the parties have agreed to use to look at what their revenue requirement positions would be.

And if you look at on Appendix D1, there's financial ratio targets, and it has an A and a B. The signatory parties have agreed to also look at what impact the revenue requirement positions would have on adjusted funds, which is I think the term from Standard & Poor's is free funds from operations in relation to interest coverage, and it's free funds from operation as a percentage of total debt, of average total debt.

And so the revenue requirement positions of the parties will be also evaluated as to what Missouri's requirement would be to meet those two ratios for Empire. And to the extent that your revenue requirement position was deficient, you would agree to impute into your revenue requirement an additional amortization to meet these targets.

Q. Okay. What is the amortization portion of rates? What is that? What's in there normally?

A. Normally, the term amortization is generally used, in the traditional sense that the Commission is exposed to is it's the pieces of investment such as lease hold improvements that we don't apply depreciation rates to, but we recognize and capitalize over a specified period of time.

For example, lease hold improvements is amortized to the cost of service over the life of the lease, or regulatory items such as ice storms, AAOs and those types of things where you set a period for them to be charged to expense in equal amounts. That's -- those are the types of amortizations that the Commission would have normally seen.

This amortization has more of the characteristics of the settlement amounts that we use going back in the early '90s when we had revenue requirement -- or excuse me -- excess rates complaint cases or reviews settled, and in those settlements, in lieu of taking the entire amount in a reduction in rates currently, an amortization was created, charged to their income to represent the funds or the rates that you did not reduce that arguably you believe should be so, but they're reinvested against the existing investment and any additional part so that in future cases the company would not earn on that.

The amortization that's in Appendix D has more -- is an extension of that concept versus just taking a fixed deferred amount and just amortizing it over a set period of time.

Q. Amortization and depreciation in determining rates, are they treated in basically the same way in coming up with revenue requirement?

A. Yes. You get the -- the depreciation or the amortization is treated as an expense, and then to the extent it has any income tax effect, the income taxes are adjusted. And then over time the accumulated balance is used as a reduction in the determination of the amounts of rate base the company can earn on.

Q. All right. Now, in this -- in this particular instance, when you're dealing with this stip, there will be some additional amount added to what would otherwise have been in the amortized portion of determining rates over and above what would have been there if the stip wasn't in effect?

A. There could be. Now, as I say, it could be. As I mention, there's a two-tier test.

Q. All right.

A. If in the first tier say the Staff's

position in Empire's next rate case --

Q. Yes.

A. -- when you look at the amount of revenue that the Staff was recommending the company be allowed to collect --

Q. All right.

A. -- and you run it through these ratios and we meet these ratios --

Q. Without any additional amounts?

A. Without any additional amount, then that position, if adopted by the Commission, would require no amortization --

Q. All right.

A. -- under Appendix D.

Q. Okay. And then if it was determined that there was an additional amount needed, then in order to meet the stipulation and the investment grade levels that are stated in the stipulation, then you would add some additional amount into the amortization portion?

A. You would actually create a separate amortization for this to raise our revenue requirement position to meet the ratios, and whatever amount it took to meet the ratios would be a special amortization that would be started in that case and under this agreement would be continued, albeit maybe adjusted over time if the need to meet the ratio increases or decreases, until what we call the Iatan 2 case, or sometimes it's referred to as the 2009 rate case.

Q. Now, is that in essence an advance of money to the company through the ratemaking process with some amount of savings down the road to the consumer in exchange for being allowed to use that money earlier than they would have otherwise used it or had it available?

A. I think -- I think I understand the question.

Q. It's a long one. I apologize.

A. The answer would be is, it would represent an additional amount of money that the signatory parties have agreed to put into their rate case recommendations to the Commission to set rates in the future, with the understanding that as they agree to put that into rates, that amount of money would be recorded and captured as a reduction to the amount of investment that the company can earn on in a future rate determination.

Q. Okay. So the advantage to the company is what?

A. The advantage to the company is in the period between now and the completion of Iatan 2, it would have a source of cash that would, to the extent it's needed, that would allow it to maintain these financial ratios, which through the negotiations of the parties it has been determined that that would be an adequate mechanism to keep the company at investment grade at the time that it's taking on the capital expenditures necessary to do the infrastructure investments that are contained in this agreement.

It would give the company -- and probably the main one is it gives the rating agency, Standard & Poor's, the assurance that the main parties in Empire's rate cases will take positions that will not be contrary to supporting their debt rating between now and the completion of Iatan 2.

That's what the company would get from that. In exchange for that support, what the -- what the customers will receive --

Q. That's what I was going to ask you next, so go ahead.

A. -- that the customers receive is the -- and I haven't seen the writeup yet from Standard & Poor's, but KCP&L's writeup was very positive, and I assume if it's going to be negative, we would have seen it by now -- that they will keep Empire's rating as it is now. They'll be neutral about it, which with the announcement of a large capital expenditure, a lot of times they will get nervous until they have the assurance that the company can make that, and that can raise their debt costs as they raise money to finance the expenditures, which will be one level of savings that the customers will get. And this agreement --

Q. Excuse me.

A. Okay.

Q. Say that one more time for me.

A. To the extent that you borrow money and your rating is higher --

Q. Yes.

A. -- you will borrow money at a lower rate.

Q. Okay. So there's some incremental savings based upon the lower amount of return that's expected from investors the company will have to pay out, and that should translate into some savings for consumers at some point?

A. Yes. That reflects in all the debt that they borrow during the construction phase. This agreement also specifies --

Q. I want to ask you a question about that real quickly.

A. Okay. Go ahead. I'm sorry.

Q. Is that a savings that's realized in the very next rate case or in the subsequent rate case after that?

A. It will be --

Q. Since all of this is something that occurs in the first rate case, I assume at least initially is impacted in the first rate case, or is it more complicated than that?

A. To the extent you'll see some of the benefits of this agreement between now and their next rate case before they even get to activate the amortization --

Q. Yes.

A. -- in the sense that they're not on any negative watch or any downgrade.

Q. Okay.

A. Because if they were to be -- if they were to be downgraded, their interest costs that they would be allowed to recover in that next rate case would be higher.

Q. All right. So hopefully this would generate some protection against increasing costs for interest on money borrowed and perhaps on capital costs that would then be reflected in the first rate case?

A. Yes.

Q. Okay. Now I interrupted you. What was the next benefit?

A. The other -- the other benefit that you receive from the amortization is that after the monies are collected and used and there will be some -- it is anticipated that only -- this requirement is only that Empire has to file a rate case to put Iatan 2 in rates, but it's anticipated that Empire will have to file a rate case at least at the end of its current IEC.

Q. And again, in this case, unlike the other stipulation with KCP&L, there is not a mandatory rate case filing provided for in this stip. At least that would occur prior to the -- to Iatan being in use, correct?

A. Yes.

Q. But you have to anticipate based upon the discussion in the stip that one would be filed before this amortization that's discussed here would have much of an impact prior to Iatan being put in place, wouldn't you?

A. You'd have to have a rate case before the Iatan 2 case to actually have the amortization, because there is no amortization that is put in place by just the Commission adopting this agreement. It has to be done in the first rate case before the Iatan 2 case. And if we had the Iatan 2 case, we wouldn't have the requirement to put the amortization in.

Q. So it's anticipated that one will be filed, but it's not mandated like it is in the KCP&L stip?

A. Yes.

Q. Okay. I interrupted you again. Sorry. Go ahead.

A. So the accumulated balances from the first case and to the extent there's another case or in the Iatan 2 case, but any case in between the first case and the Iatan 2 case, any accumulated balances of the amortizations would reduce the rate base in those cases going forward, which would produce a lower rate base, which gives you a reduction equivalent to the reduced rate of return plus applicable taxes.

Q. All other things being equal? In other words, it should produce lower rates, all other things being equal, if the same determinations were made on rate of return -- excuse me -- on ROE and other things in the case, if you have the additional amortization, the rate base will be lower so rates should be lower, if everything else would have been equal in comparison with a case where you did not -- you did not lower the rate base --

A. Yes.

Q. -- on increased amortizations?

A. The thing I hesitate, when you say all things being equal, the only way that that benefit wouldn't be received --

Q. Yes.

A. -- wouldn't be -- it would be if you consciously raised some other element of their setting that rate to overcome and negate that benefit.

Q. Yes.
A. You would have to take a -- because no matter what you do in all of the other elements, those items would be decided as being legitimate costs or not being legitimate costs or legitimate investments or imprudent investments or what their cost of capital is. This item will still reduce rates because it's an item that in the calculation of rate base, rate base is going to be lower because of this item than it would be otherwise.
The only way I know you could get rid of this benefit is to consciously make a decision to raise another cost element to overcome and negate this benefit.
Q. Is there any argument that you're aware of that would -- that could be presented toward that end?
A. I've not -- I've not seen anything other than deliberately doing that. You would have -- you would have to be very overt to try to do this, and in the ratemaking process that would be so unique, it's -- the idea that it would not be detected and brought to the Commission's attention, the probability of that would be very small.
Q. Okay. So back to Public Counsel's reference to what's in this stip and page 14 that's not in the KCP&L stip, how important is that in -- in regard to

the KCP&L stip and not having it in this one, having it present? Are we missing a protection somewhere?
A. I think -- I think it's inherently in the KCP&L stip. It's just not documented that you have the right to bring forward that in the event that those savings aren't there. But as I just mentioned to you in our discussion, someone would have to do something very overt to take those savings away.
So I don't want -- I mean, it's nice to have -- it's nice to have it in print. It's nice to have it available and highlighted so everybody has that discussion, but I don't know that I would perceive that the KCP&L stip is grossly deficient or needs to be revised just because it doesn't have that enhancement in it.
Q. Okay. All right. In the Kansas City Power & Light case, there was discussion in regard to off-system sales. Can you give me your perspective on how off-system sales are handled under this stipulation for Empire?
A. They will be handled in the same way as in the KCP&L agreement or regulatory plan. The significance of off-system sales is much different in Empire's situation than it is in KCP&L's.
Q. In what way?
A. KCP&L has significant baseload generation that is available, and it makes significant off-system

sales even today. Empire does not have that situation. It does not have the percentage of baseload, and by that I mean coal. KCPL has nuclear. Nuclear would be baseload. Empire does not have that amount of generation in its total generation portfolio.

So off-system sales to Empire is not as -- it's not as significant an item in the determination of cost of service as it is in KCP&L. But the same agreement exists to be treated the same way.

Q. There was some discussion at the KCP&L hearing about some additional revisions in regard to off-system sales that might occur in that stip. Can you tell me whether or not that is an issue in this stipulation with regard to whether there are additional -- additional things on off-system sales that are not completely resolved with this draft?

A. Yes, I can tell you that, and in this when we modified the KCP&L stip the language that we had derived in this process was controlling to get that into KCP&L. So it is in here, and this was actually the source of getting the language put into KCP&L.

Q. Can you tell me what that language is in general or point it out, whichever is quickest?

A. If you go -- I can tell you generally it's on page 18, and I'm told it's the very last sentence. The summary of it is as long as the investments and expenses are treated in rates, the off-system sales will be used as an offset to that cost determination.

Q. Okay. And let's see. Can you point that out to me again?

A. If you go to 18 and you go to the last -- the last sentence that starts with, Empire agrees it will not seek to avail itself --

Q. Yes.

A. -- of any legislation that may be enacted in the future that would be inconsistent with the ratemaking treatment for off-system sales, revenues and associated expenses as set forth in this paragraph.

Q. All right. This stipulation contains a provision at the end, if I recall correctly, that talks about its termination somewhere in the boilerplate general area.

A. There's a term of the agreement section on page 34.

Q. Yes. Does that term of the agreement boilerplate apply to the provisions on 18 and 19 on off-system sales?

A. No, because if you look at on page 34, that last line that says, except where otherwise specified in this agreement.

Q. Yes.

A. And since it is specified that it will last as long as the expenses and investment are treated in rates.

Q. Okay.

A. So it has a special provision as to how long the off-system sales condition is in play. So, therefore, the term of the agreement is controlling for that provision.

Q. And there's no dispute about this, to your knowledge?

A. No. In fact, there was extensive discussion about this feature in the development of this regulatory plan.

Q. Okay. Can you give me an explanation in general about how off-system sales work in concert with -- when I say off-system sales, I'm referring to off-system sales and purchases -- in regard to a fuel adjustment mechanism under the new legislation that's mentioned in this stipulation?

A. I mean, there is -- I mean, while the legislation has been signed, the rulemaking has not specified the parameters of, and the parties here when this was designed did not want to use the term fuel adjustment clause, and it has a term -- I see the acronym.

Q. Yes, FPPCR?

A. It's fuel and purchased power cost recovery, which is tied directly to the statute. And generally speaking, to be responsive to your question, electric companies follow what is the principle of economic dispatch, and by that you bring on to meet your load your cheapest sources of energy. To the extent that purchased power is available to meet your load, you will buy purchased power versus using a more expensive generation under your control.

Off-system sales are, in essence, to be made at what we call the system lambda or the incremental cost of the system, which is the highest source of generation or purchased power available to the system after you serve the native load.

To the extent that you were going to be doing any kind of a fuel cost mechanism or if you take, for example, the IEC, which is one that we do use here, and there are those mechanisms in place, off-system sales are first charged with the highest cost of expense on the system at the time the off-system sale was made.

And if that's purchased power, that would be charged against the revenues received from the off-system sales, and if that's generation, that will be the highest cost, to determine the margin that is available to the company's income statement.

I'm not aware of any type of fuel cost recovery mechanism that does not assign the highest cost to off-system sales to make sure that the native load receives cheaper sources of energy in terms of the setting of rates that they are charged with.

Q. The impact of that is what?

A. Well, the impact of that is so that the profit from off-system sales is not increased at the detriment of serving the native load. For example, if you could take a cheaper source and take that fuel cost and assign it to the off-system sale, you'll have a bigger difference between revenues and expense, which will give you a bigger profit margin.

Likewise, though, when a fuel source is no longer used to serve or assigned to native load, the cost to serve native load will be higher, so therefore rates will be higher.

In our system that usually isn't a big concern because we combine both pieces when we set rates. The only time we would be concerned is if the off-system sales revenues were less than the incremental costs on the system. If you were, in essence, selling cost at a loss, in almost every case that we do, we always look to make sure that the company is not engaging in off-system sales at a loss to the system lambda.

Q. Okay. And on the purchase side, do you look to see whether or not there is energy available that would be lower cost than what's the incremental cost of spending generation of its own?

A. Yes. In fact, we will look at the generation logs. There's a dispatcher for the system, and they keep logs that show what capacity is available to them and what energy is available to them, and then they will schedule that.

Now, I want to say that that's the principle in place. Sometimes there are certain operational issues where because you're not sure where the load is going to go in the day and you can't be sure the market will supply it, you may have a unit being brought online and kept in reserve so that it will be available, because system reliability is still an overriding concern over just pure dollars and cents and cost.

That will be noted in the dispatcher's log because they will note that to show what decisions they make to meet the system requirements.

Q. Is there anything in particular in regard to this stipulation that impacts more than what you've already described the use of a -- of an adjustment mechanism under 179 as it relates to off-system sales?

A. I think this agreement also puts in play the requirement that the margin from off-system sales is to be set in what we'll start calling the margin rates, the non-fuel purchased power cost recovery mechanism rate. The off-system sales margin is to be set in the other -- the permanent rates. So that whatever that profit margin is, that's to be used and established in the setting of Empire's permanent rates.

Q. Why would that be done that way as opposed to putting it in the adjustment mechanism, for lack of a better word?

A. The concern that was discussed in order to get to this level was that if you just do a pass through --

Q. Yes.

A. -- the concern that was expressed that the parties tried to address is that you have no incentive, if you're going to just be able to pass through your cost, you have no incentive to go out and make off-system sales or be aggressive in the market to make off-system sales.

The idea is once it's established in the margin or -- and that's a gas term, but it will become an electric term as we get these mechanisms -- you now have a target, and because of that, you have every incentive to make sure you sell at least up to that or you have a draw on your income until you get rates set again. To the extent you can sell more than that amount, you will in essence be able to enjoy that benefit until your rates are reset in another rate case or complaint case.

So in order to address the incentive feature of off-system sales, that was the approach that the parties finally settled on that would address getting the value of off-system sales in the future and making sure there were a framework that would give the company incentive to actually generate numbers that would be beneficial not only to themselves but to the -- to the customers.

Q. I don't want to get into an extended discussion of the advantage of fuel adjustment mechanisms of any kind beyond what we have here, I guess, Mr. Schallenberg, but that same argument applies as to why not to have an adjustment provision to begin with, doesn't it, an incentive that you're discussing?

A. What I will say is, depending on your cost environment --

Q. Yes.

A. -- when we -- we used to have a fuel adjustment clause in this state, and then it was taken away. And at the time it was taken away, it was perceived by the financial community to be a detriment. And then when we had declining costs, then it was perceived to be a benefit that companies could enjoy and they have enjoyed it for a long time.

But once costs start rising, not having a fuel adjustment clause or a fuel and purchased power cost mechanism, recovery mechanism, that is going to be perceived by the investment community and not being able to recover those costs is going to be perceived as a negative feature.

Now, to the extent that you're in a declining cost system, not having this mechanism is beneficial to the company. But they also have the incentive to try to do everything possible they can to reduce that cost even in a rising cost, but there's certain things that are beyond their control.

And what I will say is without an IEC or a fuel and purchased power cost recovery mechanism, the things I've seen in terms of looking at our utilities, and particularly Empire because of its gas usage, that is perceived as being a big financial risk to the company that if you were to add the other infrastructure investments that are in this agreement, I don't know that you would have gotten the same reaction from the investment community in terms of their perception that Empire could do the investments that are in here if we did not have at least the opportunity for the company to have that fuel purchased power cost recovery mechanism.

Q. I guess my point is, why split this between having the provision that allows the rates to flow on the fuel cost on one hand and yet you're fixing the costs regarding off-system sales? Why not have them both floating if the -- I just don't see the difference between the argument about one provides the incentive. They both provide an incentive in you fix them both. You lose the incentive if you allow them to float.

So why split this up and allow the off-system sales to be fixed at the rate case instead of floating with everything else that's floating in the fuel adjustment mechanism or whatever it is, interim energy charge or --

A. And the philosophy that you have is one, it's -- and I've heard it and seen it and am aware of it. It's not the philosophy that the parties -- because I had the role of being the facilitator.

Q. Yes.

A. That was not the philosophy that the parties gravitated to in order to get the entire agreement put together. This was an item that -- and this has a feature in it that is unique because KCP&L does not have the fuel and purchased power cost recovery mechanism. It relies on the traditional IEC for the -- for its construction period.

Q. Yes.

A. This was -- once this approach was agreed to, the off-system sales mechanism was the piece that the parties gravitated to that would get us to the agreement that's in this regulatory plan.

Q. This is the settlement, is what you're telling me, is what you've got?

A. Yes, I think.

Q. You put everything on the table. This is where you ended up?

A. Yeah. I think -- as you heard in the opening statements, and doing this for now decades, I think anybody who signs on a compromise would say there are things in there I would have rather had that aren't in there, but overall the compromise is worth more to me than fighting about the individual components.

Q. I understand. I guess I'm curious about whether or not Staff has a position on this policy matter.

A. We do not at this stage because we will start looking at 179 and in the rulemaking process because we have no draft rules or any draft parameters for that legislation as of today.

Q. Okay. On page 19, under the transmission related revenues, can you tell me, just give me an idea about what's being done there? I'm assuming this is not a huge issue money-wise, but maybe I'm wrong about that, so --

A. I think in the development of this agreement, I don't think it was assumed to be a big money issue. But with the changes in terms of what's going to happen in terms of transmission and how revenues will be determined, and I think no matter what the scheme that people think will be in play, once it gets in play and the dollars start going and what the incentives are, there's a certain level of uncertainty in what's going to be the result.

But the idea here is once we put additional generation into the system, we are going to have to put more transmission in the system as well. And to the extent that there is revenues that come from transmission investment, as well as existing ones, there is provisions in this agreement so those revenues would be used to consider what Empire's overall rates would be as we did with off-system sales.

Q. So that's where I'm -- I'm somewhat confused about how transmission revenues fit in with a fuel adjustment mechanism.

A. I can say in terms of the discussion that

I've heard today is that when you bring -- say purchased power. When you look at bringing purchased power into a control area, from a source outside the control area, you probably incur transmission charges in addition to the energy costs to bring it in. And as the purchaser of purchased power, you're going to pay all the costs to get it into your control area, which will probably include not only whatever fuel source or generation source, but will also have on it an adder for transmission to bring it in to our system.

And that is the new element now since you'll see more purchased power transactions that are being done which now have a significant component in it for transmission costs.

Q. Okay. So is purchased power then in the floating portion or the fixed portion of rates under the agreement?

A. In the agreement, when we say fuel and purchased power --

Q. Yes.

A. -- purchased power would be in the floating or the to be determined portion. It's not in -- it's not in the fixed portion.

Q. Okay. So sales, off-system sales are in the fixed portion, but purchases are in the floating portion?

A. Right. Unless those purchases were made for off-system sales, and then they would just be netted again the related revenues.

Q. Okay. Mr. Schallenberg, on page 8 and 9 of the stip, there's some reference there -- and I don't know -- if you're not the right one to ask this question, don't hesitate to direct me to someone else, and this is just relating to times here.

It says something to the effect of, down toward the bottom, if any signatory party has concerns regarding Empire's new proposed infrastructure investment plan, it shall notify Empire and all signatory parties in writing within 30 days, provide Empire's written notification to the signatory parties, and then it goes on to talk about on receipt they'll promptly schedule a meeting. There was -- just a second here. You can strike that. I think I answered my own question.

COMMISSIONER GAW: I think, Judge, that most of my other questions have to do with resource planning, which Mr. Schallenberg I'm sure could answer, but I don't know that he's the one that's necessarily being offered up for that purpose. So I'll probably just try to go on to someone else and, if necessary, if we have time, I might ask him the questions if we can't get the answers from someone else.

JUDGE PRIDGIN: Commissioner Gaw, thank you. Commissioner Clayton? Commissioner Appling?

QUESTIONS BY COMMISSIONER APPLING:

Q. Mr. Schallenberg, how are you doing?

A. Very well.

Q. I would have to say to you that I've been waiting for this opportunity for 14 months, and so I -- I'm very bothered, though, that my knowledge has not grown to a level that I can ask you some heavy lifting questions.

I do have a couple of general questions, if you could, right quick. Following the theme of the TV program, with all things considered, do you think that this stip is fair to all who signed it?

A. Yes.

Q. Okay. Is this a good balance for the public interest?

A. Yes.

Q. Since you sat back and had some time to think about it, do you have any concerns about the stip?

A. None more than -- the only reason I say that is there's the stip and then there's going to be the implementation of it. I have no greater concern about the implementation of this stip than any other stip I'm aware of, but I do know the implementation is going to cause problems and we're going to see factors that we didn't anticipate. But the parties put together and discussed everything they could, but I'm just sure something else is going to come up we didn't anticipate. But I have no reservations towards the Staff signing this agreement.

COMMISSIONER APPLING: Thank you very much, sir. Now you see why I'm disappointed. Thank you.

JUDGE PRIDGIN: Commissioner Appling, thank you. Mr. Chairman?

CHAIRMAN DAVIS: Yes.

QUESTIONS BY CHAIRMAN DAVIS:

Q.   Mr. Schallenberg, to summarize your -- briefly summarize your dialog with Commissioner Gaw, can you explain the testimony that you just gave there in response to Commissioner Gaw's questions in a nutshell for me?

A.   I'll try. I think the questions centered around the benefits from the amortization that we gain by having agreed to the amortization, which would be an assurance to the investment community that they can provide support to Empire to fund the infrastructure investments that are contained in this regulatory plan, and that they will have benefits that ratepayers will see even before the first rate case, which is anticipated in late next year or '07 at the earliest.

They will receive benefits over the long term in terms of reductions to rate base, and there are other provisions in this agreement that will result in lower rates if they were not structured.

In terms of concerns about off-system sales or transmission revenues, that those in some way could be separated from the cost of investments to the detriment of consumers in the setting of rates in the future, this agreement has put in place safeguards to address that concern to make sure that the bargain that the signatory parties reached will be fully realized in the future.

And I think that's the areas in general that Commissioner Gaw asked me about. Oh, and he asked me about the recovery of the fuel and purchased power cost recovery mechanism, and I noted that in this mechanism, as in KCP&L's, investment community wants an assurance that -- and it's probably more important in Empire's case because of its gas reliance -- that there is a mechanism in place to allow it to recover increasing costs that it has in terms of its serving its customers in order to provide the investment community the assurance that Empire can continue to be a reliable lender -- excuse me -- receive funds, borrower, to make the investments that are contained in this agreement.

As I recall, those were the areas that Commissioner Gaw asked me about.

Q. And in this agreement, Empire bargained away their right for all perpetuity to seek any sort of environmental rider for, I believe, Iatan 1, Iatan 2, the Asbury plant. They agreed not to seek the environmental rider that was contained in 179 for all perpetuity; is that correct?

A. That's correct, because there are specific provisions in here for Empire to receive recovery of the environmental upgrades to Iatan 1 and to Asbury in the first rate case that they file after those expenditures are made and placed into service. So at the time when this was negotiated, there was no need for other additional consideration through a 179 mechanism.

Q. Do you recall much of the testimony from the last Empire rate case?

A. I recall some, whether that makes enough to be much. I know I don't recall it all.

Q. Okay. And do you recall any discussions about the Asbury plant?

A. I do not recall in a rate case about the Asbury plant.

Q. Okay.

A. But I am knowledgeable about the Asbury plant.

Q. Have they ever manifested any intentions to close that plant?

A. There may have been -- I know that we get life span studies on generation plants that have termination dates, and I'm sure -- whenever those studies are done, all existing plants are identified, and I'm sure Asbury would have been on that list, as was Iatan and other units.

Q. Do you think as a matter of policy we can really afford to close any of our existing coal-fired facilities at this point?

A. I would say in a general sense the answer would be no, and that's why if you look in this agreement the parties agreed to do the environmental upgrades for Asbury because in relation to the generation -- and Warren Wood can give you exact numbers, but it's approximately 200 megawatts. For $27 million, which is in, I think, Appendix A to this agreement, we will have Asbury placed into environmental compliance and still be able to maintain 200 megawatts of coal generation.

As was mentioned in the KCP&L proceedings, when we get to the Montrose units, those units are smaller, about 150 megawatts, and the cost of compliance are much greater, the 300 megawatt -- excuse me --

$300 million range. We will have to take a serious look at what we do about those units, but that's more the exception than the rule. In most cases we have justified their spending environmental moneys in order to keep the units operating.

Q. Mr. Schallenberg, are you familiar with both the KCP&L Stip & Agreement in this case as well as the Empire Stip & Agreement?

A. Yes, I am.

Q. Can you briefly summarize what the differences are?

A. The significant differences -- well, one significant difference is that Empire is a preferred partner in Iatan 2 versus KCP&L is the central partner or the builder. So Empire's actually negotiating with KCP&L as to how much capacity it gets, but there is a provision in the KCP&L agreement that Empire and Aquila is to receive 30 percent of the output.

This agreement, the Empire agreement is not as formalized regarding the financing plan as KCP&L, but it uses the same feature that the financing will be addressed in separate cases that will come before you. This agreement, unlike KCP&L, will rely on the outcome of Senate Bill 179 for the fuel, purchased power cost recovery mechanism in lieu of using the IEC approach that was used in the environment prior to Senate Bill 179.

This agreement will -- I mean, it's just the nature of Empire and KCP&L are different. It mentions the capital investments that were Empire specific, such as Asbury and the V84, but this agreement is specific to just those investments. There was not an agreement regarding the overall integrated resource planning document starting point as there was in KCPL. So the fundamental agreement as to where we are is much broader in KCP&L than it is with Empire.

This agreement is probably much -- has a higher level of governance and oversight over energy efficiency, affordability and demand side management than KCP&L's agreement did. You'll see discussions of who will be loading parties and super majorities than KCP&L had. That's a difference that is in this agreement and not in KCP&L.

Those are the only ones that I can see right now are the major differences. I will note that Empire's investment grade and KCP&L's investment grade. So the approach of a regulatory plan for an investment grade partner is much different than the approach would be for a non-investment-grade partner.

So I think we have attempted to address in both cases what it was necessary to keep them investment grade, but to keep them investment grade, they're not at the same starting point. They have different structures. They have different non-regulated. So that by its very nature caused a difference in this agreement.

Q. Does KCP&L have greater risk than Empire in this venture?

A. I would say in terms of Iatan 2, probably no. In terms -- I say that as Iatan 2 is probably a more significant investment and endeavor for Empire and its relative size than what Iatan 2 is to KCP&L because it's a bigger utility. So to that extent, I would say KCP&L has less risk.

But to the extent that KCP&L is taking the role of being the general contractor and putting the deal together, that's a risk that Empire doesn't have, but it will pay its proportionate share of those.

Q. I think -- did you testify earlier that Empire doesn't have much in the way of off-system sales?

A. No. Yes, I did testify to that. Empire is generally a net purchaser, which means it buys more power from the grid than it sells. KCP&L is a net seller. It sells more energy to the grid than it receives.

Q. So Empire's agreement to forfeit any rights that it might have under Senate Bill 179, you know, for environmental expenditures -- well, they don't -- they don't own a lot of coal-fired generation, does Empire? What do they own?

A. They own Asbury, which is addressed here. They own a piece of Iatan, which is addressed here. And there is --

Q. And Iatan 2 will be in compliance?

A. And there is, I think it's Riverton. There is some even older coal units that they own that that's similar to the Montrose situation. We have not looked at what are the options. So that's one that's still out -- as KCP&L has Montrose outstanding, Empire would have Riverton, their Riverton coal units.

Q. At the end, I mean, Empire doesn't have nearly as much environmental exposure as say a KCP&L or an Ameren, would they?

A. Oh, no, because they don't have that many coal units in their generation portfolio.

Q. So it's much easier for them to give up on something like this than it would be for an Ameren or a KCP&L?

A. Yes. And I think the difference is, iS in 179 there is, because of the magnitude of the work that would have to be done by KCP&L or Ameren, Empire comes in frequent enough that their projects would be more specific to one activity, and then as soon as the project was done, they could file a rate case. And unlike KCP&L and UE, they file rate cases every couple of years.

Q. So this portion of the agreement probably wouldn't be a very good -- be a good model to be followed in other cases; is that correct?

A. Yes. I would say, in fact, when we started this process, we started it with KCP&L, and probably the first thing we had to do was break away from KCP&L and figure out what we needed and what we did not need for Empire. This agreement gives you a baseline to look at. I would say for another company there's going to be a lot in this agreement that wouldn't apply.

CHAIRMAN DAVIS: No further questions.

JUDGE PRIDGIN: Mr. Chairman, thank you. Do we have any further questions from the Bench? Commissioner Gaw? Commissioner Murray?

FURTHER QUESTIONS BY COMMISSIONER GAW:

Q. Just a couple. And this is something I don't think I've inquired about before, but in regard to reliability issues with the -- let's just talk about the three that are coming before us on this Iatan plant, KCP&L and Empire and Aquila. Do you know what kinds of reliability there are for the other partners if one partner defaults on its obligation?

Is there joint and several responsibility for the liabilities on this construction or is it separated some way? Do you know?

A. The answer is I don't know because the agreements haven't been finalized yet. They're in the process of making those agreements. I would point out to the Commission as that, to the extent Iatan 2 is a joint unit and will need to use the common facilities of Iatan 1 and KCP&L, Empire and Aquila are owners.

Q. Yes.

A. To the extent that any of those common facilities are to be sold or be compensated, you will have a case before you to allow them to encumber those common facilities for the new owners of Iatan 2, and at that time the operating agreements and the compensation and all of those matters should be finalized between Aquila, Empire, and KCP&L with all the new owners of Iatan 2.

The question will be before you when they come forward to sell the common facilities, but it's not known as of today.

Q. Okay. And if there was a default and there was some sort of responsibility for the whole of the obligation on behalf of the remaining participants, would that additional responsibility, if it impacted their rating, their credit rating, allow for an additional amortization amounts under this stipulation to be placed on that other -- those other utilities' ratepayers as a result of a default on one of them in the arrangement?

A. I would say I guess there's a possibility, but in today's environment the probability would be small, and the reason I say that --

Q. Why do you say that?

A. -- is the unit's over-subscribed right now, and so to the extent that you were to have -- let's see. Because Aquila has 140. Empire has 100 megawatts. The municipals I believe have 80, and I think the Kansas coops have 40.

And there are people -- Empire has expressed an interest for more capacity. Aquilla has expressed an interest for more capacity. The municipals have expressed an interest for a lot more capacity, as have the coops. So to the extent that one of them were to default, there has been more expressed interest than any one of their shares, that it could be sold at the expenditures that were in default for the new owner to step in.

We had this issue when Iatan 1 was built. Iatan 1 was built with a heavy reliance that St. Joe would take over 25 percent of the unit, and St. Joe could not finance 25 percent of the unit. And the Commission actually required St. Joe to divest itself. So it's a similar situation, other than Empire -- I mean St. Joe continued to try to do it, and that was done on the basis that KCP&L had to step up at first and take the St. Joe portion to keep the project moving, and then it sold it, which ended up being where Empire got an ownership into Iatan 1.

So if I take your -- if I look at it now, unless the coal capacity was to become, you know, much less valued than it is today and is expected to be during the next five years, there should always be an owner that will step up and be willing to step into the shoes of the default owner, in the event that that explodes.

Q. Is that something that would occur fairly rapidly, do you think, if we had a default with the legal things that would have to be dealt with and finding a buyer, which it sounds like may not be that difficult?

But my concern, I guess, as I'm expressing it, will ratepayers from the other -- I don't want to call them partners -- participants in this Iatan 2 vision be required to make up the difference, which you've already told me you don't know.

If they were, does it -- is there any protection in the agreement, in the stip, for that not just then being rolled right in to rates as a result of an increases amount of amortization to preserve the credit

rating of the others?
A. There is nothing in this agreement that specifically addresses that.
Q. But you don't think it's that big of a concern?
A. Well, I don't want to say I think it's a trivial concern because it's not, and I know it's being -- if you look at the KCPL agreement, when it says they have to have a viable financing plan, KCP&L has to be satisfied that for you to be a partner you have to have a commercially feasible, that's what it is, commercially feasible financing plan in place.
Q. Yes.
A. And part of that is, as KCPL is evaluating, because it is fundamental owner of Iatan 2 --
Q. Right.
A. -- and the managing partner at this stage. It's going through that stage, those analysis because I know in discussions with KCPL they have hired some specialists to look at what happens in the event of a default.
As I said, those ownership agreements and arrangements have not been finalized yet and signed, so I won't know what provisions have been put in place contractually between KCP&L and the other owners until

that is done. But I do know it's been examined, and I know KCP&L is extremely sensitive to this issue.

Q. There are some things that are specifically stated in the stip as things that could not -- events that would not be able to be utilized to increase the amortization amount, if I recall?

A. Yes.

Q. Can you give me an example or two off the top of your head?

A. A non-regulated loss, other jurisdictions not paying their proportional share, an imprudent action by the company. Those come to mind. I mean, it's -- and it's fundamental that Empire does not -- understands that it has the responsibility to manage itself efficiently. It cannot rely on the amortization to be a bailout in the event that it engages in any inappropriate operation or it can't rely on the Missouri amortization to be used to subsidize its operations in other states.

One of the features here that was very important, Empire does not have the same ratio of business in the other states that KCPL did. So there's a regulatory plan in Kansas which basically covers most of KCP&L's regulated operations. This is the only regulatory plan that Empire has, but it's clear in here that to the extent that Kansas or Oklahoma or Arkansas does not pay their share, they cannot look to Missouri to raise the amortization to meet these ratios. So those are provisions that were specifically addressed in this agreement.

In terms of looking at a default, to the extent it was determined that they were allowed to gain another 40 or 50 megawatts of Iatan 2, that would increase the amortization by correspondingly receive 40 or 50 more megawatts, which in terms of looking at the generation needs for Empire, that would be a good thing.

So I don't want to tell you there's no way that a default and additional ownership of Iatan 2 could not happen and Empire would be responsible for it and the amortization could be increased because that is true, but the corresponding result would be is we would have a bigger share if Iatan 2 for Empire, which I think has a significant benefit given their current coal percentage.

Q. If I knew that that would be the result, I would feel more comfortable.

A. Well, usually if you have to pay the expenditures for the default, you would take over the ownership of the person that's no longer -- that had -- the prior owner.

Q. We just don't have that in front of us.

A. And that is true.

Q. So I don't know. And the other thing I don't know is what the reaction would be, although I suppose it's not so much a question of the reaction about the credit institutions under the agreement as it is about meeting those numbers that are detailed in the agreement. Would that kind of a default have any impact on those numbers that are in the stip?

A. To trigger an impact on those numbers, you have to incur additional debt, which would mean you'd have to be making additional expenditures.

Q. Okay. So that translates into what your scenario was, then?

A. Yes.

COMMISSIONER GAW: Thank you, Judge.

JUDGE PRIDGIN: Commissioner Murray?

QUESTIONS BY COMMISSIONER MURRAY:

Q. Mr. Schallenberg, if such a default were to occur and Empire were to receive more of the Iatan plant, that's not an automatic that that gets -- any increase gets flowed through to ratepayers; isn't that correct?

A. That's true. This agreement is only at 100 megawatts or 12 percent, which is basically we're within a few hundred -- excuse me. We're within a few megawatts either way on that criteria. If Empire were to acquire more, that would be subject to review.

Q. And also, if they were to be forced to acquire more than they were currently able to use, would it not be a question that the Commission would address in terms of rate recovery on something that's not currently used and useful?

A. That would be -- that would be an option, because the Commission's not a signatory party to this agreement. So the Commission always maintains all of its rights to review and look at relevant factors that take place between now and the completion of Iatan 2.

I would just point out, it is more likely that if there's a default, that that would fly to KCP&L, not Empire. If Empire were to step in, it would be only because of an overt action on Empire's part, because KCPL is the managing partner.

Q. And when parties are coming together to reach an agreement on something as complex as the issues we deal with here, it's virtually impossible, is it not, to predict and determine what every possible scenario outcome might be?

A. That would be true. I know -- I can't remember the number of meetings, but we've been doing this for several months. I think the parties attempted to do that, and I know they haven't -- they haven't been able to do every possible scenario. But at the Commission's, you're not privy to the weeks of meetings that have taken place that underlie the development of this agreement.

Q. But eventually you arrived at what all of the parties were able to agree was the best possible way to handle these issues involved; is that correct?

A. That's correct. And it also encompasses the interest of parties that have primary interests that are different from other parties that have come together. The agreement addresses a scope issues and interest that is fairly diverse.

COMMISSIONER MURRAY: Thank you.

JUDGE PRIDGIN: Thank you, Commissioner. Any further questions from the Bench?

Let me see if we have any cross-examination from counsel.

MR. COOPER: I have some brief questions.

JUDGE PRIDGIN: Mr. Cooper.

CROSS-EXAMINATION BY MR. COOPER:

Q. Mr. Schallenberg, Chairman Davis asked you some questions about, I think it's provision Roman numeral 3C6, which has to do with the waiver associated with environmental rate recovery associated with Senate Bill 179. Do you remember those questions?

A. I remember questions about Senate Bill 179, yes.

Q. And its relation or potential waiver of use of the environmental rate recovery aspects of Senate Bill 179?
A. Yes.
Q. And I just want -- I think you got to it in your answers, but I want to make sure it's clear. There was a reference to a waiver into perpetuity, and my first question for you is, wouldn't you agree with me that the waiver reflected in that provision has to do with specifically the environmental expenditures covered by this agreement, correct?
A. That's correct.
Q. So it's not a waiver for any environmental expenditures ever at Asbury, Iatan 1, Iatan 2, correct?
A. That's correct. At some subsequent period, we have to do environmental on any of the units that aren't covered in this agreement. There is no restriction that the company can't do -- can't avail itself of any regulatory mechanism that's available to it.
Q. And additionally, as you understand, and I know we don't have rules associated with Senate Bill 179 at this point, but as you understand that environmental recovery mechanism under Senate Bill 179, would you agree with me that what Empire has given up is the ability to have a rider or a surcharge between the in-service date

and whenever its next rate case would take place?

A. Yes. As I understand the basic framework of Senate Bill 179, it allows for riders to exist outside of permanent rate case, but they are established in a permanent rate case.

Q. So presumably the environmental expenditures covered by this agreement, even with this waiver reflected in Section 6 here, if deemed to be prudent, they would become a part of Empire's permanent rates at its next rate case, correct?

A. That's correct.

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

JUDGE PRIDGIN: Mr. Cooper, thank you. Any further cross from counsel?

Mr. Frey, any redirect?

MR. FREY: No, your Honor.

JUDGE PRIDGIN: If there are no further questions, Mr. Schallenberg, you can be excused.

This looks to be a convenient time to break. I show the clock on the back of the wall to be 2:55. Let's try to resume at 3:10. It's my plan to resume and start calling witnesses from Empire, unless I get suggestions otherwise or we have schedules that we need to accommodate otherwise. So we will go off the record until 3:10.

(A BREAK WAS TAKEN.)

(EXHIBIT NOS. 2, 3 AND 4 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

JUDGE PRIDGIN: What I'd like to do, then, is go on to Empire's witness, and before I call Mr. Tarter to the stand, Mr. Cooper, I think you had some direct prefiled testimony that you wanted to introduce?

MR. COOPER: Yes, your Honor. We have premarked as Exhibit 2 William Gipson's direct testimony, we have marked as Exhibit 3 and 3HC the direct testimony of Jill Tietjen, and we have marked as Exhibits 4 and 4HC the testimony of James Vander Weide, all of which were prefiled in this case, and all of which I would at this time offer.

JUDGE PRIDGIN: Any objections?

(No response.)

JUDGE PRIDGIN: I'll show Exhibits -- and Mr. Cooper, correct me if I'm wrong -- Exhibits 2, 3, 3HC, 4 and 4HC?

MR. COOPER: Correct.

JUDGE PRIDGIN: I'll show as admitted without objection.

(EXHIBIT NOS. 2, 3, 3HC, 4 AND 4HC WERE RECEIVED INTO EVIDENCE.)

What I'd like to do, Mr. Cooper, is call Todd Tarter to the stand.

MR. COOPER: Yes. Empire would call Mr. Tarter.

JUDGE PRIDGIN: If you would, sir, please come forward to be sworn.

(Witness sworn.)

JUDGE PRIDGIN: Thank you very much, sir. If you would have a seat. And, Mr. Cooper, when you're ready, sir.

TODD TARTER testified as follows:

DIRECT EXAMINATION BY MR. COOPER:

Q. Could you please state your full name.

A. Todd W. Tarter.

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

A. The Empire District Electric Company. My title is Manager of Strategic Planning.

Q. And could you briefly describe your educational background for us?

A. Yes. I graduated from Pittsburgh State University in Kansas in 1986 with a bachelor of science degree in computer science. After graduation, I continued my education there and received a mathematics certification to become a secondary mathematics teacher.

Then I was employed by the Columbus, Kansas Unified School District No. 493 as a teacher.

Q. Would you describe for us your professional experience in the utility industry, please.

A. Yes. In May of 1989 I joined Empire District as a planning analyst. In 1994 I was promoted to senior planner. My primary functions were construction budget, fuel and purchased power budget and financial projections. In November of 2000, I became a systems analyst in the information technology department, and then I was promoted to a lead systems analyst in June of 2001.

In June of 2002, I returned to the regulatory and planning department, where my primary duties were energy and sales revenue forecast. In September of 2004 I was promoted to my current position.

MR. COOPER: Your Honor, we would provide Mr. Tarter to answer questions that the Commissioners may have at this time.

JUDGE PRIDGIN: All right. Mr. Cooper, thank you. Let me see if we have any questions from the Bench. Commissioner Murray, any questions?

COMMISSIONER MURRAY: I'll pass to Commissioner Gaw.

JUDGE PRIDGIN: All right. Thank you. Commissioner Gaw?

COMMISSIONER GAW: Thank you.

QUESTIONS BY COMMISSIONER GAW:

Q. Would you tell me what your position is again?

A. I'm the Manager of Strategic Planning.

Q. Okay. And who do you report to?

A. Kelly Walters.

Q. Okay. What is Kelly Walters' position?

A. She was just promoted to a general manager in the planning and regulatory area.

Q. Who does she report to?

A. David Gipson.

Q. How does Mr. Beecher fit into this structure?

A. Mr. Beecher is the vice president of energy supply. He is a colleague of Mr. Gipson, another vice president of the company.

Q. Okay. So he's not in the order that you report to upstream, then?

A. That's correct.

Q. How do you relate to what his area does? How do you relate?

A. I work very closely with his area on a lot of the projects that we work on.

Q. Okay.

A. Mr. Beecher has a lot of special projects that I will work on, mainly dealing with the fuel and purchased power model that we have, and doing a lot of what-if kind of scenarios and things of that nature.

Q. All right. And what was your role in regard to this particular project?

A. I worked on some of the modeling that we did as we prepared this, mainly with the Midas planning model.

Q. Okay. Do you-all have the Midas software?

A. Yes, we do.

Q. The planning, the modeling that was done with Midas in this case, was it all done in-house?

A. Yes, it was.

Q. Okay. How many people worked on it, approximately?

A. Basically two people.

Q. And who would they be?

A. Myself and Sherry McCormack.

Q. And who does Sherry McCormack report to?

A. Kelly Walters.

Q. So you're in the same area?

A. Yes, we are.

Q. Can you tell me what kind of assumptions were made in regard to availability of supply going forward as you looked at the Midas model?

First of all, let me ask you this: How far out did you look when you were working the Midas model in regard to supply?

A. Initially we ran through the year 2015, and we did five different scenarios, and they were specifically for taking to Standard & Poor's rating evaluation services.

Q. Okay. If I get into any HC material, someone please let me know, because we can go into that session, I assume.

Okay. So you went out to 2015 initially. Did you go further out later?

A. Yes, we did.

Q. How far out did you go later?

A. I think the model allows you to go, I believe, 30 years. We went as far as we could go, 30 years.

Q. All right. What assumptions did you make in regard to generation availability on owned generation in your modeling?

A. Well, we were concerned mainly through the year 2015. So during that time period we had Iatan 2 at different levels ranging from 100 megawatts up to 200 megawatts. We also had a purchased power agreement that we had in the model. And then depending on how much Iatan 2 we had in the model, we had another unit in the year 2015, and the size of that unit depended on how much Iatan 2 we had.

Then beyond that, we used a similar -- in all five plans we used a similar type of resource plan for all of them, because we were just -- at that point we were concerned about doing like a 30 year net present value revenue requirement on all the five plans.

Q. Okay. What were your assumptions in regard to specific units that you currently have online and whether they would be available through 2015?

A. All of our current units were available throughout the entire time period.

Q. All right.

A. The only thing that --

Q. Go ahead. I'm sorry.

A. The only thing worth noting there, we did convert the Riverton 7 and 8 coal units to gas in the year 2012.

Q. Year 2012. Okay. That's 7 and 8 on Riverton, did you say?

A. Yes, I did.

Q. And was that true of all of your models?

A. That was true of all five cases, yes.

Q. Okay. And Asbury 1 and 2, your assumption on those two units?

A. They operated during the entire time frame.

Q. Through 2015?

A. Yes.

Q. In your later modeling -- excuse me. In your modeling that included later years, do you recall when those units went out of service?

A. We did not take them out of service for the rest of that period.

Q. All the way through the end of the 30 years?

A. Yes, we did.

Q. Is that correct?

A. Yes, it is.

Q. Ozark Beach Units 1, 2, 3 and 4, the hydraulic production plants, I think they are, what were the assumptions in regard to the 30-year plan of those units?

A. We -- they're hydro units, so we have them generating close to, like, their 25-year average, and they were in there for the entire plan, too, all years.

Q. All right. And Riverton Units 9, 10 and 11?

A. Yes. They're small gas units, and they were available through the entire time period.

Q. All right. Energy Center Units 1 and 2?

A. They're also gas units. They were available the entire time period.

Q. All right. And I'll stop there. I'll just ask you if you're aware of this. Were you aware of the testimony Mr. Beecher gave in -- and Mr. Roff gave in the Empire rate case, the last rate case in regard to retirement of units?

A. I may have read that at some time, but it's been a while.

Q. Are you familiar with the retirement dates that were suggested to the Commission in that rate case on the units that I just asked you about?

A. No, I'm not.

Q. Did you have discussions with Donald Roff, R-o-f-f -- I may be mispronouncing that -- in regard to the potential retirement dates in preparation for the rate case?

A. No, I did not.

Q. All right. If in that rate case there was a suggestion on retirement dates for accounting purposes of Riverton Units 7 and 8 in 2008, that would not be consistent with what you put in your plan; is that correct?

A. Right.

Q. In regard to Asbury's Units 1 and 2, if the retirement dates suggested were 2014 on both of those units, would that be inconsistent with what you put in your model?

A. Yes. We did not have them retired.

Q. And in regard to Iatan Unit 1, if that retirement date was listed as 2020, would that be inconsistent with what you had in your model?

A. Yes, because we were primarily concerned with through 2015, and then we kept everything the same just to run things out, because we added some units near the end of that time frame to test to see whether they, you know, that was a correct plan to use.

You need to run them farther out, because, for example, you put in a coal unit in the year 2015. If that's where you stop your run, you have the high expenditures, capital cost to put it in, but you don't get the benefits of having the lower fuel cost throughout the time period.

Q. Sure. And I'll get into some of that maybe in just a little bit. I just want to make sure that I understand when the assumptions are that these units are going to be retired in regard to the presentation in this case since I -- we were presented with evidence in an earlier case where the retirement dates were given to us specifically for purposes of ratemaking. So I just want to -- I'm just trying to understand what the dates are and the assumptions in this case.

So in regard to the Ozark Beach units, again, they were assumed to be in effect throughout the 30-year period. So the 2022 date in the rate case would not have been what you assumed in this particular case in front of us today?

A. That's correct.

Q. And Riverton 9, a 2008 retirement date would not be consistent with what you had in this case today?

A. Right.

Q. And Unit 10 and 11, Units 10 and 11, a 2014 retirement date would not be consistent either?

A. Yes.

Q. And Energy Center Units -- Unit 1, a retirement date of 2012 would not be consistent?

A. Correct.

Q. And Energy Center Unit 2, a 2015 retirement date would not be consistent either?

A. Correct.

Q. Now, let's talk about -- just a little bit about the generation mix, and in particular looking at today's generation mix for Empire. Do you have -- is there anything in some of the prefiled testimony or something that you could give me that would give me an idea about where Empire is today on its generating units percentages of baseload versus intermediate versus peaking?

A. Are you talking with respect to capacity or the energy provided?

Q. That's a good question. Let's talk capacity.

A. Okay. I think I have something with me that would help.

Q. Okay.

A. Okay. With regards to capacity, on our coal units, of our own coal units it's about 31.5 percent. However, if you include the Weststar purchase, that would be another 12.8 percent.

Q. Okay. That's another 12.8. That's the contract that you have. Is that one contract?

A. Yes, it is.

Q. And that's with?

A. The Jeffery Energy Center.

Q. Who owns that again?

A. Weststar.

Q. Thank you. All right. Any other baseload?

A. No.

Q. Okay. So the total then is what, 43, 44 percent?

A. Correct.

Q. Okay. All right. And intermediate capacity?

A. Intermediate capacity would be State Line combined cycle at about 23.7 percent.

Q. 23?

A. 23.7.

Q. All right. Anything else on intermediate?

A. No.

Q. Okay. And then peaking?

A. Total gas generation is 55.7 percent, which that includes State Line combined cycle.

Q. Can you break that out then real quick?

A. Yeah. Riverton 9 is .9 percent; Riverton 10, 1.3; Riverton 11, 1.3.

Q. Well, actually what I'm -- just totals. You just did the subtraction for me. How much is peaking out of the gas, total gas?

A. It's around 34 percent or so, roughly.

Q. That's close enough.

A. Roughly.

Q. Just give me a round figure. Okay. Now, that's where you are currently. Anything we've left out? Hydro is not in there.

A. Right. Hydro was grouped in with the baseload.

Q. Okay.

A. But it's so small, it comes out to almost zero percent anyway.

Q. Okay. I'm with you. All right. So then there is -- this is where you are today. Now, over the course of time leading up to the plan to have Iatan 2 online, tell me what changes are anticipated in regard to your generation mix.

A. Okay. At the end of 2005, early 2006, we have a wind purchase.

Q. All right.

A. However, because it's wind, we don't know at this point how much capacity you can count.

Q. Okay.

A. But it's there. It's 150 megawatts.

Q. 150?

A. Right. But if we get to count any capacity, we think it's going to be relatively small.

Q. Do you know what the capacity allowance is for purposes of reserves in SPP?

A. I believe it depends on its operating history, and at this point we don't have any operating history on it.

Q. You don't know what the average is?

A. I don't. I really don't.

Q. Okay. It's a fairly small percentage --

A. Probably so.

Q. -- figure, isn't it?

A. Yes.

Q. All right. So then what else would be added?

A. In 2007, a 155 megawatt combustion turbine.

Q. That's in '07?

A. Yes.

Q. Where is that to be located?

A. At Riverton. In Riverton, Kansas.

Q. All right. Does that replace anything or is it just additional?

A. It's additional.

Q. Is that a generating unit that's already purchased?

A. Yes, it is.

Q. Is it up, being built? What's the status of it?

A. They're in the process right now. They did have to tear down a few buildings and things like that to

begin the process.
Q. Okay.
A. And you may have heard that referred to as the V84 CT. It's --
Q. Say that again. V --
A. V84.
Q. -- 84 CT. Okay.
A. I think in the stipulation it's referred to as the V84 CT.
Q. So this is -- this is a peaking unit that's contemplated in the stip?
A. Yes, it is.
Q. Do you know whether or not the Commission is pre-approving placing that CT in service with the approval of this stip?
A. I think in the stipulation it's listed under the decisional prudence section.
Q. Okay. All right. Give me a -- give me some idea about why adding a combustion turbine is a positive thing for Empire, considering the lack of baseload capacity that appears to be in your mix.
A. All right. At the time the decision was made to do this, a lot of the evaluation was made, I think in the study that was done, the gas price was around 4.75 at that time. That's one thing that's obviously changed.

Q. Yes.

A. The other thing is, at that time there were no joint coal units being contemplated that we knew about. Another thing is, we did do an RFP for some baseload, an intermediate purchased power in that time. What we received were responses from the south of us, and the transmission upgrade costs were cost prohibitive at that time for doing that.

Q. That's congestion that's in Arkansas generally, Oklahoma?

A. I believe it's Arkansas.

Q. Are you familiar with -- now, when you say at that time, what is -- what time are you talking about?

A. The study that was done for this was done around September of 2003, and I think that the decision was made in the July board meeting of 2004.

Q. Do you know when the unit was actually acquired?

A. I'm afraid I don't.

Q. Okay. Are you familiar with whether or not the transmission congestion that existed in northwest Arkansas during the 2004 time frame and before, whether or not there are changes being made in that transmission grid in that area today or are planned for the next -- in the next few years?

A. No, I'm not aware of that.
Q. Do you know who in the company is familiar with that?
A. Yes. We have a specialist who works a lot with transmission, Barry Ward, for the company.
Q. Okay. And you said that was a 150 megawatt unit?
A. 155.
Q. 155. Thank you. Of course, gas prices are significantly higher now than they were when that unit was being initially contemplated --
A. That's true.
Q. -- correct?
A. That's true.
Q. Do you know if we were -- if the same -- if we were at a different spot today looking forward, knowing what we know about gas prices, do you know whether or not that particular unit would be viewed in the same light in an analysis of whether or not it was a prudent thing to do moving forward if you were making that decision today?
A. That would be hard for me to answer without, you know, going back and reevaluating the study at the different prices.
Q. Sure. You haven't done that?
A. I have not done that.

Q. Okay. All right. What else is contemplated before the Iatan 2 addition?
A. I believe that's all that's contemplated.
Q. Okay. And Iatan 2 is contemplated to come into service approximately when?
A. The year 2010.
Q. 2010. And Empire is slated to receive under the agreement how much?
A. It's 100 megawatts at this point, although we've listed a preference for 150.
Q. Empire would like to have up to 150, but so far you're aware of only being able to access 100?
A. That's correct.
Q. Now, that's 2010. Now, currently you mentioned earlier you have an agreement on the Jeffery unit. That's a coal unit; is that correct?
A. Yes.
Q. And how much -- how much do you get out of that unit?
A. 162 megawatts.
Q. All right. When does that contract expire?
A. May 31st, 2010.
COMMISSIONER GAW: Okay. Just a second, Judge. I need to know whether I'm getting close to HC material by talking about this contract from someone who

can tell me, because I'm wanting to ask a few questions about it.

MR. COOPER: About the existing contract that terminates?

COMMISSIONER GAW: Yes, and any potential future.

MR. COOPER: I think that's where we have drawn the line. I'll look back. But I think the existing contract we're okay with. I think when you start to talk about potential future, you've crossed into confidential materials.

COMMISSIONER GAW: Judge, do you think it would be okay procedurally with the flow of things to go ahead and go into closed session so I can broach those subjects?

JUDGE PRIDGIN: That's probably a good idea. Let me go in-camera, and I'll ask counsel to inform me if there's anybody in the hearing room that's not bound by a Protective Order. I think everybody here belongs here. Give me just a minute to take us off the broadcast.

(Reporter's note: At this point, an in-camera session was held, which is contained in Volume 2, pages 92 through 100 of the transcript.

JUDGE PRIDGIN: All right. We're back on.

COMMISSIONER GAW: Thank you.

BY COMMISSIONER GAW:

Q. Now, as we go forward here, in looking at your generation mix, the -- who provided the load inputs or load forecasting inputs and conclusions that went into the Midas model?

A. The planning and regulatory department, the department that I work in.

Q. Okay. And do you know what those load inputs were or looked like?

A. Yes, I do.

Q. Okay. Do you have anything that summarizes those?

A. Yes, I do.

Q. Can you point those out to me?

MR. COOPER: Commissioner Gaw, do you want Mr. Tarter to provide a document or do you want him to testify as to --

COMMISSIONER GAW: If he had a document, that would be --

MR. COOPER: Easier.

COMMISSIONER GAW: -- nice, but it's not -- I can just ask him, because I've got some questions on load forecasts that I could just run through.

MR. COOPER: It looks like we could do it either way, I guess, but we would have to have copies.

THE WITNESS: I just have one copy.

COMMISSIONER GAW: That makes it a little difficult.

MR. COOPER: And I'm told the underlying data we would view as confidential.

COMMISSIONER GAW: Yeah. I wondered about that. Well, Judge, we might --

JUDGE PRIDGIN: Go back in-camera?

COMMISSIONER GAW: Yes. I'm sorry.

JUDGE PRIDGIN: That's all right.

COMMISSIONER GAW: The only way to do this, I think, is to ask questions and maybe you can provide this later when you have copies since he only has one. It would be hard for him to follow my questions if I had the document and try to go back and forth. I think we can get through it. Tell me when we're in-camera.

JUDGE PRIDGIN: We should be ready.

(REPORTER'S NOTE: At this point, an in-camera session was held, which is contained in Volume 2, pages 103 through 120 of the transcript.)

JUDGE PRIDGIN: Let me see if we have any further questions from the Bench. Commissioner Appling?

COMMISSIONER APPLING: No questions.

JUDGE PRIDGIN: If there's nothing else from the Bench, let me see if we have any cross-examination. Mr. Frey?

MR. FREY: Your Honor, thank you.

CROSS-EXAMINATION BY MR. FREY:

Q. Just a point of clarification, Mr. Tarter. I believe in an answer to a question from Commissioner Gaw, you indicated that an estimate of 10 percent of your generation was purchased power. Do you recall that?

A. I was talking from the spot market. If you include the Jeffery purchase, it's about 30 to 35 percent.

MR. FREY: Thank you. That's what I was going to ask you. Thanks.

JUDGE PRIDGIN: Mr. Frey, thank you. Anything else, Mr. Mills?

MR. MILLS: Yes, I have just a few questions. If I may, I'd like to confer with counsel for Empire because I'm not sure if my question will be HC or not.

JUDGE PRIDGIN: Certainly.

MR. MILLS: Okay. Thank you.

(REPORTER'S NOTE: At this point, an

in-camera session was held, which is contained in Volume 2, pages 123 through 126 of the transcript.)

JUDGE PRIDGIN: All right. We're back in public forum. Mr. Mills, thank you. Any further cross-examination?

MR. MILLS: Yes. I've got a couple of questions that are not highly confidential.

JUDGE PRIDGIN: Mr. Mills, when you're ready.

CROSS-EXAMINATION BY MR. MILLS:

Q. And Mr. Tarter, these have to do with the discussion you had about -- with Commissioner Gaw about what you refer to as the decisional prudence section of the Stipulation & Agreement. Is the term decisional prudence defined in this agreement?

A. My memory, I think it is defined.

Q. Can you show me where that is?

A. I may not have a copy of that up here. I'm sorry.

Q. Okay. I can hand you a copy of that.

MR. COOPER: Mr. Mills, we would stipulate with you that decisional prudence, those two words are not going to be found in the agreement if that helps move this along.

MR. MILLS: And that was going to be my next question. Not only are they not defined, I don't believe that term is even used in the agreement, is it?

MR. COOPER: We would agree with that as well.

MR. MILLS: Thank you. Then I can skip forward a little bit.

BY MR. MILLS:

Q. And, in fact, in terms of specifically on the capital investments and the V84 CT, which I think is what you were discussing with Commissioner Gaw when you used the term decisional prudence, I'll refer you to specifically No. 3 towards the bottom of page 5.

A. Yes, I see it.

Q. Do you see that sentence? What does that say there?

A. Nothing in this agreement limits the right of any signatory party to challenge Empire's generation investments contained in this agreement, related costs and off-system sales margins on the ground that Empire failed to acquire more coal-fired resources at an earlier date.

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

JUDGE PRIDGIN: Mr. Mills, thank you. Any further cross-examination? Any further cross from the Bench?

(No response.)

JUDGE PRIDGIN: Seeing none. Mr. Cooper,

any redirect?

MR. COOPER: No, your Honor.

JUDGE PRIDGIN: All right. Seeing no further questions, this witness can be excused.

I'm assuming that I don't have any more scheduling issues as far as witnesses' availability. I realize Ms. Mantle is only available in the morning. Am I missing any? All right. Mr. Cooper, you have Mr. Gipson and Ms. McCormack available today?

MR. COOPER: They are here. I guess I don't intend to necessarily put them on the stand unless there's a reason to, unless requested.

JUDGE PRIDGIN: Correct. I understand. Let me confer with the Bench here.

COMMISSIONER GAW: Let me -- I have maybe a couple of questions of Mr. Cooper and then maybe one of KCP&L if I could.

JUDGE PRIDGIN: Certainly, Commissioner.

COMMISSIONER GAW: Mr. Cooper, these other two witnesses, what would they -- what would their expertise be?

MR. COOPER: That's a good question.

COMMISSIONER GAW: What realm would they be testifying about? I'll rephrase. I'd hate for somebody to ask me that question about myself.

MR. COOPER: Mr. Gipson, as Mr. Tarter was indicating earlier, essentially is the head of the regulatory section and would have some responsibility for the negotiations that went on in regard to this Stipulation & Agreement. So I suppose that if there were general questions about the stipulation, that sort of thing, he could probably address those.

Ms. McCormack did some of the more technical work associated with the amortization, and so I suppose if there was some technical questions as to in particular that schedule that was too small for you to read --

COMMISSIONER GAW: I have my glasses now, though.

MR. COOPER: There you go. She would be the right one for that. But I guess that would be the best description I could give to you.

COMMISSIONER GAW: I just might ask in regard to her testimony, if I asked her questions that I asked of Mr. Schallenberg, would they be -- would there be any different answers? She was in the room at the time.

MS. McCORMACK: No.

COMMISSIONER GAW: Just to save time.

MR. COOPER: No. I believe that her understanding was similar to Mr. Schallenberg's.

COMMISSIONER GAW: Okay. I don't have any questions myself, Judge, of them. I would like to ask Mr. Fischer a question that is sort of just a matter of the fact that he's here right now and we had a question that came up earlier in the day in regard to the deadlines that we were working under.

MR. FISCHER: Yes, your Honor.

COMMISSIONER GAW: And I don't know if that discussion was conveyed to you or not, but we're trying to determine how -- what the important dates are for decisions in all these cases from KCP&L's standpoint and just make sure we're understanding correctly.

MR. FISCHER: Yes. I'll be glad to address that. There was a question about August 1st, I believe, and whether that was an absolute date. Of course, in the KCPL stip there's a paragraph that relates to having August 1st the financial terms, commercially feasible plans or, as an alternative, the RFP date which would be issued for Iatan 2.

August 1st isn't a drop-dead date from the standpoint of Kansas City Power & Light. However, KCPL, Aquila and Empire are currently moving forward in negotiating their ownership agreements and their agreement on the common facilities, and we're hoping to get those finalized by mid August. I think internally we have

August 12th as our date for getting those finalized.

The real issue for Kansas City Power & Light regarding the dates is that we need to know the partners, who they're going to be for Iatan 2, before we can issue an RFP for that unit. KCPL's been presuming all along that Empire and Aquila will be the partners, and if that presumption is correct, we have some additional time.

But if there's any concern about that that may not be a correct presumption, then KCPL is going to have to scramble to some extent to either find additional partners or find ways to resize that plant or fill it in with the other partners that may be interested. And it's from that standpoint that it's very important that we have expeditious determination from a regulatory standpoint whether Empire and Aquila and KCPL are all going to be able to participate in Iatan 2, if that addresses your question.

COMMISSIONER GAW: Somewhat. If we -- so is the important action on the Commission's part the issuance of the Order and when that occurs or the effective date of those Orders?

MR. FISCHER: I think if you're asking if Kansas City Power & Light sees an Order that has been issued approving the regulatory plans of all three companies and it's effective in ten days or whatever, the effective date won't be as important as the fact that we do have an approval from the Missouri Commission and that we know that Kansas City Power & Light, Aquila and Empire are indeed going to be the partners in Iatan 2. That's the critical information. Then we can proceed forward with getting the RFP and the other investment specs out there.

COMMISSIONER GAW: And if -- I understand if the -- if you found that -- if the Commission were to go a different direction on any of those decisions than allowing that partnership to move forward, the sooner you find that out the better, and that's just something about we need to know as soon as possible.

MR. FISCHER: Beyond that, in the event that one or more of those partners were not to be included and we had to find alternative arrangements, that could effectively delay the entire project.

COMMISSIONER GAW: I understand that.

MR. FISCHER: Which will add cost to the --

COMMISSIONER GAW: The reason I'm asking, though, is just a precursor to my next question, which was so if we -- if there was an approval on all three of these cases, the important thing as far as KCP&L is concerned is that there be a decision out.

Now, when is your -- give me an idea about when your deadline is for finding that information out. I think I heard say something about mid August or August the 12th.

MR. FISCHER: Yes, August 12th is the date we have internally for negotiating the ownership arrangements and the common facilities agreement. I think that's probably about as far as KCPL would want to push knowing that these other two companies would be partners.

COMMISSIONER GAW: But knowing that there was a decision out by then does not mean that you need an effective date necessarily before?

MR. FISCHER: I believe my client would agree with that. It's more important. If we know that the Missouri Commission has issued the decision, even if it's going to be effective in ten days as is typical, we'll move forward.

COMMISSIONER GAW: And I'm not trying to suggest anything in regard to any of this other than just helping us with what deadlines we're really working under. Thank you, Mr. Fischer. And I apologize for the diversion here.

JUDGE PRIDGIN: Commissioner Gaw, thank you. What I'm seeing or what I'm hearing, I think, is that the Bench doesn't have any questions for Mr. Gipson or Ms. McCormack, and I guess that would lead me to see if we -- I believe, Mr. Cooper, you said that if needed tomorrow you might be able to produce, is it Mr. Beecher and Mr. Knapp?

MR. COOPER: Correct.

JUDGE PRIDGIN: All right. And can you tell me, I guess, what they would testify about if they were here, so the Commission can have some sort of idea if their presence will be necessary?

MR. COOPER: I guess they would testify about whatever they were asked.

JUDGE PRIDGIN: A wise decision.

MR. COOPER: Mr. Beecher is the vice president of energy supply. So he has knowledge in those areas, obviously. I think that Mr. Tarter has covered the questions that were mentioned in the hearing Order, but that is his area of expertise, as Mr. Beecher's area of expertise.

Mr. Knapp is the chief financial officer of the company. If there were questions that related to the company's finances, that would be his area of expertise.

JUDGE PRIDGIN: Mr. Cooper, thank you. Let me see if the Commission would have any preference if they wanted to examine either of these witnesses.

COMMISSIONER GAW: I don't think that I need to know more than I already know that I've gotten from your witness previously.

COMMISSIONER MURRAY: I don't.

JUDGE PRIDGIN: Mr. Cooper, would Empire have anything else?

MR. COOPER: We would not, no, your Honor.

COMMISSIONER GAW: I think if I can talk to a couple of Staff's witnesses.

JUDGE PRIDGIN: Mr. Cooper, thank you. Let me go ahead and proceed with some Staff witnesses, and Mr. Frey, is Mr. Wood ready to go?

MR. FREY: I believe so, your Honor.

(Witness sworn.)

JUDGE PRIDGIN: Thank you. Mr. Frey, when you're ready, sir.

MR. FREY: May I approach the witness?

JUDGE PRIDGIN: You may. Let me alert the parties, we may have to conclude today in the middle of Mr. Wood's testimony, so just to give a heads up.

WARREN WOOD testified as follows:

DIRECT EXAMINATION BY MR. FREY:

Q. Okay. Mr. Wood, good evening. Good afternoon. Could you state your full name for the record, please.

A. Warren Wood.

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

A. The utility operations division director with the Public Service Commission Staff.

Q. And can you please describe briefly your educational background, your professional background?

A. Certainly. I have a degree in civil engineering from the University of Missouri - Columbia in 1987. I spent a little over ten years working in consulting engineering after school. During that time frame I've also spent a little over six years employed by the Public Service Commission dealing with energy issues.

Q. And your current position you indicated is what again?

A. Utilities operations division director.

Q. Thank you. Do you have any professional licenses?

A. Yes. I'm a professional engineer in the state of Missouri and Kansas.

Q. Thank you.

MR. FREY: With that, your Honor, I'll tender Mr. Wood for questions from the Bench.

JUDGE PRIDGIN: Mr. Frey, thank you. Let me see what kind of questions we have from the Bench. Commissioner Murray?

COMMISSIONER MURRAY: Pass.

JUDGE PRIDGIN: Thank you. Commissioner Gaw. Mr. Frey?

MR. FREY: If I might interrupt just for a second, Judge. Mr. Wood is going to be discussing -- or he may be. I shouldn't say he's going to be discussing. He may be discussing some matters based on some graphs and charts and that sort of thing that he has put together, and I just mention that if we reach a point where the Commissioners desire to have this information entered into the record, we'll be happy to do so provided it's acceptable, of course, to the other parties.

And maybe we should -- well, I guess we should see how the questioning goes, but perhaps it would make sense, even if we don't offer them as exhibits, to make the data available.

The other thing I would point out is I believe if Mr. Wood is to get into some of that information on questioning, I believe it's highly confidential, too, so we'll want to go in-camera.

JUDGE PRIDGIN: Thank you, Mr. Frey. I'll certainly count on counsel if we start to get close to highly confidential, to alert me. We can go in-camera. Whenever you're ready, Commissioner.

COMMISSIONER GAW: Thank you.

QUESTIONS BY COMMISSIONER GAW:

Q. Good afternoon, Mr. Wood.
A. Good afternoon, Commissioner Gaw.
Q. Someone has provided me a copy of the Black & Veatch study, and it's obviously on the outside labeled confidential. So I think -- would you rather me talk about this first or do you want -- which I've not had time to look at obviously. Would you like to talk about some of the information that you put together and then we can refer back to this later?
A. Certainly I would.
Q. You'd like to talk about your things first?
A. Well, your questions come first, but if you would like me to talk about some questions you've asked to the witness from Empire --
Q. That would be good.
A. -- some of that information I do have available for information today.
Q. Okay. Why don't we do that, and I'll just let you have at it.
A. Okay.
Q. If you want, and if it's HC material, then please let me know ahead of time.
A. Given the areas of interest expressed during the Kansas City Power & Light hearing and in the Order regarding hearing topics issued on July 20th, and

some information we had looked at prior to those Orders relative to this proceeding, there were some -- there are some tables I have available, some graphs showing load shapes, dispatch of unit, percentage of base, intermediate and peak, relative cost of different fuel types for the different units operated by Empire, and their total capacity demand balance sheet with all of the individual units shown and expected retirements as of the most recent update from Empire.

Q. All right.

A. I believe unless Empire designates otherwise, all of this is likely highly confidential information.

COMMISSIONER GAW: All right. Why don't we just go in-camera, Judge, if that's acceptable.

JUDGE PRIDGIN: Again, make sure from counsel. Mr. Frey?

MR. FREY: I'll be passing these out, then, to the parties and the Bench.

JUDGE PRIDGIN: If you give me just a moment, then, we'll go in-camera.

THE WITNESS: Would you like me to wait until all of these have been distributed?

MR. FREY: Yes, I think that would be helpful.

JUDGE PRIDGIN: Whenever the parties are ready to resume.

THE WITNESS: When we're done, everybody should have five pieces of paper.

JUDGE PRIDGIN: While we're waiting for that to get passed out, just so counsel knows, I plan on adjourning for the evening about 5:15 or so and then resuming around 8:30 in the morning.

(REPORTER'S NOTE, at this point an in-camera session was held, which is contained in Volume 2, pages 142 through 159 of the transcript.)

I N D E X

EXHIBITS INDEX