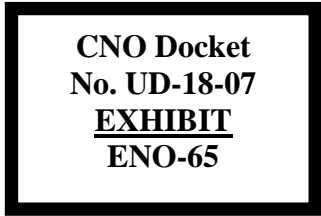


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BEFORE THE  
COUNCIL OF THE CITY OF NEW ORLEANS



APPLICATION OF: )  
ENTERGY NEW ORLEANS, LLC )  
FOR A CHANGE IN ELECTRIC AND ) DOCKET NO.  
GAS RATES PURSUANT TO COUNCIL ) UD-18-07  
RESOLUTION R-15-194 AND R-17-504 )  
AND FOR RELATED RELIEF )

V I D E O C O N F E R E N C E  
D E P O S I T I O N

The DEPOSITION, of MR. JAMES M.  
PROCTOR, taken on behalf of the ENTERGY  
SERVICES, LLC; before:

DANA L. BURKDOLL, CSR, RPR, CCR  
Certified Court Reporter #1364  
Registered Professional Reporter#830156  
Certified Shorthand Reporter #1955

at the Dentons US LLP, 650 Poydras  
Street, Suite 2850, New Orleans, Louisiana,  
70130-6132; and 4520 Main Street, Suite 1100,  
Kansas City, Missouri 64111; on the 11th day of  
June, 2019 at 9:15 a.m.

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A P P E A R A N C E S

ON BEHALF OF ENTERGY NEW ORLEANS:

Mr. Stephen T. Perrien  
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Appeared via Videoconference

ON BEHALF OF COUNCIL OF CITY NEW ORLEANS:

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Appeared via Videoconference

THE COURT REPORTER:

Ms. Dana L. Burkdoll, CSR, RPR, CCR

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

2 Whereupon,

3 JAMES M. PROCTOR,

4 of lawful age, having sworn to tell the truth,  
5 the whole truth, and nothing but the truth,

6 testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. PERRIEN:

10 Q. Good morning?

11 A. Good morning.

12 Q. Mr. Proctor, my name is Stephen Perrien and I  
13 represent Entergy New Orleans. I will be  
14 questioning you today for purposes of the rate  
15 case. If you don't understand one my  
16 questions, please let me know. And if there is  
17 some sort of technical English that stops you  
18 hearing or breaks up my question, I really ask  
19 that you try to let me know. Okay?

20 A. Yes.

21 Q. And also, to communicate with you, when I ask a  
22 question can we have agreement that you will  
23 try to give me complete answers to my  
24 questions?

25 A. Yes.

1 Q. Okay. I want to discuss a couple of additions  
2 to make sure that we're talking and on the same  
3 wavelength.

4 Do you know what FASB interpretation  
5 number 48 is?

6 A. Yes.

7 Q. Okay. If I say, as a shorthand, FIN48, can we  
8 agree that we're referring to 48?

9 A. Yes.

10 Q. Okay. Do you know what that operating loss for  
11 tax purposes is?

12 A. Yes.

13 Q. Okay. And when I say NOL, can we agree that  
14 I'm referring to a net operating loss for tax  
15 purposes?

16 A. Yes.

17 Q. Okay. When I use the term ADIT, can we agree  
18 that I'm referring to the term accumulated  
19 deferred income taxes?

20 A. Yes.

21 Q. Okay. Now, are you familiar with the term  
22 accelerated tax depreciation?

23 A. Yes.

24 Q. Okay. Are you aware that ENO sometimes refers  
25 to accelerated tax appreciation as liabilities?

1 A. Yes.

2 Q. Okay. If I use the term that I'm refer to in  
3 terms of private letter ruling?

4 A. Yes.

5 Q. Okay. Now, so, I'm going to jump into a main  
6 point on my questions to eliminate some other  
7 questions.

8 Can you get ahold of Mr. Roberts'  
9 surrebuttal testimony and I want you to focus  
10 on Exhibit RLR-2?

11 A. Let me grab that.

12 Q. Okay.

13 A. No. Mr. Roberts rebuttal testimony?

14 Q. Yes, sir.

15 A. I've got it.

16 Q. RLR-2.

17 A. Yeah. It's attached to back.

18 Q. Exhibit RLR-2, it's 19 pages?

19 A. I see it.

20 Q. Okay. Have you seen this exhibit before?

21 A. Yes, I have. I have spent a substantial amount  
22 of time, but I -- but I have reviewed it. I  
23 mean, it's probably been several weeks.

24 Q. Okay. Do you want a take a quick minute to  
25 flip through it?

1 A. Sure.

2 Q. Okay.

3 A. Okay. I think I'm -- as long as, if you're  
4 asking a specific question, you refer to the  
5 page number you're referring to.

6 Q. Sure.

7 A. Okay.

8 Q. Okay. Well, now, Exhibit RLR-2 is the  
9 company's response to Advisor's Data Request  
10 1-31, right?

11 A. Yes.

12 Q. Okay. And ENO, in response to that data  
13 request, attached two PLRs.

14 One of them is from the -- is from  
15 September of 2014, right?

16 A. Yes.

17 Q. And one is from November of 2015, right?

18 A. Yes.

19 Q. Okay. From time to time I may refer to the  
20 PLRs by their date, September -- the September  
21 2014 PLR or the November 5th, 2015 PLR.

22 A. Okay.

23 Q. Okay. Now, I understand in your testimony that  
24 you provided testimony stating that the council  
25 should not rely on these PLRs for a number of



1 reasons, right?

2 A. Generally speaking, yes.

3 Q. Okay. Now, I wanted to ask you to -- putting  
4 aside the reasons that you articulate in your  
5 surrebuttal testimony, do the PLRs support  
6 Entergy New Orleans' treatment of NOL ADIT in  
7 this case?

8 A. No, I -- I -- I don't believe so.

9 Q. Okay. Well, this -- this will be a little bit  
10 longer, then.

11 Can you tell -- can you tell me why you  
12 don't believe so?

13 A. Well, I suppose the first most fundamental  
14 reason is that these letters only pertain --  
15 these rulings only pertain to the -- the  
16 taxpayers that are discussed in these reports.  
17 They -- they don't pertain to Entergy New  
18 Orleans. And they explicitly state that in  
19 these PLRs, that they only apply to the  
20 taxpayer discussed in the PLR and that they  
21 cannot be used as precedent in any other  
22 matter. I mean, I could refer to that language  
23 in here, but I'd have to look for it, but it's  
24 -- it's -- it's in there.

25 Q. Okay. Putting aside that reason for -- for the

1 council to ignore the PLR --

2 A. Yes.

3 Q. -- okay, do the words and language in the PLRs  
4 support ENO's treatment of NOL ADIT in this  
5 case?

6 A. I believe the language in these PLRs that was  
7 provided to the Internal Revenue Service to  
8 make their ruling is not an accurate  
9 explanation as to what the accounting and  
10 financial circumstances are with respect to the  
11 subject matter. Therefore, I -- I don't  
12 necessarily agree with these rulings even as  
13 they apply, probably, to those companies that  
14 are the taxpayers in these PLRs. So my answer  
15 would be still no, that I don't think that  
16 these PLRs support ENO's position with respect  
17 to the treatment they desire.

18 Q. Okay. In your testimony you refer to that as  
19 misinformation?

20 A. I'm not sure how I referenced it in the  
21 testimony. If you refer me to the page you're  
22 referring to, I can confirm that or not.

23 Q. Sure.

24 A. Is that in my cross-answering or my direct --

25 Q. Surrebuttal and cross-answering.

1 A. Okay.

2 Q. And it would be on page 49 of 50.

3 A. Okay. Okay. Where -- what particular line are  
4 you referring to here? I'm on page 49.

5 Q. Okay.

6 A. Okay. On page[sic] 4 I say -- I testify, "It  
7 is apparent to me from reading the PLRs the IRS  
8 relied on misinformation provided by the  
9 utilities seeking the PLRs. That is, the  
10 circumstances described to and relied on by the  
11 IRS from the utilities appeared to be biased in  
12 favor of the rulings sought from the IRS by the  
13 utilities."

14 Q. You broke up on us, Mr. Proctor.

15 A. You want me to read it again?

16 Q. Sure.

17 A. Okay. On -- beginning on line -- beginning on  
18 line 4, page 49 my testimony reads, "It is  
19 apparent to me from the reading the PLRs the  
20 IRS relied on misinformation provided by the  
21 utilities seeking the PLRs. That is, the  
22 circumstances described to and relied on by the  
23 IRS from the utilities appeared to be biased in  
24 favor of the rulings sought from the IRS by the  
25 utilities."

1 Q. Okay.

2 A. Okay.

3 Q. Can we just -- can we sort of describe that  
4 concept as misinformation?

5 A. I used that word in my sentences here that I  
6 read to you. If I don't think that word  
7 applies to a particular question that you asked  
8 I'll let you know, but I -- I -- I think that's  
9 fair.

10 Q. Okay. Now, what I'm asking -- now I'm going to  
11 ask, putting aside that misinformation issue --  
12 okay? We put aside -- putting aside  
13 precedence -- the precedence issue that you  
14 identified and the misinformation issue  
15 identified, does the language of the PLRs  
16 support the company's treatment of NOL ADIT in  
17 the rate case?

18 A. Well, no.

19 Q. Why?

20 A. Well, the information that is discussed in  
21 these PLRs that you provided to me include the  
22 taxpayer's characterization of the  
23 circumstances pertaining to their PLR. The  
24 discussion in those PLRs with respect to the  
25 accounting, financial and tax issues are very

1 similar to the issues in the ENO case and very  
2 similar to testimony that ENO has provided in  
3 support of the position that they're seeking.  
4 So if I don't think the language in these PLRs  
5 adequately support the request of those  
6 taxpayers, likewise I don't think it supports  
7 ENO's position in the current rate case either.

8 Q. Okay. Well, let me put the question to you.

9 I mean, isn't it a possibility that a  
10 factfinder in this case could not agree with  
11 you on your precedent issue or your  
12 misinformation issue, right?

13 A. Are you referring to the IRS or...

14 Q. I'm talking and the factfinder in this rate  
15 case.

16 A. Okay. The -- the council.

17 Q. Right.

18 A. Well, regulatory bodies don't -- don't always  
19 make the right decision with respect to  
20 rate-making. I cannot -- you know, they should  
21 not render a decision different than what I'm  
22 recommending, but that doesn't mean that they  
23 will not.

24 Q. Okay. I mean, if the council asked you -- I  
25 understand your concern with these PLRs.

1           Is the company doing what the PLR said  
2           with respect to the NOL ADIT in this case?

3    A.   The treatment that the taxpayers in these PLRs  
4           sought approval for is very similar to the  
5           treatment ENO is seeking in the rate case.

6    Q.   Okay.  And the PLRs concluded that if that  
7           treatment was not accorded to NOL ADIT, then  
8           there would be a normalization violation,  
9           correct?

10   A.   Can you point me in the PLR where the language  
11           you're referring to is -- is written so I can  
12           refer to it?

13   Q.   Sure.  Let's go to page SS-45.  This is a  
14           portion of the September 24th PLR.  There are  
15           three rulings.

16   A.   What -- which page are you looking at?

17   Q.   It's SS-45.  It's page 9 of 19 of the exhibit.

18   A.   Okay.

19   Q.   Okay.

20                   MR. BEATMANN:  Okay.  Let me ask you  
21           to clarify.

22                   MR. PERRIEN:  Sure.

23                   MR. BEATMANN:  You're saying,  
24           "September 24" --

25                   MR. PERRIEN:  2014.

1 MR. BEATMANN: -- but I see,  
2 "September 19, 2014."

3 MR. PERRIEN: Right, September 2014.  
4 I'm referring to the year.

5 MR. BEATMANN: Oh, oh. Okay.

6 MR. PERRIEN: I wasn't trying to  
7 refer to anything else. I'm sorry. When I  
8 say, "2014," I'm talking about a year.

9 MR. BEATMANN: Okay.

10 MR. PERRIEN: It's got a date,  
11 September 18, 2014, yeah.

12 MR. BEATMANN: You're saying, "2014,"  
13 for short.

14 MR. PERRIEN: Yes, for short.

15 MR. BEATMANN: Okay.

16 MR. PERRIEN: And then the other  
17 one's November 2015.

18 MR. BEATMANN: Perfect.

19 MR. PERRIEN: Okay.

20 BY MR. PERRIEN:

21 Q. Okay. So -- so, looking at the rulings that  
22 are on pages -- page 9 and page 10, is Entergy  
23 New Orleans' treatment of the NOL ADIT in this  
24 rate case consistent with the rulings found in  
25 the September 2014 PLR?

1 A. I think you've already asked me that question  
2 and I answered it. I don't believe that was  
3 the question pending. I think you were asking  
4 me about a normalization violation.

5 Q. Okay. I'm sorry. Normalization violation.

6 A. Yeah.

7 Q. Well, let me ask it again.

8 A. Okay.

9 Q. Do you agree that the PLRs stated that if the  
10 treatment that -- that the -- that the  
11 treatment of the NOL ADIT in those PLRs was not  
12 consistent with the rulings that I pointed you  
13 to, then there would be a normalization  
14 violation?

15 A. Let me refer to the language here first.

16 Q. Sure.

17 A. I do not see language stating -- just a minute.  
18 Under the head title, We Rule as Follows, they  
19 have 1, 2 and 3.

20 Q. Yes.

21 A. I don't see in that discussion there where  
22 they're drawing the conclusion that it would be  
23 a violation -- a normalization violation.  
24 They're not making that statement.

25 Q. They're not making that statement. Okay.



1                   How do you interpret, "would be  
2                   inconsistent with the requirements of section  
3                   168(i)9 and section 1.167(l)-1 of the income  
4                   tax regulations"? How do you interpret that  
5                   phrase?  
6       A.   As -- I interpret that phrase as written, that  
7            it -- it -- it's not consistent with those  
8            regulations.  
9       Q.   Okay. Do you know what those regulations  
10           address?  
11      A.   Yes, I've read them before. I don't have those  
12           with me at the current time, but I have read  
13           them.  
14      Q.   All right. You have read them, but you have no  
15           recollection of what they mean?  
16      A.   Well, they're a discussion with respect to  
17           various income tax regulations. I mean,  
18           they're several paragraphs in length and -- I  
19           mean, I know they -- I understand what they say  
20           and what they mean. If you have a specific  
21           question, it might help me be more to the  
22           point.  
23      Q.   Sitting here today you cannot tell me what  
24           section 168(i)9 of the Internal Revenue Code  
25           provides?

1 MR. BEATMANN: I'm going to object.  
2 That's a mischaracterization of his prior  
3 testimony.  
4 BY MR. PERRIEN:  
5 Q. All right. Are you saying that you don't know  
6 what section 168(i)9 of the Internal Revenue  
7 Code provides?  
8 A. No, I'm not saying that.  
9 Q. Then please tell me what it provides.  
10 A. Well, it provides an order for the utility to  
11 be able to use liberalized depreciation in their  
12 tax returns, that their rates must be  
13 normalized for rate-making purposes.  
14 Q. Okay.  
15 A. -- their utility rates.  
16 Q. Right. So if the phrase says, "would be  
17 inconsistent with the requirement of the  
18 168(i)9," that means it would inconsistent with  
19 normalization, right?  
20 A. I'm not agreeing -- I'm not disagreeing with  
21 that. I said that that was the language that I  
22 read here earlier.  
23 Q. Okay. And do you object to me paraphrasing  
24 that as a normalization violation?  
25 A. Well, I'm not -- I'm not agreeing with the

1 position that the treatment that I recommended  
2 in my testimony would result in a violation to  
3 normalization requirements, so I don't want  
4 that to be a conclusion with respect to the  
5 discussion we're having.

6 And -- and, again, if you go to page 10  
7 of this PLR that we're talking about, it  
8 specifically states, "This ruling is based on  
9 the representations submitted by the taxpayer  
10 and is only valid if those representations are  
11 accurate." Now, I don't believe they're  
12 probably accurate for this taxpayer, but I  
13 wouldn't know without having access to their  
14 books and records, but I do know that it's not  
15 accurate with respect to ENO's position with  
16 respect to their tax normalization testimony.  
17 So --

18 Q. What do you mean by that?

19 A. Well, I mean, the -- I discussed in my  
20 testimony at great length how my recommended  
21 treatment with respect to net operating loss  
22 ADIT assets is not a normalization violation  
23 with respect to the IRS regulations. I mean, I  
24 --

25 Q. Okay.

1 A. I have pages and pages and pages where I  
2 discuss various aspects of that, so --

3 Q. Okay.

4 A. And I -- in the course of that discussion, I  
5 mean, there are Q-and-As in which I explain  
6 specifically why that's the case and why the  
7 representations provided by ENO in their  
8 testimony is not an accurate and fair  
9 representation of the facts.

10 Q. Okay. All right. Let's go to your direct  
11 testimony --

12 A. Okay.

13 Q. -- regarding the NOL ADIT.

14 A. Direct testimony?

15 Q. Yes, your direct testimony.

16 A. Okay. Okay.

17 Q. Okay. Please point me to the passages where  
18 you discuss the IRS normalization rules in your  
19 direct testimony.

20 A. Oh. It may take me a while to find that.

21 Q. I'll wait.

22 MR. BEATMANN: Well, if you know  
23 where it is, why don't you point it out, or are  
24 you suggesting that it's not in there? I mean,  
25 let's -- let's take some time off of this if we

1           can.

2                           MR. PERRIEN: Well, okay.

3                           MR. BEATMANN: I mean --

4           BY MR. PERRIEN:

5   Q. Mr. -- all right. Mr. Proctor, would you agree

6       that you don't discuss the normalization rules

7       in your direct testimony?

8   A. I know I discussed them in either my direct --

9       it's probably in my surrebuttal testimony,

10      actually.

11   Q. Would you agree with me that you don't discuss

12      it in your direct testimony?

13   A. Without looking through my testimony I'm not

14      sure I can answer that question.

15   Q. All right. Well, then please look through your

16      direct testimony.

17   A. Okay. Well, I just don't want to make a

18      statement that's not true.

19   Q. I don't want you to either, Mr. Proctor --

20   A. Okay.

21   Q. -- so that's why you need to look.

22   A. Okay.

23   Q. Please look.

24   A. I don't believe I discussed it in my direct

25      testimony.

1 Q. Okay. Now, do you agree that at the time you  
2 filed your direct testimony you were aware that  
3 the company had stated in testimony this  
4 rate-making approach is required by the IRS in  
5 order to comply with tax normalization rules  
6 and the approach that is being referred to is  
7 the inclusion of NOL ADIT in rate base?

8 A. Whose testimony are you referring to, what  
9 company witness?

10 Q. Why don't you look at Exhibit RLR-2, the first  
11 page, which is the advisor's data request.

12 A. Let me find that. Was that the data request we  
13 were looking at?

14 Q. Yes.

15 A. Okay. Okay. 1-31?

16 Q. Yes.

17 A. And what was the question?

18 Q. You asked what testimony had -- that referred  
19 to the normalization rules --

20 A. Yes.

21 Q. -- and I'm pointing you to the advisor's  
22 question to ENO.

23 A. Question 9-9?

24 Q. Yes.

25 A. Okay. Can we refer to that?

1 Q. Sure.

2 A. Do I have that? Did you send me that?

3 Q. The revised direct testimony of Mr. -- of  
4 Mr. Thomas, yes.

5 A. Okay. What page are you -- question 9-9?

6 Q. Yes, page 73. It's written on the advisor's  
7 data request.

8 A. Okay. Okay. It's on page 72.

9 Q. Okay. That's where Q 9-9 starts.

10 A. Right.

11 Q. Then it finishes -- the answer finishes on 73.

12 And do you see the sentence where  
13 Mr. Thomas says, "This rate-making approach is  
14 required by the IRS in order to comply with tax  
15 normalization rules"?

16 A. Yes, I see that sentence. I'm familiar with  
17 that sentence. That's the extent of the  
18 testimony on normalization rules in his  
19 testimony.

20 Q. Was that a yes?

21 A. Yes.

22 MR. THREE: We -- we had a problem  
23 with the connection. Would you repeat that?

24 THE WITNESS: I said, "yes," I mean,  
25 to that question.

1                   What was the question again? I'll make  
2                   sure we're -- can you hear me?

3                   BY MR. PERRIEN:

4           Q.   No, we could not hear your -- your complete  
5                   answer.

6           A.   Okay. Which question are you asking me right  
7                   now that you didn't hear the answer to?

8           Q.   Okay. I did not hear your answer to the  
9                   question about were you aware at the time you  
10                  filed your direct testimony that ENO had  
11                  testified that this rate-making approach is  
12                  required by the IRS in order to comply with tax  
13                  normalization rules and a rate-making approach  
14                  that is referenced as the inclusion of NOL ADIT  
15                  in rate base.

16          A.   Well, I'm familiar with that paragraph of  
17                  Mr. Thomas' revised direct testimony that you  
18                  -- that we were referring to, question 9-9, but  
19                  that's the extent to his -- his testimony with  
20                  respect to IRS normalization rules, is like one  
21                  -- is one sentence long. He doesn't discuss  
22                  the normalization rules. He just makes this  
23                  conclusion with respect to their normalization  
24                  rules. He doesn't --

25          Q.   Okay.



1 A. He doesn't discuss them.

2 Q. All right. And then the advisors asked ENO a  
3 data request, right, regarding his conclusion?

4 A. Right.

5 Q. Okay. And ENO provided two PLRs in response,  
6 right?

7 A. Yes.

8 Q. Okay. Now -- and you received this before you  
9 filed your direct testimony, right?

10 A. The response to the data request?

11 Q. Yes.

12 A. Yes, I --

13 Q. Okay. But in your direct testimony you neither  
14 discuss the tax normalization rules or the  
15 private letter rulings?

16 A. The -- I did not discuss that in direct  
17 testimony. We've already asked and answered  
18 that question.

19 Q. No, I had not asked that question. I -- that  
20 was the first time I asked it, but that's your  
21 answer?

22 A. Well, when I was looking through my direct  
23 testimony -- the reason I was looking through  
24 my direct testimony was to answer that question  
25 and I -- yes, that's the answer to my question.

- 1 Q. Okay. Why?
- 2 A. Why what?
- 3 Q. Why did you not discuss the normalization rules  
4 or the PLRs in your direct testimony?
- 5 A. Well, I think I've -- I think the company asked  
6 a data request about that very question. Did I  
7 -- did you send that to me? I think I --
- 8 Q. Yes.
- 9 A. I think the company submitted a data request to  
10 us asking us that question.
- 11 Q. I don't recall. Could you please answer the  
12 question again?
- 13 A. The testimony -- Mr. Thomas' testimony did not  
14 discuss the tax normalization rules and they  
15 did not discuss the PLRs. I was rebutting  
16 Mr. Thomas' testimony.
- 17 Q. Did Mr. Thomas say that he was complying with  
18 the tax normalization rules?
- 19 A. His -- Mr. Thomas' testimony reads, "This  
20 rate-making approach is required by the IRS in  
21 order to comply with tax normalization rules."  
22 He did not discuss the PLRs and he did not  
23 discuss why he believed that that treatment was  
24 required by tax normalization rules.
- 25 Q. Okay.

- 1 A. He just made that statement.
- 2 Q. All right. And in your testimony nowhere did  
3 you say Mr. Thomas is incorrect, right?
- 4 A. Not in my direct testimony. That's the --
- 5 Q. Okay.
- 6 A. -- third time I've answered that question.
- 7 Q. Now, if you asked for the PLRs in discovery,  
8 why didn't you discuss those in your direct  
9 testimony?
- 10 A. I believe I stated a -- a couple of minutes ago  
11 that the PLRs were not discussed in Mr. Thomas'  
12 tes -- revised direct testimony; therefore, I  
13 didn't have anything to rebut.
- 14 Q. All right. Now, let's go to your surrebuttal  
15 testimony, pages 49 to 50.
- 16 A. Okay.
- 17 Q. Okay. Now, on those pages you argue that the  
18 council should disregard the PLRs, right?
- 19 A. Generally speaking, that's the substance of it.
- 20 Q. Right. And so -- so one reason you give is no  
21 -- that they have no precedence with respect to  
22 ENO, right?
- 23 A. Yes.
- 24 Q. All right. Now, are you saying that the  
25 council should ignore all decisions from other

1 regulators or administrative agencies that have  
2 no precedence with respect to issues before the  
3 council concerning ENO?

4 A. Well, it's the IRS that is saying that these  
5 PLRs do not apply to any other taxpayer.

6 Q. Right.

7 A. Now, that's a different question than -- than  
8 what the council or any regulatory body can  
9 look at. You know, the council is free to  
10 review these PLRs in the dis -- in their  
11 evaluation of this issue. If they draw  
12 conclusions from those PLRs in rendering their  
13 decision, that would be certainly within their  
14 authority to do so but, I mean, that does not  
15 speak to whether my recommendation is correct  
16 or incorrect. It just speaks to the council  
17 can review these PLRs if they choose to.  
18 They're -- they're in the record and they're  
19 discussed in the record.

20 Q. Okay. But your testimony is that they should  
21 not give -- assign any weight to them, right?

22 A. Yes.

23 Q. Okay. And I read your testimony to be saying  
24 that it should not be accorded weight because  
25 of this precedence issue that you identified;

1 is that right?

2 A. That's part of the reason. That's one of the  
3 reasons.

4 Q. Okay. That's one of the reasons.

5 And so I'm going to ask you, why does  
6 that affect your opinion about how the council  
7 should treat these PLRs?

8 A. Well, I think you need to read that in  
9 conjunction with the IRS statement that this  
10 ruling is based on the representations  
11 submitted by the taxpayer and is only valid if  
12 those representations are correct. I think  
13 that is the most fundamental point here, is  
14 that I don't think the PLRs fairly represent  
15 the issues with respect to those taxpayers and  
16 I don't think ENO's testimony fairly represents  
17 the issues to the council that's written in  
18 ENO's testimony. I mean, that's -- that's a  
19 fundamental issue. There -- there's nothing in  
20 these PLRs that suggest that the circumstances  
21 are identical for these taxpayers as they are  
22 for ENO. First of all, there's not even enough  
23 information in these PLR to draw those  
24 conclusions.

25 Q. Have you finished your answer?

1 A. Yes.

2 Q. Okay. Don't the PLRs provide information  
3 regarding the IRS's interpretation and  
4 application of the statues and regulations that  
5 are not dependent on the facts in the PLRs?

6 A. The PLRs discuss the IRS regulations in some  
7 detail. What I'm referring to is the  
8 information that -- the IRS's evaluation of  
9 those rules and regulations was based on, and  
10 that information was based on representations  
11 submitted by the taxpayers. You know, in  
12 addition -- okay.

13 I should read the -- the full paragraph  
14 in these PLRs. It's only two sentences. "This  
15 ruling is based on the representations  
16 submitted by taxpayer and is only valid if  
17 those representations are accurate." The next  
18 sentence is, "The accuracy of these  
19 representations is subject to verification on  
20 audit." Now, I -- I have -- I have no way of  
21 knowing whether there's been any verification  
22 or audit process; and if there was, I haven't  
23 had access to look at it, so -- but I am  
24 familiar with ENO's treatment.

25 Q. Okay. Why does the IRS make PLRs available to

1 the public?

2 A. I don't know.

3 Q. Is it to inform the public how the IRS  
4 interprets and applies statutes and  
5 regulations?

6 A. It may be. I don't know.

7 Q. Okay. Now, you give another reason why the  
8 council should disregard the PLRs, and that's  
9 because of misinformation, right?

10 A. Yes.

11 Q. Okay. What do you mean by the term,  
12 "misinformation"?

13 A. Well, what I mean is the information that is  
14 presented -- are you referring to the PLRs or  
15 ENO's testimony at this point?

16 Q. The PLRs.

17 A. Okay. Based upon my reading of the PLRs and  
18 the information that was provided by the  
19 taxpayer it was my conclusion, based upon  
20 assumptions that I made, that the  
21 characterization represented by the taxpayers  
22 was a misrepresentation of the facts with  
23 respect to their request.

24 Now, because I didn't have access to as  
25 much detailed information in making that

1 judgment, I had to make certain assumptions  
2 that it was consistent with ENO's position.  
3 But this is probably one reason why this letter  
4 wouldn't apply to anyone else, and that is  
5 because the facts may or may not be identical,  
6 so...

7 Q. Okay. Well, gee, Mr. Proctor, you said that  
8 there's misrepresentations in the PLRs just  
9 now, right?

10 A. Yes.

11 Q. Okay. In your testimony you say that the  
12 circumstances described to and relied on by the  
13 IRS from the utilities appeared to be biased in  
14 favor of the rulings sought from the IRS,  
15 right?

16 A. Yes.

17 Q. Okay. Are you using, "misrepresentation," to  
18 refer to bias or are you referring to factual  
19 -- essentially, lies?

20 A. Do you want me to read through the PLR to  
21 answer that? Look, here's the fundamental  
22 point, at least as it applies ENO. ENO has in  
23 the past recovered deferred income taxes  
24 through their rates, which were the reason an  
25 ADIT liability was established for them in the



1 past. They're wanting to eliminate this ADIT  
2 liability by offsetting it with an ADIT asset  
3 with respect to net operating losses, and one  
4 of the reasons why the company is proposing  
5 that that should be done is that they have not  
6 had an opportunity to receive cost-free capital  
7 through the recovery of deferred income tax  
8 expense.

9 Now, my understanding from reading these  
10 PLRs, that that was a very similar argument  
11 that was probably made by those taxpayers in --  
12 in representing the facts of the case to the  
13 IRS as well; and if it was, and I believe it  
14 probably was, that's a misrepresentation of the  
15 facts as well, because they would have also  
16 recovered deferred income tax expense through  
17 their rates in previous years and received  
18 cost-free capital as a result of that.

19 Q. Okay.

20 A. These PLRs are, you know, nine or ten pages  
21 each. It would take me a few minutes to find  
22 specific language in them that relate to that  
23 point I just made, but I -- I think I probably  
24 could find it if you want me to.

25 Q. Sure, please do.

1 A. Okay. I can certainly find it with respect to  
2 ENO.

3 Q. Okay.

4 A. Okay. I'm looking at the PLR dated September  
5 19th, 2014.

6 Q. Okay.

7 A. And I'm looking at page 5, which is SS page 41.

8 Q. Okay.

9 A. In the first full paragraph the taxpayer  
10 states, "In the setting of utility rates in  
11 state, a utility's rate base is offset by its  
12 ADIT balance. In its rate case filing and  
13 throughout the proceeding taxpayer maintained  
14 that the ADIT balance should be reduced by the  
15 amounts the taxpayer calculates did not  
16 actually defer tax due to the presence of the  
17 NOLC as represented in the deferred tax asset  
18 account. Thus, taxpayer argued that the rate  
19 base should be reduced as of the end of year D  
20 by its federal ADIT balance the net of the  
21 deferred tax asset account attributable to the  
22 federal NOLC."

23 Basically, the information they're  
24 relying on there presented by the taxpayer is  
25 that the company was never provided cost-free

1 capital with respect to the deferred income  
2 taxes and, therefore, that ADIT balance should  
3 be removed as a rate-based reduction by  
4 offsetting it with the ADIT asset liability,  
5 which is exactly what the company, ENO, has  
6 done in this particular case.

7 So based upon those sentences it was my  
8 conclusion, based upon this language and other  
9 assumptions, that their situation was, if not  
10 the same, very similar to that of ENO and that  
11 they were making a similar argument and that  
12 that they were not provided cost-free capital  
13 through recovery of deferred income tax  
14 expense.

15 Q. Can you go to the next PLR and see if there's  
16 some information in there that would also be  
17 misinformation?

18 A. Yes. The paragraph that I was reading in the  
19 first PLR does go on with some additional  
20 discussion of the subject matter. Do you want  
21 me to read that into the record as well?

22 Q. No, not -- not unless you think that's a --  
23 some misinformation from the taxpayer. In  
24 other words, I'm hoping that you're identifying  
25 the pieces of the PLR that are what you call

1           misinformation.

2       A.   Well, let me read it, because it does refer to  
3           cost-free capital.

4       Q.   Okay.

5       A.   Okay. I'm going to carry on from the paragraph  
6           that I was reading a minute ago. "It based  
7           this position on its determination that this  
8           net amount represented the true measure of  
9           federal income taxes deferred on account of its  
10          claiming accelerated depreciation deductions  
11          and, consequently, the actual quantity of  
12          cost-free capital available to it. It also  
13          asserted that the failure to reduce its  
14          rate-based offset by deferred tax asset  
15          attributable to the federal NOLC would be  
16          inconsistent with the normalization rules  
17          testimony by another participant in case argued  
18          against taxpayer's proposed calculation of  
19          ADIT."

20                 So, from reading that paragraph, I'm  
21          fairly confident that the situation is, if not  
22          identical, very similar to what ENO was  
23          presenting in their case here as well.

24       Q.   Okay.

25       A.   Now, let me -- you want me to look in the other

1 -- the other PLR?

2 Q. Yes.

3 A. Okay.

4 Q. And this time you don't have to read the  
5 paragraph into the -- into the record. You can  
6 just identify it for us, and that might speed  
7 things along.

8 A. Okay. Okay. On the -- the PLR dated November  
9 27, 2015, if you go to page 13 of the data  
10 request response, which is SS-49, the -- the  
11 first full paragraph begins discussing the  
12 subject matter with respect to the recovery of  
13 deferred income tax expense and the  
14 relationship between that and the ADIT  
15 liability and assets and cost-free capital.

16 Q. Okay.

17 A. I can read the paragraphs if you want me to,  
18 but that's -- that's where you find the same  
19 subject matter being discussed.

20 Q. Okay. And that this situation as described by  
21 the taxpayer, in your mind, is similar to the  
22 situation that ENO is describing in this rate  
23 case?

24 A. Generally speaking. I think this PLR relates  
25 to bonus depreciation as the timing difference,

1 but the normalization issues with respect to  
2 deferred income tax expense and ADIT assets and  
3 liabilities would be the same.

4 Q. Same as what?

5 A. Well, as the previous PLR. What I'm saying is  
6 the -- the logic --

7 Q. Okay.

8 A. -- the logic as to whether you should include  
9 an NOL ADIT asset in rate-based -- the  
10 reasoning in the first PLR we talked about and  
11 this PLR and the treatment ENO seeks are all  
12 very similar.

13 Q. Okay.

14 A. Okay.

15 Q. When you gave this reason of this -- when you  
16 articulated this reason for disregarding the  
17 PLR of misinformation were you aware of the  
18 revenue procedure that is attached to  
19 Mr. Roberts' rejoinder testimony as Exhibit  
20 RLR-5?

21 A. I -- I need to look at his rejoinder testimony.  
22 Let me -- let me grab that.

23 Okay. I have his rejoinder testimony.  
24 What page did you want me to look at?

25 Q. I want you to look at Exhibit RLR-5.

1 A. Okay. I have that exhibit.

2 Q. Okay.

3 A. What was the question?

4 Q. When you gave the misinformation reason in your  
5 testimony were you aware of the revenue -- of  
6 this revenue procedure that is attached as  
7 Exhibit RLR-5?

8 A. No. This was provided after I filed my  
9 surrebuttal testimony. The rejoinder  
10 testimony, obviously, was in response to my  
11 surrebuttal testimony, so I had not seen that  
12 exhibit at the time that I prepared by  
13 surrebuttal testimony.

14 Q. Well, I -- I got that you didn't see the  
15 exhibit. I'm asking about Mr. Proctor's  
16 knowledge of being -- of working for a  
17 regulator and -- and knowing about tax issues  
18 and normalization issues.

19 Were you aware of that revenue procedure?

20 A. I -- I can't -- I -- I don't know.

21 Q. Why -- why don't you know?

22 A. Well, I mean, it's something that I -- I very  
23 likely have read in the past, but I haven't  
24 reviewed this recently.

25 Q. Okay. So this revenue procedure was not in

1 your mind and you did not take that into  
2 account when you wrote your surrebuttal  
3 testimony?

4 A. This exhibit -- this one-page procedure --  
5 revenue procedure you're talking about is not  
6 something I referred to in the preparation of  
7 my surrebuttal testimony.

8 Q. Okay. I agree -- I agree with that, but is it  
9 something that you recall from your experience  
10 as someone that has worked for regulatory  
11 commissions when you were drafting your  
12 surrebuttal testimony?

13 A. I'm not familiar with Mr. Roberts' testimony  
14 with respect to this exhibit. Can -- can you  
15 refer to me in his testimony where he discusses  
16 this exhibit?

17 Q. No, no, no. I'm asking you about Mr. Proctor's  
18 experience and information that he carries  
19 around in his head when he does utility work.  
20 Okay? Do you understand that?

21 A. Perhaps.

22 Q. Okay. Now I'm asking that, when you wrote your  
23 surrebuttal testimony -- did this revenue  
24 procedure enter your mind while you were  
25 writing the words in your surrebuttal testimony



1 regarding misinformation?

2 A. No, this particular revenue procedure was not  
3 part of the basis for my conclusions in my  
4 testimony.

5 Q. Okay. All right. Great. Thank you.

6 Do you agree with me -- have you -- have  
7 you had a chance to read it?

8 A. No, I have not read it yet. Do you want me to  
9 read it?

10 Q. No, I want you to read -- I want you to read it  
11 to yourself --

12 A. Okay.

13 Q. -- but not on the record. Okay.

14 Did you read it?

15 A. Other than a list of many procedures, there's  
16 one paragraph with respect to rate orders,  
17 regulatory agency and normalization, yeah, I  
18 read that.

19 Q. Okay. Don't you think the revenue procedure  
20 lessens the likelihood that the IRS received  
21 misinformation?

22 A. We're talking the about those PLRs now?

23 Q. Yeah.

24 A. Well, no. No, I don't.

25 Q. Okay. Why? Why?

1 A. Well, I -- I don't know what communication was  
2 undertaken between the regulatory authority and  
3 the IRS or the company with respect to those  
4 PLRs, and even if I had access to that  
5 information I still may disagree that that --  
6 that the information provided to the IRS is  
7 accurate. I mean, I -- I would disagree that  
8 it's accurate, because the company in those  
9 PLRs -- the taxpayer in those PLRs had  
10 recovered deferred income tax and cost-free  
11 capital. So, no, I...

12 Q. Okay.

13 A. I mean, just -- just because the regulatory  
14 agency may or may not have participated in the  
15 process of the IRS ruling does not mean that  
16 the information was represented accurately.

17 Q. Well, doesn't the revenue procedure say that  
18 the regulator has to review the request?

19 A. That's what it says.

20 Q. Right. And so are you saying that that review  
21 did not -- did not happen with respect to these  
22 PLRs?

23 A. No. I'm saying I don't know whether it  
24 happened or not, and if it -- I'm saying that  
25 if it did happen, that doesn't mean that the

1 regulatory authority fairly explained the  
2 circumstances that I explained in my testimony  
3 with respect ENO.

4 Q. Okay. So I take that as you're saying that if  
5 the regulatory authority did review it, they  
6 didn't do an adequate job of reviewing the PLR  
7 requests, right?

8 A. Probably. I mean, you're --

9 Q. Okay.

10 A. I'm having to make an assumption on that that  
11 I'm -- that's why, when I was discussing the  
12 PLRs earlier, I -- I have to base some of it on  
13 my assumptions because it's -- all the  
14 information isn't in those PLRs.

15 Q. Okay.

16 A. But I am familiar, substantially, with an ENO's  
17 situation, which I would think would be the  
18 situation that we'd be discussing here.

19 Q. Okay. Now, you talked about this conclusion  
20 that you arrived at earlier with respect to  
21 misinformation.

22 What process did you go about in forming  
23 that conclusion?

24 A. I assume we're still talking about the PLRs?

25 Q. Yeah, I'm talking about your -- your conclusion

1 that the PLRs contain misinformation. I want  
2 to know the process that you undertook to reach  
3 that conclusion.

4 A. Well, I read paragraphs into the record from  
5 each of those PLRs earlier and I referred to  
6 paragraphs that you've told me I didn't have to  
7 read, but if you read those paragraphs you will  
8 see the information that the IRS is relying on  
9 in drawing their conclusions suggest that in  
10 those particular cases the taxpayer did not  
11 recover cost-free capital through its rates  
12 from recovering deferred income tax expense. I  
13 mean, that's the fundamental point right there.  
14 That in and of itself is the -- is the issue  
15 here. I mean, you can talk about deferred  
16 income taxes and ADIT at great length, like I  
17 have in my testimony, but it all comes down,  
18 basically, to that point.

19 MR. PERRIEN: Okay. I -- I object  
20 the responsiveness of the answer, and I'm going  
21 to try it one more time about this.

22 BY MR. PERRIEN:

23 Q. Was the -- let me see if I can narrow up my  
24 question somewhat for you.

25 Now, the process that you used to come to

1 your conclusion that there was misinformation  
2 in these PLRs was that you read the PLRs  
3 completely, right?  
4 A. Yes.  
5 Q. Was there any other step in that process?  
6 A. No. I had -- I did -- I had no access to any  
7 further information with respect to those PLRs.  
8 Q. Okay. So it's based on Mr. Proctor's  
9 subjective conclusion regarding the information  
10 or the language that was included in the PLRs,  
11 right?  
12 A. I believe I've already answered that yes. My  
13 conclusion was based upon the information in  
14 those PLRs.  
15 Q. Okay. And nothing else?  
16 A. Well, I mean, it's based on my understanding of  
17 deferred income tax and accelerated  
18 depreciation and other related issues.  
19 Q. Okay. Did you discuss the PLRs with the IRS or  
20 any representative of the IRS?  
21 A. No.  
22 Q. Okay. Did you compare the PLRs in Exhibit ROR  
23 -- RLR-2 to other PLRs regarding the treatment  
24 -- the rate-making treatment of NOL ADIT?  
25 A. Those were the only two PLRs that I have

1 reviewed. I'm not sure what you asked me, I  
2 suppose.

3 Q. Sure. Did you compare the PLRs in Exhibit  
4 RLR-2 to other PLRs publicly available  
5 regarding the NOL ADIT rate-making treatment?

6 A. No.

7 Q. Okay. Did you know who the taxpayers were that  
8 sought those PLRs?

9 A. No. I believe I asked -- I believe I submitted  
10 a data request to the company asking for that  
11 information and I -- I believe the company said  
12 that it wasn't available.

13 Q. Wasn't available to the company. I'm not ask  
14 -- didn't ask that question. I asked about  
15 Mr. Proctor.

16 MR. BEATMANN: I'm going to object.  
17 I want you to let him finish his answer --

18 MR. PERRIEN: Okay. I'm sorry.

19 MR. BEATMANN: -- and then you can  
20 ask a follow-up.

21 MR. PERRIEN: Okay. I'm sorry.

22 A. Well, no, I -- I'm simply saying that I did not  
23 have knowledge of who the taxpayers were, so I  
24 thought perhaps -- well, actually, I thought  
25 perhaps one of those taxpayers might be an

1 affiliate of Entergy, and I asked that question  
2 and I think Entergy responded that, no, it  
3 wasn't. I think I also asked whether they knew  
4 who the taxpayer was and I think they said, no,  
5 they didn't. So, no, I haven't talked to the  
6 taxpayer because I don't know who they are and,  
7 apparently, the company says they don't know  
8 who they are either.

9 BY MR. PERRIEN:

10 Q. Okay. So then I take it that you didn't have  
11 the rate order or the utility (inaudible)  
12 decision referenced in either of the PLRs?

13 A. Correct.

14 Q. Okay. Let's look at the -- the September 2014  
15 PLR and let's go to the paragraph straddling  
16 the pages 8 through 9.

17 A. We're looking at the September 19, 2014 PLR?

18 Q. Yeah, page 9 of 19.

19 A. Okay. Page 9 of 19, I've got that.

20 Q. Yeah. And I want you to focus on the sentence  
21 that begins, "Because the ADIT account."

22 A. In the first paragraph up here?

23 Q. In the straddle paragraph --

24 A. Okay. I -- I see that.

25 Q. -- on 8 of 9 onto 9.

1 A. Right.

2 Q. Okay. Does that sentence contain any  
3 misinformation in it?

4 A. Let me read it.

5 Q. Sure.

6 A. Well, I -- I don't know whether that  
7 information is correct or not without having  
8 access to the -- the more detailed information  
9 that we just talked about in the previous  
10 answer with regard to the commission testimony  
11 and orders and so forth. Also, it does not  
12 discuss whether deferred income tax expense had  
13 been recovered through rates and provided  
14 cost-free capital to the company.

15 The assumption in this sentence, which  
16 reads, "Because the ADIT account, the reserve  
17 account for deferred income taxes, reduces rate  
18 base it is clear that the portion of an NOLC  
19 that is attributable to accelerated  
20 depreciation must be taken into account in  
21 calculating the amount of the reserve for  
22 deferred taxes (ADIT). Thus, the order by  
23 Commission A is not in accord with the  
24 normalization requirements."

25 Now, that information may or may not be



1 accurate, but it's certainly not the full  
2 picture because it doesn't discuss the  
3 cost-free capital that would have been provided  
4 by the utility's -- utility taxpayer's recovery  
5 of deferred income tax expense through rates.

6 Q. Isn't that sentence just explaining how the IRS  
7 applies treasury regulation section  
8 1.167(l)-1(h)6(i)?

9 A. Well, the -- the whole paragraph discusses the  
10 regulation that you just cited, not just that  
11 part starting with the word, "because," you  
12 know.

13 Q. Okay.

14 A. That paragraph discusses the regulation that  
15 you cited.

16 Q. Okay. It is not a recounting of the -- of the  
17 factual circumstances pertinent to the  
18 taxpayer, right?

19 A. In my opinion it's not.

20 Q. Okay.

21 A. Do you want me to read the whole paragraph?

22 Q. No, no. Let's go to the first sentence of the  
23 -- of the next paragraph.

24 Okay. Have you had a chance to read  
25 that?

1 A. Yes.

2 Q. Okay. Doesn't that first sentence interpret  
3 treasury regulation section  
4 1.167(l)-1(h)1(iii)?

5 A. Yes.

6 Q. Okay. And it doesn't contain any  
7 misinformation in it, does it?

8 A. That sentence does not include any  
9 misinformation, as far as I know.

10 Q. Okay. What about the next sentence?

11 A. Well, I mean, the sentence does not discuss the  
12 facts of this particular case. It just makes a  
13 statement as to that particular regulation that  
14 you read, that it --

15 Q. Okay. Oh, I didn't mean to cut you off. Go  
16 ahead.

17 A. No, I don't know what -- what are you asking me  
18 with respect to this? I mean, I -- it doesn't  
19 change my position with regards to whether the  
20 taxpayer accurately represented this -- the  
21 circumstances and facts of their case correctly  
22 or not and it certainly doesn't --

23 Q. I got -- I got it.

24 A. It certainly doesn't represent ENO's facts, if  
25 we were talking about ENO instead of these

1 taxpayers that we can't even identify.

2 Q. But you agree that this second sentence of the  
3 full paragraph on page 9 of 19 doesn't contain  
4 any misinformation in it, right?

5 A. I can't see that it includes misinformation. I  
6 mean, that information does not come from the  
7 taxpayer, it comes from the IRS, that  
8 discussion --

9 Q. Right.

10 A. Yeah.

11 Q. Okay. So there are portions of the PLRs that  
12 do not contain misinformation, right?

13 A. Yes.

14 Q. Yeah. There are statements by the IRS about  
15 how they apply their regulation and statutes,  
16 correct?

17 A. Yes.

18 Q. Okay. And they're not -- they're not infected  
19 with that -- this sort of deficit of  
20 misinformation that you had mentioned in your  
21 testimony, right?

22 A. Well, I'll -- I'll read again on page 10 of the  
23 PLR that we're talking about. It says, "This  
24 ruling is based on the representations  
25 submitted by taxpayer and is only valid if

1 those representations are accurate." So all  
2 this discussion by the IRS in this PLR depends  
3 on whether the information provided to them by  
4 the taxpayer was accurate or not, okay, and I'm  
5 saying it wasn't accurate.

6 Q. Even the statements where they interpret their  
7 own regulations?

8 A. Well, they're interpreting their regulations as  
9 they apply to what was provided to them by the  
10 taxpayer, okay, so -- I mean, I don't know what  
11 more you want me to say. It's -- I'm not  
12 saying that the IRS is misrepresenting, you  
13 know, facts in the case. I'm saying that the  
14 taxpayer's misrepresenting facts and the IRS is  
15 relying upon those facts, those  
16 misrepresentations.

17 Q. In the IRS's statements regarding its  
18 regulation of the statute, is the IRS  
19 misrepresenting its interpretation of those  
20 statutes and regulations?

21 A. I mean, I -- I can't say that they absolutely  
22 are not. I mean, the -- these regulations are  
23 not extremely specific. I mean, they're very  
24 somewhat vague. As a matter of fact, your  
25 witness, James Warren, has testified in

1 previous cases that I've been involved in that  
2 they are very subjective. And if you -- if you  
3 look -- if you look at this --

4 MR. BEATMANN: Jim, we -- we -- the  
5 -- the feed broke up. We couldn't hear your  
6 last answer.

7 THE WITNESS: Okay. Are you able to  
8 read it?

9 THE COURT REPORTER: I can read it  
10 back.

11 MR. BEATMANN: We had a poor  
12 connection for that last answer.

13 THE COURT REPORTER: I can read it  
14 back.

15 MR. BEATMANN: Yeah, that would be  
16 helpful.

17 (The last answer was read back.)

18 A. Actually, I'm not sure what I was going to say  
19 at that point -- or what I said.

20 BY MR. PERRIEN:

21 Q. I want you to look at the next sentence in that  
22 paragraph that we were discussing -- well, not  
23 the next one, the one after that, the one that  
24 mentions the with or without methodology.

25 A. What -- what word does the sentence begin with

1 that you're reading?

2 Q. "The."

3 A. Oh. The with or without methodology?

4 Q. Yeah.

5 A. I didn't hear it clearly what you said. Okay.

6 What about that sentence?

7 Q. Okay. Yes, that sentence, do you know what the

8 with or without methodology is?

9 A. Yes.

10 Q. Can you please describe that?

11 A. Well, I mean, it -- it's the methodology that

12 was employed by ENO in -- in the determination

13 as to the amount of the ADIT asset, and it has

14 to do with making a determination as to how

15 much of a particular timing difference relates

16 to -- well, let me back up. It's a methodology

17 used to attribute a portion of an NOL to an NOL

18 ADIT asset.

19 Q. Okay. Okay. And the PLR states that a utility

20 must use some methodology to do that to

21 determine, you know, what portion of NOL ADIT

22 is attributable to accelerated tax depreciation

23 to avoid a normalization violation, right?

24 A. I will say yes to that question.

25 Q. Okay. Let's go the November 2015 PLR.

1 A. Okay.

2 Q. Okay. And I want you to look on page 17 of 19.

3 A. Okay.

4 Q. Okay. And I want you to look at the sentence  
5 that starts, "The last dollars deducted  
6 methodology."

7 A. How far down the page is that?

8 Q. It's almost at the bottom. It's the --

9 A. Okay. I found it.

10 Q. Okay.

11 A. "The last dollars deducted methodology employed  
12 by taxpayer is specifically designed to ensure  
13 that the portion of the NOLC attributable to  
14 accelerated depreciation is correctly taken  
15 into account by maximizing the amount of the  
16 NOLC attributable to accelerated depreciation."

17 Q. Do you know what the last dollars deducted  
18 methodology is?

19 A. I believe they're referring to the same  
20 methodology as the with and without  
21 methodology.

22 Q. Okay. And that -- so that this PLR says that  
23 you need to use -- that the last dollars  
24 deducted methodology is a methodology utilities  
25 could apply when determining the portion of the

1 NOL ADIT that is attributable to accelerated  
2 tax depreciation and thereby avoid a  
3 normalization violation, right?

4 A. That's what this relates to.

5 Q. Is that a yes or a no? I mean, I interpret it  
6 to be a yes.

7 A. Well, yes. You know, I mean, we've discussed  
8 at length my feelings about these PLRs and  
9 whether they -- the information provided by the  
10 taxpayers fairly represents the situation or  
11 not.

12 Q. Right.

13 A. So, I mean, to qualify, generally speaking,  
14 your answer would be yes, but -- but it doesn't  
15 -- it wouldn't be yes with respect to whether I  
16 agree with ENO's testimony or not.

17 Q. Right. I gotcha.

18 I want to focus on the next page, page  
19 18. And is it -- that paragraph is about -- I  
20 just want to just try to set this up. Don't go  
21 reading anything yet, and certainly don't read  
22 anything aloud.

23 This question's about a third issue and  
24 so I would like you to -- I would like you to  
25 go to page 14 of 19 and I'd like you to see the



1 -- the third request.

2 A. Page 14 of 19?

3 Q. Yeah.

4 A. Are -- are you citing the correct page number?

5 Q. Page 14 of 19. I'm looking at Roman numeral  
6 three -- I mean -- not Roman numeral, I mean,  
7 Arabic numeral three, "taxpayer requests that  
8 we rule as follows," and then there's a 1, 2,  
9 3.

10 A. Okay. Yes.

11 Q. Okay. And then I want you to focus on number  
12 3.

13 Isn't the rate-making treatment that's  
14 being described in item 3 similar to a  
15 treatment that you're proposing in this rate  
16 case?

17 A. I want to make sure we're talking about the  
18 same -- let me read that number 3.

19 Q. Yeah.

20 A. You're referring, "Under the circumstances  
21 described above, any reduction in taxpayer's  
22 tax expense element of cost of service to  
23 reflect the tax benefit of NOLC would be  
24 inconsistent with the requirements," is that  
25 what you're --

- 1 Q. Right.
- 2 A. -- is that the sentence you're --
- 3 Q. Yes.
- 4 A. I'm not sure what element of my recommendations  
5 you're referring to here. Can you be more  
6 specific? What --
- 7 Q. Sure, sure. On page 56, lines 12 to 14 of your  
8 surrebuttal testimony don't say that you're  
9 proposing to reduce deferred income tax expense  
10 by an amount equal to the NOL ADIT included in  
11 rate base if the council determines that the  
12 NOL ADIT should be included in rate base?
- 13 A. Let me -- let me grab that first. Page 56?  
14 Page 56?
- 15 Q. Yes.
- 16 A. Okay. Okay.  
17 Okay. I'm on page 56.
- 18 Q. Okay.
- 19 A. What was the question again?
- 20 Q. Don't you say in your testimony that you are  
21 proposing to reduce deferred income tax expense  
22 by an amount equal to the NOL ADIT included in  
23 rate base if the council determines that the  
24 NOL ADIT should be included in rate base?
- 25 A. I -- I make -- yes, I make that recommendation,

1 but I say that -- that neither one of them  
2 should be in the cost of service. The ADIT  
3 assets should not be in the cost of service and  
4 the credit to deferred income tax expense  
5 should not be in the cost of service, but if  
6 the -- if the -- if the council chose to put  
7 the ADIT asset in the cost of service in rate  
8 base, they must also treat the entry to the  
9 deferred income tax expense as a reduction to  
10 deferred income tax expense.

11 Q. Okay. And isn't that proposal similar to the  
12 proposal that is being described in Arabic  
13 numeral three on page 14 of 19 of Exhibit  
14 RLR-2?

15 A. It may be. I don't know for sure, but even if  
16 it is -- even if it is -- can you hear me?

17 Q. Yeah.

18 A. Okay. What I'm saying is that the facts that  
19 were presented by the taxpayer that were used  
20 to draw all these conclusions by the IRS do not  
21 fairly represent the circumstances involving  
22 the income taxes, deferred income tax,  
23 accumulated depreciation and so -- liberalized  
24 depreciation. What I'm saying is those facts  
25 are not accurate. Okay? Therefore, any

1 conclusions that the IRS is drawing with  
2 respect to the taxpayer's case are not  
3 reliable.

4 Q. I got that part. You've told me that a number  
5 of times, and that's not what my question was  
6 about.

7 Please look at the last sentence on page  
8 13 of 19.

9 A. Okay.

10 Q. Have you read that to yourself?

11 A. You're talking about the PLR, page 13 of 19?

12 Q. Yes --

13 A. Yes, I've --

14 Q. -- the last sentence.

15 A. Yes, I've read that.

16 Q. Okay. Good.

17 Do you agree that that proposal that is  
18 discussed in that sentence in the PLR is  
19 similar to the proposal that you discuss -- or  
20 that you propose on page 56, lines 12 to 14 of  
21 your surrebuttal testimony?

22 A. Yes. I thought I already answered that.

23 Q. No, you didn't.

24 A. Okay.

25 MR. BEATMANN: Well, we're going to

1 -- we're going to let the record speak for  
2 itself. Mr. Perrien is not going to decide  
3 what -- what's been answered and what hasn't.

4 MR. PERRIEN: Okay. That -- I --

5 MR. BEATMANN: The record will show a  
6 response, and whoever reads the record can  
7 decide for themselves.

8 MR. PERRIEN: Okay. Let's -- can we  
9 take a break?

10 MR. BEATMANN: Sure.

11 (The Deposition Proceedings went off  
12 the record at 11:46 a.m.; whereupon, back on  
13 the record at 12:10 p.m.)

14 BY MR. PERRIEN:

15 Q. Mr. Proctor, when we were discussing the PLRs  
16 you said something along the lines that there  
17 was a -- an omission in deferred income tax  
18 expense.

19 Can you restate what -- what you meant by  
20 that?

21 A. Did you -- you say, "an omission," or what --  
22 what did you say?

23 Q. An omission, yeah.

24 A. Well --

25 Q. You said there's something in the PLRs don't

1 discuss about deferred income tax expense and  
2 cost-free capital or something like that.

3 A. The point I was making is that it's not clear  
4 from my reading of those PLRs whether it's  
5 fairly representing whether deferred income tax  
6 expense had been recovered in rates in the  
7 previous years that the NOLs were incurred and,  
8 thus, providing cost-free capital for the  
9 utility. Now, I am more, obviously,  
10 knowledgeable about ENO's situation but,  
11 because those PLRs only give a partial picture  
12 of the representations that needed to be relied  
13 upon, it was difficult for me to draw that  
14 conclusion without making an assumption.

15 Q. Okay. Isn't it possible that the IRS  
16 determined that whether deferred income tax  
17 expense had generated cost-free capital in  
18 prior periods was irrelevant?

19 A. They don't say that in the PLRs. They don't --  
20 they don't draw that conclusion in the PLR.  
21 They --

22 Q. They don't -- go ahead. I'm sorry.

23 A. No, I'm just saying that that -- I suppose  
24 anything is possible. I don't know what  
25 they're thinking if it's not in these PLRs.

1           They don't discuss that point in the PLRs that  
2           you just made.

3       Q.    Okay.  So they don't -- they don't -- in the  
4           PLRs they -- the IRS does not discuss this  
5           deferred income tax expense concept that --  
6           that is critical to you, right?

7       A.    That's my opinion, yes.

8       Q.    Okay.  All right.  Let's look at page 48 of  
9           your surrebuttal testimony.

10      A.    Okay.  Okay.

11      Q.    Okay.  I want to focus on the sentence that you  
12           have at 7 to 9.

13      A.    Yes.

14      Q.    Okay.  Don't both PLRs say the exact opposite  
15           of what you say in your surrebuttal testimony  
16           on lines 7 through 9?

17      A.    No, I don't believe so.

18      Q.    Okay.  Are you finished with your answer?

19      A.    Yes.  I -- I mean, in the next sentence I say,  
20           "Further, the IRC section -- regulation section  
21           1.1671-1(h)1(iii) [sic] is misunderstood and  
22           misapplied by ENO."  Okay?  And I would make  
23           that same suggestion with respect to the PLRs  
24           based upon the limited information that I --  
25           that's in those PLRs.

1 Q. Okay. You're saying that the IRS misunderstood  
2 and misapplied regulation section  
3 1.167(l)-1(h)1(iii)?

4 MR. BEATMANN: I'm going to object to  
5 the extent that it mischaracterizes his  
6 testimony. I think he said ENO misunderstood  
7 and misapplied.

8 MR. PERRIEN: Okay. Then let me  
9 rephrase my question. I'll ask the whole  
10 question.

11 BY MR. PERRIEN:

12 Q. Are you saying that the IRS misunderstood and  
13 misapplied regulation 1.167(l)-1(h)1(iii)?

14 A. I -- and I'll -- what I'm saying is I don't  
15 have enough information from those PLRs to make  
16 that determination.

17 Q. All right. Let me read the sentence -- let's  
18 read the sentence together from the PLR. Okay.  
19 Let's go to page 9 of 19.

20 A. Okay. I'm on page 9.

21 Q. Okay. The first sentence of the -- of the  
22 first full paragraph --

23 A. Okay.

24 Q. -- that sentence says, "Section  
25 1.167(l)-1(h)1(iii) makes clear that the effect



1 of an NOLC," a net operating loss carryforward,  
2 "must be taken into account for normalization  
3 purposes."

4 That's what it says, right?

5 A. That's what this -- that's what the sentence  
6 says, yes.

7 Q. Yes. And when you look at page 48 of your  
8 surrebuttal testimony, lines 7 through 9, you  
9 say the exact opposite, right?

10 A. Well, I put the word, "attributable," in that  
11 sentence in parenthesis because I discuss it in  
12 more detail in my testimony and so I -- I think  
13 there's more being said there than just what is  
14 contained in that one sentence of my testimony.  
15 One of the points I make is that it's  
16 impossible to be able to attribute an NOL to  
17 any one particular item on an income statement,  
18 which is also a statement made by James Warren,  
19 which I discuss -- your -- the company's  
20 witness, James Warren -- in a previous matter,  
21 which I discuss in my testimony. Okay?

22 So, I mean, I -- I mean, my discussion in  
23 my testimony is more substantive than just that  
24 statement that I'm making there in that one  
25 sentence. That sentence is taking into account

1 the other points that I'm making in my  
2 testimony with respect to that IRC regulation  
3 and the attributability of -- of an NOL to any  
4 one particular cost.

5 And, again, if -- if you look at the  
6 PLRs, it's really difficult to understand what  
7 information they are exactly basing their  
8 opinion on, because the full story does not  
9 appear to be told by the taxpayer in these  
10 PLRs. There's nowhere in the PLR where you can  
11 make a determination whether the company  
12 recovered deferred income tax expense through  
13 their rates in previous years with respect to  
14 the timing differences which is, like I'm  
15 saying, the fundamental issue at stake here.

16 Q. But couldn't the PLRs reflect that the IRS  
17 concluded that that was not relevant to the  
18 determination of how NOL ADIT should be treated  
19 in rate base to comply with normalization  
20 rules?

21 A. Well, again, I think I answered that question a  
22 few minutes ago, but I'll -- I'll answer it  
23 again. There's not enough information in the  
24 PLR to make that determination. Now, if the --  
25 if the IRS did make that conclusion, they

1           didn't discuss it in their PLR. So I can't say  
2           whether they could or could not reach that  
3           conclusion.

4                     I -- I'm just saying that, based upon  
5           what they presented in their PLR, you don't  
6           know whether they made that conclusion or not.  
7           I would think that, if it was a conclusion of  
8           theirs, they would have discussed it in the PLR  
9           because, as I've said in my testimony, that is  
10          perhaps the most fundamental issue at stake  
11          here, whether they had been provided -- whether  
12          they had been provided cost-free capital in  
13          their rates. I mean, if --

14                    MR. BEATMANN: Wait a minute, Jim.  
15          You're -- you're breaking up.

16                    THE WITNESS: Okay.

17                    MR. BEATMANN: The -- the feed was  
18          breaking up again. I'm sorry.

19                    THE WITNESS: Okay.

20          A. Well, I -- I've said at least once before that  
21          the fundamental issue here is whether the  
22          company has recovered depreciation expense in  
23          previous years in which NOLs were incurred by  
24          the company and the extent to which that  
25          created cost-free capital for the company. You

1 cannot make any determination as whether that  
2 was the case with respect to these PLRs because  
3 they don't discuss those -- that issue in the  
4 PLRs.

5 They rely upon the statement of the  
6 taxpayer that the taxpayer did not recover  
7 cost-free capital, but they don't say how they  
8 draw that conclusion. And -- and from reading  
9 the PLR, I can only assume that they're drawing  
10 that conclusion because that's what the  
11 taxpayer told them. Okay? Again, if we talk  
12 about ENO, I know the specific facts with  
13 regards to ENO. I don't know the full story  
14 with respect to the taxpayers in these PLRs.

15 Q. Okay. You made reference to -- to statements  
16 made by Mr. Warren.

17 What time frame were those statements  
18 made in?

19 A. I -- I don't remember.

20 Q. Are they prior to 2010?

21 A. I -- you know, my testimony, when I discussed  
22 that point, cites the reference, and the  
23 reference would -- would have the date of -- of  
24 that testimony. I'm trying to find Mr. Warren  
25 -- I'm trying to find in my testimony where I

1 talk about Mr. Warren's testimony.

2 Q. Okay.

3 A. And I'm not seeing it right offhand here, but  
4 there's a document -- I reference a document, I  
5 think.

6 Q. Look on page 53 of your surrebuttal testimony.  
7 Okay?

8 A. Okay.

9 Q. Okay.

10 A. It would be footnote 29.

11 Q. Right.

12 A. So it was an Entergy Gulf States Case.

13 Q. Right. Okay. Can I -- are you referencing --  
14 when you talk about Mr. Warren and what he said  
15 in this Q-and-A that's on page 53 which has  
16 this footnote 29, are there any other  
17 statements by Mr. Warren that are not included  
18 in this footnote that you are attributing to  
19 Mr. Warren in this -- in this Q-and-A?

20 A. Well, I don't know. I'd have to go back and --  
21 and look at the reference, but I think his  
22 testimony on that issue was more than just one  
23 sentence, but I'm only quoting the one sentence  
24 because I think it makes it fairly clear what  
25 his conclusion is.

1 Q. Right.

2 A. There was more substance to his testimony than  
3 just that one statement, you know. I mean, he  
4 --

5 Q. Right. I'm ask -- what I want to know and I  
6 want to be clear on is, are you referring to  
7 statements from Mr. Warren that are outside of  
8 this time frame that is referred to in footnote  
9 29?

10 A. No. The basis for my testimony regarding  
11 Mr. Warren in this paragraph on page 53 relates  
12 to this Entergy Gulf States case. I haven't  
13 researched other cases that he's testified in  
14 with respect to that issue.

15 Q. Okay. And so, to kind of close the loop,  
16 you're not going to show up at hearing and say,  
17 "Oh, Mr. Warren said such-and-such in 2012  
18 about deductions and NOLs"?

19 A. Well, I'm not -- let me say this. I'm not  
20 aware that he -- I'm not aware that he did.  
21 Okay. Now, if you're suggesting I should go  
22 back and review some cases because I'll find he  
23 said it in other cases, well, you know, maybe I  
24 will do that. I -- I don't know. I mean, Jay,  
25 I don't know what you -- I'm just saying, as

1 we're testify -- as I'm testifying here today I  
2 cannot say that I'm aware of another case in  
3 which he's made a similar statement.

4 Q. Okay. Okay. And do you agree that the PLRs  
5 take a position that is different than what  
6 Mr. Warren said in the testimony that you  
7 referenced?

8 A. The -- the PLR appears to take -- make a  
9 different conclusion, but I -- I'll have to say  
10 again that, you know, I don't know what  
11 additional information they may or may not base  
12 their -- their conclusion on. I -- and it  
13 certainly doesn't apply to the ENO  
14 circumstances -- facts and circumstances of  
15 this case.

16 Q. All right. I want you to look at Mr. Roberts'  
17 rejoinder testimony in Exhibit LRL-6.

18 A. Okay.

19 Q. Okay. Have you seen this exhibit before?

20 A. I think I've -- I think I looked at this after  
21 he filed his rejoinder testimony.

22 Q. Okay. To make sure we have a mutual  
23 understanding of what's here, do you agree that  
24 sort of lines 1 through 4 of this exhibit lay  
25 out the assumptions for each example?

- 1 A. Yes, they appear to.
- 2 Q. Okay. Do the amounts on line 5 show a correct  
3 illustration of the taxable income on the tax  
4 returns for each example?
- 5 A. Well, now, what was your question again?
- 6 Q. Sure. Do the amounts on line 5 show a correct  
7 illustration of the taxable income on the tax  
8 returns for each example?
- 9 A. They appear to, yes.
- 10 Q. Okay. Do you agree that line 6a through 7 show  
11 the -- show the financial income tax accounting  
12 for each example?
- 13 A. Well, you know, I -- I would prefer to go one  
14 line at a time here instead of answering a  
15 question about four lines with one answer.
- 16 Q. Okay. Sure.
- 17 A. So, for example, what is your question with  
18 respect to 6a?
- 19 Q. Well, let's go to 6a.
- 20 A. Okay.
- 21 Q. Does that -- does that correctly illustrate the  
22 current income tax expense on regulatory pretax  
23 income for each example?
- 24 A. Well, line 6a is line 3 times the tax rate,  
25 which is 21 percent, and so that computes to



1           \$63 on each line.

2    Q.    Okay.

3    A.    Each column, I mean.

4    Q.    Okay.  Is that a correct illustration of the  
5           current income tax expense on the regulatory  
6           pretax income?

7    A.    Well, it looks like the -- it would be the --  
8           the total income tax on the regulatory pretax  
9           income.  I mean, it's a -- it's the revenue  
10           minus regulatory expenses, which equals \$300 on  
11           line 3.

12   Q.    Right.

13   A.    Okay.  Which would be the regulatory taxable  
14           income before taking into account timing  
15           differences, apparently.  And if you multiply  
16           that by 21 percent you get --

17   Q.    Yeah.

18   A.    -- you get \$63, which is the total income -- I  
19           -- I don't think it's correct to say that's  
20           current income tax expense.  That would --  
21           should be just income tax expense.  It would  
22           be --

23   Q.    Okay.

24   A.    It would include the sum of current and  
25           deferred income tax expense.

1 Q. Okay.

2 A. So that's an error in the schedule.

3 Q. Okay. You say that that \$63 contains -- okay,  
4 contains a combination of current and deferred  
5 income tax expense?

6 A. Yes.

7 Q. Okay.

8 A. Based on what I'm looking at here it does.

9 Q. All right. Let's -- let's look at -- at row  
10 6b.

11 Does that correctly illustrate the  
12 current income tax expense on the timing  
13 difference in the examples that there are a  
14 timing difference?

15 A. Okay. Well, in example 2 he's taking the -- or  
16 the exhibit shows on line 4 a timing difference  
17 of 700 -- of \$700.

18 Q. Uh-huh.

19 A. So if you multiply that by 21 percent, that  
20 doesn't seem to equal 147 -- yeah, it does.

21 Okay. That's correct. So that's -- that would  
22 be \$147 current income tax expense, timing  
23 difference -- I mean, that's the timing  
24 difference.

25 Q. Right. So does 6 -- does line 6b correctly

1 illustrate the current income tax expense  
2 associated with the timing difference for  
3 examples 2, 3 and 4?  
4 A. Okay. Well, it does in 2.  
5 Q. Okay.  
6 A. 3 it -- do you want to do one at a time here?  
7 Q. Yeah, you can do one at a time.  
8 Is that one a correct illustration in  
9 the...  
10 A. Yes.  
11 Q. Okay. All right. What about example 4?  
12 MR. BEATMANN: When you say, "example  
13 4," are you talking about 6c?  
14 MR. PERRIEN: Yeah, we're actually on  
15 6b -- we're on row 6b and we're talking about  
16 example 4.  
17 MR. BEATMANN: Okay.  
18 BY MR. PERRIEN:  
19 Q. Are those numbers correct illustrations of  
20 current income tax expense associated with  
21 timing difference?  
22 A. Well, I'm going back to example 2 here for a  
23 minute. His -- his --  
24 Q. Yeah.  
25 A. His labels here don't seem to be very clear.

1 Like -- like I mentioned on -- on line 6a, he's  
2 calling something current income tax expense  
3 when it's actually not current income tax  
4 expense. It's a -- it would be the regulatory  
5 -- the normalized tax expense, which is the --  
6 the sum of deferred income tax expense and  
7 current income tax expense.

8 And when you go back and look at line 4,  
9 he's saying -- apparently, what he's  
10 illustrating in example 2 there on line 4 is  
11 that the tax deduction is \$700 less than the  
12 regulatory expense. And if that's case, then  
13 the -- the amount on line 6b -- if the tax  
14 deduction is less, that's going to make --  
15 okay, okay. That would -- that would still be  
16 current income tax there. Okay.

17 Q. Now, wait. Say that again. I missed that.

18 A. Well, okay, I'm just trying to -- his -- his  
19 labeling on this column where he has the -- the  
20 descriptions --

21 Q. Yes.

22 A. -- don't seem to be extremely precise and  
23 understandable, so I'm -- I'm wanting to take  
24 enough time here to make sure I'm interpreting  
25 what he's doing here correctly.

1 Q. Okay. Can I just point out one other thing,  
2 that lines -- that row 6a and row 6 -- and row  
3 8 have identical outcomes, identical amounts in  
4 them. Okay?

5 A. Right.

6 Q. So, please, when you're reading 6a, that is one  
7 concept, I think, and then column -- and then  
8 row 8 is a -- seems to be a different concept  
9 and it has a different calculation. I just  
10 wanted you to -- I'm not trying to tell you  
11 what the answer is. I'm just saying there's  
12 multiple columns with the same numbers and it  
13 seemed that you were sort of jumping between  
14 the two, to me, but please go on and read.

15 A. Okay. Well, are we going to example 3 now?

16 Q. Okay.

17 A. Okay. On line 3, the pretax regulatory income  
18 is \$300.

19 Q. Right.

20 A. And on line 4, the tax deduction is \$100 more  
21 than the -- timing difference is \$100. So the  
22 tax deduction -- tax depreciation is more than  
23 the -- than straight line depreciation, which  
24 means the taxable income would be \$200.

25 Q. You're breaking up, Mr. Proctor.

- 1 A. Okay.
- 2 Q. Can you stop for a second?
- 3 A. Okay. Okay.
- 4 Q. You were talking about the relationship between  
5 the tax deduction and the -- and the regulatory  
6 expense --
- 7 A. Okay. On line --
- 8 Q. -- in example 3.
- 9 A. On line 3, the -- the regulatory pretax income  
10 is \$300. The tax deduction is \$100 more than  
11 straight line depreciation; therefore, current  
12 taxable income is \$200. And so current income  
13 tax would be 21 percent times that, which is  
14 line 6c, which is \$42. Okay?
- 15 Q. Okay. I mean, and -- but you can see that 6a  
16 -- the sum of 6a and 6b, do you have a problem  
17 with that breakout of -- do you have a problem  
18 about the presentation of 6a, 6b and 6c?
- 19 A. Okay. Well 6 -- 6a should not be called  
20 current income tax expense. It should just be  
21 called income tax expense. Okay? And that  
22 should be the sum of deferred income tax  
23 expense and current income tax expense.
- 24 Q. Okay. Can I -- can I tell you --
- 25 A. Let me --

- 1 Q. Can I tell something to you? Are you -- I  
2 don't want to interrupt you, but what you just  
3 said is what row 8 says, right?
- 4 A. Right.
- 5 Q. Okay. So that concept in this table -- do you  
6 understand that this table is laying out the  
7 calculation of current income tax expense in  
8 the way that it is presented in ENO's cost of  
9 service studies?
- 10 A. Well, I mean, when you say, "cost of service  
11 studies," are you talking about their -- their  
12 filed income statements in their --
- 13 Q. I'm talking -- I'm talking about adjustment  
14 AJO-3 in the cost of service studies, which  
15 includes the adjusted current income tax  
16 calculation.
- 17 A. Okay.
- 18 Q. Are you familiar with that?
- 19 A. Yes. I'm very familiar with those, yes.
- 20 Q. Okay. And so you would agree with me that it  
21 starts with regulatory pretax income, correct?
- 22 A. Right.
- 23 Q. Okay. And -- and so that's consistent with row  
24 3, right?
- 25 A. Right.

1 Q. Okay. And then the next section it has our --  
2 what we refer to as the timing differences or  
3 Schedule M items, right?  
4 A. Right.  
5 Q. Okay. And that corresponds to line 4, right?  
6 A. Right. Now, I think -- well, I -- I assume  
7 what we're talking about here is -- is the  
8 timing difference with respect to depreciation.  
9 Q. Well, I didn't specify that in this response --  
10 A. Right.  
11 Q. -- but I think this is -- I think this is  
12 generic. We can put different assumptions  
13 around what is the cause of the timing  
14 difference --  
15 A. Right.  
16 Q. -- but this is an illustration of timing  
17 differences --  
18 A. Okay. Do I --  
19 Q. -- right?  
20 A. Yeah. Well, I'm -- I'm just assuming that,  
21 since we're talking about accelerated versus  
22 straight line depreciation, that's what this  
23 refers to.  
24 Q. Okay. That's fine. You can -- I think you can  
25 -- you can interpret it in that context.



1 A. Okay.

2 Q. I would -- I would just add that there is  
3 another section of testimony by Mr. Roberts  
4 that's regarding FIN 48.

5 A. Okay.

6 Q. And it does not have to do with accelerated tax  
7 depreciation --

8 A. Okay.

9 Q. -- right? I mean, you understand FIN 48 --

10 A. Right.

11 Q. -- is not accelerated tax depreciation?

12 A. Right.

13 Q. But they do involve timing differences, right?

14 A. Right.

15 Q. Okay.

16 A. So what's the next question?

17 Q. So the next question is on -- let's go back to  
18 row 6a.

19 Now, having in mind the company's current  
20 income tax calculation, do you agree that row  
21 6a correctly illustrates the current tax  
22 expense on the regulatory pretax income?

23 A. Now, what -- what I said was that that should  
24 be called just income tax expense because it  
25 includes deferred and current income tax

1 expense.

2 Q. That -- but that is not what the -- the exhibit  
3 says, though, right?

4 A. This exhibit is incorrect.

5 Q. Okay. The exhibit is incorrect.

6 Is -- is -- is the company's adjustment,  
7 AJO-3, incorrect because it multiplies the tax  
8 rate times the regulatory pretax income?

9 A. All -- I don't have that exhibit in front of me  
10 that you're referring to, AJO-3. What I'm  
11 saying is this particular exhibit here, line 6a  
12 does not represent current income tax expense.  
13 Line 6c reflects current income tax expense.

14 Q. Okay.

15 A. And you can see that they are both labeled the  
16 same even though there's different numbers  
17 there.

18 Q. They are not -- Mr. -- Mr. Proctor, labeled 6c  
19 says, "total current income tax expense,"  
20 doesn't it?

21 A. Right.

22 Q. Okay. And so isn't 6a and 6b simply separating  
23 6c into two components in the way that the  
24 current income tax calculation in ENO's cost of  
25 service study does the same thing?

- 1 A. Okay. Here, let me answer it this way. Okay.
- 2 6a equals a total income tax expense. And if
- 3 you look at example 2 -- well, I mean, it --
- 4 the total income tax expense is \$63 under each
- 5 -- each column, okay, but if you look at
- 6 example 2, that number equals 6c plus 7, right?
- 7 Q. Wait, you broke up. Say that again?
- 8 A. Okay. The income tax -- the income tax expense
- 9 on line 6a of \$63 equals --
- 10 Q. Right.
- 11 A. -- the sum of 6c and 7, right?
- 12 Q. Yes, right.
- 13 A. And 6c is the current income tax expense paid
- 14 to the IRS and 7 equals the deferred income tax
- 15 expense recorded for financial reporting
- 16 purposes and then --
- 17 Q. Okay.
- 18 A. -- the sum of those two equal the \$63, which is
- 19 the same number that's on line 6a, but --
- 20 Q. According to the table, that sum is -- is the
- 21 amount on row 8, right?
- 22 A. 6a and row 8 are the same amounts.
- 23 Q. Right. But the calculations are different,
- 24 correct?
- 25 A. And the labels are different. I mean, on line

1           6a it's called current income tax expense and  
2           on line 8 it's called income tax expense, which  
3           is what I'm telling you 6a should say. 6a and  
4           8 should have the same label and they don't,  
5           and it appears me the reason they don't was to  
6           make -- try to make this exhibit confusing.

7                     I mean, if 6a and 8 are the same amount,  
8           why do you have -- why -- why does this exhibit  
9           show them with different labels because, see,  
10          what I'm telling you 6a should say here is --  
11          I've mentioned this several times already. The  
12          word, "current," should not be there on line  
13          6a. It should just say, "income tax expense on  
14          regulatory pretax income," and then it would be  
15          -- agree with the label of income tax expense  
16          included in the cost of service study on line  
17          8. Okay? So, you know, line 6b and lines 6c  
18          are important lines for this -- the points I  
19          make in my testimony, if we want to talk about  
20          those, line 6 --

21        Q. Well, I hope I've talked about the relationship  
22          between 6b and 7 --

23        A. Okay.

24        Q. -- in example 2. Okay? And I would like you  
25          to -- to tell me, does the current tax expense

1 related to the timing difference -- is it  
2 offset by the deferred income tax expense  
3 associated with timing difference?  
4 A. Well -- well, line 6c equals the current -- the  
5 current income tax expense paid to the IRS or  
6 to the United -- you know, to the federal  
7 government. That's because --  
8 Q. I asked you about 6b and -- and row 7.  
9 A. Okay. What -- ask -- ask the question again.  
10 Q. Okay. In example 2, doesn't the current income  
11 tax expense associated with the timing  
12 difference -- isn't it offset by the deferred  
13 income tax associated with the timing  
14 difference?  
15 A. Well, they're the same amounts. I don't know  
16 what you mean by, "offset."  
17 Q. Well, in the calculation of net and total  
18 operating income, the deferred -- the deferred  
19 tax expense associated with the timing  
20 difference and the current income tax  
21 associated with timing difference have no  
22 effect, correct?  
23 A. Ask the question again?  
24 Q. Sure. In the calculation of net and total  
25 operating income, the current income tax

1 expense related to the timing difference and  
2 the deferred income tax expense associated with  
3 the timing difference offset and have no  
4 effect?

5 A. Well, the effect is that the deferred income  
6 tax expense is recovered from rate payers  
7 through utility rates even though the company  
8 is not making that payment to the United States  
9 government. For example -- well, you could  
10 look at any of these examples.

11 The -- the total income tax expense on  
12 line 6a and on line 8 equals the sum of lines  
13 6c and 6b. 6c is the line item that pertains  
14 to how much tax is being paid to the government  
15 and line 7 is how much is being recorded for  
16 financial reporting purposes on line -- for  
17 deferred income tax expense. Line 6b is  
18 irrelevant to the discussion that we're having.

19 I --

20 Q. Why is it -- why is it irrelevant?

21 A. Well, I mean, the company makes a -- a current  
22 income tax payment to the government, okay, and  
23 then they collect a different amount through  
24 rates through rate payers. Okay? So if -- if  
25 the company is collecting one amount based upon

1 the current income tax law and another amount  
2 based upon financial reporting purposes, the  
3 difference between the two is -- is considered  
4 cost-free capital; otherwise, it wouldn't be  
5 subtracted from rate base, so -- I mean, I  
6 don't know what more I can say about this  
7 exhibit. What's important here is the  
8 breakdown between -- of income tax expense  
9 between deferred income tax expense and current  
10 income tax expense and -- because the current  
11 -- well, I -- I'm just repeating myself.

12 Q. Doesn't the table show that a portion of 6c,  
13 total current income tax expense, offsets the  
14 amount of deferred income tax expense  
15 completely in row 7 in each of the examples?

16 A. You're saying line 6c?

17 Q. Yeah.

18 A. Well, okay, line 6 --

19 Q. (Inaudible.)

20 A. -- line 6c plus line 7 equals line 8.

21 Q. Right.

22 A. Okay. So, you know, line 6c relates to the  
23 amount that is actually paid to the government  
24 and line 7 amounts to the additional tax  
25 recorded as deferred income tax expense.

- 1 Q. Okay.
- 2 A. And when you add the two together, in example 2  
3 you get \$63.
- 4 Q. Okay. Now, let me ask you this.
- 5 Do you agree that row 8 correctly  
6 illustrates the level of income tax expense  
7 that would be included in the cost of service  
8 under each example?
- 9 A. Yes.
- 10 Q. Okay. Do you --
- 11 A. And so does 6 -- so does line 6a, by the way.  
12 6a and 8 both do.
- 13 Q. I'm with you, Mr. Proctor.
- 14 A. Okay.
- 15 Q. All right. Do you agree with me that no matter  
16 what the amount is in row 7, the amount -- no  
17 matter what the amount of deferred income tax  
18 is in row 7, it does not change the amount of  
19 income tax expense included in cost of service  
20 related on row 8?
- 21 A. No matter what the amount on line 7 is?
- 22 Q. Yeah.
- 23 A. You could say the same thing about line 6c --
- 24 Q. Okay.
- 25 A. -- or line 6b.



1 Q. Okay.

2 A. I mean, but it does make a difference -- those  
3 lines relate to the difference between what's  
4 being recovered from rate payers and what's  
5 being paid to the federal government, and the  
6 difference between those two amounts represents  
7 deferred income tax expense, and sometimes it's  
8 negative and sometimes it's positive.

9 In example 2 the deferred income tax  
10 expense is a negative \$147. So this would  
11 represent a timing difference in which the  
12 company is paying more current income tax  
13 expense than what they're recovering through  
14 rates. And I -- I discussed this type of  
15 example in my testimony. In my testimony I  
16 talk about if a utility sells an asset at a  
17 gain, they have to pay the tax on that gain up  
18 front yet they -- they normalize it for income  
19 tax purposes. So they offset that with a large  
20 amount of deferred income tax expense and they  
21 create a tax asset.

22 So in this particular case, example 2,  
23 that illustrates an example similar to if a  
24 utility sold an asset for a gain and they had  
25 to pay a tax on that gain of \$210, okay, yet

1 they were only able -- they had to defer  
2 collection of that tax by crediting \$147 for  
3 rate-making purposes as a -- as a credit to  
4 deferred income tax expense, which is shown on  
5 line 7. I mean, line 6c and line 7 and line 8  
6 are the lines that are the most important with  
7 respect to the points I make in my testimony.  
8 Okay? They relate to the -- to the effect on  
9 the revenue requirement of deferred income  
10 taxes and how that affects cost-free capital.

11 Q. Okay. So you said that lines 6c, 7 and 8 are  
12 the most important points -- or most important  
13 rows to the discussions in your surrebuttal  
14 testimony?

15 A. In my direct testimony also.

16 Q. Okay. So it -- I want to make sure I got the  
17 right rows. 6c, 7 and 8, right?

18 A. Right.

19 Q. Okay. Okay.

20 MR. PERRIEN: Can we -- I need to  
21 take a health break. Can I take breath break?

22 MR. BEATMANN: Sure.

23 MR. PERRIEN: Like 5 minutes.

24 MR. BEATMANN: Sure.

25 (The Deposition Proceedings went off

1 the record at 1:00 p.m.; whereupon, back on the  
2 record at 1:11 p.m.)

3 BY MR. PERRIEN:

4 Q. Now, when we left off you had told me that rows  
5 6c, 7 and 8 were the most important rows, the  
6 most critical rows with respect to your direct  
7 and surrebuttal testimony, right?

8 A. With respect to the deferred income tax ADIT  
9 issues, yes.

10 Q. Okay. So both FIN 48 and the NOL carried  
11 forward, right?

12 A. Yes.

13 Q. Okay. Do you agree that row 6c -- let's go  
14 back to my original set of questions. I want  
15 to make sure I'm on the same page with you.

16 Row 6c correctly illustrates the total  
17 current income tax expense under each of the  
18 examples?

19 A. Well, we've only looked at examples 1, 2 and 3,  
20 but it does -- it does for those.

21 Q. Okay. What about row 4 -- example 4?

22 A. Oh, okay. I'm sorry. I didn't look at it.

23 Q. Row 6c for example 4, is that a correct  
24 illustration of total current income expense?

25 A. Yes.

1 Q. Okay. All right. Row 7, does that provide a  
2 correct illustration of deferred income tax  
3 expense for each of the examples?

4 A. It does for 1 through 4.

5 Q. What do you -- or you mean -- you mean 1  
6 through 4 or you mean 2 through 4?

7 A. I meant 2 through 4, but it does through 1  
8 through 4 also.

9 Q. Okay. That's what I -- I was just trying to  
10 make sure. I wanted to make sure that's clear.

11 Okay. And do you agree that row 8  
12 correctly illustrates income tax expense that  
13 would be included in -- in rates for each of  
14 the examples?

15 A. Yes, and so does line -- it's the same as line  
16 6a, right.

17 Q. Okay. That's fine.

18 A. Okay.

19 Q. But your answer was yes as to row 8, right?

20 A. Right.

21 Q. Okay. Now -- okay. Now, let's go to your  
22 direct testimony.

23 A. Are we done with this exhibit?

24 Q. Well, keep it handy. I mean, just keep it  
25 handy, don't -- don't put it on the -- put it

1 in the shredder yet.

2 A. Where do you want me to go, what page?

3 Q. I didn't say any page, but in your -- isn't it  
4 true that in your discussions of income tax --  
5 of the -- of the treatment -- the rate-making  
6 treatment of the analog -- of the analog ADIT  
7 and the FIN 48 -- (inaudible) the FIN 48 items,  
8 that nowhere in your direct testimony do you  
9 discuss total income -- total current income  
10 tax expense?

11 A. I -- I don't -- I'm not -- I can't say that  
12 that's correct. I don't --

13 Q. Okay.

14 A. I mean, I -- I think I do discuss current  
15 income tax expense. I mean, I think --

16 Q. Okay. Then please show me -- please show me  
17 where, Mr. Proctor.

18 A. Okay. This might take a while.

19 Q. Okay.

20 A. Okay. I'm on page 71 of 88 --

21 Q. Okay.

22 A. -- of my direct testimony, line 15. Well --

23 Q. Okay. 71, line 15.

24 A. Well, actually, let's look at line 8, line 8.

25 Q. Okay.

1 A. Do you want me to read this -- or what do you  
2 want me to do? I mean, I --

3 Q. No. I want you to tell me -- tell me exactly  
4 where you reference current income tax expense.

5 A. Well, on lines 12 and 13 and on lines 15 and  
6 16.

7 Q. Okay.

8 A. Do you want me to continue on through my  
9 testimony?

10 Q. Yes.

11 A. Okay. On line 72 -- I mean, page 72 on lines  
12 10 -- line 10, 11, on lines 16 and 17 -- 18, I  
13 mean.

14 Q. Okay. On lines 16 and 17?

15 A. Well, it's a -- it's a continued -- it's a  
16 sentence. It begins on line 16 and ends on  
17 line 18.

18 Q. Okay.

19 A. On page 73, lines 1, 2 and 3, 4 and 5.

20 Q. Okay.

21 A. Excuse me. I -- I'm basically having to read  
22 my testimony. Do you want me continue on,  
23 because this is --

24 Q. Yes, yes.

25 A. Okay.

1 Q. Please do, please do.

2 A. Okay.

3 Q. I was hoping that you'd have a recollection of  
4 what was in your testimony, but if you don't  
5 that's fine. Let's -- let's go.

6 MR. BEATMANN: Well, let's be clear.  
7 Mr. Proctor's testimony, some of which was  
8 filed in February of this year, he's not able  
9 to recite every word verbatim in his testimony.  
10 So --

11 MR. PERRIEN: Yeah.

12 MR. BEATMANN: -- if -- if counsel's  
13 going to ask for every line or every word used  
14 in the testimony, then he's going to have to go  
15 through it.

16 MR. PERRIEN: Okay. Good. I agree,  
17 I agree.

18 BY MR. PERRIEN:

19 Q. Go ahead.

20 A. Page 76, lines 11 through 15.

21 Q. 11 through 15 I don't see a reference to  
22 current income tax expense.

23 Can you -- can you tell me where you are?

24 A. Okay. Page 76, line 11, "Under normalization  
25 treatment for income tax paid for the gain on

1 the sale of an asset, a utility occurs an  
2 upfront cash expenditure for paying income  
3 taxes to the government on the gain in the  
4 current -- in the year of the sale." That's  
5 current income taxes.

6 Q. Okay.

7 A. Page 76, lines 16 through 19, "The  
8 corresponding unrecovered accumulated  
9 investment represented by the ADIT asset  
10 balance is used to increase the utility's rate  
11 base, and the regulator thereby treats the cost  
12 incurred by utility to pay income taxes in the  
13 year of the sale," which is current income  
14 taxes.

15 Q. Okay.

16 A. Okay. Page 77, line 10 through 12 I discuss  
17 current income tax expense.

18 Q. Well, where -- where do you -- okay. Okay.  
19 You say...

20 A. Shall I move on?

21 Q. Yes.

22 A. Okay.

23 Q. Yeah.

24 A. Okay. On page 77, lines 15 through 17.

25 Q. Okay. And where does that CI -- is the current



1 income tax?

2 A. Okay. Let me go back. I already moved on.

3 Hold on. Line -- page 77, line 15.

4 Q. Okay.

5 A. "ENO did not incur a cash distribution to pay

6 income taxes to federal and state governments

7 with respect to these -- with respect to the

8 recording of these ADIT assets." That relates

9 to current income tax expense. You only make

10 cash distributions for current income tax

11 expense.

12 Q. Okay.

13 A. On page -- page 82 --

14 Q. Okay.

15 A. -- lines 11 through 15.

16 Q. Okay.

17 A. Okay. Now I need to go to my surrebuttal

18 testimony?

19 Q. Let me follow up on some elements in your

20 direct testimony in -- on page 79 -- on page

21 79, the Q that straddles 79 through 88.

22 A. Okay.

23 Q. Okay. In that explanation you do not address

24 current income tax expense, correct?

25 A. 79 through what -- where?

1 Q. 80 -- page 80.

2 A. Okay. Let me read that again.

3 Q. Sure.

4 A. Okay. I -- what I read, I think, is -- what  
5 you asked me to read was page 79, line 12  
6 through page 80, line 2?

7 Q. Yes.

8 A. Okay. I don't think I discussed current income  
9 tax expense in that paragraph.

10 Q. Okay. Okay. And in that Q-and-A, that's the  
11 justification that you provide for excluding  
12 the NOL ADIT from rate base, right?

13 A. Well, I mean, that's part of it. I mean, the  
14 -- this whole section of my testimony discusses  
15 the issue. That's --

16 Q. Right.

17 A. That's one of my -- that's one of my  
18 conclusions.

19 Q. Okay. Isn't this the critical omission from  
20 the PLRs that you mentioned earlier, this --  
21 the function of DIT expense, in your mind?

22 A. Well, the point that deferred income tax  
23 expense has been recorded above the line with  
24 respect to the timing difference and collected  
25 through rates -- treated above the line for

1 rate-making purposes is the primary reason in  
2 my testimony as to why the liability that  
3 offsets -- the liability that offsets that  
4 deferred income tax expense should not be  
5 offset for rate-making purposes by the NOLCF  
6 ADITS balance.

7 I mean, I -- in the first sentence I say,  
8 "The NOLCF ADITS assets relate to deferred  
9 income tax expense previously recorded as an  
10 above-the-line expense for rate-making  
11 purposes." Okay? And my point is that, since  
12 that is the case, cost-free capital was  
13 provided ENO because they increased their  
14 revenues by the amount of those deferred income  
15 tax expenses, creating the cost-free capital.  
16 Therefore, the offsetting ADIT balance --  
17 liability balance should be used to decrease  
18 rate base. Okay.

19 Q. Okay. But the accelerated tax deductions did  
20 not increase ENO's revenues, right?

21 A. The accelerated tax deduction?

22 Q. Yeah.

23 A. Well, yeah, I just said it did. The -- because  
24 it created deferred income tax expense, and  
25 that deferred income tax expense is included in

1 calculating the revenue requirement; therefore,  
2 it's collected from rate payers.

3 Q. Okay. Well, let's go back to RLR-6. Okay?

4 A. Okay.

5 Q. All right. In example 1 there is no  
6 accelerated reduction, right?

7 A. There's no timing difference, right. There's  
8 no timing difference.

9 Q. Right. And the timing difference would be  
10 created by accelerated tax depreciation, right?

11 A. Yes. Well, I'm just saying --

12 Q. Okay.

13 A. When I said that in relation to this exhibit  
14 earlier you said, well, it could relate to any  
15 timing difference, so --

16 Q. I -- I know, but we're talking now about the --  
17 we're talking about the context of this  
18 question --

19 A. Right.

20 Q. -- and that's fine, but --

21 A. Okay. I'm just --

22 Q. Okay.

23 A. I'm saying I tried to talk about it that way  
24 earlier and you wanted to change me, so I --

25 Q. Well, I --

1 A. All right.

2 Q. -- I put accelerated tax depreciation in there  
3 just because -- okay.

4 A. Okay.

5 Q. But we're okay with accelerated tax  
6 depreciation if there is not -- if there's no  
7 accelerated tax depreciation in example 1 --

8 A. Right.

9 Q. -- we use -- okay.

10 A. Yes.

11 Q. Right. But in example 3 there is an  
12 accelerated deduction, right?

13 A. Yes.

14 Q. Okay. And you would agree with me between  
15 example 1 and example 3 the level of income tax  
16 expense does not change that's included in the  
17 cost of service?

18 A. Yes, but the deferred income tax does change  
19 and, you see, that's the -- that's the  
20 important point here. If you look at line 7,  
21 the company is recovering \$21 for deferred  
22 income tax expense through its rates even  
23 though it's only paying \$42 in current income  
24 tax. So what they're actually collecting from  
25 rate payers is the \$42 that they're paying the

- 1 government and the \$21 of deferred income tax  
2 expense; therefore, they're collecting \$63 of  
3 tax expense from the rate payers.
- 4 Q. Mr. Proctor, didn't you say earlier that that  
5 -- the deferred income tax increased the  
6 company's revenues?
- 7 A. Deferred income tax?
- 8 Q. Yeah.
- 9 A. If it's collected in rates it -- it increases  
10 -- if it's a -- if it's a debit amount. I  
11 mean, deferred income tax expense can be a  
12 debit or a credit, but in this particular case  
13 it's a debit. Okay?
- 14 Q. Right.
- 15 A. So it increases the revenue requirement. It  
16 increases the revenue requirement --
- 17 Q. Versus what, Mr. -- all right. It increases  
18 the revenue requirement versus what,  
19 Mr. Proctor?
- 20 A. Versus what they pay the government. Okay.
- 21 Q. Okay. I --
- 22 A. Okay. What they collect in rates is line 8.  
23 Okay?
- 24 Q. Right.
- 25 A. Okay. What they pay the government is on line

1           6c. Therefore, they're collecting \$63 through  
2 rates and only paying \$42 to the government, so  
3 they're netting -- they're netting \$21 there,  
4 which is -- which is why you -- which is why  
5 you would -- okay. This is a debit of \$21 to  
6 deferred income tax expense. That increases  
7 the revenue requirement. At the same time  
8 you're crediting ADIT for \$21, which decreases  
9 rate base. Okay?

10           Now, if you come back in a following year  
11 and want to offset that liability balance of  
12 \$21 with an ADIT asset for a net operating  
13 loss, you're eliminating the ADIT balance even  
14 though the company recovered the deferred  
15 income tax expense through rates, which is the  
16 point -- one of the points I make in my  
17 testimony.

18       Q. The point you make in your testimony is that  
19 the DIT expense increases the -- the utility's  
20 revenues, right?

21       A. Yes, the revenues that they charge rate payers.

22       Q. But does it -- Exhibit RLR-6 show that if the  
23 company didn't take the tax deduction, the  
24 level of income tax expense and the revenue  
25 requirement would be exactly the same, right?

1 A. But the current income tax would be different.

2 Okay?

3 Q. No, that's not my -- my question. I asked  
4 about row 8, not row -- not row 6c.

5 A. Okay. Ask the question again.

6 Q. I asked about the income tax expense included  
7 in the cost of service. Wouldn't they be the  
8 same regardless of whether there was -- the tax  
9 deduction was taken and it produced deferred  
10 income tax expense or that the accelerated tax  
11 deduction was not taken, the revenue  
12 requirement associated with the income tax  
13 expense would not change.

14 A. For income tax expense the revenue requirement  
15 would be \$63.

16 Q. Whether or not the company took the accelerated  
17 tax deduction, right?

18 A. Well, right, I mean, but -- but that's not the  
19 relevant question here. The relevant question  
20 here is what do they recover through rates  
21 versus what -- what I'm telling you --

22 MR. BEATMANN: Hold up, Jim. We've  
23 got a problem with the feed.

24 MR. PERRIEN: Okay.

25 THE WITNESS: You can't hear me?



1 MR. PERRIEN: We couldn't. We -- you  
2 froze for a second.

3 MR. BEATMANN: Every now and then the  
4 screen freezes -- the audio freezes so we can't  
5 hear you every now and then, but -- but we try  
6 to let you know as soon as it happens.

7 MR. PERRIEN: Can the court reporter  
8 read back the last question?

9 THE WITNESS: Every time that happens  
10 I'm making a very good point over here too,  
11 so...

12 MR. PERRIEN: I want to hear that  
13 very good answer, so let's -- let's take it  
14 from the top.

15 THE WITNESS: I thought maybe you  
16 were pushing some button over there.

17 MR. PERRIEN: No, I thought you were  
18 pushing the button. I -- I don't mean that.

19 THE WITNESS: I'm just kidding.

20 MR. PERRIEN: We're joking.

21 THE WITNESS: I'm just kidding.

22 MR. PERRIEN: I'm joking too.

23 All right. Can I ask the court reporter  
24 to read back the previous question?

25 (The requested portion was read

1 back.)

2 BY MR. PERRIEN:

3 Q. Can you finish that answer?

4 A. Well, either that or you can ask the question  
5 again. I mean, I -- I -- the point -- the  
6 point I was making is that -- I think we were  
7 talking about example 3. Okay? In example 3,  
8 the amount of income tax expense included in  
9 the cost of services is \$63, on line 8. The  
10 amount of current income taxes they actually  
11 pay to IRS, they being ENO in this  
12 illustration, is only \$42, which means there's  
13 \$21 of deferred income tax expense recovered  
14 through rates that is not being paid by ENO to  
15 the government. Rates are collecting \$63,  
16 ENO's only paying 42 to the government;  
17 therefore, they get a cost-free capital benefit  
18 there. They recover --

19 Q. Okay.

20 A. Their -- their cash outflow is \$21 less than  
21 their cash inflow from -- from the income  
22 taxes.

23 Q. Okay. But in taking -- but that did not  
24 increase the tax expense -- whether ENO took  
25 the tax deduction or not, that did not increase

1 tax expense between example 1 and example 3?

2 A. I -- I've made that point several times today,  
3 I'd make it several -- I make it in my  
4 testimony, but it's not the relevant point -- I  
5 mean, it's not the point I make in my  
6 testimony. The significance of -- I mean,  
7 income -- income tax expense is the sum of  
8 deferred income tax expense and current income  
9 tax expense. So it's going to be the same  
10 under each of these scenarios.

11 Q. Right. And so it's going to be the same  
12 whether ENO takes the tax deduction or not,  
13 right?

14 A. Yes.

15 Q. Thank you.

16 All right. I want to go to Exhibit RLR-3  
17 from Mr. Roberts' rejoinder testimony.

18 A. Exhibit RLR-3?

19 Q. Yeah.

20 A. All right.

21 Q. It's -- it's before the deposition transcript  
22 experts.

23 A. Okay. Okay. I think I found it.

24 Q. Okay. It's -- it's very short. It's two  
25 lines.

1 A. Okay.

2 Q. Okay. Okay. Doesn't RLR-3 show that  
3 accelerated tax depreciation does not result in  
4 a higher level of income tax expense being  
5 included in the calculation of net utility  
6 operating income than if there would be no  
7 accelerated tax deductions taken by ENO?

8 A. What was your question? I was just looking at  
9 your exhibit here. What was the question?

10 Q. Yeah, sure. Does Exhibit RLR-3 show that the  
11 fact that ENO took liberalized depreciation  
12 deductions does not increase income tax expense  
13 in the -- in the calculation of net total  
14 operating income as compared to the situation  
15 where ENO did not take those accelerated tax  
16 deductions?

17 A. Okay. Ask the question one more time.

18 Q. Sure. Doesn't Exhibit RLR-3 show that the  
19 company's income tax expense does not change  
20 whether the company takes accelerated tax  
21 depreciation deductions or does not take  
22 accelerated tax depreciation deductions?

23 A. Well, yes, I think I've already made that  
24 statement in our previous discussion, that the  
25 income tax expense in total would be the same,

1 but -- but the components need to be broken  
2 down between deferred and current income tax  
3 expense.

4 Q. You locked up.

5 THE COURT REPORTER: I'll read the  
6 answer back.

7 MR. BEATMANN: Wait -- just wait one  
8 minute. The -- the screen locked.

9 THE COURT REPORTER: Do you want me  
10 to read his answer?

11 MR. PERRIEN: The last words he said  
12 was the components need to be --

13 (The last answer was read back.)

14 BY MR. PERRIEN:

15 Q. Is that the end of your answer?

16 A. Well, I -- I'm remaking the point that I've  
17 made several times this afternoon, and that is  
18 whether cost-free capital is created or not is  
19 not related to what the total income tax  
20 expense is. It's what the component of that  
21 total -- the two components of that current --  
22 that total income tax expense are, how much is  
23 current and how much is deferred and whether  
24 it's credit or debit balances. I mean, I've  
25 already agreed that the total income tax

1 expense is the same. Okay? I mean, I --

2 Q. Okay.

3 A. I think you're just asking me the same question  
4 here that you've already asked me a couple  
5 times before.

6 Q. I did ask the same question, but the difference  
7 is that with respect to ENO's cost of service  
8 study.

9 A. I -- I agree with that too -- if I haven't  
10 already answered that, I agree again. I mean,  
11 I agree, yes.

12 Q. Okay.

13 A. Okay.

14 Q. You agree with respect to ENO's cost of service  
15 study?

16 A. What I'm saying is the total income tax expense  
17 consists of current and deferred income tax  
18 expense, okay, and that I agree -- I've already  
19 made the statement several times. I feel like  
20 I keep repeating myself, but I -- I -- I agree  
21 with the point about the total income tax  
22 expense. The breakdown between deferred and  
23 current is what is the basis of my discussion  
24 and my testimony concerning the ADIT assets,  
25 so...

1 Q. Okay. Is the breakdown between the current  
2 income tax expense and deferred income tax  
3 expense with respect to liberalized  
4 depreciation correctly reflected in this  
5 exhibit RLR-3?

6 A. Doesn't appear to be.

7 Q. And why is that?

8 A. Well, because this -- this exhibit shows that  
9 the current income tax expense and the deferred  
10 income tax expense are the same amount, and  
11 they're -- they're not.

12 Q. Okay. The current tax expense -- the current  
13 income tax expense related to the timing  
14 difference, okay, isn't it -- doesn't it --  
15 isn't it offset by the deferred income tax  
16 expense associated with the timing difference  
17 in the ENO's cost of service study?

18 A. Well, I mean, I don't have the cost of service  
19 study here I'm looking at, okay, but what I'm  
20 saying is in the determination of ENO's revenue  
21 requirement, they collect income taxes from  
22 rate payers. That income tax amount is going  
23 to have a deferred component and a current  
24 component, okay, so they're not going to offset  
25 each other. The two together sum to income tax

1 expense. It's just like your example 2 in this  
2 -- in this Roberts exhibit that we were looking  
3 at a minute ago. Current income tax expense in  
4 example 3 was \$42, deferred income tax expense  
5 was \$21, and the total tax expense was 63. The  
6 42 and the 21 don't offset each other. They  
7 add to get what the current income tax expense  
8 is -- I mean, the current -- the recoverable  
9 income tax expense and the cost of service.

10 Q. Okay.

11 A. They don't offset each other. I mean, if they  
12 did you would never have ADIT.

13 Q. Well, there is deferred income tax expense in  
14 exhibit RLR-3, right?

15 A. Right.

16 Q. So there was ADIT?

17 A. Examples 1 -- yeah, there is in examples 1  
18 through 3 but, from looking at this one-page  
19 exhibit you provided me, RLR-3 --

20 Q. Right.

21 A. -- it's showing that the current income tax  
22 expense and deferred income tax expense are the  
23 same amounts.

24 Q. Well, no, they're opposite.

25 A. Opposite amounts.



1 Q. And they net to zero and --

2 A. Which is not the case.

3 Q. -- this is an excerpt -- excuse me?

4 A. Which is not the case in reality. Their  
5 deferred -- the company's deferred income tax  
6 expense and current income tax expense that  
7 they recover through rates are different  
8 amounts and they don't offset each other.

9 Q. Now, this is only -- this exhibit only shows  
10 the current income tax amount associated with  
11 accelerated tax depreciation deductions. It  
12 does not show the complete income tax expense,  
13 right.

14 A. Well, I mean, the same thing applies for  
15 current -- I mean, for the liberalized  
16 depreciation. I mean, there's going to be a  
17 current component and a -- and a -- did we lose  
18 him?

19 (Off-the-record discussion.)

20 BY MR. PERRIEN:

21 Q. All right. So, Mr. Proctor, is your testimony  
22 that Exhibit RLR-3 does not correctly represent  
23 the effect of the timing difference with  
24 respect to liberalized depreciation in ENO's  
25 cost service study?

1 A. I'm saying it doesn't relate to my testimony.

2 I don't know what these numbers refer to. I  
3 mean, I -- I don't have the cost of service  
4 study to -- to cross-reference these two, but  
5 these numbers are not relevant to the  
6 discussions in my testimony.

7 Q. Let's -- let's switch gears.

8 THE WITNESS: Excuse me. There's  
9 another gentleman in our photo now. Do you see  
10 the gentleman?

11 MR. PERRIEN: Yes, I do.

12 (Off-the-record discussion.)

13 MR. PERRIEN: All right. We're going  
14 to switch gears, prepaid pension -- pension  
15 asset.

16 THE WITNESS: Can I take a  
17 five-minute health break?

18 MR. PERRIEN: Yes, yes.

19 (The Deposition Proceedings went off  
20 the record at 1:59 p.m.; whereupon, back on the  
21 record at 2:04 p.m.)

22 BY MR. PERRIEN:

23 Q. Okay. Now, in your direct testimony you took  
24 issue with the forecasted balance of the  
25 prepaid pension asset as of December 31st,

1           2018, right?

2    A.   In the direct testimony?

3    Q.   Yeah.

4    A.   The forecasted balance?

5    Q.   Yeah.

6    A.   Yes.

7    Q.   Okay. Now, in that testimony you explained

8           that the pension asset may vary significantly

9           over time due to financial markets and plan

10          benefit changes, right?

11   A.   Could you direct me --

12   Q.   Page 67.

13   A.   Okay. Okay. What line are you looking at?

14   Q.   Lines 11 through 12.

15   A.   Okay. Yes.

16   Q.   Okay. Now -- now, when you said,

17          "significantly over time," did you mean that

18          month-to-month changes in the financial markets

19          could change the value of the prepaid pension

20          asset?

21   A.   Well, the -- the answer to that question is

22          more complex than that question implies. First

23          of all, when I'm talking about the prepaid

24          pension asset here, it would be the funded

25          status of the pension plan plus the balance of

1 the benefit obligations regulatory asset.

2 Okay? And it would -- it would be the balance  
3 of the benefit obligations regulatory asset  
4 that is being recognized for rate-making  
5 purposes. So in this -- so, given that  
6 qualification, would you restate your -- your  
7 question?

8 Q. I'm talking about the prepaid pension asset,  
9 which excludes SFAS 158 accounting  
10 requirements.

11 A. That's the benefit obligations regulatory  
12 asset.

13 Q. Right, and we don't look at -- we're not -- we  
14 don't include that in the prepaid pension  
15 asset, right?

16 A. Well, the company makes an adjustment to add it  
17 to the funded status of the plan.

18 Q. What do you mean by that statement?

19 A. Well, what I mean is that the fund -- the  
20 funded status of the plan is equal to the  
21 benefit obligations liability plus the current  
22 value of the pension plan. Okay? And at the  
23 end of 2017 and then of 2018 that funded status  
24 is a credit or negative amount. In other  
25 words, the benefit obligations exceed the

1 funded -- the value of the -- the fair market  
2 value of the pension plan assets, okay, so  
3 that's credit. Then the company adds to that  
4 credit the balance of the benefit obligations  
5 regulatory asset to come up with their proposed  
6 prepaid pension asset, which -- which becomes a  
7 -- a positive number instead of a negative  
8 number.

9 Q. In its calculations of prepaid pension asset,  
10 doesn't the company exclude both the benefit  
11 obligation and the regulatory asset?

12 A. No.

13 Q. Okay.

14 A. No, they don't -- they don't.

15 Q. Let's look at the company's response to  
16 Advisor's 3-37.

17 A. Okay. Let me -- let me find that. Okay. I  
18 have it. I have it.

19 Q. Okay. Let's go to page SS 105.

20 A. Okay. I have it.

21 Q. Have you seen this -- this data request  
22 response before?

23 A. Yes, I have. I -- you know, it's probably been  
24 several months since I've looked at it, but I  
25 -- I've seen it. I -- I'm sure I wrote this

1 data request.

2 Q. Okay. Okay. When you -- when you -- does this  
3 page -- in your mind does it show the  
4 calculation of the prepaid pension asset by  
5 month?

6 A. It appears to, yes.

7 Q. Okay. And do you agree with me that the -- the  
8 change in the amount of the prepaid pension  
9 asset between January and December is a  
10 function of columns C, D and H?

11 A. The change in the balance?

12 Q. Yes.

13 A. Well, what I -- okay. Let's look at January  
14 here.

15 Q. Yeah.

16 A. The balance in column K --

17 Q. Yes.

18 A. -- equals F plus J. Okay?

19 Q. Okay.

20 A. F is the funded status of the plan, which is  
21 what I was speaking about a few minutes ago,  
22 which is --

23 Q. Right.

24 A. -- which is the difference between the benefit  
25 obligations under the plan and the fair market

1 value of the pension assets at that point in  
2 time. Okay?

3 Q. Okay.

4 A. Which means it's a negative \$58,608,000.

5 Q. Okay.

6 A. In column J is the benefit obligations  
7 regulatory asset of 95,403,000.

8 Q. Right.

9 A. Okay. If you add those two together, which is  
10 what I was speaking about a few minutes ago,  
11 you come up with company's proposed pension  
12 prepaid pension asset, which is --

13 Q. I got that.

14 A. Okay. But this is what I was explaining a few  
15 minutes ago before we got this exhibit out.

16 Q. Right.

17 A. Okay.

18 Q. Okay. All right. I just wanted to make sure  
19 that we -- we were talking about the same  
20 thing.

21 A. Okay.

22 Q. Now, what -- do you agree with me that what  
23 changed the funded status in January is what  
24 happened in columns C and D?

25 A. The funded status?

1 Q. Yeah.

2 A. It -- yes.

3 Q. Okay. All right.

4 A. Well, and E also, C, D and E.

5 Q. Okay. C -- well, E's not January. E --

6 A. Okay. Okay.

7 Q. Okay. But E also changes the funded status,

8 right?

9 A. Right.

10 Q. All right. But what happened in E doesn't

11 change the balance of the prepaid pension

12 asset, right?

13 A. In column E?

14 Q. Yeah.

15 A. Well, it does for December.

16 Q. Well, isn't what's in column E offset by the

17 amount in column I and, therefore, the prepaid

18 pension asset --

19 A. Well --

20 Q. -- does not change as a result?

21 A. Yeah, I'll agree with that, but I thought -- I

22 thought you asked about the funded status.

23 Okay. I -- I agree that when you take into

24 account column I they -- they offset each

25 other.



1 Q. Okay. And so what I'm trying to do is strip  
2 out the amounts that are duplicated and look at  
3 only the amounts that are really changing the  
4 prepaid pension asset.

5 A. Okay.

6 Q. Okay? So the only items that are changing the  
7 amount of the prepaid pension asset are the --  
8 are the amounts in columns C, D and H?

9 A. For the purposes of this exhibit I will agree,  
10 yes.

11 Q. Okay. And so when we talk about excluding SFAS  
12 158, right, we're excluding a portion of the  
13 amounts that are in B, F, G and J, right?

14 A. Well, I'm not sure I agree with your  
15 characterization of excluding because, I mean,  
16 like we -- we noticed a few minutes ago, column  
17 K equals column F plus column J, and column F  
18 includes B, C, D and E, okay, is the net --

19 Q. Right.

20 A. Okay. So, basically, what you're doing in this  
21 exhibit is you're including SFAS 158 instead of  
22 excluding, because in column J you're adding it  
23 in. Column J is SFAS 158. It is -- it's the  
24 benefit obligations regulatory asset. And  
25 you're adding it to the funded status of the

1 plan, you see, because you --

2 Q. Yeah, I -- I see that. I see that. That's

3 what the calculation does that's here, but

4 isn't another way to look at it is to say,

5 well, gee, I take -- I start with my qualified

6 prepaid pension balance, okay, and we can see

7 the changes from month to month are a function

8 of C, D and H only, because those amounts roll

9 up into the other columns, right?

10 A. I agreed with that question a few minutes ago.

11 I said yes.

12 Q. Okay.

13 A. What I -- my disagreement was with respect to

14 your reference to the obligations regulatory

15 asset as being excluded when in actuality it's

16 included --

17 Q. Okay.

18 A. -- because it's added -- it's added back

19 instead of excluded. It's add --

20 Q. Okay. But you would agree that a portion of

21 the regulatory asset is offset by the funded

22 status, right? Is that what you're trying to

23 tell me?

24 A. No, I don't think it's offset. I think the --

25 I think the benefit regulatory asset offsets

1 the funded status. In other words, through  
2 this exhibit here, if this related to the year  
3 2018 instead of 2016 --

4 Q. Right.

5 A. -- what the company would be proposing in rate  
6 base is column K.

7 Q. Right.

8 A. Okay? Which includes adding the funded status  
9 of the plan to the benefit obligations  
10 regulatory asset, which is what this exhibit --

11 Q. Okay.

12 A. -- which is what this exhibit does. It's just  
13 -- it's for 2016 instead of 2018.

14 Q. Okay. So -- so let's go back -- going back to  
15 your recommendation, on page 68 you recommended  
16 that the prepaid pension asset be based on the  
17 actual data for December 31st, 2018, right?

18 A. In my direct testimony I made that  
19 recommendation subject to receiving responses  
20 to outstanding data requests CNO 12-2 and 12-3,  
21 which we didn't get --

22 Q. Right.

23 A. -- until more than two months after they were  
24 submitted to the company.

25 Q. I got that.

- 1 A. Okay.
- 2 Q. All right. Now, in your testimony you said the  
3 financial market is declined in the fourth  
4 quarter, and that can have a significant effect  
5 on the amount of ENO's prepaid pension asset,  
6 right?
- 7 A. Okay what -- where did you -- what -- what page  
8 and what line are you referring to in my  
9 testimony?
- 10 Q. Page 68 --
- 11 A. Okay.
- 12 Q. -- lines 11 through 13.
- 13 A. Okay. Yes.
- 14 Q. Okay. You said decline in the financial  
15 markets could have a substantial impact on the  
16 prepaid pension asset, right?
- 17 A. Yes.
- 18 Q. Okay. Now, in what you're describing -- this  
19 decline in asset values that you're describing,  
20 wouldn't that be caught with an unrecognized  
21 loss under SFAS 158?
- 22 A. Well, the unrecognized losses are part of the  
23 calculation for the benefit obligations  
24 regulatory asset. Okay? To the extent they're  
25 going to be allowed in rate base, then that

1 will have an effect on the prepaid pension  
2 asset in rate base. The benefit --  
3 Q. (Inaudible.)  
4 A. The benefit obligation --  
5 Q. Go ahead.  
6 A. The benefit obligations regulatory asset has  
7 the effect of truing up an actual and estimated  
8 funded status of the plan which more  
9 specifically updates the fair market value of  
10 the plan assets and the -- the benefit  
11 obligations liability of -- of the pension  
12 plans such that they offset. So if you didn't  
13 include unrecognized losses in that true-up  
14 process, then the fair market value of that --  
15 the pension plan at the end of the year would  
16 have substantial impact on the pension asset  
17 that's allowed in rate base.  
18 Q. Is it your testimony here today that the SFAS  
19 158 true-up affects the balance of the prepaid  
20 pension asset?  
21 A. I think I discussed this in my surrebuttal  
22 testimony and I think -- I think --  
23 Q. I'm asking you a question.  
24 A. Well, I mean, I think I've made that --  
25 Q. Go ahead.

1 A. I made that point in my surrebuttal testimony.

2 Do you want me to -- let me -- let's go read  
3 that. Okay.

4 Okay. On page 65 of my surrebuttal  
5 testimony, beginning on line 13 --

6 Q. Wait. Page 65 on line 13. Yes.

7 A. Okay. I say, "I found that ENO's actual funded  
8 status of its pension funds at December 31st,  
9 2018 was significantly less than the amount  
10 forecasted by Entergy's actuaries, Aon Hewitt.  
11 Also, ENO's actual balance for its benefit  
12 obligations regulatory asset at December 31st,  
13 2018 significantly larger than the amount  
14 forecasted by Aon Hewitt. Further, Aon  
15 Hewitt's overestimated funded status of ENO's  
16 pension funds and underestimated balance for  
17 ENO's benefit obligations regulatory asset at  
18 December 31st, 2018 respectively offset one  
19 another. After accounting for rounding, ENO's  
20 forecasted balance as determined by Aon Hewitt  
21 and actual balances for the pension asset at  
22 December 31st, 2018 remain the same."

23 Q. Okay.

24 A. So --

25 Q. And then you continue on, and let's go to -- a

1 little further down on page 66.

2 You discuss a netting process, right?

3 A. On page 5 -- I mean, on line 5?

4 Q. 6?

5 A. Line 5?

6 Q. Line 15.

7 A. Line 15. Yes.

8 Q. Right.

9 A. I'm basic -- that -- that sentence, I'm

10 basically stating the same thing that I just

11 read to you.

12 Q. Right.

13 A. Right.

14 Q. You're right. Differences between the

15 estimates and the actual net gains and losses,

16 have no effect on a prepaid pension asset,

17 right?

18 A. To the extent that the pre-pension asset is

19 fully includable in rate base.

20 Q. Well, we're talking about ENO's calculation

21 right now. Okay?

22 A. Okay. Okay.

23 Q. All right. What happened in the -- it turns

24 out what happened in the markets had no effect

25 on ENO's prepaid pension asset, right?

- 1 A. Not the way that ENO calculates it, okay, which  
2 includes unrecognized gains and losses to the  
3 value of their pension plan. Okay?
- 4 Q. Well, wait. Don't you have a timing problem  
5 with that?
- 6 A. Well, I mean, basically, the -- the position  
7 that the company is taking here is that the  
8 balance in rate base of the benefit obligations  
9 regulatory asset needs to be mark to market  
10 regardless of whether the gains and losses have  
11 been recognized or not. Okay?

12 Now, for the -- for purposes of the  
13 benefit obligations regulatory asset, you know,  
14 that's used in calculating pension expense to  
15 collect it in rates, you know, that is the  
16 correct way to make the calculation. It  
17 becomes another decision as to what you want to  
18 include in -- in rate base. For example, do  
19 you want to include the funded value -- the  
20 fair market value of the funded assets in rate  
21 base based upon marketing the -- the value of  
22 those assets to mark it regardless of whether  
23 they've been recognized or not. In other  
24 words, they -- they recognize both -- I mean,  
25 they include both recognized and unrecognized



1 losses and gains in the calculation of their  
2 benefit obligations regulatory asset and,  
3 therefore, the pension asset. It's basically  
4 through the netting process of the benefit  
5 obligations regulatory asset those -- the  
6 values are -- are marked to the market value.  
7 It's a -- it's a mark to market type  
8 calculation.

9 MR. BEATMANN: Wait. Hold on, Jim.  
10 Hold on a second.

11 THE WITNESS: Did you lose me?

12 MR. BEATMANN: Yeah, we -- we lost  
13 the connection for a second.

14 BY MR. PERRIEN:

15 Q. Isn't it true you reached the conclusion that  
16 the market declines in 2018 had no effect on  
17 ENO's prepaid pension asset as ENO calculated  
18 it?

19 A. Yes.

20 Q. Okay. All right. And -- and you stated that  
21 conclusion in your surrebuttal testimony,  
22 right?

23 A. Yes.

24 Q. Okay. Didn't ENO tell you that in the response  
25 to Advisor's 3-37 before you filed your direct

1 testimony?

2 A. No. I would say no.

3 Q. Okay.

4 A. It's not even relevant to the same year.

5 Q. Let's go to the explanation that's in -- in

6 part A of Advisor's 3-37.

7 A. Excuse me. Which page are we looking at?

8 Q. SS 104.

9 A. 104? Okay. 104 --

10 Q. Okay. Yes.

11 A. Which -- which --

12 Q. I want you to just look at the paragraph that

13 begins at December 31st and I'd like you to

14 read that paragraph and the next paragraph.

15 A. "At December 31st, when the PBO and assets are

16 measured by the independent external actuary --

17 "

18 Q. That -- that's the correct paragraph. I just

19 wanted you to read them to yourself --

20 A. Oh, okay. I'm sorry.

21 Q. -- to get familiar with it.

22 A. Okay. I've read it.

23 Q. Okay. In those two paragraphs doesn't the

24 company write that the actual net gains and

25 losses that are experienced during the year

1 have no effect on the prepaid pension asset?

2 A. That's what this says but, I mean, I -- I

3 agreed with that. My testimony said that also.

4 Q. Did your direct testimony say that?

5 A. No, the surrebuttal testimony did.

6 Q. Okay. And do you agree that the calculations

7 on page SS 105, like with respect to 2016, show

8 that the actual market performance during 2016

9 did not affect the prepaid pension asset

10 balance as of December 31st, 2016?

11 A. Yes. We've already been over that.

12 Q. Okay. And that would be the same for 2018 as

13 well, right?

14 A. Well, I don't have 2018 in front of me, but the

15 way the company makes this calculation, it

16 would -- it would also be approximately the

17 same.

18 Q. All right. That the market decline does not

19 affect the -- the amount of the pension --

20 prepaid pension asset?

21 A. What's that? I didn't hear you. You --

22 Q. The market decline in 2018 does not affect the

23 ending balance of the prepaid pension asset on

24 December 31st, 2018?

25 A. Well, it does. It's just that that effect is

1 offset by an adjustment to the benefit  
2 obligations regulatory asset. I mean, like --  
3 like I read from my testimony, Aon Hewitt  
4 forecasted the funded status of the plan and  
5 the balance of the regulatory asset before the  
6 end of 2018. I don't remember when their  
7 calculations were done. Before the end of 2018  
8 their estimates were way off of actual  
9 experience, and part of that was because the --  
10 the market had done significantly worse than  
11 what they expected it would do and their -- the  
12 value of their pension fund assets were less  
13 than what -- they had forecasted a gain on the  
14 assets and the pension plan for 2018 and they  
15 ended up having a significant loss on the  
16 pension plan assets. That loss, relative to  
17 the forecasted gain, whatever that number  
18 turned out to be -- I don't have it with me  
19 right now -- was offset by an increase to the  
20 benefit obligations regulatory assets so that  
21 when you add the benefit obligations regulatory  
22 asset to rate base, it offsets that loss. In  
23 other words, the company still recovers a  
24 return -- or is still proposing to recover a  
25 return on those losses by adding them back to

1 the benefit obligations regulatory asset.

2 Q. Well -- strike that.

3 Would you agree with me that the change  
4 in the prepaid pension asset between January 1  
5 and December 31st, 2018 was a function of the  
6 extent to which the employer contributions to  
7 the trust exceeded pension expense for the  
8 trust?

9 A. Yes.

10 Q. Okay. Would you agree that the contributions  
11 to the trust fund are scheduled out and given  
12 to ENO by its independent actuary?

13 A. I believe that's the case.

14 Q. Okay. Would you agree that the pension expense  
15 is calculated by the independent actuary and  
16 given to ENO to use for financial accounting  
17 purposes?

18 A. I'm not sure as to whether that comes from Aon  
19 Hewitt or not. In other words, what I'm saying  
20 is I'm not sure whether they calculate it or  
21 whether the company calculates it.

22 Q. In -- in 337 doesn't the company assert that it  
23 was calculated by ENO -- by ENO's actuary?

24 A. I'll have to look.

25 Q. Well, let me be a little bit more precise,

1 because it's going to take you -- it might take  
2 you a little bit.

3 Could you look at footnotes 2 and 4 to  
4 the qualified pension calculations?

5 A. On what page?

6 Q. Let's -- go to SS 107.

7 A. 107? Okay.

8 Q. Yeah.

9 A. Okay.

10 Q. And I want you to look at footnotes 2 and 4.

11 A. Okay. Well, footnote 4 refers to the annual  
12 amortization of the losses and gains,  
13 unrecognized gains and losses. I think you --  
14 I thought you asked me a different question  
15 than that.

16 Q. You're breaking up, Jim -- I mean, Mr. Proctor.

17 A. Okay. Footnote 4 relates to annual  
18 amortization of unrecognized gains and losses  
19 as provided by the actuary.

20 Q. Right.

21 A. But I thought your question was something  
22 different than that. I thought --

23 Q. Oh.

24 A. I thought you asked me about pension expense.

25 Q. Right. And isn't -- aren't 2 and 4 -- those

1 two components together equal pension expense

2 that's reflected in the cost of service?

3 A. I mean, I think there's some other elements  
4 that go into the calculation, but they're --  
5 they're part of the calculation.

6 Q. Right.

7 A. Yeah.

8 Q. Okay. And you agree that those amounts are  
9 supplied by the actuary?

10 A. That's what this says here.

11 Q. Okay.

12 A. Yeah.

13 Q. And you have no reason to dispute that, right?

14 A. No.

15 Q. Okay.

16 MR. PERRIEN: I've got one more set  
17 of questions. Can I -- can I have a  
18 five-minute -- thanks. I need a five-minute --  
19 I've got one more passage of questions.

20 MR. BEATMANN: We only have about 15  
21 more minutes.

22 MR. PERRIEN: Oh, well, let's --  
23 let's go, let's go.

24 (Off-the-record discussion.)

25 BY MR. PERRIEN:

1 Q. Now, looking at SS 107, okay, of the response  
2 to Advisor's 3-37 --  
3 A. Yes.  
4 Q. -- wouldn't it be reasonable to assume that the  
5 amounts for October, November and December in  
6 column C would be the same amount as that's  
7 shown in September?  
8 A. Column C?  
9 Q. Yeah.  
10 A. Yes.  
11 Q. Okay. And wouldn't that be a reasonable  
12 assumption for -- for column H as well?  
13 A. Yes.  
14 Q. Okay. With respect to column D, do you have  
15 the response to Advisor's 3-35 with you?  
16 A. I think you sent it to me. Let me look.  
17 Q. Yeah. I don't know what it looks like when you  
18 printed it. That's what I'm worried about.  
19 A. Just a one-pager?  
20 Q. No, there was an electronic attachment that  
21 would have been be the Aon forecast for the --  
22 for the pension -- for the ENO pension.  
23 A. Well, I've got another page here from Aon that  
24 looks like assumptions, but that wasn't  
25 attached to the testimony -- to the DR. Is



1           that it?

2       Q.   Yeah, that's the first -- that's one of the  
3           tabs, but there's another tab that has a grid  
4           with numbers on it and dates.  I'm going to  
5           show you picture of what it looks like.

6       A.   That's the only page I have.

7       Q.   I pulled it up on my laptop, if that helps.

8       A.   Let me get a little closer here.  Can you hold  
9           it up a little bit?  Okay.  That wasn't  
10          provided by the person that --

11      Q.   Okay.

12      A.   -- that did the copying.

13      Q.   Okay.  All right.  Well, let me just ask this  
14          question and see what happens.

15                 In this -- in this response, the company  
16                 produced a -- a schedule from the actuary that  
17                 shows the contributions to be made to the  
18                 pension trust.  Okay?

19                 Would it be reasonable to assume that  
20                 those contributions would have been made by the  
21                 -- by the utility?

22      A.   The ones -- the contributions that were on that  
23          sheet?

24      Q.   Yeah.  Well, let me -- I'm not trying to --  
25          this is -- we were just sort of -- we have a

1 little problem. All right.

2 In the -- in the document that we have

3 there's five pension contributions scheduled

4 out by the actuary. Okay?

5 A. Okay.

6 Q. The last one was to be made in October.

7 A. Okay.

8 Q. Okay? The other four are reflected on SS 107.

9 A. Yes.

10 Q. Okay. So the only piece of information that

11 was outstanding for someone to know what their

12 prepaid pension balance would be at December

13 31st, 2018 was whether ENO made that last

14 contribution in October, correct?

15 A. Based on this exhibit that -- the answer would

16 be yes.

17 Q. Okay.

18 A. But, again, I mean, that's as the company would

19 calculate the pension asset for rate-making

20 purposes. Okay?

21 Q. Right. Okay. On page 68 of -- of the -- of

22 your surrebuttal testimony --

23 A. Okay.

24 Q. Okay. -- you said that the ENO pension asset

25 increase is largely due to the abnormally

1 impressive performance of asset markets over  
2 the period and introduced larger-than-necessary  
3 contributions to ENO pension funds, right?

4 A. Are you looking at lines 1 through 3?

5 Q. Yeah.

6 A. Okay. Yes.

7 Q. Yeah, okay.

8 Now, isn't it true that the -- that ENO's  
9 current amount of unrecognized losses show --  
10 or unrecognized gains and losses shows that ENO  
11 is in an unrecognized loss position?

12 A. I don't know if I have that information in  
13 front of me to answer that question. Are you  
14 talking about the --

15 MR. BEATMANN: You've broken up.  
16 Could you repeat that last answer? We didn't  
17 hear the last answer.

18 A. What I'm saying is I -- I don't think that I  
19 have that information in front of me to make  
20 that response.

21 BY MR. PERRIEN:

22 Q. Okay. Can -- can you look at the -- at the --  
23 at the company's response to Advisor's 9-5?

24 A. Okay. I have it.

25 Q. Okay. And on page WG782 of that response...

- 1 A. Yes, I'm looking at it.
- 2 Q. Okay. And in the box, doesn't it show that the  
3 projected unrecognized losses as December 31st,  
4 2018 is a negative 77 million dollars?
- 5 A. This was -- this was according to the Aon  
6 forecast?
- 7 Q. Yes.
- 8 A. That's what this says, but the actual amount  
9 was different than that.
- 10 Q. Right.
- 11 A. Right.
- 12 Q. It was actually higher, wasn't it? There were  
13 more losses, right?
- 14 A. Right.
- 15 Q. Okay. Doesn't that show that the market  
16 performance has not increased the value of the  
17 pension fund assets?
- 18 A. Well, I'm talking about over the period from  
19 2014 to 2018, not just -- not just for 2018. I  
20 think my testimony was referring to -- yeah.  
21 If I look at page 68 of my surrebuttal  
22 testimony --
- 23 Q. Yeah.
- 24 A. -- I say, "ENO's pension asset has consistently  
25 increased over the period from 2014 to 2018."

1 I wasn't referring just to 2018. 2014 to 2017  
2 the story would have been different than this.  
3 The -- the -- the value of the assets would  
4 have increased. Can you hear me?  
5 Q. Yeah.  
6 A. Okay.  
7 Q. Did '18 erase all the -- all the gains between  
8 24 -- 2014 and 2017?  
9 A. No, no.  
10 Q. Okay. Over the life of the plan, though,  
11 hasn't the market performance produced a loss?  
12 A. The -- are you asking me whether the -- the  
13 fair market value of the plan assets over the  
14 life of the plan has sustained a loss.  
15 Q. Reflects unrecognized losses of 78 million  
16 dollars -- of 77 million dollars, an amount  
17 that actually could be higher.  
18 A. My understanding is that this is -- this part D  
19 on response to 9-5 --  
20 Q. Uh-huh.  
21 A. -- this -- I think that -- I think that line  
22 item, unrecognized losses is actually referring  
23 to the benefit obligations regulatory asset,  
24 based on this calculation.  
25 Q. Okay.

1 A. Because you're showing here --

2 Q. Your testimony is that that is not the  
3 unrecognized losses?

4 A. What that is is the amount that has not been  
5 recovered through rates. The amount -- that's  
6 the amount of the pension -- the benefit  
7 obligations regulatory asset that has not been  
8 recovered through rates, based upon what I see  
9 here --

10 Q. That's right?

11 A. -- based upon what I see here. I mean, I --

12 Q. And that's what --

13 A. Go ahead.

14 Q. Okay.

15 A. But that -- that doesn't have anything to do  
16 with the gains or losses on the -- on the value  
17 of the plan assets. This has to do with  
18 whether plan obligation -- whether the total  
19 costs have been recovered through rates or not.  
20 This -- the benefit obligations regulatory  
21 asset pertains all the costs of the plan that  
22 have not been expensed into the rate-making  
23 process as of any point in time, whether it is  
24 December 31st, 2018 or December 31st 2017 or  
25 whatever it is, but the unrecognized losses on

1 the value of the plan assets is a -- is a  
2 different issue. That's a subcomponent of --  
3 of what this is showing here.

4 Q. Okay. And you're saying from this amount you  
5 can't tell whether we're in -- whether there is  
6 a -- an unrecognized loss position or an  
7 unrecognized gain position with respect to the  
8 fair market value of the assets?

9 A. Right. I mean, I -- I would strongly suspect  
10 that the unrecognized gains in the pension plan  
11 are larger than the unrecognized losses at  
12 2018, but -- what I talk about in my testimony  
13 relates to the change in those balances during  
14 2018, but this -- this is not -- this is  
15 relating to something different. This is the  
16 -- the unrecognized losses, the 77 million  
17 dollars, relates to the benefit plan obligation  
18 regulatory asset, based upon my looking at this  
19 page here. If I had nothing else to look at,  
20 that's what I would use.

21 Q. Well, what if you looked at -- look back at the  
22 response to Advisor's 3-37.

23 A. 3-37.

24 Q. That was the one we were looking at before.

25 Doesn't that show that the unrecognized

- 1 gains and losses are reflected in the  
2 regulatory asset?
- 3 A. Well, yes, they are. That's not the point I  
4 was making. The point I was making about data  
5 request 9-5 was that this -- this line item,  
6 unrecognized losses of \$77,038,000 --
- 7 Q. Uh-huh.
- 8 A. -- that must pertain to the balance of the --  
9 the projected balance, apparently, of the  
10 benefit obligations regulatory asset, because  
11 it's being added -- well, I mean, it's -- the  
12 funded status of the plan in this chart is  
13 negative \$30,813,000. And if you add back that  
14 77-million-dollar amount, you come to the  
15 46,225,000. So that recognized loss line item  
16 must be the balance of the benefit obligations  
17 regulatory asset, because that's what you would  
18 be adding back to the funded status of the plan  
19 to get that prepaid pension asset balance.
- 20 Q. Well, doesn't the table show that you subtract  
21 the unrecognized losses?
- 22 A. But that's -- that's -- where are you -- what  
23 table are you at?
- 24 Q. That one that you're looking -- WB782.
- 25 A. Well, but you can see that it wouldn't add to



1 46 million dollars. Okay? You're subtracting  
2 this negative amount, which means you're adding  
3 it back.

4 Q. Right.

5 A. Okay. So --

6 Q. Well --

7 A. So --

8 Q. Go ahead.

9 A. I -- I'm just saying that, without having any  
10 additional information in response to data  
11 request 9-5, I'm just assuming that that line  
12 item pertains to the balance of the benefit  
13 obligations regulatory asset projected by Aon  
14 Hewitt. And the -- and the number looks  
15 familiar to me anyway, but -- but I don't want  
16 to make a -- a certain answer without having  
17 additional information.

18 Q. Okay. Last question.

19 How did you quantify your adjustment for  
20 the pension asset in your direct testimony?

21 A. I provided an exhibit to the company. I -- I  
22 basically made a -- a forecasted estimate as to  
23 what I -- as a placeholder until we got  
24 responses to our data requests. The company  
25 has the worksheet that I used to calculate that

1 adjustment. I don't have it with me. It was  
2 provided to the company through a data request.

3 Q. Okay. Can you describe the methodology that  
4 you used?

5 A. It -- it was a rather complex calculation and I  
6 had to make numerous assumptions. I mean, I'm  
7 trying -- I'm trying to see what I said about  
8 it in my testimony.

9 Well, in my testimony I -- my direct  
10 testimony on page 69 I explained what the  
11 adjustment is, but it -- I don't -- I don't  
12 discuss the calculation there. The calculation  
13 would be part of the work papers that I  
14 provided the company.

15 Q. But the -- but you would agree that that  
16 calculation is not a five-year average of the  
17 prepaid pension asset balance, right?

18 A. The -- the calculation from my direct  
19 testimony?

20 Q. Right.

21 A. Right, that's not what that is.

22 Q. Okay. And you didn't change your calculation  
23 in your surrebuttal testimony, right?

24 A. Well, no, I changed the -- I changed my  
25 recommendation to a five-year balance. So the

1 calculation was changed. I did not change the  
2 amount of the adjustment. In other words, the  
3 -- I believe the five-year average was less  
4 than the amount that I proposed in my direct  
5 testimony, and I didn't reduce the amount down  
6 to the five-year average. They were very  
7 similar, but they weren't exact.

8 MR. PERRIEN: Okay. Mr. Proctor,  
9 thank you. That's all I have.

10 THE WITNESS: That's all?

11 MR. BEATMANN: Okay. Thank you.

12 THE WITNESS: Thank you.

13 THE COURT REPORTER: Do you want to  
14 read and sign the transcript?

15 THE WITNESS: Yeah, that'll be fine.

16 (The Deposition Proceedings went off  
17 the record and concluded at 3:05 p.m.)

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DEPONENT'S SIGNATURE

In re: Application of Entergy New Orleans, LLC  
for a Change in Electric and Gas Rates  
Pursuant to Council Resolution R-15-194  
and R-17-504 and for Related Relief.  
Docket No. UD-18-07.

Date: June 11th, 2019

Deponent: MR. JAMES PROCTOR

I, MR. JAMES PROCTOR, do hereby  
state that I have read the foregoing questions  
and answers appearing in this transcript of my  
deposition consisting of 150 pages; that this  
is a true and accurate report of said answers  
given in response to the questions appearing,

\_\_\_\_\_  
JAMES M. PROCTOR

Subscribed and sworn to  
before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public within and for  
\_\_\_\_\_  
County, \_\_\_\_\_

My commission expires:

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ERRATA SHEET

In re: Application of Entergy New Orleans, LLC  
for a Change in Electric and Gas Rates  
Pursuant to Council Resolution R-15-194 and  
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Docket No. UD-18-07.

Date: June 11th, 2019  
Deponent: Mr. James M. Proctor

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\_\_\_\_\_  
JAMES M. PROCTOR

Subscribed and sworn to before  
me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public within and for

\_\_\_\_\_ County, \_\_\_\_\_

Commission expires:

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C E R T I F I C A T E

I, DANA L. BURKDOLL, a Certified Court Reporter (#1364), Registered Professional Reporter (#830156) and Certified Shorthand Reporter (#1955), do hereby certify that the within-named witness was by me first duly sworn to testify the truth.

That the testimony given in response to the questions propounded, as herein set forth, was first taken in machine shorthand and reduced to writing with computer-aided transcription, and is a true and correct record of the testimony given by the witness.

I certify that review of the testimony was requested by the witness or the parties. If any changes are made by the deponent during the time period allowed, they will be appended to the transcript.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested in the action.

WITNESS my hand and official seal on this 11th day of June, 2019.



DANA L. BURKDOLL, CSR, RPR, CCR  
Certified Court Reporter #1364

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