

1 THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3  
4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 October 9, 2007

7 Jefferson City, Missouri

8 Volume 11

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10  
11 In the Matter of the Application )  
12 of Kansas City Power and Light )  
13 Company for Approval to Make )  
14 Certain Changes in its Charges ) Case No. ER-2007-0291  
15 for Electric Service to Implement)  
16 Its Regulatory Plan, )

17 RONALD D. PRIDGIN, Presiding  
18 SENIOR REGULATORY LAW JUDGE.

19 JEFF DAVIS, Chairman,  
20 CONNIE MURRAY,  
21 TERRY JARRETT,  
22 COMMISSIONERS

23 REPORTED BY:  
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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: We are on the record.

3 We are back on the record in Case No. ER-2007-0291.

4 This is October 9th, 2007. The time is roughly 9:10.

5 I apologize for the late start. We have scheduled for

6 today some rate design issues. And I believe Mr. Rush

7 is the first scheduled witness for the day.

8 Is that counsel's understanding? All

9 right.

10 Before I see if there's anything else  
11 from counsel, I talked to some of the Commissioners,  
12 and because of some filings made in the last few days  
13 from, among other parties, Office of Public Counsel and  
14 Praxair, I believe the Commission wants to try to  
15 address some of those issues. And we'll do so, sooner  
16 rather than later by trying to get Chris Giles and  
17 Warren Wood on the stand to answer any questions about  
18 whatever conversations that Commissioner Appling may --  
19 or may have taken place that were addressed in the  
20 motions.

21 I will -- I am giving you as much notice  
22 as I can. That's really all I know right now. And  
23 this will be very much -- or could be very much on the  
24 fly. But I'm letting you know right now that potential  
25 change. It may be something that we do today. It may

1 be later in the week. I simply don't know yet.

2 MR. WOODSMALL: Can you tell me the  
3 relevance of Warren Wood to this?

4 JUDGE PRIDGIN: Mr. Wood, from what I  
5 understand, was also present during those conversations  
6 that the Commissioner had with Mr. Giles that were  
7 raised in those motions.

8 MR. WOODSMALL: How did that become  
9 apparent?

10 JUDGE PRIDGIN: I had talked to the  
11 Commissioner, and the Commissioner said so. And I  
12 don't know if that's -- I don't know if that were said  
13 on the record or not. I do not know. Okay.

14 And I understand we also have a pending  
15 motion to strike some of the testimony of Ms. Pyatte  
16 and that motion is still pending.

17 Are there any other pending motions or  
18 anything else from counsel before we proceed?

19 Ms. Kleithermes?

20 MS. KLEITHERMES: Staff also had a  
21 motion to limit portions of Ms. Meisenheimer's  
22 testimony.

23 JUDGE PRIDGIN: All right. Was that  
24 contained in that same --

25 MS. KLEITHERMES: No. Is was in the

1 response.

2 JUDGE PRIDGIN: -- response? All right.

3 Thank you.

4 MR. WOODSMALL: Your Honor, as another  
5 matter, I would note that we had the stipulation, and  
6 you asked if parties would be opposing. We're --  
7 Praxair is not going to support the stipulation, but we  
8 won't oppose. And consistent with that, I'll drop my  
9 objection to Mr. Fischer's offer to introduce Exhibits  
10 26 and 27 into the record.

11 JUDGE PRIDGIN: All right. And with  
12 that, Mr. Woodsmall, it's certainly up to you. You're  
13 not required to file anything in writing to that effect  
14 since we have it on the record, but I appreciate it.  
15 So Exhibits 27 -- excuse me -- 26 and 27, the  
16 objections are withdrawn.

17 Are there any other objections to those  
18 exhibits?

19 All right. Exhibit 26, and that's  
20 NP&HC, I show; and Exhibit 27NP, are admitted.

21 (WHEREIN; Exhibit Nos. 26NP&HC and 27NP  
22 were received into evidence.)

23 MR. BLANC: There is --

24 JUDGE PRIDGIN: Mr. Woodsmall, thank  
25 you.

1                   MR. BLANC:  There's also Exhibit 15,  
2   Your Honor, Melissa Hardesty's testimony.  It pertained  
3   to stipulation and agreement, as well.

4                   JUDGE PRIDGIN:  And Mr. Woodsmall, I  
5   note that you had an objection pending.  Does that  
6   objection still stand?

7                   MR. WOODSMALL:  No.  I'll withdraw that  
8   one, too.

9                   JUDGE PRIDGIN:  All right.  Are there  
10  any other objections to Exhibit 15?  All right.  
11  Hearing none, Exhibit 15 is admitted.

12                   (WHEREIN; Exhibit No. 15 was received  
13  into evidence.)

14                   JUDGE PRIDGIN:  Mr. Blanc, thank you.  
15  Mr. Woodsmall, thank you.

16                   Anything further from the parties before  
17  we begin with rate design?

18                   All right.  If Mr. Rush would come  
19  forward to be sworn, please.

20                   MR. FISCHER:  Judge, if -- with  
21  permission of the Bench, I'd like to just give a brief  
22  opening on this issue.

23                   JUDGE PRIDGIN:  Yes, sir.  Yes, sir.

24                   And I'm sorry.  If there are other  
25  parties who wish to give an opening on rate design,



1     either now or later, you may do so. Just please let me  
2     know when you'd like to do that.

3                     MR. MILLS: I do. And I'll do it after  
4     Mr. Fischer or --

5                     JUDGE PRIDGIN: Mr. Mills, thank you.  
6     Are there others who would want to do it now? I mean,  
7     let me just --

8                     MR. KEEVIL: Very briefly.

9                     JUDGE PRIDGIN: All right. Mr. Keevil.  
10    Ms. Kleithermes. Okay.

11                    MR. WOODSMALL: I may.

12                    JUDGE PRIDGIN: Okay. So I'm assuming  
13    that we're going to take care of the openings now, and  
14    we won't have any rate design openings later; is that  
15    correct?

16                    MR. FISCHER: Tomorrow we're dealing  
17    with some all-electric-related rate design. If you'd  
18    like for me to address those topics today, we can.  
19    Otherwise, I'd reserve that for tomorrow.

20                    JUDGE PRIDGIN: That --

21                    MR. KEEVIL: And Judge, if I could jump  
22    in on that. I would prefer that we address those --  
23    the opening for those issues tomorrow, if that's  
24    possible.

25                    JUDGE PRIDGIN: It's up to counsel. If

1     you'd rather wait until tomorrow.

2                     MR. FISCHER: That's fine with me.

3                     JUDGE PRIDGIN: Okay. That's fine.

4     Sure.

5                     Okay. Anything --

6                     MR. FISCHER: It makes it shorter today.

7                     JUDGE PRIDGIN: I understand.

8                     Anything further?

9                     Mr. Fischer, when you're ready, sir.

10                    MR. FISCHER: Thank you very much. May  
11     it please the Commission. The stipulation approved by  
12     the Commission in the regulatory plan case, which was  
13     EO-2005-0329, laid out a regulatory roadmap for four  
14     KCPL rate cases.

15                    That particular stipulation states the  
16     signatory parties' agreement related to the rate design  
17     issues in each of those four rate cases contemplated by  
18     the regulatory plan.

19                    In Rate Case No. 1 -- which I'll refer  
20     to as the 2006 rate case, which was ER-2006-0314 --  
21     KCPL agreed to include the filing of a class cost of  
22     service study, including certain specifically  
23     agreed-upon requirements that were contained in the  
24     Appendix 1 to the stipulation and agreement in the  
25     regulatory plan case.

1                   As the Commission may recall, rate  
2     design was a hotly contested issue in the 2006 rate  
3     case. And the various parties took widely differing  
4     positions on class cost of service and rate structure  
5     issues.

6                   There were issues related to the  
7     allocation of production capacity and transmission  
8     costs, allocation of distribution costs, allocation of  
9     margins for off-system sales, and the computation of  
10    coincident peak demands and line losses.

11                  In the 2006 rate case, we also disagreed  
12    about what revenue adjustments among the classes should  
13    be implemented, and what percentage increase should be  
14    assigned to each class. The list of issues also  
15    related -- or contained issues related to the  
16    availability of general service space-heating rates  
17    that are very similar to the issues that are being  
18    raised by Trigen in this proceeding.

19                  Fortunately, with the exception of what  
20    I call the Trigen issues, which were fully resolved by  
21    the Commission in the report and order, the rest of the  
22    rate design litigants were able to resolve their  
23    differences in the 2006 rate case.

24                  The signatory parties agreed to overall  
25    class revenue responsibility on a revenue-neutral basis

1     that had the effect of increasing the residential class  
2     rates by about 2 percent; decreasing small, medium and  
3     general service class rates; and decreasing the large  
4     power service rates by 2.54 percent. I guess we  
5     decreased the general service rates by about 2 percent.

6                     Now, as a part of the settlement of that  
7     case, the parties agreed that the general service  
8     space-heating and all-electric winter rates would be  
9     increased by five percentage points more than each  
10    class's general application rates. This agreement had  
11    the effect of reducing the difference between the  
12    all-electric rates and the other general service rates.

13                    In addition, the Commission resolved the  
14    other all-electric rate issues raised by Trigen. And  
15    Trigen has appealed that rate order, but we're still  
16    awaiting a decision from Judge Beetem in that case.

17                    Now, we did an awful lot of work on the  
18    rate design issue in the 2006 rate case, based upon the  
19    extensive class cost of service studies submitted by  
20    KCPL, Staff, Public Counsel and other interveners to  
21    the case. As the Commission knows, rate design issues  
22    are very complex, and KCPL was frankly happy to have  
23    that issue behind us after the 2006 rate case, and  
24    didn't anticipate having to deal with it in a major way  
25    until the Iatan 2 plant comes into rate base.

1                   We believe that rate design issues were  
2 resolved because of the agreements of the parties in  
3 the regulatory plan stipulation related to Rate Case  
4 No. 2 and Rate Case No. 3. We believe that the  
5 signatory parties to the regulatory plan stipulation  
6 had agreed not to relitigate rate design after the  
7 Commission resolved the rate design issues in Rate Case  
8 No. 1 -- at least not relitigate in the second and the  
9 third rate cases that are contemplated by the  
10 regulatory plan.

11                   In the regulatory plan stipulation, the  
12 signatory parties agreed to the following with regard  
13 to Rate Case No. 2, which is this case: "Rate design.  
14 The signatory parties agree not to file new or updated  
15 class cost of service studies or to propose changes in  
16 rate structures in Rate Filing No. 2."

17                   As KCPL witness Tim Rush explains in his  
18 testimony, it's the company's opinion that anything  
19 other than an equal shift in rates uniformly to all  
20 classes does not comply with the intent of that  
21 stipulation. The Office of Public Counsel concurs with  
22 that position, that any increase should be allocated on  
23 an equal percentage basis across the board in this  
24 particular case.

25                   Now, the same identical provision is

1 included in the regulatory plan stipulation as it  
2 relates to Rate Case No. 3. At Page 39 of the  
3 regulatory plan stipulation, the parties agreed: The  
4 signatory parties agree not to file new or updated  
5 class cost of service studies or to propose changes to  
6 rate structures in Rate Filing No. 3.

7                   Since the language is the same, the  
8 Commission's decision in this case on whether the  
9 signatory parties may propose rate design changes under  
10 the regulatory plan stipulation will also have an  
11 impact upon whether we go through another round of rate  
12 design hearings in the 2008 rate case.

13                   From KCPL's perspective, it's clear that  
14 the signatory parties agreed not to file new or updated  
15 class cost of service studies or to propose changes in  
16 rate structures in Rate Case No. 2 and 3. And there's  
17 a good public policy reason for that position.

18                   We carefully considered the results of  
19 the class cost of service studies in the last rate  
20 case, and the Commission made appropriate changes based  
21 upon those class cost of service studies -- changes  
22 that all the signatory parties to the stipulation on  
23 the rate design settlement agreed to in that 2006 rate  
24 case.

25                   Rate design cases are a huge amount of

1 work for everyone, and KCPL believes that it's a waste  
2 of resources for the Commission and the parties to go  
3 through that process every year when there are not  
4 dramatic changes in the underlying costs. Unless there  
5 is a major change in the underlying cost structures,  
6 like there will be when Iatan 2 comes into rate base in  
7 the year 2010, it's frankly unnecessary for the  
8 Commission to continually readjust the rate design.

9                   And from KCPL's perspective, that was  
10 the reason that we believe the signatory parties to the  
11 regulatory plan case had agreed not to file new and  
12 updated class cost of service studies or to propose  
13 changes in rate structures in the second and third rate  
14 cases.

15                   Now, some parties seem to be saying in  
16 this case, We agreed not to propose changes to rate  
17 structures, but that doesn't mean we agreed not to  
18 propose changes to rate design. KCPL believes that any  
19 change to the rates that will cause customers to  
20 reevaluate the rate schedules they have chosen  
21 represents a change in rate structure.

22                   Even if the Commission, though, decides  
23 that rate structure doesn't mean rate design in this  
24 context, the Commission has the clear discretion to  
25 allocate the rate increase on an across-the-board

1 basis, as is advocated by the Office of the Public  
2 Counsel and Kansas City Power and Light Company.

3               We believe this is the solution that the  
4 Commission should adopt in this case. We could do more  
5 dramatic changes in rate design or rate structure, if  
6 you prefer that term, in future cases, when we have  
7 class cost of service studies and everyone knows going  
8 into that case that rate design or rate structures, if  
9 you prefer that term, will be considered.

10              Turning for just a moment to proposals  
11 for Praxair and MIEC in this case. Mr. Brubaker has  
12 sponsored a proposal which will benefit the highest  
13 load factor customers in the large power service  
14 class -- the LPS class -- while increasing the costs  
15 above the average for the lower load factor customers  
16 in that same class.

17              If Mr. Brubaker's proposal is adopted,  
18 then KCPL will not collect all the revenues as a result  
19 of this proposed revenue shift. An adjustment will  
20 need to be made to increase some LPS customers over 6  
21 percent, and decrease others by around 9 percent.

22              Mr. Brubaker's proposal suggests a tail  
23 block rate for the LPS class of approximately 1.4 cents  
24 per kilowatt hour, annually. KCPL believes that that  
25 tail block rate is just too low. In comparison to the



1 1.4 cents proposed by Ford and Praxair, KCPL's  
2 incremental energy costs reflected in its recent  
3 Parallel Generation Tariff is 2.4 cents per kilowatt  
4 hour.

5 The company also believes that the  
6 Commission should carefully consider the customer  
7 impacts of this particular proposal from Ford, Praxair  
8 and MIEC.

9 Since we're going to be talking about  
10 the general service, all-electric tariff rates  
11 tomorrow, I'm going to reserve the remainder of my  
12 opening comments until that time.

13 Thank you very much.

14 JUDGE PRIDGIN: Mr. Fischer, thank you.

15 Staff? Ms. Kleithermes?

16 MS. KLEITHERMES: May it please the  
17 Commission. In resolving our first issue this morning,  
18 what you'll need to determine is simply what is the  
19 appropriate way to deal with some obvious misalignments  
20 between class revenues and class cost of service that  
21 haven't gone away since the last KCPL rate case.

22 Considerable evidence shows that some  
23 discrepancies between the cost of providing service to  
24 each class and the revenues collected by that class in  
25 rates currently exist. In particular, the evidence

1 shows that residential revenues or rates are too low  
2 relative to the cost of providing service to  
3 residential customers, and also that general service  
4 small, medium and large revenues, are too high,  
5 relative to the providing cost of service to those  
6 customers. We don't need new or updated studies to see  
7 this.

8                   Explicit action by the Commission is  
9 necessary to eliminate these misalignments. They won't  
10 go away on their own, and an equal percentage increase  
11 in rates won't touch them, either. Staff invites you  
12 to consider this case to be an opportunity to address  
13 those discrepancies and to take a step towards a  
14 scenario where the rates that each class pays are  
15 closer to that class's fair share of the costs.

16                   Whether or not the construction of Iatan  
17 2 stops tomorrow or is completed tomorrow, these  
18 misalignments were identified in four of the class cost  
19 of service studies filed in the last rate case. And  
20 while some progress was made to narrow them in that  
21 last case, they're still not where they need to be.

22                   The shifts identified by Staff present a  
23 workable solution; that is, to shift 3.5 million in  
24 revenue responsibility from the medium general service  
25 class to the residential class prior to applying the

1 overall revenue increase resulting from this case.

2                   It's a modest narrowing of the  
3 misalignments that is consistent with the evidence.  
4 There are no proposals out to add or delete classes, or  
5 to add or delete rate blocks. In other words, no  
6 signatories to the stipulation and agreement have  
7 proposed changes to rate structure.

8                   The second issue for today is whether it  
9 is sound public policy to implement the changes that  
10 have been suggested by Mr. Brubaker. The issue isn't  
11 whether they are allowed under the experimental  
12 regulatory plan -- and they are, by the way -- it's  
13 whether it makes sense for this Commission to reduce  
14 the energy rates charged any of KCPL's retail customers  
15 to a level below KCPL's incremental cost of producing  
16 electricity.

17                   I would submit that such a change  
18 doesn't constitute sound public policy. And  
19 Mr. Watkins, through his pre-filed testimony, and  
20 through anything he has to say on the stand here today,  
21 can tell you why.

22                   Thank you.

23                   JUDGE PRIDGIN: Ms. Kleithermes, thank  
24 you.

25                   Mr. Mills?

1                   MR. MILLS: Good morning. May it please  
2 the Commission. Rarely have I been able to follow an  
3 opening statement by a company attorney and be able to  
4 say I agree with almost everything he said. But in  
5 this case I do.

6                   To a larger degree, this is an issue we  
7 shouldn't be here talking about. You will hear  
8 testimony today from OPC witnesses Russ Trippensee and  
9 Barb Meisenheimer that OPC's understanding of the  
10 regulatory plan, based on the language as filed in the  
11 stipulation and agreement in EO-2005-0329, is that the  
12 middle two cases, of which this is the first, were not  
13 to have rate design as a contested issue.

14                  Part of the disagreement has to do with  
15 the definition of the term "rate structure." OPC  
16 Witness Meisenheimer in her testimony cited two  
17 authorities to make clear that the proposed interclass  
18 shifts in other proposals are indeed changes in rate  
19 structures.

20                  Staff Witness Pyatte, in her surrebuttal  
21 testimony, in an attempt to cover those authorities,  
22 cites to an anonymous Staff report filed in this case.  
23 Essentially Staff is saying, here is Staff's  
24 definition, and you can rely on it because it's Staff's  
25 definition.

1                   Even if the Commission disagrees and  
2       decides to consider rate design and rate structure  
3       changes in this case, it should not shift any costs to  
4       residential customers. In the last case, we agreed to  
5       approximately a 2 percent shift to residential, largely  
6       on the belief that there would be no additional shifts  
7       in this case, and in the next.

8                   There is no basis to make these changes.  
9       The class cost of service studies are old. They're  
10      based on a period ending about two years ago, and they  
11      don't even take into account the approximately \$40  
12      million in additional revenues KCPL got in the  
13      ER-2006-314 case.

14                  Now, think about what Staff's  
15      interpretation of the stipulation and agreement  
16      language in the EO-2005-329 means. It means that we  
17      can make the exact same types of interclass shifts in  
18      Cases 2 and 3, except that the Commission can only do  
19      it based on old information. That makes no sense, but  
20      that's what Staff urges you to do.

21                  Public Counsel urges to deny Staff's and  
22      DOE's proposed shifts and refuse to make the other rate  
23      structure changes proposed in this case.

24                  Thank you.

25                  JUDGE PRIDGIN: Mr. Mills, thank you.

1                   Mr. Woodsmall, I can't recall, is  
2   that -- Mr. Keevil, you wanted to wait until tomorrow;  
3   is that correct?

4                   MR. KEEVIL:   Well, I will have a  
5   little --

6                   JUDGE PRIDGIN:   Okay.

7                   MR. KEEVIL:   -- very briefly this  
8   morning, but I would be after Mr. Woodsmall, according  
9   to the list, anyway.

10                  JUDGE PRIDGIN:   Okay.   Thank you.

11                  Any other counsel besides Mr. Woodsmall  
12   and Mr. Keevil?

13                  MR. BRUDER:   Yes, sir.   For DOE very  
14   briefly.

15                  JUDGE PRIDGIN:   Okay.   All right.   Thank  
16   you.   I'm sorry.   Mr. Woodsmall, when you're ready,  
17   sir.

18                  MR. WOODSMALL:   Thank you, Your Honor.  
19   Good morning.

20                  I'll be very brief today.   There are two  
21   topics that are going to be talked about today.   One is  
22   the interclass shifts that are proposed by Staff and by  
23   DOE.   Praxair, Ford and MIEC have not taken a position  
24   on that issue.

25                  The second issue, however, is an

1 adjustment to the large power tariff that has been  
2 proposed by Mr. Brubaker. That is an issue that we  
3 have taken a position on, obviously. And I just wanted  
4 to give you that run-down of the two topics so you  
5 won't mix them up. They are being tried at the same  
6 time, so it may get a little confusing. But I wanted  
7 you to be aware that those two topics are separate and  
8 distinct.

9                   While we don't agree with Staff's use of  
10 confidential settlement documents in this case, we do  
11 agree with Staff's conclusion. And that is, that the  
12 stipulation in the last case does not preclude any  
13 changes to the LP tariff. As Ms. Kleithernes said,  
14 that stipulation does not prevent any of these type of  
15 changes.

16                   In his testimony, Mr. Brubaker proposes  
17 an adjustment to the LP tariff. By his adjustment,  
18 KCP&L would begin to collect more revenues from the  
19 demand charge and less from the energy charge. In  
20 effect, the energy charge is driven towards KCP&L's  
21 actual variable costs.

22                   With this modification, KCP&L will begin  
23 to collect more of its fixed costs through the demand  
24 charge, and more of its variable costs through the  
25 energy charge. It is essentially just an adjustment to

1 eliminate the subsidies and the collection of fixed  
2 charges from a variable component.

3                   There are many other benefits to  
4 Mr. Brubaker's proposal, and I would invite you to  
5 engage him in such a discussion.

6                   Now, KCP&L, in its testimony and in its  
7 statement here today, has raised two points of  
8 opposition. First, that the adjustment will lead to  
9 some migration of customers off of the LP tariff.  
10 Praxair does not dispute that. Migration between  
11 tariffs is always a possibility. Nothing you can do  
12 will prevent that from occurring. Customers will look  
13 to those tariffs that will best provide them the  
14 economic value they are searching for.

15                   But in this case, Praxair has agreed to  
16 make KCP&L whole against any downfall it may suffer in  
17 its revenues associated with this adjustment.

18                   The second criticism raised by KCP&L is  
19 that Mr. Brubaker's adjustment will lead to a tail  
20 block energy rate that is below the rate in KCP&L's  
21 Parallel Generation Tariff. I submit to you that this  
22 criticism is nothing more than a red herring.

23                   You will hear testimony today, and  
24 you've probably seen it in Mr. Brubaker's testimony, as  
25 to the difference between incremental cost and average



1 cost. They are apples and oranges. KCP&L, by bringing  
2 up its Parallel Generation Tariff, is comparing average  
3 cost to incremental cost. The two have nothing to do  
4 with each other, and shouldn't -- and is not a valid  
5 criticism to Mr. Brubaker's adjustment.

6 I know this is a highly complex issue.  
7 Mr. Brubaker has decades and decades of experience on  
8 rate design, structuring, rate tariffs. And I would  
9 invite you to ask him as many questions as you like on  
10 the subject.

11 Thank you.

12 COMMISSIONER MURRAY: Judge, may I ask a  
13 question?

14 JUDGE PRIDGIN: Absolutely.

15 COMMISSIONER MURRAY: Mr. Woodsmall,  
16 isn't there a threshold issue that we have to determine  
17 first, and that is whether or not the stipulation and  
18 agreement allows this change?

19 MR. WOODSMALL: I would agree that KCP&L  
20 and OPC have raised that as a threshold issue.  
21 Consistent with Staff's argument, it is our contention  
22 that this does not violate the stipulation. And, in  
23 fact, this is somewhat different than the DOE and the  
24 Staff issue. DOE and Staff's adjustment would move  
25 revenues between rate schedules.

1                   COMMISSIONER MURRAY: All right. And  
2 would you -- because I think this is a legal  
3 interpretation. Would -- rather than ask your witness  
4 or the other witnesses, I'd like to ask you --

5                   MR. WOODSMALL: Sure.

6                   COMMISSIONER MURRAY: -- and possibly  
7 the other attorneys this question. How are you  
8 classifying the adjustment that you are proposing?  
9 What are you calling it?

10                  MR. WOODSMALL: Our adjustment is a  
11 modification to the LP tariff. It is solely within  
12 that tariff. It has no effects on any other tariff, so  
13 there is no inter-schedule interplay.

14                  COMMISSIONER MURRAY: How can it not  
15 affect the other tariffs if KCP&L is to have the  
16 appropriate revenue recovery in this case?

17                  MR. WOODSMALL: It is designed -- KCP&L,  
18 in a rate design case, what you do is you take the  
19 company's overall revenue requirement and you allocate  
20 portions of that revenue requirement to the different  
21 customer classes. Once you have the portion that is  
22 supposed to be collected from a particular class -- in  
23 this case, the LP tariff -- you then design rates that  
24 are designed to collect that.

25                  Mr. Brubaker's adjustment is still

1 designed to collect the same overall amount of money.  
2 It is just designed to collect more of it from the  
3 demand charge and less from the energy charge.

4 COMMISSIONER MURRAY: The same overall  
5 amount from the same customers?

6 MR. WOODSMALL: True.

7 COMMISSIONER MURRAY: And you indicated  
8 that there was a commitment to make KCP&L whole for any  
9 loss --

10 MR. WOODSMALL: Correct.

11 COMMISSIONER MURRAY: -- as a result of  
12 this.

13 MR. WOODSMALL: Correct.

14 COMMISSIONER MURRAY: What period of  
15 time is that? Just during the period that these rates  
16 would be in effect?

17 MR. WOODSMALL: I don't believe that  
18 that has been hashed out to any degree. Any movement  
19 between tariffs is completely speculative at this  
20 point. We acknowledge that it could happen. And in  
21 order to make KCP&L -- we would agree to any adjustment  
22 to make them whole.

23 COMMISSIONER MURRAY: Thank you.

24 Thanks, Judge.

25 JUDGE PRIDGIN: You're quite welcome.

1 Mr. Woodsmall, thank you.

2 MR. WOODSMALL: I see a quizzical look.

3 I'll wait until he releases me.

4 CHAIRMAN DAVIS: I'll pass right now,  
5 Judge. Thank you.

6 JUDGE PRIDGIN: Thank you.

7 Mr. Woodsmall, thank you.

8 Mr. Keevil?

9 MR. KEEVIL: Thank you, Judge. I will  
10 be extremely brief this morning.

11 Good morning. May it please the  
12 Commission. It is my understanding that the issues  
13 listed as Item or Issue 23 on the list of issues will  
14 not be heard until tomorrow. And that's a good thing,  
15 as far as I'm concerned. So it is not my intention  
16 this morning to get into those details -- into those  
17 issues in any detail this morning.

18 Also, Trigen was not a signatory to the  
19 regulatory plan and stipulation, so I also won't get  
20 into much detail on the Issues 21 and 22, which are  
21 scheduled to be heard today.

22 However, there could be thought or  
23 interpreted to be a slight overlap between some of the  
24 issues you will hear today and the Issue 23 issues, so  
25 I just wanted to make sure that what I said last Monday

1 during my opening was clear in regard to issues other  
2 than the Issue 23 issues.

3 Now, one of the issues you will hear  
4 today concerns the proposals of some parties to make  
5 certain interclass revenue shifts, whereby they would  
6 reduce the revenue responsibility for some or all of  
7 KCPL's general service rate classes. As will be  
8 discussed in detail tomorrow, when the Issue 23 issues  
9 are heard, Trigen submits and believes that the  
10 evidence will establish tomorrow that KCPL's general  
11 service all-electric tariff rates and separately  
12 metered space-heating rates should be increased, and  
13 increased more than KCPL's standard general application  
14 rates.

15 Therefore, as I mentioned last Monday,  
16 in the event that the Commission orders any reduction  
17 in revenue responsibility for KCPL's small general  
18 service, medium general service, or large general  
19 service rate classes, the Commission should make it  
20 clear in the order that none of that reduction in  
21 revenue responsibility should be applied to the  
22 discounted all-electric rates or the separately metered  
23 space-heating rates within those rate classes. Since  
24 we believe those rates are already too low, they  
25 certainly should not be reduced any further.

1 Thank you.

2 JUDGE PRIDGIN: Mr. Keevil, thank you.

3 Mr. Bruder?

4 MR. BRUDER: Thank you.

5 May it please the Commission. I do want  
6 to point out about the stipulation and agreement, first  
7 of all, that at least two very active parties here were  
8 not signatories to that agreement -- that are Trigen  
9 and DOE. Secondly, our cross-examination and our brief  
10 will demonstrate that the language itself of the  
11 stipulation and the agreement does not prohibit  
12 proposals or adoption of proposals regarding rate  
13 structure and rate design in this proceeding.

14 Secondly, there's a very viable cost of  
15 service study available in this case upon which to base  
16 and adopt such proposals.

17 Third, and finally, because the  
18 stipulation does not prohibit it, and because there's a  
19 viable cost of service study available, in this  
20 proceeding, the Commission can make fair and essential  
21 changes without a lot of complicated efforts to  
22 partially alleviate the interclass subsidies that  
23 everybody agrees exists and everybody will agree are  
24 against the very basic principle of cost -- of  
25 rate-making.

1 Thank you very much.

2 JUDGE PRIDGIN: If there's nothing  
3 further, we'll call the first witness. All right.  
4 Mr. Rush, come to the stand, please.

5 (Witness sworn.)

6 JUDGE PRIDGIN: Thank you very much,  
7 sir. If you would, have a seat.

8 THE WITNESS: May I take a seat right  
9 here?

10 MR. MILLS: Oh, sure.

11 JUDGE PRIDGIN: Mr. Fischer, anything  
12 before he's tendered for cross-examination?

13 TIM RUSH testifies as follows:

14 DIRECT EXAMINATION BY MR. FISCHER:

15 Q. Mr. Rush, do you have any changes to any  
16 of your pre-filed testimony?

17 A. No. I do not.

18 MR. FISCHER: I would tender the witness  
19 for cross-examination.

20 JUDGE PRIDGIN: All right. Thank you  
21 very much.

22 Ms. Kleithermes, you'll have cross?

23 MS. KLEITHERMES: Yes.

24 JUDGE PRIDGIN: Mr. Mills?

25 MR. MILLS: I have no cross on this

1 issue.

2 JUDGE PRIDGIN: Mr. Woodsmall?

3 MR. WOODSMALL: Yes, Your Honor.

4 JUDGE PRIDGIN: Mr. Keevil?

5 MR. KEEVIL: Not today.

6 JUDGE PRIDGIN: Mr. Bruder, will you

7 have cross?

8 MR. BRUDER: Yes, sir.

9 JUDGE PRIDGIN: Okay. Any other

10 parties? All right.

11 Mr. Bruder.

12 CROSS-EXAMINATION BY MR. BRUDER:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. Mr. Rush, does the company agree with

16 and support the principle that an electric utility rate

17 should be based on what it costs for the supplying

18 electric utility to provide the service or the services

19 for which the ratepayer pays that rate?

20 A. Generally, yes.

21 Q. That's generally what we call the

22 principle of cost-based rate-making; is that correct?

23 A. Yes.

24 Q. Does the company agree that all of the

25 class costs of service studies that have been presented



1 in this proceeding, and that were presented in the 2006  
2 proceeding, demonstrate that there are and continue to  
3 be significant interclass subsidies from the various  
4 large user classes to residentials?

5 A. If you say that -- are you asking if  
6 there are equal rates of return on those investments  
7 for each of the classes, I would say there are not  
8 equal returns on their investments. But as far as  
9 subsidization, that would be some definition on that,  
10 that there would be equal returns.

11 Q. Well, if there were equal returns, are  
12 we agreeing that there would be no interclass  
13 subsidies?

14 A. Generally, yes.

15 Q. Okay. So if there are unequal returns,  
16 then there are some subsidies, are there not?

17 A. I don't think that's true. No.

18 Q. Well, my question actually was, reading  
19 the class cost of service studies that we see in these  
20 cases, do they not all agree that there are what we  
21 generally call interclass subsidies, and that those  
22 subsidies, in fact, go from the large users to the  
23 residentials?

24 A. That's what is defined generally, yes.

25 Q. And does the company agree that if rates

1 are to be made, in this proceeding or anywhere, in  
2 accordance with the principles of cost-based rate  
3 making, these interclass subsidies have got to be  
4 eliminated or at least significantly decreased?

5 A. I think there's a significant policy  
6 decision behind what you look at as far as your class  
7 cost of service studies. I'm not sure that you would  
8 always argue as a policy decision that they all have to  
9 be an equal rate of return.

10 Q. Well, I'm not speaking definitely of an  
11 equal rate of return, and I'm not speaking of a policy  
12 decision. I'm speaking specifically of making rates in  
13 accordance with the principle of cost-based rate making  
14 that we've mentioned. Now, if we're moving toward  
15 being in accordance with that principle, don't we have  
16 to do something further on these subsidies?

17 A. If you define there are subsidies, yes.  
18 My whole argument -- my whole point is, is that I'm not  
19 sure that we're -- we've made a policy decision that  
20 everybody is to receive an equal rate of return.

21 Q. Well, what I'm asking is, even if it  
22 were not an equal rate of return, the closer to equal  
23 rate of return we move, the more closely we are in  
24 adherence to the principle of cost-based rate making,  
25 are we not?

1           A.       That's how it's generally worded, yes,  
2     and defined.

3           Q.       And so in order to endeavor to move  
4     closer toward rates that adhere to that principle, we  
5     need to address and try to ameliorate or eliminate  
6     those subsidies. Isn't that true?

7           A.       If that's what somebody were trying to  
8     do, yes. But, I mean, that's not clear that we're  
9     trying to do that in this proceeding.

10          Q.       Well, suppose for the moment that we  
11     were. Wouldn't we have to address those subsidies if  
12     we were trying to do that?

13          A.       We would have to address the overall  
14     rates of return for each one of the classes, and we'd  
15     have to ascertain whether that was the appropriate  
16     return for that particular class.

17          Q.       And if we could address that, and we  
18     could do the things you just mentioned in your last  
19     response, then we could address those subsidies,  
20     couldn't we?

21          A.       If there were subsidies defined, yes.

22          Q.       Has the company presented any proposal  
23     of any sort in this proceeding, and has it any plan to  
24     present one in the next proceeding, that would in fact  
25     move toward eliminating or significantly decreasing

1     those interclass subsidies?

2             A.       It was the intent of the company in this  
3     case and in the following case --

4             Q.       Sir, I'm going to ask you to answer yes  
5     or no, and then, you know, of course, go ahead --

6             A.       Okay. Could you repeat the question,  
7     then?

8             Q.       Sure. Has the company presented any  
9     proposal of any sort in this case, or has it any plan  
10    to present in the next case, any proposal that would in  
11    fact move toward eliminating or significantly  
12    decreasing the interclass subsidies we've been talking  
13    about?

14            A.       I don't know.

15            Q.       Well, who could tell us that, sir?

16            A.       I can tell you what we are going to  
17    propose, and I can tell you what we've proposed in this  
18    case.

19            Q.       But you can't tell me whether those  
20    proposals have the intent of decreasing the interclass  
21    subsidies?

22            A.       Well, if I could explain. The costs are  
23    shifting within classes all the time. And so what we  
24    will do is, our proposal in the next case will be an  
25    equal percentage increase, just as we did here. If

1     there are cost shifts that would move those towards  
2     eliminating subsidies, so be it. If they do not, that  
3     would be a result.

4                     But what we intended to do in this case  
5     is to go on an equal percentage basis. And we propose  
6     that in the next case, too.

7             Q.       And --

8             A.       But during this time, while we're going  
9     through all this construction, and all the activities  
10    that are going on, and what's being rolled into rate  
11    base, you'll see costs change and you'll see the  
12    structure of the class cost of service studies change  
13    simply because of the additions of plant and the  
14    changes in the cost structure of the company. So you  
15    really won't know the outcome.

16            Q.       So although we cannot know how the  
17    interclass allocations in terms of dollars may change,  
18    the company will not present any proposal that  
19    deliberately aims to change them in such a manner as to  
20    eliminate or ameliorate the subsidies we're talking  
21    about; is that correct?

22            A.       That's correct.

23            Q.       Okay. What we contemplate here is that  
24    there will be, after this proceeding, two more KCP&L  
25    rate filings and rate proceedings under the regulatory

1 plan; is that correct?

2 A. Yes.

3 Q. Looking ahead now, if we may, to the  
4 fourth and last of those four proceedings, that will  
5 be, as DOE understands it, under the plan -- the  
6 regulatory plan, the proceeding in which the company  
7 will seek to add a large new coal facility, and certain  
8 wind facilities and certain environmental facilities to  
9 rate base; is that correct?

10 A. Well, the environmental facilities --  
11 for example, Iatan 1 -- should be added in the next  
12 case. The wind has already -- that was added in the  
13 last case that we just had. The Iatan 2 construction  
14 is what we contemplate adding in the last case.

15 Q. It's just that item, not the other two  
16 that I mentioned in the last case?

17 A. Hopefully the others will be in service  
18 and operational prior to that.

19 Q. Okay. Iatan 2 now. Of course, it's  
20 been bantered about. It's a very, very large facility,  
21 a huge undertaking. Can you give us a ballpark figure  
22 of how many dollars will be added to -- or the company  
23 will seek to add to rate base in order to Iatan 2 into  
24 rate base in that fourth proceeding?

25 A. I think it will be over a billion

1     dollars.

2             Q.       How much over a billion do you reckon,  
3     sir?

4             A.       I don't remember what the current  
5     numbers are at this time. And I don't know -- when you  
6     talk about, you know, it will be added to both  
7     jurisdictions, Kansas and Missouri, and I'm not sure  
8     how that will all work through the process at this  
9     point. It's been done, I just don't have it with me.

10            Q.       Okay. But we're talking about at least  
11    a thousand million dollars added to rate base, and  
12    we're talking about something like half of that --  
13    roughly half of that in Missouri; is that right?

14            A.       I think that would be correct.

15            Q.       Okay. Now, assume with me, if you will,  
16    that the company does in fact seek to and does succeed  
17    in adding that facility to rate base. The addition of  
18    that many hundreds of millions of dollars to rate base  
19    will necessitate a significant increase or increases in  
20    residential rates, will it not?

21            A.       Not --

22            Q.       Holding everything else constant.

23            A.       You mean if you simply added the plant  
24    and didn't offset it with any of the savings that would  
25    be attributable to that?

1           Q.       Well, we'll come to the savings for a  
2 moment on that -- in a moment. Let's go to what it  
3 will be like if you held everything else constant and  
4 added, say, \$500 million to rate base here in Missouri.

5           A.       If you held everything else constant --  
6 what category are you talking about? I mean, they  
7 all -- everybody's rates theoretically would go up.

8           Q.       Yes. And they'd go up significantly,  
9 wouldn't they, sir?

10          A.       Reasonably so, yes.

11          Q.       Okay. Now, you said there would be some  
12 offsetting savings with the addition -- the coming  
13 online of Iatan 2. What would those be, sir?

14          A.       My expectation would be that there will  
15 be a fuel savings associated with the generation mix  
16 that's required to serve our customers.

17          Q.       Because coal is cheaper, generally?

18          A.       Because coal is cheaper, but this is a  
19 much more efficient plant. This is -- you know, it  
20 would be in the lower -- lowest operating cost of our  
21 business.

22                    You'll have the increase of off-system  
23 sales that will be relatively significant. You will  
24 have -- I'm not sure if we'll have any purchase power  
25 contracts. But you'll have some make-hold when you



1 simply transition over from the increment of adding the  
2 plant and how it's attributable to our whole capacity  
3 alignment. So there are a number of things that will  
4 be impacted by the addition of this.

5 Q. And how much of an offset do you reckon  
6 that will be to the half billion or so we've agreed --

7 A. I don't --

8 Q. -- will be in your rate base?

9 A. I don't have that number.

10 Q. No ballpark figure you can give me at  
11 all?

12 A. It will be significant. I mean, it's  
13 according to how much rates have gone up at this point.  
14 It's according to the markets that are in existence at  
15 that time. It could offset the majority of that cost  
16 in rate base.

17 Q. You're saying at the very highest, it  
18 could offset half of it?

19 A. I don't --

20 Q. The majority --

21 A. -- have a number to speculate at this  
22 time.

23 Q. Well, let me just see if I can tie that  
24 up. We said it's roughly \$500 million. You said that  
25 the concomitant savings might amount to half of that.

1 That would be 250 million. So we're still looking at  
2 250 million added to rate base, aren't we?

3 A. I don't --

4 Q. Using your ballpark figures. I  
5 recognize that their ballpark figures.

6 A. If I said half is savings, I didn't mean  
7 that.

8 Q. Okay. What --

9 A. But I don't remember saying 50 percent  
10 savings.

11 Q. You said the majority. That's why I  
12 took it as 50 percent.

13 A. I did say the majority. It could be all  
14 of it. I don't know -- I don't have that answer of the  
15 market today. I do not.

16 Q. Is it your testimony, sir, that it  
17 really is a reasonable possibility that the concomitant  
18 savings on Iatan 2 might amount to the whole of the  
19 addition to rate base for Iatan 2?

20 MR. MILLS: Judge, I'm going to object  
21 at this point. I object both on relevance, because  
22 this has got nothing to do with what we're here to talk  
23 about today; and on the basis that it calls for  
24 speculation.

25 The witness has said several times that

1 he really doesn't know. He's just guessing. And given  
2 the fact that it's neither relevant nor based on  
3 anything in the record in this case, I don't see that  
4 there's any reason that we spend time on it.

5 MR. FISCHER: I would join in Mr. Mills'  
6 objection on that point.

7 MR. BRUDER: Well, I'll certainly say  
8 why it's relevant. It's relevant because we believe,  
9 and other interveners believe, that these interclass  
10 subsidies must be addressed. The question is, when are  
11 they going to be addressed.

12 The parties to the stipulation say they  
13 won't be addressed in this proceeding and they won't be  
14 addressed in the next proceeding. That leaves the last  
15 proceeding. Our question is: How practical is it  
16 going to be to address those interclass subsidies in  
17 the last proceeding?

18 What I am endeavoring here to  
19 demonstrate -- and I understand that it may have gone  
20 somewhat afar -- but what needs demonstrated is that  
21 the increase to the residentials that is going to be  
22 necessitated by the addition of Iatan 2 to rate base is  
23 going to necessitate a large increase to the  
24 residentials, no matter what.

25 JUDGE PRIDGIN: Okay. And Madam Court

1 Reporter, may I trouble to you to read back Counsel's  
2 question, please?

3 (OFF THE RECORD.)

4 JUDGE PRIDGIN: Mr. Bruder, if you will  
5 ask that question again. I'm concerned that you're  
6 asking the witness to speculate. That's my concern.  
7 So if you'll ask the question again.

8 MR. BRUDER: Well, why don't I move on.  
9 I'll be more than willing to do that.

10 BY MR. BRUDER:

11 Q. What I would ask you to posit with me is  
12 even if there are concomitant savings that go along  
13 with the addition of this large new coal facility,  
14 isn't it true that a significant increase in  
15 residential rates is likely to be needed in that rate  
16 proceeding, even if nothing is done to eliminate or  
17 decrease the interclass subsidies to the residentials?

18 A. I think that we will have an increase in  
19 the residential rates at that time.

20 Q. If as per the company these subsidies  
21 are not addressed in the second and the third  
22 proceedings, does the company plan to move forward one  
23 or more proposal to address them in this fourth  
24 proceeding?

25 A. That is a good question. I think what

1 we would propose is that we use the Iatan 2 rate case  
2 as a basis for a rate design case. And there's several  
3 options that can be a result of that. Number one is  
4 that those proposed changes be addressed in that case.

5                   The second alternative, however, would  
6 be a spin-off case that would use that as a foundation  
7 for doing rate design. When you get into a rate design  
8 case, they can be quite extensive and take quite a long  
9 period of time to address.

10                   The rate design cases I have been  
11 involved with have taken several years, in fact, to  
12 conclude from the beginning to the end. I think many  
13 of it -- much of that time is spent on setting the  
14 foundation. If that foundation were established in the  
15 Iatan 2 case, you know, I think you could speed the  
16 case along fairly quickly -- less time, meaning, than  
17 my experience has been. But I would propose that we do  
18 it in that case.

19           Q.       Well, is it going to be practical, sir,  
20 to do it in that case when we know that that case is  
21 going to involve, no matter what else happens, a  
22 significant increase for the residential; and is the  
23 Commission, is the company, is anybody going to be  
24 willing to move anywhere near parity between the  
25 classes when the residentials are already going to take

1    such a significant increase as they are on the fourth  
2    case?

3                   MR. FISCHER:  Calls for speculation.

4                   THE WITNESS:  I --

5                   MR. BRUDER:  Well, I would -- if there's  
6    objection to that sort of speculation, I will withdraw  
7    the question.

8                   JUDGE PRIDGIN:  Thank you.

9    BY MR. BRUDER:

10           Q.       All right.  One more thing on that  
11   subject.  As you know, DOE has provided in the record  
12   in this case with Mr. Gary Price, a class cost of  
13   service study; is that correct?

14           A.       That's correct.

15           Q.       Does that class cost of service study in  
16   the record as it is now and subject to examination and  
17   cross-examination as it is now, provide enough for the  
18   Commission to make a significant percentage shift to  
19   change the interclass revenue allocations if the  
20   Commission should choose to do that?

21           A.       I think if the Commission were so  
22   inclined to make a revenue shift within classes that  
23   they should weigh more information than simply  
24   Mr. Price's cost of service.  There have been a number  
25   of other cost of service studies presented in the past

1 from the last case. And that is not our position at  
2 all. But if they did, they needed to weigh all the  
3 evidences of those various class cost of service  
4 studies.

5 Q. Don't all those cost of service studies,  
6 demonstrate each and every one, that these significant  
7 interclass subsidies exist?

8 A. They demonstrate that different classes  
9 have different rates of return.

10 Q. Given the fact that all of those class  
11 cost of service studies, all, demonstrate that those  
12 interclass subsidies exist, can't the Commission on the  
13 basis of DOE class cost of service study, and all those  
14 other studies that they know about, make a significant  
15 change in the allocations in this case on the basis of  
16 those studies, sir?

17 MR. MILLS: And I object to the form of  
18 the question. This witness has consistently declined  
19 to agree with Mr. Bruder that there are interclass  
20 subsidies and the question pursuing that.

21 MR. BRUDER: Well --

22 MR. MILLS: So I would object to the  
23 form of the question.

24 MR. BRUDER: I would respectfully  
25 disagree with my colleague. I believe that we're

1 saying the same thing in two different ways. The way  
2 you define an interclass subsidy is by the lack of  
3 unity in the rate of the return for the classes. We  
4 have lack of unity; we have interclass subsidies.

5                   However, for the purpose of the meeting  
6 of the objection, I will say, instead of wherever I  
7 said, address the interclass subsidies, I will say  
8 address the lack of unity in the rate of return between  
9 the classes, and ask the witness to answer the question  
10 in that form.

11                   JUDGE PRIDGIN: All right. If you'll  
12 ask it in that form and give Mr. Rush a chance to  
13 answer that question. If you'll rephrase the question,  
14 please.

15                   MR. BRUDER: Sure.

16 BY MR. BRUDER:

17                   Q. We are all agreed that there is a lack  
18 of unity between the rates of return of the various  
19 classes and that the large users generally have rates  
20 of return well over 1.0, and that the residentials have  
21 a rate of return of about .67; is that correct?

22                   A. I don't know the facts of all of the  
23 class cost of service studies. We'd have to look at  
24 the -- at what was presented. So when you say .67, I  
25 don't think they all demonstrate that number, for



1 example.

2 Q. Are we -- all right. Are we agreed that  
3 the residential's rate of return is significantly less  
4 than 1.0?

5 A. You mean as far as an index goes? Is  
6 that what you're -- when you say 1.0, you're talking  
7 about an index relative to the average? Is that what  
8 you're talking about?

9 Q. The index is the amount of money that it  
10 costs to serve the class relevant to the amount of  
11 money that the class provides in revenues. Isn't it  
12 true that when you calculate that index in any of these  
13 class cost of service studies, it will show that the  
14 index, the return, whatever you call it, for the  
15 residential is significantly less than 1.0?

16 A. I'm still a little unclear, but I think  
17 I understand what you're trying to ask me. I think  
18 you're trying to talk about the index as far as if you  
19 looked at all the class rates of return, and you set  
20 them side-by-side, and then you took the average; if  
21 you took each class divided by the average of the  
22 overall returns, then that --

23 Q. No.

24 A. -- would be the index?

25 Q. No. No. What I'm talking about is the

1 rate of return for each class. What I'm saying, in  
2 effect, is that don't all the class cost of service  
3 studies show that the large users are paying more than  
4 it costs to serve them, and the residential are paying  
5 less than it costs to serve them?

6 A. Again, it's according to how you define  
7 it. If you say they all have to have an equal rate of  
8 return, then the larger class -- the classes that  
9 represent the commercial and industrials have a higher  
10 return on equity than do the residential on a general  
11 basis in most of the Class of Cost Service studies.

12 Q. All right. Then let's go through it one  
13 step at a time. Suppose I take the amount of dollars  
14 that it costs to serve the large users, and I take the  
15 amount of revenues that they contribute, won't the  
16 revenues that they contribute in any of these class  
17 cost of service studies be shown to be significantly  
18 higher than the amount of dollars that it costs to  
19 serve them?

20 A. Can you repeat that, sir? I'm not sure  
21 I understand.

22 Q. Sure. We're going to take two numbers.

23 A. Okay.

24 Q. The first number is the number of  
25 dollars that it costs to serve any of the larger user

1 classes. Choose any one of the classes; it doesn't  
2 matter which one.

3 A. Okay.

4 Q. The second is the number of dollars or  
5 revenues that that class contributes through its rates.

6 A. Right.

7 Q. Won't all of the cost of service studies  
8 show that the number of dollars that the larger user  
9 class contributes is significantly greater than the  
10 number of dollars that it costs to serve that class?

11 MR. FISCHER: Your Honor, I'm going to  
12 object. I'm not sure that he's identified what class  
13 cost of service studies he's talking about. There's  
14 only one in the record in this case, and he hasn't --  
15 he seems to be talking about class cost of service  
16 studies from some other matter or some other case, or  
17 out there generally.

18 MR. BRUDER: Well, let me answer that,  
19 and say that the witness has referred on a number of  
20 occasions -- and Counsel as well -- to the cost of  
21 service studies that were provided in the last case.

22 JUDGE PRIDGIN: I'll --

23 MR. BRUDER: So I feel --

24 JUDGE PRIDGIN: I'll overrule. That's  
25 fine.

1 MR. BRUDER: Thank you.

2 JUDGE PRIDGIN: Can you ask the question  
3 again, but give Mr. Rush a --

4 MR. BRUDER: Sure.

5 JUDGE PRIDGIN: -- a chance to digest  
6 what you're asking him?

7 MR. BRUDER: Sure.

8 BY MR. BRUDER:

9 Q. We'll take two numbers. The first  
10 number is the costs of serving one particular large  
11 general service class. The second is the number of  
12 dollars of revenues that that class provides.

13 Don't all of the cost of service studies  
14 to which you have referred demonstrate that the amount  
15 of money that each and every one of the large user  
16 classes contributes through rates is significantly  
17 greater than the number of dollars that it costs to  
18 serve that class?

19 A. I would have -- I would say that every  
20 one of the classes in the residential, small  
21 commercial, small -- or small general service, medium,  
22 et cetera, all contribute more than the actual cost.  
23 Every one of those classes do. And that is quantified  
24 as the return.

25 Q. And that's under all of the class cost

1 of service studies that --

2 A. All of the --

3 Q. -- have --

4 A. -- class cost of service studies show

5 that every one of the classes provide a return on

6 investment. And I would also say that the larger

7 classes provide a higher return than does the

8 residential in most of the class cost of service

9 studies.

10 Q. Are there some --

11 A. So that --

12 Q. -- where they don't, sir? Can you cite

13 a class cost of service study where that doesn't show

14 that?

15 A. I'd need to look at the class cost of

16 service studies that were presented.

17 Q. Well, if you want to, you can provide

18 that to us. There's no need to do it right here.

19 A. All right.

20 Q. Great. Now, the obverse is, let us take

21 the number of dollars that it costs to serve the

22 residential users as a class, let us take the number of

23 dollars that the residentials contribute through rates.

24 Isn't it true that each and every one of the class cost

25 of service studies demonstrates that the residentials

1 provide in rates fewer dollars than it costs to serve  
2 them?

3 A. That's not correct.

4 Q. Why not?

5 A. Because what you look at is, is a class  
6 contributing to its -- is it -- are you -- first of  
7 all, are you recovering all of your variable costs, and  
8 then what relation is it that you're providing to the  
9 overall fixed costs. And every one of the residential  
10 classes, you recover all of your variable costs, and  
11 you recover your expenses.

12 And it is the percent return that you  
13 earn on that class that may be lower in the residential  
14 class than it is to other classes. So they all are  
15 recovering -- all of the classes that we have are  
16 providing a return to our investment -- on the  
17 investment that we have.

18 Q. All right. You said the residential's'  
19 rate of return may be lower. Isn't it a fact, sir,  
20 that the studies show that in every case it is lower?

21 A. I think that's correct.

22 Q. Okay.

23 A. But it does not say that they are not  
24 providing their costs. That's, I guess, what I'm  
25 trying to distinguish that, you know.

1           Q.       You're trying to distinguish between  
2 cost and return?

3           A.       I'm trying to say that the cost is the  
4 expense incurred, and then the return is the investment  
5 that's sitting out there and you earn a return on the  
6 investment. And you have various classes providing  
7 various returns.

8           Q.       And the resident -- and the return that  
9 the residentials provide is significantly lower than  
10 that provided by the large user class, though; is that  
11 right?

12          A.       It's not significantly lower, but it is  
13 lower.

14          Q.       You say it isn't significantly lower?  
15 Is that your testimony, sir?

16          A.       Various class cost of service studies  
17 demonstrate various returns to the residential class.  
18 You'd have to look at each one of the studies that have  
19 been performed.

20          Q.       I ask you now, is there any study that  
21 demonstrates that it is significantly lower? And I'll  
22 ask you to provide that at a later time, if there is.  
23 If not --

24          A.       If you can --

25          Q.       -- I would assume there isn't.

1           A.       What is significant, I guess? I  
2 think -- you know, I'm not sure. I really don't know.

3           Q.       Okay.

4                   MR. MILLS: And, Your Honor, I'm going  
5 to have to object to the form of that last question.  
6 He seemed -- and the witness and the attorney were  
7 somewhat speaking over each other, but it seemed as  
8 though Mr. Bruder challenged Mr. Rush to file some  
9 study; and if he didn't, then we would assume that  
10 there isn't such a thing. I believe that's an improper  
11 form of cross-examination question.

12                   MR. BRUDER: Well, no. I certainly  
13 didn't challenge him to file such a study. What I  
14 asked him to do was give us a reference to any existent  
15 study that will demonstrate that there is not a  
16 significant difference in these returns. That's all I  
17 asked him to do. He has those studies that are  
18 available. He could look at them. He could provide  
19 such a reference if such is available. If not, then  
20 we'll assume there isn't any such reference.

21                   JUDGE PRIDGIN: Okay. And if we can  
22 move on. We can bicker, and I think, like Mr. Rush  
23 said, what is significant. And, certainly, I see that  
24 as argumentative. And we can all agree or disagree on  
25 what is or is not significant and how that pertains to



1 just and reasonable rates. And you're certainly free  
2 to argue that it's significant in the brief. But if  
3 you want to ask him higher or lower, that's fine. But  
4 significantly higher or lower -- Mr. Mills.

5 MR. MILLS: And I -- my --

6 MR. BRUDER: I will withdraw the  
7 question. I will move on, sir.

8 JUDGE PRIDGIN: All right. Thank you.

9 MR. BRUDER: I'm sorry. If you want to  
10 go ahead, please go ahead.

11 MR. MILLS: My objection was the  
12 assumption that Mr. Rush's, I don't know, means there  
13 isn't anything. And I don't believe that's a proper  
14 question for cross-examination. I don't know simply  
15 means I don't know. And failure to add something to  
16 that later should not lead to an assumption that I  
17 don't know means no. And that's my objection to the  
18 question. But if it's withdrawn, then we don't have to  
19 go anywhere with it.

20 JUDGE PRIDGIN: All right. It's been  
21 withdrawn.

22 Mr. Bruder, any further cross?

23 MR. BRUDER: Yes, please.

24 BY MR. BRUDER:

25 Q. It's been suggested that the language of

1 the stipulation prohibits changes of rate structure  
2 that are designed in this case; is that correct?

3 A. That's correct.

4 Q. Now, the language that's referenced  
5 there -- I'll read to you -- I'm not sure whether you  
6 put it directly in your testimony, but certainly you  
7 based your testimony upon it. It says: The signatory  
8 parties agree not to file new or updated class cost of  
9 service studies or to propose changes in rate structure  
10 and rate filings No. 2 and No. 3.

11 I have before me a copy of the rebuttal  
12 testimony of Mr. Trippensee. I'm just going to hand  
13 you that for the purpose of allowing you to look  
14 directly at this language. Or maybe you have the  
15 language before you in the stipulation.

16 MR. FISCHER: Judge, we'll stipulate  
17 that that language is in the regulatory plan  
18 stipulation.

19 MR. BRUDER: Thank you.

20 JUDGE PRIDGIN: Thank you.

21 BY MR. BRUDER:

22 Q. Now, under that language, sir, are the  
23 parties to the stipulation and agreement prohibited  
24 from considering a rate structure or rate design filing  
25 that is filed or otherwise put forward by a non-party

1 to the stipulation and agreement?

2 A. I think the parties have to respond to  
3 that.

4 Q. Sir? I don't know what you mean, the  
5 parties have to respond to that.

6 A. Well, ask your question again.

7 Q. Sure. As I understand it, your  
8 testimony that we need to keep -- that we need not to  
9 make changes in the interclass subsidies is based in  
10 part upon the supposition that the stipulation and  
11 agreement prohibits making changes of rate structure  
12 and rate design in this proceeding; is that correct?

13 MR. MILLS: And once again, I object to  
14 the form of the question. He's said -- he's again  
15 talking about those interclass subsidies that Mr. Rush  
16 has never agreed to.

17 MR. BRUDER: All right. No interclass  
18 subsidies.

19 BY MR. BRUDER:

20 Q. Any changes in rate structure and rate  
21 design in this case. Is it your position that the  
22 stipulation and agreement prohibits any changes in rate  
23 structure and rate design in this case?

24 A. The stipulation and agreement talks  
25 about rate structure. So -- and that's what it's

1 limited to, and updated class cost of service studies.

2 Q. Well, is it your testimony that the  
3 stipulation and agreement prohibits considering a rate  
4 structure change if that change is put forward by a  
5 non-party to the stipulation and agreement?

6 A. I think, as I said before, I think the  
7 parties that signed the stipulation and agreement have  
8 to address any proposal made by a non-signatory.

9 Q. Okay.

10 A. I do think -- if I could add a piece --  
11 that I do think DOE was involved with the regulatory  
12 plan, and sat -- and if I remember right, sat here and  
13 agreed here and agreed that they were in agreement with  
14 the overall stipulation and agreement from the  
15 regulatory plan; and that included that provision. And  
16 so it was my understanding that DOE would be in a  
17 position supporting no changes either in rate structure  
18 or updated class cost of service studies in this  
19 agreement.

20 MR. BRUDER: All right. The witness has  
21 opened another question, and I need to go back to my  
22 desk and pick up something that's relevant to that. If  
23 I may, Judge?

24 JUDGE PRIDGIN: You may.

25 MR. BRUDER: I'm reading now from a

1 transcript which is apparently from one of the hearings  
2 at the close of the 2006 case. This is quoted in the  
3 rebuttal testimony of Ms. Meisenheimer. And I will  
4 show it now to counsel for the company, if they  
5 prefer -- if they would like. Or they could refer to  
6 it themselves. It is at Ms. Meisenheimer's rebuttal  
7 testimony at Page 5.

8 MR. FISCHER: That's fine. I'll just  
9 look at it there.

10 MR. BRUDER: Okay. Please tell me when  
11 you have that.

12 MR. FISCHER: I've got it right here.

13 THE WITNESS: Are you saying her  
14 testimony? I have her testimony.

15 MR. BRUDER: Okay.

16 BY MR. BRUDER:

17 Q. Yeah. When I read this testimony, it  
18 was my understanding that the assertion that the  
19 Department supposed the stipulation and agreement was  
20 based upon the statements that are quoted here and on  
21 the next page of Mr. Phillips, who is my predecessor.  
22 Is that what it's based on? Or is there something  
23 else?

24 A. I was present at the stipulation and  
25 agreement discussion, and I -- that's what I recall

1 hearing. So I think it's probably also supported here  
2 in this testimony. But that was just my memory.

3 Q. Okay. I'm reading that indented  
4 verbiage from Mr. Phillips. And as you'll see in the  
5 second to last line -- or third and second to last  
6 line, he said, We do not oppose the stipulation and  
7 agreement. It doesn't say we support it, does it, sir?

8 A. That's what it says, yes.

9 Q. Okay. It also -- I'm going to go to  
10 Page 6 now and read the second indented quotation.  
11 "USDOE believes the stipulation and agreement can be  
12 found by the Commission to be supported by competent  
13 and substantial evidence and be in the public  
14 interest."

15 Mr. Phillips didn't say that DOE thought  
16 it was in the public interest, did he, sir?

17 A. It's subject to interpretation.

18 Q. Now, I'll ask you the operant language  
19 of the stipulation that we've agreed to here, does that  
20 language prohibit the parties to the stipulation and  
21 agreement from agreeing to a change in the rate  
22 structure or rate design if that change is filed or  
23 otherwise put forward by a non-party to the stipulation  
24 and agreement?

25 A. I think that could happen, if all the

1 parties agreed to something, yes.

2 Q. So the answer is, it doesn't prohibit  
3 that; is that right?

4 A. That's correct.

5 Q. Okay. Does the stipulation and  
6 agreement anywhere say that only an across-the-board  
7 increase to all of the rate classes is the only  
8 acceptable form of increase in this case or in the next  
9 case?

10 A. No. It does not.

11 Q. Okay.

12 MR. BRUDER: Nothing further. Thank you  
13 very much.

14 JUDGE PRIDGIN: Mr. Bruder, thank you.

15 I'm sorry. Mr. Keevil, did you have  
16 questions?

17 MR. KEEVIL: Not today.

18 JUDGE PRIDGIN: All right. Thank you.

19 Mr. Woodsmall, I thought he had cross.

20 Okay. Let me go ahead, and we'll take him out of  
21 order.

22 Mr. Mills?

23 MR. MILLS: No questions.

24 JUDGE PRIDGIN: Ms. Kleithermes?

25 MS. KLEITHERMES: Yes. I have an

1 exhibit for this witness.

2 JUDGE PRIDGIN: If counsel will -- and  
3 Mr. Woodsmall, I'm sorry. I'll give you the chance to  
4 cross. I moved on to Ms. Kleithermes.

5 MR. WOODSMALL: I'm sorry.

6 JUDGE PRIDGIN: That's quite all right.  
7 I'll show this -- I have this as Exhibit 122. Does  
8 that match Counsels' records? This is a Staff exhibit  
9 and I have it as 122. Thank you.

10 (WHEREIN; Exhibit No. 122 was marked for  
11 identification by the court reporter.)

12 MS. KLEITHERMES: And that is simply a  
13 copy of two pages out of KCPL's tariff.

14 JUDGE PRIDGIN: Thank you.

15 CROSS-EXAMINATION BY MS. KLEITHERMES:

16 Q. Good morning, Mr. Rush.

17 A. Good morning.

18 Q. I've handed you a copy of two KCPL  
19 Missouri tariff sheets that have been reduced and  
20 copied to fit on one page. Other than the formatting  
21 difference, do you recognize this document?

22 A. Yes.

23 Q. And could you tell us what that is?

24 A. Well, these are our -- what I would  
25 classify as the class, large power service. They are



1 the rates that are designed for that class of customer  
2 at various voltage levels. It is the price structure  
3 of that.

4 Q. And now, why do they vary by voltage  
5 levels on the document?

6 A. Well, because they are different costs  
7 associated with different voltage levels of serving  
8 customers.

9 Q. What would any of those differences be  
10 attributable to, if anything?

11 A. Well, a simple one would be, for  
12 example, line losses that occur or investment in plants  
13 associated with various voltage levels.

14 Q. Now, by investment in plant, you're  
15 referring to?

16 A. Transformation, distribution lines  
17 versus transmission lines, and a combination how  
18 actually a class cost of service is put together.

19 Q. All right. So then is it correct to say  
20 that the large power rate schedule consists of four  
21 separate but related sets of voltage level specific  
22 rates, and that each large power service customer is  
23 billed only one and only one of those sets?

24 A. That's -- I guess you could have a  
25 customer with two -- same name, two different

1 locations --

2 Q. Generally speaking?

3 A. Yes. Generally speaking, yes.

4 Q. All right, then. So what are those four  
5 types of charges shown for service at each voltage  
6 level on that LPS rate schedule?

7 A. What are the different charges? I'm not  
8 following.

9 Q. I see an A, B, C and D under each of  
10 those four headings.

11 A. Oh, okay. I'm -- well, there's a  
12 customer charge, obviously. There's a customer charge,  
13 a facilities charge, a demand charge, and an energy  
14 charge attributable to each one of the rates that we  
15 have here. The rates are broken into summer and  
16 winter, for example, as attributable to the demand  
17 charge and the energy charge. And the energy charges  
18 in all the categories are basically declining, what's  
19 often referred to as a declining block hours use rate.

20 Q. All right. Now, does the customer  
21 charge vary by voltage level?

22 A. It does not.

23 Q. So secondary, primary, substation and  
24 transmission are all paying the same customer charge?

25 A. That's correct.

1           Q.       Does the facilities charge vary by  
2 voltage level?

3           A.       Yes. It does.

4           Q.       Could you go through those for us?

5           A.       Well, the facilities charge for a  
6 secondary -- for the secondary rate is a dollar --  
7 \$1.987 per kW of facilities demand, per month. And  
8 each one varies. The next one is 1.648, that's for the  
9 primary voltage. For substation voltage, it's .497.  
10 And for transmission, it's a zero.

11          Q.       So why do those facilities charges rates  
12 vary by the voltage level?

13          A.       Again, that's attributable to the amount  
14 of investment associated with each one of those  
15 categorizations of voltage.

16          Q.       So --

17          A.       And any other costs that may be  
18 incurred. But it's investment and cost.

19          Q.       All right. Well, then, so just to  
20 clarify this issue. Why would the facilities charge  
21 rate for transmission voltage be zero when secondary  
22 voltage customers pay almost \$2 a kilowatt?

23          A.       Well, the transmission -- the facilities  
24 charge is designed to recover what I would call often  
25 as the distribution equipment that's out there, the

1 transformation, et cetera. For a transmission  
2 customer, they don't have any.

3 Q. Okay.

4 A. So they actually take it at a different  
5 level of service, and they actually take -- you know,  
6 they don't have as much distribution -- they don't have  
7 distribution facilities associated with their service.  
8 They've taken it at some other level of service.

9 Q. Now, to clarify, they do actually have  
10 those physical facilities, it's just not that they're  
11 owned by KCPL; is that correct?

12 A. Typically, they are owned by that  
13 customer.

14 Q. Okay.

15 A. I mean, yes.

16 Q. There would be something in existence  
17 that --

18 A. Most likely, yes.

19 Q. Okay. All right. Do the demand charges  
20 vary rate -- pardon me. Do the demand charge rates  
21 vary by voltage level?

22 A. Yes. They do.

23 Q. And why do those vary by voltage level?

24 A. Typically, that's associated with the  
25 losses that are occurring over those.

1           Q.     Okay. Within each voltage level, are  
2 there multiple demand charge rates?

3           A.     Yes. There are.

4           Q.     Are the demand charge rates less costly  
5 per kilowatt for larger demand customers than for  
6 smaller demand customers?

7           A.     Yes. Actually, the demands decline as  
8 the usage -- as their demand grows.

9           Q.     What is the rationale for charging a  
10 higher demand charge rate for smaller customers and a  
11 lower demand charge rate for larger customers?

12          A.     Well, in this class, when you look at  
13 that, you look at -- you have certain -- and, really,  
14 it's structured on the design itself. But you have  
15 certain investments that you're trying to recover  
16 regardless of the fluctuation of the demands that  
17 occur. So you sometimes have a higher demand component  
18 simply because of how you structured the price  
19 associated with the increment.

20                 But, additionally, there is some  
21 economies of scale that do -- that are contributed to  
22 the demand, that the larger the load, the less the cost  
23 per load to serve that. But, for example, one of the  
24 things that you have -- if you have a customer that has  
25 a significant volatility in their demand over a yearly

1 period, you know -- for example, one month it's a very  
2 high number, and the next it's hardly anything -- you  
3 want to make sure that you recover that cost over the  
4 yearly period. So you look at that. And demand,  
5 typically, is associated with the generation side of  
6 the business, not necessarily the distribution and  
7 transmission side of the business.

8 Q. Okay. Thank you. So do the energy  
9 rates vary by voltage level?

10 A. Yes. They do.

11 Q. Why do those energy charge rates vary by  
12 voltage level?

13 A. Again, you have losses associated with  
14 it that are significant and attributable to that piece.

15 Q. All right. Now, Mr. Rush, if you could  
16 refer to Page 2, Line 22 of your rebuttal testimony.  
17 And do you have a copy of that?

18 A. I do. Which page?

19 Q. That would be Page 2.

20 A. 2, Line 22. Okay.

21 Q. Indeed. All right. Now, at that  
22 citation, you refer to the impact of implementing  
23 Mr. Brubaker's proposal.

24 A. That's correct.

25 Q. And exactly what proposal is that?

1           A.       Mr. Brubaker's proposal is to take the  
2     large power class and take the rates that you see here,  
3     in essence, and reduce the energy component, the energy  
4     charge, of each one of the blocks for each one of the  
5     categories by one cent; and to take the revenue that's  
6     lost from that; and to take that and increase the  
7     demand charges. So that's the proposal that I'm  
8     addressing here.

9           Q.       All right. And certainly any time you  
10    feel that we may be going into anything that would give  
11    us the need to go in camera, please indicate as such.

12          A.       Okay.

13          Q.       But if you'll now refer to the sentence  
14    on Page 3, Line 5, you state: "Mr. Brubaker's proposal  
15    will benefit the highest load factor customers in this  
16    class, while increasing the cost above the average for  
17    the lower load factor customers in the class."

18                   How many customers are currently served  
19    on the Missouri large power rate schedule?

20          A.       I believe there are 89 customers  
21    currently served under this rate.

22          Q.       Of these 89 large power customers, will  
23    the majority benefit under Mr. Brubaker's proposal?

24          A.       Will the majority? No. They will not.

25          Q.       All right. So of these 89 large power

1 customers, how many do you estimate will benefit under  
2 Mr. Brubaker's proposal, if you've done the figuring?

3 A. I haven't done that figuring, but I  
4 could do that.

5 Q. That would be much appreciated, I  
6 suspect.

7 A. I believe of the 89, 14 of those  
8 customers will actually see a decrease in their bill.

9 Q. All right, then. What would --

10 A. On an annual basis. On an annual basis.

11 Q. On an annual basis. Okay. What would  
12 be the magnitude of the decrease in the electric bills  
13 of those 14 customers?

14 A. Well, as I pointed out in my testimony,  
15 the largest is about 9 percent.

16 Q. Okay.

17 A. And there's one that's .01 percent  
18 decrease. So it's a very small decrease there. But  
19 there are -- so it ranges between virtually nothing to  
20 9 percent -- 9.06 percent.

21 Q. Okay, then. A little test of simple  
22 arithmetic here. Of these 89 large power customers,  
23 how many do you estimate will be worse off under  
24 Mr. Brubaker's proposal?

25 A. I just -- didn't I say 14?



1 Q. Oh.

2 A. I think that was the number I counted  
3 that will save money, so it will be 75 of them that  
4 would have an increase in their bill before any change  
5 in rates were to occur.

6 Q. All right. Do you have a guess as to  
7 what the magnitude of increase in the electric bills of  
8 those 75 would be, or a reasonable calculation?

9 A. Well, it ranges between zero and  
10 6 percent. I think I presented there that the most  
11 significant increase was 6.37 percent in my testimony.  
12 Or I said 6 percent, but it's 6.37.

13 Q. All right, then. If you could refer to  
14 your sentence on Page 3, it's at Line 7 of your  
15 rebuttal. It's the statement, Mr. Brubaker's proposal  
16 requires additional adjustment because many of the  
17 customers on this rate would be better off moving to  
18 the large general service class.

19 A. That's correct. Yes.

20 Q. Of the 75 large power customers whose  
21 electric bills will increase under Mr. Brubaker's  
22 proposal, how many do you estimate will switch to the  
23 large general service class?

24 A. Forty-seven of them will actually switch  
25 to the large general service rate.

1           Q.       Why wouldn't -- what would cause that  
2   switch?

3           A.       Well, what would happen is -- and you  
4   have to look at -- you know, when you do a -- and this  
5   is what -- kind of one of the debates, is a rate  
6   structure change -- or this is rate design.  Whatever  
7   you're going to call this.  You have to look at the  
8   impacts that it has on each and every customer.

9                    In this case, when you look and evaluate  
10   what their current rate is and what the revenue under  
11   it would be, or what the bill to the customer would be,  
12   you'd need to compare that to the alternatives that  
13   they could also be billed.

14          Q.       Uh-huh.

15          A.       And the next alternative rate that this  
16   class could be billed under was the large general  
17   service.  So we went back and rebilled every large --  
18   or it was rebilled -- every large general service was  
19   billed.  And it was determined that 47 of them would  
20   actually be better off on that rate.

21          Q.       Now, when you say you billed that, of  
22   course, it just means you calculated what --

23          A.       Calculated it.

24          Q.       -- it will be under --

25          A.       Right.

1 Q. Okay.

2 A. You calculate it based on some  
3 historical level of the 89 customers.

4 Q. All right, then. So is it your  
5 testimony that 57 current large power customers that  
6 will -- sorry. Was that 47?

7 A. Forty-seven.

8 Q. I apologize. Of the current large power  
9 customers that will likely switch to the large general  
10 service will still be worse off than on their current  
11 power rates? Was that the analysis you just went  
12 through there? Given that the --

13 A. I said that 47 customers, it would be  
14 beneficial for them to move from the large power  
15 service rate to the large general service rate. They  
16 will still get an increase in their bill --

17 Q. Yes.

18 A. -- even in that -- when --

19 Q. Okay.

20 A. -- they move to that. They will not get  
21 a savings.

22 Q. Okay, then. So they will be worse off  
23 by being on the large general service rate than they  
24 presently are if they could remain on an unaltered  
25 version of the LPS tariff?

1           A.       That's correct.

2           Q.       All right. Thank you. Would you happen  
3 to know who some of those companies are?

4           A.       Would I happen to know who those  
5 companies are? Yeah. They're typically our largest  
6 customers. They're anywhere from -- I don't think it's  
7 a --

8                   MR. FISCHER: Judge, if you wouldn't  
9 mind going in camera to talk about specific customers,  
10 that might be appropriate.

11                  MR. WOODSMALL: Your Honor, and before  
12 we do that, I've been pretty patient here before  
13 raising this objection. But I think this is nothing  
14 more than friendly cross. Staff and company take the  
15 same position on the issue of Mr. Brubaker's testimony.  
16 And this is nothing more than friendly cross designed  
17 to buttress Staff's case, which they could've done in  
18 their own testimony.

19                  MS. KLEITHERMES: I believe we're  
20 actually clarifying assertions that Mr. Rush has made  
21 in his testimony that were more qualitative and  
22 quantitative, and we are attempting to ascertain what  
23 the quantity of these movements he refers to would be.

24                  MR. FISCHER: Judge, and I would say  
25 that from Kansas City Power and Light's perspective,

1   our perspective is, this is a rates structure change  
2   that would not be prohibited -- or would be prohibited  
3   under the regulatory plan, where I believe Staff has,  
4   in their opening statement, suggested just the  
5   contrary.

6                   JUDGE PRIDGIN: All right. I'll  
7   overrule. Let me go in camera for Mr. Rush to testify  
8   on the names of those companies. And then I'll -- when  
9   we're done with, we'll come back in public session, and  
10  I'll try to limit anything I perceive to be friendly  
11  cross.

12                   So if you'll give me just a moment,  
13  please.

14                   (REPORTER'S NOTE: At this point, an  
15  in-camera session was held, which is contained in  
16  Volume 12, pages 744 through 747 of the transcript.)

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1 JUDGE PRIDGIN: All right. We're back  
2 in public session.

3 BY MS. KLEITHERMES:

4 Q. All right, Mr. Rush.

5 A. Yes.

6 Q. Are the terms "rate design" and "rate  
7 structure" synonymous?

8 A. In a very general way, I believe they  
9 are. Yes.

10 MS. KLEITHERMES: Nothing further at  
11 this time.

12 JUDGE PRIDGIN: All right. Thank you.

13 Mr. Woodsmall, did you have cross?

14 MR. WOODSMALL: Thank you.

15 JUDGE PRIDGIN: And after this, we'll  
16 probably break, even though we're in the middle of a  
17 witness.

18 CROSS-EXAMINATION BY MR. WOODSMALL:

19 Q. I was going to take it up in a different  
20 order, but I'll just go through. Mr. Rush, I'm going  
21 to ask you a number of economic terms, if you will, and  
22 ask you to define them. First, can you tell me what is  
23 meant by the term "embedded cost"?

24 A. As far as a technical definition? Just  
25 what I believe is the definition of embedded? Embedded

1 cost is how much the company has invested in its  
2 facilities.

3 Q. And would you agree that in general  
4 rate-making in Missouri is based upon embedded costs?

5 A. Well, I technically think we're a fair  
6 value state, but we generally do everything as far as  
7 fair -- as far as embedded costs, as far as rate  
8 design.

9 Q. Can you tell me what "marginal cost"  
10 means?

11 A. Marginal cost is, from my mind, looking  
12 at the last increment of cost of some component.

13 Q. And to that extent, do you  
14 differentiate, then, between marginal costs and  
15 incremental costs? Or are they -- do you use those  
16 terms synonymously?

17 A. Well, I generally use them synonymously.  
18 Some people will say it's the cost of the next unit,  
19 maybe the incremental cost; and the marginal cost may  
20 be the cost of the last unit. But I'm not -- I think  
21 you're talking, you know, fairly the same number in a  
22 general sense.

23 Q. Okay. And can you tell me what the term  
24 "avoided cost" means?

25 A. I believe avoided cost is avoiding that

1 last increment of cost. So what is the cost of the  
2 next unit? That's -- so I think that that's the  
3 definition of it.

4 Q. Okay. And to that extent,  
5 incremental/marginal costs would be the costs of  
6 adding, moving up one unit; and avoided costs would be  
7 the cost saved by moving down a unit. Would you agree  
8 with that distinction?

9 A. I generally would, yes. Uh-huh.

10 Q. Thank you. Can you tell me what  
11 "average cost" means?

12 A. That it's simply an average of costs. I  
13 mean, I don't know how to -- it's a mean number.

14 Q. Okay. And that is different in your  
15 mind than marginal cost?

16 A. Oftentimes. I mean, it -- yeah.

17 Q. Okay. Would you agree that for purposes  
18 of rate-making here, generally, average cost is the  
19 same as embedded cost?

20 A. When you're talking about investments  
21 that are fixed, embedded costs are average. I mean,  
22 that's the -- that's what's embedded there. But when  
23 you look at the expense side of things, which is  
24 another component of your overall costs, it's not  
25 necessarily embedded; it's based on normalization and



1 annualization and that type of component. So it's not  
2 embedded, it's not what you've incurred. It has  
3 adjustments to it.

4 Q. Okay.

5 A. You typically take a test period and  
6 make adjustments to reflect those things.

7 Q. Were you involved in any portion of  
8 KCP&L's last class cost of service study?

9 A. I was not. Well, I'm sorry. Yes. I  
10 was.

11 Q. Okay.

12 A. Yes. I was. It was the one in the last  
13 case. If you are referring to the one in '96, I was  
14 not.

15 Q. Okay. I was referring to the one in the  
16 last case.

17 A. Yes. I was very involved with that.

18 Q. Okay. Would you agree that embedded  
19 costs were used in that -- in those calculations in the  
20 class cost of service study?

21 A. From the investment point of view, yes.  
22 We used the overall class cost of service from the case  
23 itself.

24 Q. But that class cost of service study was  
25 based upon your actual revenue requirement; is that

1 true?

2 A. In a general sense, yes, it was.

3 Q. Okay.

4 A. There were some adjustments made to it

5 before, because we didn't know what the overall revenue

6 requirement would be.

7 Q. In general, would you agree that a

8 utility's costs of service are made up of three

9 different components: Customer costs, demand costs,

10 and energy costs?

11 A. Generally, yeah. Yes.

12 Q. And in a hypothetical situation where

13 customer charges are set equal to the utility's cost --

14 customer costs, demand charges are set equal to the

15 utility's demand costs, and energy charges are set

16 equal to the utility's energy costs, would you agree

17 that the overall rate would then collect a cost of

18 service for the utility?

19 A. If it were applied to the revenues that

20 occurred in the past -- or to the -- I mean, if

21 everything were held constant -- because everything is

22 dynamic, so --

23 Q. But if the volume and the billing --

24 A. -- in a general sense --

25 Q. -- determinants are all the same, you

1     would collect --

2             A.       Yeah.  Yes.

3             Q.       I'm going to ask you some questions  
4     about the term "load factor."  Can you tell me what  
5     your understanding of the phrase "load factor" means?

6             A.       A load factor is a representation of how  
7     much -- how many hours a specific demand level is used.  
8     For example, if someone has a very high load factor,  
9     it's often phrased, they have a high demand that's  
10    constant for a period of time in relation to the  
11    overall period of time.

12                    So, for example, if you had 100 kW, and  
13    you used it every hour of a month -- and let's say  
14    there were 720 hours in a month, and they used 100  
15    every single hour, that would be considered a 100  
16    percent load factor.  If they used 100 for only half of  
17    the month and zero for the rest of the month, that  
18    would be a 50 percent load factor.

19            Q.       Thank you.

20            A.       And so that would be what a definition  
21    of load factor would be.

22            Q.       You answered my next question.  Thank  
23    you.

24                    Would you agree that all other things  
25    being equal, the average cost to serve a high load

1 factor customer is lower than the average cost to serve  
2 a low load factor customer?

3 A. Generally speaking, yes.

4 Q. Are you familiar with the company's LP  
5 tariff, large power service tariff?

6 A. Yes. I am.

7 Q. And I believe Staff has marked that as  
8 Exhibit 122. I'm going to ask you some questions about  
9 that. Would you agree that that tariff has charges for  
10 several different voltage levels?

11 A. Yes.

12 Q. And for each of the different voltage  
13 levels, there are one or more demand charges; is that  
14 correct?

15 A. That's correct.

16 Q. And similarly, for each voltage level,  
17 there is a customer charge and three energy blocks; is  
18 that correct?

19 A. There's a customer charge, there's three  
20 energy blocks that are seasonally differentiated.

21 Q. Okay. Regarding the energy blocks in  
22 the LP tariff, can you tell me how that works, how you  
23 determine how much energy to put in each block when a  
24 billing month is over?

25 A. Well, the way that it operates is that

1   you look at the demand that is experienced by the  
2   customer. You take that demand times the block. For  
3   example, take the -- let's take the secondary voltage  
4   rate. Under the energy charge, it says, the first 180  
5   hours used per month, you would take the demand, times  
6   180, and you would calculate -- that would be the  
7   amount of energy that was going to be billed in that  
8   block.

9                   And if the usage exceeded that, then you  
10   would bill that full amount at the block. And then  
11   you'd go to the next block. And you would go through a  
12   series to define how much energy you would be putting  
13   in every one of those blocks. And you do that for  
14   every customer, for every month. So, you know, it's  
15   kind of like a floating energy use per each block,  
16   based on the customer's demand.

17           Q.       And we've heard the expression  
18   throughout the testimony, opening statements, even in  
19   cross-examination. Can you tell me what the tail block  
20   rate refers to?

21           A.       The tail block is representative at the  
22   over 360 use per month block, where it's the last  
23   energy rate component of the rate itself.

24           Q.       Okay. And going back to your response  
25   before that, you indicated that you bill in sequential

1 fashion. That is, you fill up the first 180 hours and  
2 then move on.

3 A. Right.

4 Q. Would you agree that a customer cannot  
5 buy energy in the tail block until they have first  
6 filled the other two blocks with energy purchases?

7 A. That would be correct.

8 Q. Okay. I'm trying to tie the LP tariff,  
9 then, to what we discussed on load factor. Assuming a  
10 30-day month, that would have 720 hours in that month;  
11 is that correct?

12 A. I think that -- 700 -- whatever 24 times  
13 30 is. Yeah.

14 Q. Okay. 720. Would you agree, then, that  
15 if a customer only used -- let's say we had a customer  
16 that uses one kilowatt of demand, and they use 180  
17 total kilowatt hours that month that they would then  
18 just be filling the first energy block; is that  
19 correct?

20 A. I mean, yes, in a sense, that's correct.

21 Q. And could you tell me what the load  
22 factor would be for such a customer?

23 A. The load factor would be 180 divided by  
24 720, whatever that load factor is. Probably in the  
25 30 --

1 Q. 25 percent?

2 A. 25 percent. Yeah.

3 Q. Okay.

4 A. You have the math better than I do.

5 Q. I did it previously. And, similarly, if  
6 a customer filled the first two energy blocks -- the  
7 180 and then the next 180, for a total of 360 -- can  
8 you tell me what their load factor would be?

9 A. 50 percent.

10 Q. Okay. And then if they get into what we  
11 call the tail block, it necessarily leads to the  
12 conclusion that their load factor is somewhat greater  
13 than 50 percent; is that correct?

14 A. That would be correct.

15 Q. If a customer has a 75 percent load  
16 factor, isn't it true that the customer then purchases  
17 two-thirds of its energy in the first two blocks and  
18 one-third, then, in the tail block?

19 A. I think that would be correct, yes. I  
20 mean, there's a lot of factors involved with that.  
21 It's according to the month that it occurred -- let's  
22 see.

23 Q. And all these have been based upon a  
24 hypothetical 30 --

25 A. Hypothetical. Right. Yes.

1           Q.       Okay.  Finally, a customer with a 100  
2     percent load factor, is it true that that customer  
3     would purchase one-fourth of their energy in the first  
4     energy block, one-fourth in the second energy block,  
5     and then one-half in the tail block?

6           A.       That's correct.

7           Q.       And the only way, then, such a customer  
8     could buy energy in that tail block would be to first  
9     fill the other two energy blocks?

10          A.       That's right.  Yes.

11          Q.       Would you agree with the statement that,  
12     customers that have their peaks during on-peak hours, a  
13     large portion of what is purchased in the tail block is  
14     energy consumed during off-peak hours?

15          A.       I'm not sure what you just said, because  
16     you said -- I think what I heard you say is, customers  
17     that have a high demand in their on-peak hours use --

18          Q.       Experience their peak in the on-peak  
19     hours.

20          A.       Experience their peak in the on-peak  
21     hours.  What did you say then?  That they use a lot of  
22     energy in the off-peak?  I don't have any idea.

23          Q.       A large portion of their energy is  
24     consumed in the third block?

25          A.       I -- you'll have to be a little more



1 specific. I don't understand what that says -- what  
2 your question is.

3 Q. Okay. Again, it is assumes a 75 percent  
4 load factor.

5 A. Oh, okay. Assuming a 75 percent load  
6 factor, assuming the customer -- what, now? You -- has  
7 a -- their peak in the on-peak period?

8 Q. Correct.

9 A. Just because they're a 75 percent load  
10 factor would mean that a lot of their load occurs in  
11 the off-peak period. I would agree with that.

12 Q. Okay. And I think we kind of discussed  
13 this before, regarding load factors, but would you  
14 agree that energy costs are typically lower during  
15 off-peak hours during -- than during on-peak hours?

16 A. In a general way, yes. That's correct.

17 Q. Turning to Page 3, Line 13 of your  
18 surrebuttal.

19 JUDGE PRIDGIN: And Mr. Woodsmall, if I  
20 can interrupt for just a second. I don't want to limit  
21 your cross at all. But could you let me know roughly  
22 how much more you have? It's roughly --

23 MR. WOODSMALL: I'm about halfway  
24 through, if that gives you --

25 JUDGE PRIDGIN: Well, I hate to

1 interrupt you in the middle of cross, but since --

2 MR. WOODSMALL: You're --

3 JUDGE PRIDGIN: -- it's roughly eleven  
4 o'clock and we haven't a mid-morning break, if we could  
5 interrupt --

6 MR. WOODSMALL: I took one. Sorry.

7 JUDGE PRIDGIN: -- and take a break.  
8 It's 10:55 according to the clock in the hearing room.  
9 If we could reconvene at 11:10. And I'll let Counsel  
10 know that the Commission has an agenda set for noon,  
11 and that time may move back somewhat, but we'll also  
12 likely break for agenda. All right.

13 And Mr. Woodsmall, I apologize for  
14 breaking in the --

15 MR. WOODSMALL: No problem.

16 JUDGE PRIDGIN: -- middle of your cross.  
17 All right. We'll go off the record.

18 (WHEREIN, a recess was taken.)

19 JUDGE PRIDGIN: All right. We're back  
20 on the record. Mr. Woodsmall, I know you're still in  
21 the middle of cross-examination. I'll let you resume  
22 here in just a second.

23 I'm trying to keep the parties up to  
24 date on today's schedule. We are still on Mr. Rush on  
25 rate design. And we are scheduled to have, it looks

1    like, five to six more witnesses on that issue today,  
2    as well. So we may be falling behind schedule. We'll  
3    have to wait and see. So we may have to move some of  
4    this over to Wednesday.

5                   And, also, I believe the Commission  
6    wants to give anyone who has the chance -- or excuse  
7    me -- has any questions the chance to cross-examine  
8    witnesses regarding the motions to recuse -- or, I  
9    guess, the request to recuse that are pending.

10                   And so Mr. Giles from KCPL; Warren Wood,  
11    who I understand was at the meeting that was referenced  
12    by Commissioner Appling, is a former employee of the  
13    Commission; and Sheryl Gregory, who is an employee of  
14    the Commission will be available for cross-examination.  
15    And we will probably try to deal with those witnesses  
16    today. And I'm giving counsel as much as notice as I  
17    can.

18                   MR. WOODSMALL: In the context of this,  
19    I'm just kind of lost. Is someone going to be doing  
20    some direct examination of those people? Because I  
21    have no clue what to even cross someone --

22                   JUDGE PRIDGIN: And I understand. And I  
23    think, largely, it would be the Bench inquiring of what  
24    occurred. And, for example, KCPL just filed something  
25    today that I haven't even had time to read. So, I

1 mean, I want to give all the counsel and all the Bench  
2 the opportunity to ask questions regarding the request  
3 that the Commissioner recuse himself. I'm going to  
4 give counsel the opportunity to do that.

5 Obviously, if you don't have any  
6 questions, I understand. And I realize I'm not giving  
7 you a great deal of notice. But I'm giving you as much  
8 notice as I can. And I understand that you're filing  
9 motions while we're in the hearing room, and I'm just  
10 trying to deal with those while we're together here in  
11 the hearing room. I'm just giving you as much notice  
12 as I can.

13 MR. MILLS: Judge, you said that KCPL  
14 filed something today --

15 JUDGE PRIDGIN: Yes.

16 MR. MILLS: -- on this topic?

17 JUDGE PRIDGIN: Yes.

18 MR. WOODSMALL: Okay.

19 MR. FISCHER: Yes, Judge. If I could  
20 address that. KCPL filed a response to the pleading,  
21 as well as an affidavit from Chris Giles explaining the  
22 background on that particular incident.

23 MR. MILLS: And certainly you can do  
24 what you want to do, but I'm like Mr. Woodsmall, I'm a  
25 little lost in what the procedure will be and how this

1 will actually get started and who's going to be asking  
2 questions and that sort of thing. I assume you will  
3 make it clear as we go along?

4 JUDGE PRIDGIN: I believe so. And  
5 Mr. Chairman.

6 CHAIRMAN DAVIS: Well, Mr. Mills, when  
7 you filed the motion alleging something inappropriate,  
8 I felt like for public trust and public confidence sake  
9 that we needed to get these witnesses on the stand and  
10 find out what really happened that day. So the  
11 opportunity is for you and Mr. Conrad and anybody else  
12 that's a party to this case to ask those questions and  
13 to find out the answers.

14 MR. WOODSMALL: So does this encompass a  
15 Commission investigation? Is the Commission changing  
16 its policy that they are now investigating? Or what is  
17 this, given that this is a Commission hearing?

18 CHAIRMAN DAVIS: It's a motion that was  
19 raised as part of this rate case, Mr. Woodsmall. So I  
20 feel like, you know --

21 MR. WOODSMALL: I understand that. But,  
22 presumably, it's the Commission calling these  
23 witnesses. So is the Commission investigating, or what  
24 is the --

25 CHAIRMAN DAVIS: Well, I'm calling them

1 for you, Mr. Woodsmall, because your client has raised  
2 this issue. And so let's --

3 MR. WOODSMALL: So --

4 CHAIRMAN DAVIS: -- put it out there,  
5 let's --

6 MR. WOODSMALL: So the Commission is  
7 calling witnesses here? The Commission is conducting  
8 an investigation?

9 CHAIRMAN DAVIS: There has been no  
10 investigation called. We're putting these witnesses  
11 on.

12 MR. WOODSMALL: Okay.

13 JUDGE PRIDGIN: All right. Is there  
14 anything further from counsel? All right.

15 Mr. Woodsmall, I apologize for  
16 interrupting you during your cross. Did you have  
17 further cross-examination for Mr. Rush?

18 MR. WOODSMALL: Yes. And in the break,  
19 I was able to trim it down quite a bit, so I think  
20 we'll finish up pretty quick.

21 BY MR. WOODSMALL:

22 Q. Turning to your surrebuttal testimony.  
23 I believe it's Exhibit 21. Can you tell me when you  
24 have that, Page 3?

25 A. You said my surrebuttal testimony?

1 Q. Yes. Exhibit 21.

2 A. All right.

3 Q. Page 3, Line 13. You used the word  
4 there, "shift." Do you see that?

5 A. Yes.

6 Q. Would you agree that in the context of  
7 your testimony, you're talking about two different  
8 kinds of shifts -- one being a shift in the context of  
9 an interclass revenue requirement, and another is a  
10 shift of customers between rate schedules?

11 A. I have talked about both of those  
12 issues, yes.

13 Q. Okay. Would you agree that in the  
14 latter context -- that is, movement between  
15 schedules -- that's commonly referred to as migration;  
16 is that correct?

17 A. Often referred to as migration, yes.

18 Q. And whether any changes are made to the  
19 LP tariff today, would you agree that customers always  
20 have the right to migrate from one rate schedule to  
21 another?

22 A. They always have the ability to do that  
23 in evaluating their tariffs. That's correct.

24 Q. Okay. And so whether changes are made  
25 here today, it is possible that some customers may

1 migrate to the large general service rate schedule,  
2 anyway; is that correct?

3 A. Normally they would do so if it's  
4 beneficial to them.

5 Q. Okay. Thank you. Again, on Page 3, you  
6 talk about the revenue impacts associated with  
7 migration. Do you recall that topic?

8 A. I do.

9 Q. And in his surrebuttal, Mr. Brubaker  
10 said that Praxair is willing to agree that the large --  
11 the remaining large power service customers would  
12 compensate KCP&L for any losses in revenues. Do you  
13 recall that?

14 A. Yes. I do.

15 Q. Okay.

16 A. It was also what we recommended -- what  
17 I recommended in my testimony, also.

18 Q. Okay. So KCP&L and Praxair, Ford, MIEC  
19 are all in agreement on that point?

20 A. Right.

21 Q. Is that correct?

22 A. As a result of that, you'll have  
23 additional customers that will shift that you'll have  
24 to address. It's an iterative process that would --  
25 you'd have to go through.



1 Q. Okay. Would you agree that under  
2 Mr. Brubaker's proposal, there is no money shifted to  
3 any other rate class -- that is, to a residential,  
4 general service, or lighting rate class?

5 A. Under his proposal, that's correct.

6 Q. The only impact would be on the current  
7 large power service customers; is that correct?

8 A. That's how it's -- that's his proposal,  
9 yes.

10 Q. Okay. Page 3, Line 15 of your  
11 surrebuttal. You began to talk about the Parallel  
12 Generation tariff. Do you recall that?

13 A. I --

14 Q. It may be in your --

15 A. I remember, but it's not --

16 Q. It may be in your rebuttal.

17 A. I think it's in my rebuttal testimony.

18 Q. Okay.

19 A. And it's on Page 3, also in that --

20 Q. Okay.

21 A. -- concept.

22 Q. Let me clarify the record. Page 3 of  
23 your rebuttal, Exhibit No. 20, you talk about the  
24 Parallel Generation tariff; is that correct?

25 A. Yes. I do.

1           Q.       And in that, specifically Line 20, you  
2     talk about a 2.4 cent price for energy under that  
3     tariff; is that correct?

4           A.       That's right.

5           Q.       Would you agree that that amount, 2.4  
6     percent, is an incremental cost to KCP&L?

7           A.       It's 2.4 cents per kilowatt hour, not  
8     percent.

9           Q.       I'm sorry.

10          A.       And it is the incremental cost for a  
11     specific load design for a specific -- I mean, it's for  
12     Parallel Generation activities. So it has certain  
13     characteristics attributable to it. But, yes.

14          Q.       Okay. Can you tell me how that number  
15     was calculated?

16          A.       In a general sense, I can. We went  
17     through an evaluation where we took the current market  
18     prices and evaluated what it would be to serve the last  
19     incremental load -- or pardon me, the next incremental  
20     load for a typical renewable generation facility, and  
21     derived this -- you know, did it over 8,760 hours and  
22     came up with the 2.4 cents. It's -- actually, it's a  
23     filing, that we follow a guideline with regard to the  
24     Commission's cogeneration tariffs.

25          Q.       And that is an amount that you would pay

1 to another entity that's generating in your service  
2 area; is that correct?

3 A. It is the price that we would pay to a  
4 generating facility less than 100 kW in our service  
5 territory.

6 Q. Would you agree that your incremental  
7 cost of energy is lower during off-peak hours and  
8 higher during on-peak hours?

9 A. Yes. I would.

10 Q. And also that that incremental cost  
11 generally is lower during the winter and higher during  
12 the summer?

13 A. Yes. I would. I would agree with that.

14 Q. Your Parallel Generation tariff has no  
15 separate demand charge payment; is that correct?

16 A. It doesn't at the present -- that's  
17 right. It does not.

18 Q. I believe Mr. Brubaker had given you  
19 earlier -- and I'll let your counsel look at this --  
20 what is referred to as Schedule TPP, Two-Part Time of  
21 Use Tariff.

22 A. Yes.

23 Q. Are you familiar with that document?

24 A. I'm generally familiar with it, yes.

25 Q. Okay. Turning to -- it's called Sheet

1 No. 20C at the top. Do you see that?

2 A. I do.

3 Q. Can you tell me what's reflected on that

4 sheet?

5 A. These are the price variances that we

6 would pay with regard to the base rate. So we would

7 establish what's called a CBL, and we would look at the

8 variance that occurred from the actual usage to this --

9 CBL stands for a customer baseline. We would compare

10 that to the customer baseline, and we would pay the

11 difference of that, added to the customer's average

12 bill.

13 Q. And would you agree, looking at that

14 schedule, that generally that reflects your previous

15 comments; that is, that off-peak energy is less than

16 on-peak energy? Is that correct?

17 A. That's -- yes. And we actually break it

18 between daytime, also.

19 Q. Okay. And that wintertime energy is

20 cheaper --

21 A. I'm sorry.

22 Q. -- than summertime energy?

23 A. That's correct. Yes.

24 Q. Okay.

25 A. I was incorrect in saying -- yeah, we

1 have a summer rate, a winter rate; and then between the  
2 daytime, we have an on-peak and an off-peak. And  
3 they're differentials.

4 Q. In looking at -- let's just take the  
5 substation voltage level of this tariff, Sheet No. 20C.  
6 Can you tell me what the wintertime off-peak rate is?

7 A. Well, I can tell you what this rate is  
8 on this sheet. But if you're implying that that's what  
9 a customer pays for energy, that's not correct.

10 Q. I'm sorry. I'll clarify. Can you tell  
11 me what the rate is on this sheet for the winter  
12 off-peak?

13 A. Yes. It's two cents per kilowatt hour.

14 Q. Okay.

15 MR. WOODSMALL: One final question, Your  
16 Honor, and I need to go in camera for this.

17 JUDGE PRIDGIN: All right. If you'll  
18 bear with me just a moment, please.

19 (REPORTER'S NOTE: At this point, an  
20 in-camera session was held, which is contained in  
21 Volume 12, page 772 of the transcript.)

22

23

24

25

1 JUDGE PRIDGIN: All right. We're back  
2 in public session. That concludes cross. Let me see  
3 if we have any Bench questions. Mr. Chairman?  
4 Mr. Chairman, no questions?

5 CHAIRMAN DAVIS: No questions.

6 JUDGE PRIDGIN: Commissioner Murray?

7 COMMISSIONER MURRAY: Good morning.

8 THE WITNESS: Good morning.

9 QUESTIONS BY COMMISSIONER MURRAY:

10 Q. I just have a few. And it may be clear  
11 from the pleadings, but I would just like for you to,  
12 if you would, define for me what you mean by rate  
13 structures.

14 A. What I mean by rate structures is any  
15 time you change prices such that it affects more than  
16 just that customer or that class. And when a customer  
17 has to make a decision about what is the appropriate  
18 rate that they should be on, I believe that is a change  
19 in rate structure.

20 So, for example, if we determined that  
21 it was appropriate to go to what's often called an  
22 inverted rate -- meaning it starts at a lower price and  
23 goes to a higher price -- that, to me, is a rate  
24 structure change. If we decided that the customer  
25 charge should be tripled, for example, or reduced in

1    whatever way -- increased or reduced, significantly,  
2    that would be a rate structure change.

3                   And what's happening here is by both the  
4    recommendations of both Praxair's presentation of  
5    change in the large power service rate, as well as  
6    shifting between classes as recommended by the Staff  
7    and others, customers will have to make decisions. We  
8    have to go through and evaluate what's the best rate  
9    for the customer to be on. And I think that is a rate  
10   structure change.

11           Q.     And forgive me, this was probably all  
12   covered this morning. But I think as most of us, we've  
13   been trying to read motions and other things as we're  
14   listening. The -- on Page 4 of your surrebuttal  
15   testimony, you say that -- in talking about rate design  
16   issues being complicated and --

17           A.     Yes.

18           Q.     -- creating shifts. And you're saying  
19   that -- on Page 4, If these shifts are not addressed in  
20   the rate design, the company will be shorted in the  
21   recovery of its overall revenue requirement. Is that  
22   true also -- and I do think you covered it -- but is  
23   that also true with the Staff and DOE's proposal?

24           A.     Yes. It is.

25           Q.     And how -- and dollar-wise or

1 percentage-wise? Did you give any --

2 A. No. I did not give any -- we're talking  
3 about 26,000 customers -- or 25 or 26,000 customers  
4 affected by those shifts in those classes. And to try  
5 to rebill every one of those, we weren't really set up  
6 to be able to do that, to see the impacts that would  
7 have. With the large power service rate, however,  
8 Mr. Brubaker's, we were able to go through and actually  
9 rebill all of those shifts. But with that proposed by  
10 Staff and DOE, we were not.

11 Q. And just one last thing. In your  
12 rebuttal testimony on Page 6, you indicated that,  
13 Mr. Price proposes that the Commission require the  
14 company to file a class cost of service study in this  
15 case. That's -- that was not what I heard in the  
16 opening statement. Is that still your position,  
17 that --

18 A. I'm sorry. Could you lead me to the  
19 point you're talking about?

20 Q. Oh, I'm sorry. I didn't tell you the  
21 lines. It's Lines 18 and 19. I thought --

22 A. What I was trying to get at is, because  
23 Mr. Price's recommendation is that a class cost of  
24 service study be used in this case, which would imply  
25 that we need to -- the company needs to prepare a class



1 cost of service for this case. We did not. We  
2 followed -- what we followed were the -- what we  
3 thought were the guidelines set out in the stipulation  
4 and agreement, which we agreed not to do that.

5 Q. And that -- if you just took that  
6 sentence from the stip and agreement regarding the  
7 class cost of service study, I suppose you could  
8 interpret that to mean that there will be a new class  
9 cost of service study --

10 A. That's right.

11 Q. -- required, but that one would be used  
12 in the next proceeding?

13 A. It could be argued that way, yes.

14 Q. And is that your understanding of what  
15 DOE is currently arguing?

16 A. Well, DOE has actually prepared their  
17 own class cost of service. They've actually gone  
18 through an updating process. But then they've used the  
19 one we just did as a comparison for, you know, how  
20 theirs stands. Because they're trying to make an  
21 argument to update on a continual basis these class  
22 cost of service studies through the proceeding so that  
23 they make shifts that would occur each case.

24 Q. And basing it on the original class cost  
25 of service study?



1 recross except Mr. Woodsmall? Okay.

2 Mr. Woodsmall, when you're ready, sir.

3 MR. WOODSMALL: Yes. I just have just  
4 one brief question, I believe.

5 RECROSS EXAMINATION BY MR. WOODSMALL:

6 Q. In response to a question from  
7 Commissioner Murray, you gave a definition, your  
8 definition of the phrase "rate structure." Do you  
9 recall that?

10 A. Yes. I do.

11 Q. Can you provide me any documentation,  
12 any treatises, any documents that are consistent with  
13 your definition?

14 A. I believe the -- what's often referred  
15 to as the NARAC (ph) class cost of service rate Design  
16 Manual. And I'm not sure the date or definition of it.  
17 In a general sense, it would be consistent with what I  
18 proposed -- or what I stated.

19 Q. That was the NARAC Class Cost of Service  
20 Rate Design Manual?

21 A. Yes. And I'm not really -- it's a very  
22 small book, and I believe -- I'm just not sure of  
23 the -- when it was last published or anything. I don't  
24 know.

25 Q. Okay. Thank you.

1 JUDGE PRIDGIN: Mr. Woodsmall, thank  
2 you. Redirect?

3 MR. FISCHER: Yes.

4 REDIRECT EXAMINATION BY MR. FISCHER:

5 Q. Mr. Rush, let's start with Commissioner  
6 Murray's questions. You visited with her about  
7 inverted rate structures a little bit.

8 A. That's correct.

9 Q. Is it possible to change a declining  
10 block rate structure into an inverted rate structure in  
11 some way, by changing rates?

12 A. Well, it is -- you can do it by simply  
13 changing the price components from -- you know, from  
14 a -- actually just change all the price components if  
15 you have the billing units and you understand what  
16 revenue you'll receive from it. And that's my concern.  
17 I mean, that's part of my concern with this overall  
18 rate structure change, that that's -- if you say that's  
19 not a rate structure change, I disagree with that.

20 Q. If all you did was raise the tail block  
21 rate of a declining block rate structure, could you  
22 change the essential nature of that structure?

23 A. That's what I believe. Yes. You'd  
24 change the characteristics that the customer would pay  
25 and how it would be perceived by the customer.

1           Q.       Could you just change one rate of an  
2 existing rate structure to make it from a declining  
3 block to an inverted block rate structure?

4           A.       Yes.

5           Q.       You had a conversation with counsel from  
6 DOE regarding unequal rates of return and subsidies and  
7 interclass subsidies. Do you recall that conversation?

8           A.       Yes. Yes. I do.

9           Q.       Are all major rate classes served by  
10 Kansas City Power and Light recovering their  
11 incremental costs and making a contribution to fixed  
12 costs of the company?

13          A.       I believe they are, yes.

14          Q.       Is that one definition of a subsidy?

15          A.       Well, I mean, that's one of the  
16 troublesome areas. I mean, is, you can define subsidy  
17 as if it's not an equal return on equity for every  
18 class. And I would disagree with that.

19                   I think that, as you just pointed out,  
20 that if you're covering your incremental costs or your  
21 variable components, for example, and then if you're  
22 providing a contribution to your recovery of fixed  
23 costs, that would constitute, you know, a return. Now,  
24 they may not all be the same for every class, but it  
25 would constitute a return.

1           Q.       To your knowledge, has this Commission  
2       ever announced a policy that all classes should recover  
3       equal rates of return in any KCPL rate case that you're  
4       familiar with?

5           A.       I am not familiar with any that have  
6       done so.

7           Q.       Does KCP&L experience different levels  
8       of risks associated with the different classes -- rate  
9       classes that it serves?

10          A.       Yes. They do. If you --

11          Q.       Would you elaborate about why you  
12       believe that.

13          A.       Well, as an example, I guess, last week  
14       Mr. Giles talked about a large customer that -- it was  
15       the largest customer of Kansas City Power and Light  
16       that left the system, in essence, and basically went  
17       into bankruptcy. And there was a significant loss of  
18       revenue, and we had to write off a significant amount  
19       of revenue. That's, to me, a much higher risk than a  
20       residential customer leaving the service area.

21                   Some -- you know, residential customers  
22       are kind of a platform, if you want to look at;  
23       industrials have a lot more flexibility -- or larger  
24       customers do. And we -- so there's a different risk  
25       associated with every customer.

1           Q.       And you're suggesting the LPS class has  
2 a higher risk? Is that what you're suggesting?

3           A.       I think that's a policy decision that  
4 would definitely be addressed. To me, there are some  
5 large -- or, yeah, large power service customers that  
6 may not have as high a risk as others.

7           Q.       Okay. DOE's counsel also asked you  
8 about KCPL's plans for addressing rate design in Rate  
9 Case No. 3. Do you recall that?

10          A.       Yes. I do.

11          Q.       If the Commission rules that rate design  
12 changes may be made in this rate case, would -- could  
13 that affect KCPL's proposal in the next rate case?

14          A.       Most -- yes. It will. We'll have to  
15 quickly reevaluate how we would go about filing our  
16 case.

17          Q.       You were also asked, I think, by DOE's  
18 counsel regarding the fourth rate case, which would  
19 include Iatan 2.

20          A.       Right.

21          Q.       Do you recall that? If the company  
22 decides after it has input from other parties to go  
23 forward with an additional investment in wind, what  
24 rate case is that likely to show up in?

25          A.       If the company decides to go forward

1 with investments in wind -- well, it's according to the  
2 timing of that wind. I'm -- I don't really have a  
3 clear answer. You know, first of all, we'd need to go  
4 through an evaluation with the Staff and other parties  
5 of this case about the actual investment. But it could  
6 be as early as next year, if everything could work out  
7 right.

8 Q. You were also asked by counsel for DOE  
9 about the likelihood of increases, I think, in that  
10 Iatan 2 case.

11 A. Yes.

12 Q. Are there -- you mentioned savings that  
13 would be used to offset the increase in that case. Are  
14 there other things that are a part of the regulatory  
15 planned stipulation that would impact the level of the  
16 rate increase in that case?

17 A. Yes. There are. You know, one of the  
18 things is -- kind of unique to the regulatory plan is  
19 what's called this -- the amortizations associated with  
20 this class -- with the rate cases. It's my  
21 understanding these amortizations will mostly likely go  
22 away.

23 We will actually put them into rate base  
24 as offsets, and we will change the characteristics of  
25 our rate case attributable to that. And so that would



1 be one of the dynamics that would fall into the rate  
2 case.

3 Q. And that amortization could  
4 substantially change the level of the increase,  
5 depending --

6 A. Yes.

7 Q. -- on how many amortizations --

8 A. Right.

9 Q. -- are adopted?

10 A. Yes.

11 Q. You also mentioned that the Iatan 2 case  
12 could be the basis for a spin-off rate design case. Do  
13 you recall that discussion?

14 A. Yes. I do.

15 Q. Why do you believe that? And what would  
16 be your recommendation regarding that point?

17 A. Well, it's our -- it's my opinion, and I  
18 think it's the company's position, that completing the  
19 regulatory plan is a significant event for our company  
20 that deals with capacity, deals with a number of  
21 things, and energy efficiency, and deals with other  
22 investments of the company -- environmental, et cetera.

23 And basically, we'll have kind of  
24 concluded the components of the regulatory plan. And  
25 that would be the appropriate time to address -- at the

1 end. We addressed it at the beginning, which was last  
2 rate case. We addressed cost of service and rate  
3 design. And now, once we've gone through all the  
4 investments, that would be, to me, the next appropriate  
5 time to address it.

6 Q. And at that time, would you know how  
7 much was included in rate base and --

8 A. That's correct.

9 Q. -- what the overall expenses were  
10 associated with that --

11 A. Right.

12 Q. -- that investment?

13 A. Yes. Yes.

14 Q. Counsel for DOE also asked you regarding  
15 the stipulation and agreement in the regulatory plan  
16 case. And I believe the statement that was made by  
17 DOE's counsel in that case -- do you recall -- related  
18 to that stipulation, do you recall that discussion?

19 A. Yes. I do.

20 Q. If no party objects to a non-unanimous  
21 stipulation, do you know if the stipulation is deemed  
22 unanimous under the Commission's rules related to  
23 stipulations and agreement?

24 A. I believe it does. Yes.

25 Q. Staff counsel asked you, I think,

1 regarding the customer impacts that were related to  
2 Mr. Brubaker's proposal, related to the LPS class.

3 A. Right.

4 Q. Do you --

5 A. Yes. I do.

6 Q. -- recall that? If 47 customers switch  
7 to a different class as a result of the adoption of  
8 that proposal, do you believe that that would represent  
9 a rate structure change from your perspective?

10 A. I believe Mr. Brubaker's recommendation  
11 is excessive and does cause a rate structure change,  
12 because it moves a full cent per kilowatt hour away  
13 from the energy charge; it places all of that increase  
14 to the demand charge. And it's been my position --  
15 what I recommended is that that goes too far, that --  
16 you know, that you at least ought to look at the  
17 Parallel Generation tariff.

18 Q. Why do you believe that's excessive? Is  
19 there some other proposal that would be better?

20 A. Well, I believe --

21 MR. WOODSMALL: Your Honor, I believe  
22 this is far outside the scope of any cross-examination.  
23 Maybe he can tie it in, but I don't see where it's  
24 going.

25 JUDGE PRIDGIN: Mr. Fischer?

1                   MR. FISCHER: Your Honor, I was asking  
2 about the 47 customers that switched to a different  
3 class. And I believe Mr. Rush has indicated that he  
4 thinks that would be a change in rate structure and  
5 that that proposal is excessive. And I was just asking  
6 him why.

7                   JUDGE PRIDGIN: All right. I'll  
8 overrule. And I'm sorry. Do you need the question  
9 asked about, Mr. Rush?

10                  THE WITNESS: No. I do think that as a  
11 rate structure change -- I think that it goes too far.  
12 And as I state in my testimony, as well as discussed  
13 this morning, you need to look at that Parallel  
14 Generation tariff, that it shouldn't exceed that.

15                  You know, what we've talked about is  
16 that it should be mitigated. And whether it's --  
17 whether you don't reduce the full one cent; whether you  
18 reduce, for example, it only a, you know, a half a cent  
19 or something like that, in the first couple of blocks,  
20 you need to limit that reduction because it has far too  
21 big of an impact on the class.

22 BY MR. FISCHER:

23                  Q. If a proposal causes customers to  
24 migrate to another rate schedule, do you consider that  
25 proposal to be a rate design or rate structural change?

1           A.       I do. I do. My whole point with that,  
2    though, is if you're going to make this rate structure  
3    change, which we disagree with, it definitely needs to  
4    be limited.

5           Q.       If the Commission moderated  
6    Mr. Brubaker's proposal in some way as you just said,  
7    could that reduce the number of LPS customers that  
8    would be adversely affected?

9           A.       Yes. It would. Yes. I mean, we looked  
10   at a lot of different avenues of how to mitigate that  
11   impact to customers.

12          Q.       Do you know of a good way to reduce the  
13   number of LPS customers that would be adversely  
14   affected?

15          A.       I would recommend that if you're going  
16   to make the change -- which I don't agree you should,  
17   but if you're going to make the change, you should  
18   limit it to, for example, a half a cent for the first  
19   couple of -- two blocks, and no decrease for the last.  
20   And that would address the Parallel Generation tariff.

21                   MR. FISCHER: That's all I have, Your  
22   Honor. Thank you.

23                   JUDGE PRIDGIN: Mr. Fischer, thank you.  
24   I show that we are sitting almost right at noon, and  
25   the Commission has an agenda at noon, so this seems to

1 be the perfect time to break. Let's plan on resuming  
2 at roughly 1:15.

3 MR. MILLS: Your Honor, can you give us  
4 some idea of how we're going to proceed this afternoon,  
5 when we're going to make this switch to the other  
6 topic? And the only reason I ask is because I believe  
7 I talked last week with counsel about getting  
8 Mr. Brubaker on and off today so he doesn't have to  
9 come back tomorrow. And, if need be, if we can take  
10 him out of order so he does get done, I'd appreciate  
11 that.

12 JUDGE PRIDGIN: And that's certainly  
13 fine with me. And if that's something you can work in  
14 with counsel, I'm certainly willing to try to adjust  
15 anyone's schedule. And I'm doing this somewhat on the  
16 fly.

17 I would anticipate just staying with  
18 schedule and going with Ms. Meisenheimer, unless  
19 counsel wishes to go ahead and put Mr. Brubaker on.  
20 That's perfectly fine with me. And I'll -- like I  
21 said, I'm giving you as much warning as I can, as far  
22 as when we would switch over to have those other  
23 witnesses. And it would be something --

24 MR. WOODSMALL: You don't have a time  
25 for that right now?

1 JUDGE PRIDGIN: I do not. I'm sorry.

2 MR. MILLS: Okay.

3 JUDGE PRIDGIN: All right. Is there  
4 anything further from counsel before we go off the  
5 record?

6 MR. BRUDER: I did want to check, sir,  
7 will we have Mr. Rush back after the break? I did have  
8 three short matters where I think I -- I have some  
9 recross, or I guess re-recross in regard to some  
10 questions counsel just propounded to him.

11 MR. FISCHER: Your Honor, under the  
12 traditional custom and practice in this jurisdiction, I  
13 think one round is all we had.

14 MR. BRUDER: If that's the case, I  
15 withdraw my request.

16 JUDGE PRIDGIN: All right. Thank you.  
17 Is there anything further? All right. We will break  
18 for lunch. Let's resume at 1:15. Thank you very much.  
19 We're off the record.

20 (WHEREIN; a lunch recess was taken.)

21 JUDGE PRIDGIN: All right. We're back  
22 on the record. It's about 1:20. We are going to  
23 resume with rate design cross-examination.  
24 Ms. Meisenheimer is on the stand.

25 And I'll swear you in, Ms. Meisenheimer

1 in just a moment because -- I'm sorry.

2 Just to kind of give the parties a  
3 heads-up, I do want to deviate from today's list of  
4 issues and insert the witnesses that will be testifying  
5 on the subject matter of the motion to recuse  
6 Commissioner Appling.

7 And I believe that would be Warren Wood,  
8 a former employee of the Commission; Chris Giles, a  
9 Kansas City Power and Light employee; and Sheryl  
10 Gregory, she's an employee of the Commission, as well.

11 I understand Mr. Wood is only going to  
12 be available for a brief time this afternoon at  
13 roughly -- anywhere from 1:45 until about 3:00, or  
14 maybe a little before. And I understand Mr. Giles is  
15 en route and should be here about 2:30. And I haven't  
16 heard anything about Ms. Gregory's availability, so I'm  
17 just going to assume that's she available anytime this  
18 afternoon.

19 So that is my plan, and we'll do as best  
20 as we can insert those witnesses around that time slot.  
21 And again, I'm giving you as much notice as I can. I'm  
22 doing this on the fly. But I'm giving you literally --  
23 you know, minute-by-minute, I'm giving you updates on  
24 the availability of people. And I'll certainly try to  
25 accommodate counsel the best I can with anything.



1                   As you know, we will have Commissioners  
2 here, and they will have questions for these witnesses.  
3 And obviously you'd have the chance to cross-examine.  
4 Is there anything from counsel before we proceed with  
5 Ms. Meisenheimer?

6                   MR. MILLS: Just briefly, Judge. With  
7 respect to the motions to strike --

8                   JUDGE PRIDGIN: Yes, sir.

9                   MR. MILLS: -- having to do with  
10 Ms. Pyatte's testimony --

11                  JUDGE PRIDGIN: Yes, sir.

12                  MR. MILLS: -- it's my understanding  
13 that the Commission decided not to rule on those, at  
14 least at the present time.

15                  JUDGE PRIDGIN: That's correct. It will  
16 be taken under advisement. And I understand that  
17 counsel may need to raise those objections, and I would  
18 simply take those objections with the case. They would  
19 not be ruled upon.

20                  MR. MILLS: Okay. So I guess -- and  
21 I'm -- this is sort of a statement and sort of a  
22 question. Should we be asking questions of the  
23 witnesses as though that material were going to be part  
24 of the record?

25                  JUDGE PRIDGIN: I think that would be

1 the safer --

2 MR. MILLS: Okay.

3 JUDGE PRIDGIN: -- route to go, because  
4 I don't know how the Commission is going to rule. And,  
5 obviously, if they end up sustaining motions and  
6 striking, they would also not pay any attention to  
7 anything that was asked about that material. And I  
8 think that's a fair question.

9 MR. MILLS: Okay. Thank you.

10 JUDGE PRIDGIN: All right. Anything  
11 further before Ms. Meisenheimer takes the stand? All  
12 right.

13 If you'll raise your right hand to be  
14 sworn, please.

15 (Witness sworn.)

16 JUDGE PRIDGIN: Thank you very much.  
17 And Mr. Mills, anything for her before she's tendered  
18 for cross-examination?

19 MR. MILLS: Yes.

20 BARBARA MEISENHEIMER testifies as follows:

21 DIRECT EXAMINATION BY MR. MILLS:

22 Q. Ms. Meisenheimer, do you have a  
23 correction to your testimony?

24 A. I do. I have one. It occurs on Page 4  
25 of my rebuttal testimony, which is the only piece of

1 testimony that I filed in this case. On Line 8,  
2 there's a percentage that appears as 9.9 percent. That  
3 should be 7.7 percent.

4 MR. MILLS: Judge, that's all I have,  
5 and I'll tender the witness for cross-examination.

6 JUDGE PRIDGIN: Mr. Mills, thank you.  
7 Counsel who wish cross of Ms. Meisenheimer.

8 MR. BRUDER: DOE, sir.

9 JUDGE PRIDGIN: Mr. Bruder. Any other  
10 counsel? All right. I'm not sure who -- how we have  
11 this in order.

12 I'm sorry. Ms. Kleithermes?

13 CROSS-EXAMINATION BY MS. KLEITHERMES:

14 Q. Good afternoon, I suppose we're at now.

15 A. Good afternoon.

16 Q. Did you send or did you receive on  
17 direct distribution any e-mails in the discussions  
18 giving rise to the stipulation agreement finally  
19 adopted in the KCPL experimental rate plan case?

20 A. I personally did not. I think to some  
21 degree that may --

22 Q. All right.

23 A. -- be considered settlement discussions.  
24 I did, however, review e-mails, so --

25 Q. Okay. Did you participate in the

1 discussions among the parties that led to the rate  
2 design sentence the stipulation agreement that the  
3 signatory parties agree not to file new or updated cost  
4 of service studies or to propose changes to rate  
5 structures in Rate Filing No. 2?

6 A. I guess I'd like to ask my attorney to  
7 what extent I can answer this.

8 MR. MILLS: I will object to the  
9 questions. I think they're objectionable. Whether --  
10 the question of whether or not you participated is  
11 okay. I'm a little leery of where this is heading, but  
12 I don't have an objection to this question.

13 THE WITNESS: Okay.

14 I did not specifically file testimony, I  
15 don't believe, in that case.

16 BY MS. KLEITHERMES:

17 Q. Well, that wasn't the --

18 A. I --

19 Q. -- question, but feel free to continue.

20 A. Well, I'm trying to lead myself there.

21 It's been a long time. I've worked for Public  
22 Counsel -- I worked for Public Counsel during that  
23 period of time. We're a small office, and we often  
24 discuss generally --

25 Q. That's understandable.

1           A.       Okay. But I did not file testimony, and  
2 I cannot remember attending specific meetings where  
3 that was discussed.

4           Q.       Okay. Do you know who from the OPC  
5 would have participated in those discussions that gave  
6 rise to the language in the finally adopted stipulation  
7 and agreement?

8           A.       I believe that we had both -- or at  
9 least -- I should say at least -- at least Ryan Kind  
10 (ph), Russ Trippensee, and very possibly others in our  
11 office.

12          Q.       Okay. And do you remember roughly, you  
13 know, year-wise when those discussions would have  
14 occurred?

15          A.       Well, I mean, I think the 2006, part  
16 of -- maybe even as far back as 2005.

17          Q.       All right. Were there discussions  
18 within the Office of Public Counsel regarding rate  
19 design language in the stipulation and agreement as the  
20 stipulation agreement was being negotiated?

21                 MR. MILLS: That one I object to. That  
22 calls for attorney/client privilege. I don't think  
23 it's relevant to anything about what discussions the  
24 Office had internally.

25                 MS. KLEITHERMES: I don't know that

1 we're going into any conversations she may have had  
2 with her attorney. We are going to generally what  
3 group of experts consulted together regularly on these  
4 matters.

5 JUDGE PRIDGIN: All right. I'll  
6 overrule to the extent that I won't allow getting into  
7 any kind of attorney/client discussion. And Mr. Mills,  
8 I'll certainly, you know, I'll allow you to object.  
9 And so with that in mind, if you can answer her  
10 questions.

11 THE WITNESS: Typically, in office  
12 meetings that we have, there is an attorney present.

13 MS. KLEITHERMES: If you're not seeking  
14 the advice of that attorney on that matter, I don't  
15 believe for these purposes it would matter whether or  
16 not they're present. It would just be what the contact  
17 was, as discussed between the technical staff.

18 THE WITNESS: With respect --

19 MR. MILLS: Okay. Hang on. Hang on. I  
20 object to that statement. That's not a question.

21 MS. KLEITHERMES: That was a  
22 mischaracterization.

23 MR. MILLS: She cannot counsel this  
24 witness on what constitutes and doesn't constitute  
25 attorney/client privilege. So I don't think it's

1 right, in fact, in terms of advice. And I don't think  
2 she is in a position to offer legal advice to this  
3 witness.

4 MS. KLEITHERMES: My sincerest --

5 MR. MILLS: So I object --

6 MS. KLEITHERMES: -- apologies.

7 MR. MILLS: -- to that statement on --

8 MS. KLEITHERMES: I --

9 MR. MILLS: -- both grounds.

10 MS. KLEITHERMES: I withdraw that  
11 question.

12 BY MS. KLEITHERMES:

13 Q. And I simply ask the question: Who  
14 within the OPC made those discussions?

15 A. As I indicated before, our office is a  
16 small office. And we have typically an attorney that's  
17 dedicated to each area, and that attorney participates  
18 in the decision-making process and discussions that we  
19 generally have on any particular topic.

20 Sometimes additional personnel in  
21 addition to those specifically working on a case  
22 participate. I've been involved -- I originally  
23 started as a witness in telecommunications issues. But  
24 just generally, with the freedom to explore other areas  
25 and work on other issues, I've done other areas, as

1 well.

2 Q. All right.

3 A. So I don't think there's a clear-cut  
4 answer, and I do think that -- or at least from my  
5 perspective, I mean, certainly we get regular input  
6 from the attorneys on issues.

7 Q. All right. Well, moving on, then. Did  
8 you consult with anyone regarding the meeting of the  
9 rate design language in the stipulation and agreement  
10 before you pre-filed your rebuttal testimony in this  
11 case? And, of course, that would be in reference to  
12 other technical staff, not advice of counsel.

13 MR. MILLS: You can certainly answer it  
14 as to whether or not you talked to anyone before you  
15 filed your testimony.

16 THE WITNESS: Yes. I did.

17 BY MS. KLEITHERMES:

18 Q. All right. Who would that have been, of  
19 course, excluding counsel?

20 A. Excluding counsel, it would have  
21 included Ryan Kind, it would've included Russ  
22 Trippensee. And, of course, I -- in addition, I  
23 reviewed materials prior to filing testimony --

24 Q. All right.

25 A. -- that I believed were relevant.



1 Q. When did those discussions occur?

2 A. Before I filed testimony. I can't tell  
3 you specific dates.

4 Q. All right. So that would've been done  
5 in response to Ms. Pyatte's testimony? You did not  
6 endeavor to delve into the meaning of any terms in the  
7 stipulation agreement prior to any other sorts of  
8 matters other than Ms. Pyatte's surrebuttal?

9 A. No.

10 MR. MILLS: I object. There's no  
11 question there. That was a statement.

12 JUDGE PRIDGIN: If you could -- and I'll  
13 sustain it. If you can ask the question again, please.

14 BY MS. KLEITHERMES:

15 Q. Let me see if I can break that down a  
16 bit, because that was a rather compound thought on my  
17 part. At what time relative to events that have  
18 occurred in this case, in terms of filings, did you  
19 consult with Mr. Kind and Mr. Trippensee and review  
20 materials?

21 A. I consulted with them before I wrote  
22 testimony in the last case.

23 Q. Okay.

24 A. And perhaps even, you know, back to the  
25 time of the rate design discussions.

1           Q.       All right. And so what were you told in  
2 regard to what was and was not allowable in the opinion  
3 of these fellow experts?

4                   MR. MILLS: I object to that. First of  
5 all, there's no evidence yet that either of those  
6 people told her anything, and there certainly isn't any  
7 evidence that they told it to her outside of the  
8 context of any meeting with an attorney, which would be  
9 privileged according to the attorney/client privilege.

10                  MS. KLEITHERMES: I believe her  
11 discussion -- or her previous answer to the last  
12 question, she indicated that Mr. Kind and  
13 Mr. Trippensee reviewed those -- or in addition to  
14 materials that she reviewed was done.

15                  JUDGE PRIDGIN: I'll sustain to the  
16 extent that it's getting into attorney/client  
17 privilege. Otherwise, I'll overrule. And she's  
18 certainly free to say that she doesn't know or doesn't  
19 remember, or what have you. So if you can ask that  
20 question again.

21 BY MS. KLEITHERMES:

22           Q.       What were you told concerning the  
23 opinions of other non-attorney personnel in the Office  
24 of Public Counsel as to what meaning might be  
25 attributed to that sentence in the stipulation and

1 agreement?

2 A. I mean --

3 MR. MILLS: And I will instruct the  
4 witness only to answer that to the extent that these  
5 conversations occurred outside of the presence of an  
6 attorney and outside of the context of preparation for  
7 litigation in this case.

8 If you can recall any such occasions in  
9 which you talked about this without an attorney and  
10 without talking about litigation in this case, then you  
11 can answer the question --

12 MS. KLEITHERMES: Judge, if I may --

13 MR. MILLS: -- if you still recall --

14 MS. KLEITHERMES: -- quibble with  
15 Mr. Mills' interpretation of the attorney/client  
16 privilege. I believe he's accorded that much more  
17 broad protection than is generally associated with that  
18 privilege to the extent that he is apparently stating  
19 that any time an attorney is present in the room, even  
20 if the matter at hand is not giving legal advice, that  
21 privilege is accorded. Is that correct?

22 MR. MILLS: Is she asking me a question,  
23 Judge?

24 JUDGE PRIDGIN: I think so.

25 MS. KLEITHERMES: My apologies. That

1 was improper form.

2 JUDGE PRIDGIN: That's all right.

3 Again, I'll -- I will sustain to the extent that we're  
4 getting into attorney/client privilege. And otherwise,  
5 ask the witness to answer the question the best she  
6 can, if, indeed, anything happened that's outside the  
7 attorney/client privilege. So with that -- and if you  
8 need to ask that question again.

9 BY MS. KLEITHERMES:

10 Q. In these discussions that you say you've  
11 had with other members of the OPC staff, to the extent  
12 that any of them are not attorneys, could you please  
13 inform us as to what they told you regarding the  
14 meaning of the stipulation agreement language?

15 MR. MILLS: And again, if this is a  
16 meeting at which an attorney is present, and at which  
17 you were talking about trial litigation strategy, even  
18 if the attorney is not speaking at that exact moment, I  
19 would say that that is subject to the attorney/client  
20 privilege.

21 MS. KLEITHERMES: And I was simply  
22 restating the question with the qualification that the  
23 Judge has just placed on it so that Ms. Meisenheimer  
24 can have the question before her to answer.

25 MR. FISCHER: Sounds like hearsay to me,

1 Judge.

2 JUDGE PRIDGIN: I don't know if it's  
3 being offered for the truth of the matter asserted.  
4 And it may be hearsay. I'm going to sustain because I  
5 think we're getting too close into attorney/client  
6 privilege. And I think we're also getting very near  
7 hearsay, if we're not already in it.

8 MS. KLEITHERMES: All right. Moving on,  
9 then.

10 BY MS. KLEITHERMES:

11 Q. When did you first learn of any of the  
12 e-mails included in the surrebuttal testimony of Staff  
13 Witness Pyatte?

14 A. I believe I actually saw them before  
15 they were filed in Ms. Pyatte's testimony.

16 Q. When would that have been?

17 A. I think it was before I filed the  
18 rebuttal testimony.

19 Q. Would these be among some of those  
20 materials you reviewed?

21 A. Yes.

22 Q. And how were you made aware of the  
23 existence of those documents?

24 A. Within Public Counsel, as I've tried to  
25 describe before, we work fairly closely with other

1 members of the staff, and that -- you know, in  
2 exploring what issues should be addressed in testimony,  
3 who should address those issues based on our resources.  
4 As a part of that review and my preparation, I inquired  
5 as to the opinions of other staff members in Public  
6 Counsel, as I regularly do.

7 Q. Okay. What is your interpretation of  
8 the phrase "all rates will be determined by an equal  
9 percentage increase to all rate components"?

10 A. What is my what?

11 Q. What do you believe that phrase to mean?

12 A. I assume that it would mean --

13 MR. MILLS: Well, wait. Before we  
14 answer that question, it's my belief that -- and  
15 Counsel didn't cite to that, but I believe this is a  
16 portion of the disputed language that was filed, I  
17 believe, as confidential. And we're in open session  
18 now. And I believe --

19 MS. KLEITHERMES: I --

20 MR. MILLS: -- it is also language that  
21 we assert is subject to privilege, which we have not  
22 waived. And so if that is the language that she's  
23 reading from, then I object to it on both of those  
24 bases.

25 MS. KLEITHERMES: Well, I -- Judge, if I

1 may respond to that. I was actually paraphrasing what  
2 I believe is the Office of Public Counsel's position on  
3 how any rate increase imposed in this case should be  
4 implemented. And I was speaking only to that. And I  
5 will not address whether or not he may have just  
6 inadvertently disclosed what is highly confidential.

7 JUDGE PRIDGIN: Okay. First things  
8 first. We need to go in camera for this. I'm a little  
9 concerned if we're getting into anything --

10 MR. MILLS: May I have that question  
11 read back, please?

12 JUDGE PRIDGIN: Yes, sir.

13 MS. KLEITHERMES: What is your  
14 interpretation of the phrase "all rates will be  
15 determined by an equal percentage increase to all rate  
16 components"?

17 MR. MILLS: Yeah. I would like to in  
18 camera just to discuss this.

19 JUDGE PRIDGIN: All right. Bear with me  
20 just a moment.

21 (REPORTER'S NOTE: At this point, an  
22 in-camera session was held, which is contained in  
23 Volume 12, pages 807 through 815 of the transcript.)

24

25

1 JUDGE PRIDGIN: All right. We're back  
2 in public session.

3 BY MS. KLEITHERMES:

4 Q. Ms. Meisenheimer, what is your  
5 interpretation of the term "rate block"?

6 A. What I believe is meant by a rate block,  
7 or what we typically characterize as a rate block, is a  
8 block of usage to which a particular rate applies.  
9 And, often, that rate block is established by creating  
10 a lower and an upper bound measured in whatever usage  
11 units --

12 Q. Okay.

13 A. -- are relevant.

14 Q. What's your interpretation of the term  
15 "rate structure"?

16 A. Rate structure involves both specific  
17 rates and relationships between rates.

18 Q. And what is your interpretation of the  
19 term "rate design"?

20 A. Rate design is, in my opinion, both the  
21 work of establishing a rate structure as well as  
22 identifying the justifications for that rate structure.  
23 For example, is there a basis -- or have you ensured  
24 against, or is there some basis for price  
25 discrimination under certain conditions? Is marginal



1 cost pricing appropriate, or some other basis of  
2 pricing?

3                   So, generally, I think the rate design  
4 is a little bit broader in that it also incorporates  
5 the basis for the rate structure.

6           Q.       All right. Now, Phillips, in his  
7 work -- I believe it's the regulation of public  
8 utilities is the title of it. You refer to it in your  
9 testimony.

10          A.       Yes.

11          Q.       He refers to rate structure as having a  
12 number of components, correct, such as freedom from  
13 controversy, revenue stability, rate of return --  
14 sorry, considerations of rate of return, fair cost  
15 apportionment, the consumer rationing objective.  
16 Doesn't this definition of rate structure preclude even  
17 a general rate increase?

18          A.       Can you please direct me to the page?  
19 And are you looking at -- are you referring to the  
20 version that I cited in my testimony, or the version  
21 that the Staff owns?

22          Q.       I have the third before me. If the  
23 second version is substantially different, I'd  
24 appreciate it if you could bring that to my attention.

25          A.       Minus the second edition, I was aware --

1 in responding to Staff's later requests -- that Staff  
2 had a copy that was actually newer than mine. So if  
3 you'd like me to look at your version, I'm happy to.

4 Q. Certainly.

5 A. And did you have a page? I mean, are  
6 you referring to the criteria of sound rate structure?

7 Q. Yes.

8 A. Okay. Those are actually Baumbright's  
9 criteria. They're not --

10 Q. Yes.

11 A. -- actually Phillips' who you've --

12 Q. My apologies.

13 A. -- I thought your question --

14 Q. I was referring to that as they were  
15 cited by Phillips, and I believe you refer to both  
16 Baumbright and Phillips in your testimony.

17 A. That's correct. I was trying to point  
18 out that Phillips independently of Baumbright uses that  
19 same definition, if you will, of rate structure. Okay.  
20 So --

21 Q. But --

22 A. -- you want me to talk about the  
23 Baumbright criteria?

24 Q. Well, is -- by Phillips citing them, I'm  
25 assuming he doesn't have a whole lot of problems with

1     them.  So is it -- would you --

2                   MR. MILLS:  Judge, can I ask that to be  
3     stricken?  That's not a question.  That's another  
4     comment.

5                   JUDGE PRIDGIN:  I'll overrule, but I  
6     will ask Counsel to try to ask questions and not just  
7     make statements.  And I may strike in the future.

8                   MS. KLEITHERMES:  Okay.

9     BY MS. KLEITHERMES:

10            Q.     Phillips refers, I mentioned, to a  
11     number of components to rate structure, such as freedom  
12     from controversy, revenue stability, rate of return  
13     considerations, fair cost apportionment, the consumer  
14     rationing objective.  Would you agree with that?

15            A.     Among others, sure.

16            Q.     Yes.  Would that definition of rate  
17     structure preclude even a general rate increase  
18     concurrent with your interpretation of the language of  
19     the stipulation and agreement?

20            A.     No.  I don't believe it would.  And the  
21     reason that I don't believe it would is, if you had  
22     read more of the book, you would recognize that  
23     Phillips actually separates those issues into two  
24     distinct areas.

25                   The first area of regulation involving

1 determination of a revenue requirement, or what they  
2 refer to as the rate level. The second component being  
3 the rate structure and dealing with concepts of what  
4 supports the rate structure.

5                   So, actually, they're viewed as two  
6 distinct steps in the process of rate regulation. So I  
7 do not think that those particular criteria preclude a  
8 consideration of what is the proper revenue  
9 requirement, total revenue requirement.

10               Q.       He does include -- Phillips and/or  
11 Baumbright do include revenue stability as a criteria  
12 of rate structure, though. Correct?

13               A.       Revenue stability from year to year, I  
14 think, is most appropriately interpreted as once you  
15 determine what is the revenue requirement and you're  
16 designing a rate structure to collect the revenue  
17 requirement that occurred at a snapshot in time, if you  
18 will, then I really believe what this means is that on  
19 a going-forward basis, you don't expect significant  
20 volatility in that level of revenue requirement  
21 recovery until you do the next rate-setting process.

22               Q.       Is your support of an equal percentage  
23 rate increase, which ignores fairly widely acknowledged  
24 misalignments in keeping with the principles of fair  
25 cost apportionment?

1 MS. KLEITHERMES: And, I course, see  
2 Mills' objection there.

3 BY MS. KLEITHERMES:

4 Q. And let me rephrase that question to say  
5 that: Is your support of an equal percentage increase  
6 not in keeping with the results of the four class cost  
7 of service studies introduced in the previous rate case  
8 and keeping with the principles of fair cost  
9 apportionment as identified by Baumbright and by  
10 Phillips -- and/or by Phillips?

11 A. Let me write down the parts of that that  
12 I'd like to respond to. Okay.

13 Q. Certainly.

14 A. First of all, you were asking me about  
15 whether it's in keeping with the cost studies filed in  
16 the last case. Correct?

17 Q. Well, it was a compound sentence for a  
18 reason. And that is to ask that, in recognition of  
19 Baumbright and Phillips' principle of fair cost  
20 apportionment, do you see a discrepancy between that  
21 position of only advocating an equal percentage  
22 increase in this case when, if you would take the  
23 results of the class cost of service studies introduced  
24 in the last case into consideration?

25 MR. MILLS: I think I may have an

1 objection. Can I have that question read back, please?

2 BY MS. KLEITHERMES:

3 Q. Would you consider --

4 JUDGE PRIDGIN: I'm sorry. If you'll  
5 let the court reporter do it. I'm sorry.

6 MS. KLEITHERMES: Okay.

7 (WHEREIN; the question was read back by  
8 the court reporter.)

9 MR. MILLS: I object because I think it  
10 assumes facts that are not in evidence, and it's a  
11 compound question that is not necessarily  
12 comprehensible.

13 JUDGE PRIDGIN: Yeah. I think she just  
14 withdrew the question. Thank you.

15 BY MS. KLEITHERMES:

16 Q. Are the terms "rate structure" and "rate  
17 design" synonymous?

18 A. They are not exactly the same, no.

19 MS. KLEITHERMES: No further questions.

20 JUDGE PRIDGIN: All right. Thank you.

21 Mr. Bruder, did you have cross?

22 MR. BRUDER: Yes. I do.

23 I'm going to ask if I take this seat.

24 MR. MILLS: You can have mine, if it  
25 helps.

1 MR. BRUDER: Oh, good idea. Thank you.

2 CROSS-EXAMINATION BY MR. BRUDER:

3 Q. Good afternoon, Ms. Meisenheimer.

4 A. Good afternoon.

5 Q. Does Public Counsel agree with and  
6 support -- oh, let me just withdraw that and say first,  
7 I will ask you please if these questions I have for you  
8 are structured in a way that they can be answered yes  
9 or no. I will ask you please to answer yes or no, and  
10 then of course elaborate as much as you choose. But I  
11 would like a yes or no answer.

12 A. I'll do my best.

13 Q. Thank you. Does Public Counsel agree  
14 with and support the principle that an electric utility  
15 rate should be based on what it costs for the supplying  
16 electric utility to provide the service or the services  
17 which the ratepayer pays -- for which the ratepayer  
18 pays that rate?

19 A. My answer would be yes, generally.

20 Q. Okay. That's generally what we call the  
21 principle of cost-based rate making; is that right?

22 A. Yes.

23 JUDGE PRIDGIN: And Ms. Meisenheimer,  
24 I'm sorry. If you could do your best to speak into the  
25 microphone in case we have people listening.

1                   THE WITNESS: It would help if he was at  
2 the podium, then I could actually --

3                   JUDGE PRIDGIN: I understand. I know  
4 it's kind of awkward.

5                   THE WITNESS: -- be in -- well, it helps  
6 to see someone's, you know, facial and their mouth move  
7 when they're asking you a question -- when they're  
8 asking you questions softly.

9                   MR. BRUDER: Oh, okay.

10 BY MR. BRUDER:

11               Q.       Does Public Counsel agree that all of  
12 the cost of service studies that were presented in this  
13 proceeding and the prior proceeding demonstrate that  
14 there are significant differences in the return -- rate  
15 of return from the various rate classes?

16               A.       No.

17               Q.       Are you saying that the rates of return  
18 of the various classes are the same?

19               A.       I think that you originally asked me if  
20 they were significantly different. And my answer was  
21 no.

22               Q.       Do you know what the various rates of  
23 return are?

24               A.       I actually performed the class cost of  
25 service study for Office of Public Counsel in that



1 previous case. I'm sorry. Did you ask me a yes or no  
2 question? I didn't mean to be not --

3 Q. I asked you whether you know what the  
4 various classes' rates of return are.

5 A. Based on the previous cost studies, at  
6 one time I did know what those were, yes.

7 Q. Are you saying you don't know them this  
8 day and this moment on the stand?

9 A. I'm saying I would have to look back  
10 through my testimony and the cost studies that I  
11 prepared. I think that there is some indication of  
12 information provided in Ms. Pyatte's testimony in this  
13 case.

14 Q. All right. I don't quite understand,  
15 because you testified that the differences in the  
16 returns are not significant, but you tell me you don't  
17 know what the returns are. I don't understand how you  
18 can testify that they're not significant if you don't  
19 know what they are. Can you explain that?

20 A. Specifically. In the last case, I did a  
21 cost study based on time of use that indicated that the  
22 residential class was approximately -- I believe it was  
23 2 to 2.5 percent from class cost to service on a  
24 fully-allocated basis.

25 And so then if you would take into

1 account the 2 percent adjustment that was done in the  
2 last case, I would say that within a range of  
3 reasonableness from a statistical basis, you could  
4 argue that it's not really clear that residential is  
5 significantly different from cost of service.

6 Now, granted, the other cost studies in  
7 the case had a range away from cost of service for  
8 residential that varied. But at least one, I think,  
9 indicated that residential was not significantly  
10 different from cost of service once you take into  
11 account the shift that was already made.

12 Q. And that happens to be the cost of  
13 service study that you prepared and presented; is that  
14 correct?

15 A. One of the cost studies that I prepared  
16 and presented, yes.

17 Q. Do any of the other studies that you  
18 prepared and presented demonstrate that?

19 A. I guess my answer would have to be yes.

20 Q. How do they do that? Which studies and  
21 how do they do that?

22 A. The other study that I performed used  
23 different allocators that I -- actually, I preferred  
24 the time of use study to the other one. But I had done  
25 another study based on the method the Public Counsel

1 had previously used to develop an allocator. And that  
2 came up with residential, I want to say around 5  
3 percent away from cost of service, with a 2 percent  
4 adjustment.

5                   You know, you're down to roughly 3  
6 percent. And cost of service studies are a guide to  
7 setting rates. They're allocation of significant  
8 common costs and joint costs. So --

9           Q.       Excuse me. You're pretty much beyond  
10 the frame of the question.

11          A.       You asked me --

12                   MR. MILLS:   Aside -- go ahead.

13                   THE WITNESS:   You asked me to explain  
14 why, and I'm doing exactly that. It's -- I think I  
15 gave you the yes answer first, and then --

16                   MR. BRUDER:   I'm sorry.

17                   THE WITNESS:   -- I was trying to  
18 explain.

19                   MR. BRUDER:   I think you're right. I do  
20 apologize. I think you're right. Go ahead.

21                   THE WITNESS:   And so once you take into  
22 account that there is some variation in the preparation  
23 or the results that you obtain from cost studies -- in  
24 fact, I believe the Staff in the past has accepted  
25 something in a range of about 5 percent away from cost

1 of service.

2 That when you take all those  
3 considerations -- and also the time frame of the cost  
4 studies -- I think there was just a -- there were a  
5 number of reasons why you wouldn't want to go or be  
6 tied to directly to the specific number that came from  
7 the cost study.

8 So I think within a range of  
9 reasonableness. It wasn't entirely clear to Public  
10 Counsel that residential was priced significantly above  
11 cost.

12 BY MR. BRUDER:

13 Q. Did you say it wasn't entirely clear?

14 A. It was not clear to Public Counsel that  
15 residential was priced significantly above cost.

16 Q. Okay. What supports that other than  
17 studies done by Public Counsel? Could you -- any other  
18 studies that were filed?

19 A. I think that the Staff filed a class  
20 cost of service study report which I don't know whether  
21 we're going to address later. Also, in surrebuttal  
22 testimony, Ms. Pyatte included a schedule that appears  
23 to be updated for the studies that Public Counsel and  
24 other parties filed later in the process, and that she  
25 filed in her first testimony.

1                   I would say that, you know, looking at  
2     those results, it -- you know, the two OPC studies did  
3     come up with the lowest for the residential class.

4                   Now, were you specifically asking me  
5     about the residential class? Or did you want me to go  
6     on and talk about other classes, as well?

7           Q.       Well, what I'm asking is putting aside  
8     the semantics, DOE believes that all of the cost of  
9     service studies demonstrate that there are significant  
10    subsidies from the large users to the residentials.

11                   What I've heard suggested in your  
12    testimony this afternoon is that Public Counsel studies  
13    at least provide some suggestion that that may not be  
14    the case; is that right?

15           A.       Yes. That's true. And I'm not sure  
16    what your definition of subsidy is, but I doubt it  
17    would agree with an economic definition of subsidy.

18           Q.       Well, if I ask you yes or no, do you  
19    believe that are a subsidy or subsidies from the large  
20    classes -- large user classes to the residentials,  
21    would you say there are or there aren't?

22           A.       As an economist, I would say no, there  
23    are not.

24           Q.       Okay. And why is that?

25           A.       A subsidy is defined to exist when

1 one -- when one class, if you will, is paying less than  
2 incremental cost and another class can be shown to be  
3 paying in excess of a fully-distributed cost. And so I  
4 do not think that from an economic definition of  
5 subsidy there are subsidies that exist.

6 Q. Okay. So if we define the word  
7 "subsidy" as you have just now defined it, then your  
8 position is there are no subsidies?

9 A. Yes.

10 Q. Okay. We're contemplating here, as I  
11 understand it -- and I'm a newcomer -- that there will  
12 be this case and then two more rate cases that is under  
13 the regulatory plan; is that correct?

14 A. Yes.

15 Q. Now, looking ahead, if we may, to the  
16 fourth and last of those proceedings, it's anticipated  
17 under the plan that that will be the proceeding in  
18 which the company seeks to add to its rate base a new  
19 large coal fire facility; is that correct?

20 A. That's my understanding.

21 Q. And does Public Counsel or you  
22 particularly have a notion of how many dollars roughly  
23 will be added or sought to be added to rate base --

24 A. I think --

25 Q. -- on the base of that?

1           A.       I'm sorry. I think that instead of  
2 attempting to answer this yes or no, I might ask you to  
3 ask the same question of Russ Trippensee. He's our  
4 witness on that issue.

5           Q.       Okay. This morning, we had testimony to  
6 the effect that a ballpark figure for that new plant's  
7 addition to rate base would be something like \$500  
8 million. That's a ballpark estimate. Now, if we hold  
9 everything else constant, and that \$500 million is  
10 added to rate base, will that pretty definitely  
11 necessitate a significant increase in residential  
12 rates?

13          A.       Again, how that additional revenue  
14 requirement is added is something probably best  
15 addressed by Mr. Trippensee. Are you asking me about a  
16 hypothetical, just any company had that kind of an  
17 increase? Or --

18          Q.       You can take it either way that you're  
19 comfortable answering. And I understand the  
20 distinction you're making, and you can respond as you  
21 choose. Just, that's fine.

22          A.       All right.

23          Q.       Yeah. Take it as a hypothetical.

24          A.       Well, if I -- okay. If I took it as a  
25 hypothetical, then I would say, yes, residential, as

1 well as all other classes, would likely face a  
2 significant increase.

3 Q. And assuming for the moment that there  
4 are the interclass subsidies that you deny, isn't it  
5 true that that significant increase would be necessary  
6 for the residentials even if nothing were done to  
7 address those interclass subsidies?

8 A. Well, I disagree with the premise that  
9 they are interclass subsidies. But if you want to  
10 rephrase it, unequal rates of return, like I believe  
11 that you did with the company witness, I might be able  
12 to answer it for you.

13 Q. That's just fine. Go ahead on the basis  
14 of calling it unequal rates of return instead of  
15 subsidies. That's fine.

16 A. And I'm sorry. Can I get you to repeat  
17 the question?

18 Q. Sure. Assuming that the plant is added  
19 to rate base, won't that necessitate a significant  
20 increase for residentials even if nothing is done to  
21 address the differences in the relative rates of return  
22 of the various classes?

23 A. Yes. It might, as it would likely for  
24 all other classes, as well.

25 Q. Now, you've been involved in this sort



1 of thing for a long time. And so I ask you, the fact  
2 that there will be necessary and significant increase  
3 or increases for the residential rates, isn't that  
4 going to make the Staff and Public Counsel and the  
5 company more reluctant than they would otherwise be to  
6 address these interclass subsidies, assuming that there  
7 are interclass subsidies and redefining them the way  
8 you do?

9 MR. MILLS: I object to the form of the  
10 question on two basis. One is that the whole  
11 interclass subsidies thing, which this witness  
12 disagrees with. But the first is that the question was  
13 premised with the statement, You have been involved  
14 with this sort of thing for a long time, or something  
15 of that nature.

16 MR. BRUDER: All right. I take it back.

17 MR. MILLS: I believe that's unclear as  
18 to what "this sort of thing" is. So I object to it on  
19 both of those bases.

20 BY MR. BRUDER:

21 Q. Okay. This sort of thing is utility  
22 rates, telephone and electric utility. Does that  
23 clarify?

24 MR. MILLS: You can answer, if you  
25 understand the question.

1                   MR. BRUDER: All right. I'll go back.

2     Let's lay a foundation.

3     BY MR. BRUDER:

4                   Q.     You've worked for this Commission for  
5     how many years?

6                   A.     I have not worked for the Commission. I  
7     have worked for the Public Counsel for at least 11  
8     years.

9                   Q.     During those 11 years, have you been  
10    involved in proceedings regarding various utility rates  
11    and in the making of studies which underlie those  
12    utility rates and prevent proposals and possibilities  
13    thereto?

14                  A.     Yes. In the 11 years that I've worked  
15    for Public Counsel, I've worked doing cost-related  
16    studies in the area of telecommunications, gas,  
17    electric, water.

18                  Q.     Is it fair to say that you're an expert  
19    in public utility rates?

20                  A.     Generally, yes, I would say that I am.

21                  Q.     Is it fair to say that you've worked  
22    before this Commission for 11 years?

23                  A.     Yes. I have regularly presented  
24    testimony before the Commission.

25                  Q.     All right. Having established that

1   you're an expert on utility rates and that you've  
2   worked before this Commission for 11 years on the  
3   subject of utility rates, please tell me your opinion  
4   as to whether the necessity of a significant increase  
5   to the residential rates will likely render Staff and  
6   the Public Counsel and the company more reluctant than  
7   they would otherwise be to address the differences in  
8   interclass rates of return in that fourth rate  
9   proceeding.

10                   MR. FISCHER: Your Honor, I object to  
11   having this witness speculate what the company's  
12   reaction may be in any future proceeding.

13                   MR. MILLS: As well as speculating what  
14   the Staff's approach may be. I join in the objection.

15   BY MR. BRUDER:

16           Q.       All right. How about Public Counsel's?

17           A.       Well, first of all, I think that I asked  
18   that you direct questions regarding future potential  
19   revenue requirements to Mr. Trippensee who is our --

20           Q.       You did.

21           A.       -- witness on that area -- in that area.

22           Q.       Uh-huh.

23           A.       And in the previous questions, we were  
24   working with hypotheticals. I'm not sure at this point  
25   whether you've now converted that hypothetical to an

1 assumption about specifically what will happen when  
2 Iatan 2 -- I'm trying to decide whether I can answer  
3 the question yes or no.

4 JUDGE PRIDGIN: I don't know that he --  
5 I know that he asked you to answer yes or no, but I  
6 think he asked something based on a please give your  
7 opinion. So to the extent that you're able to answer  
8 his question.

9 THE WITNESS: Well, in -- I'm not sure  
10 that I know today what the impact of adding Iatan 2 by  
11 the time it's fully deployed will be. And so I guess  
12 my best answer would be, I don't know right now.

13 BY MR. BRUDER:

14 Q. You don't have any clear sense of what  
15 the impact of that enormous plant to rate base will be?  
16 Is that what -- your testimony?

17 A. I don't have a clear sense today of what  
18 that impact might be on the relative class  
19 responsibilities of a significant increase. So I don't  
20 know whether there will be a need to address class  
21 differentials at the time that additional investment  
22 may be incorporated into the revenue requirements.

23 Q. All right. Then assuming for the  
24 purpose of the question that the need to address the  
25 differences in return is more or less what it is today,

1 can you answer the question?

2 A. I don't understand the question. I'm  
3 sorry. I don't understand that question.

4 JUDGE PRIDGIN: Do you need the question  
5 asked again?

6 THE WITNESS: Please.

7 JUDGE PRIDGIN: All right.

8 THE WITNESS: Please.

9 JUDGE PRIDGIN: I'm sorry. If you could  
10 ask the question again, Mr. Bruder.

11 BY MR. BRUDER:

12 Q. Well, let me go back to the beginning of  
13 this. In this fourth proceeding, we're going to have  
14 one thing happening, and that's going to be a fairly --  
15 a significant increase for the residential. The  
16 reason for that increase being the addition of this  
17 plant to rate base. I believe we've agreed to that  
18 much.

19 A. I don't know that we really have agreed  
20 to that until you talk to Mr. Trippensee. However,  
21 I -- also, I have a concern that you characterized it  
22 as to residential, but it seems to me that if there's a  
23 significant increase, it may be to all the classes, not  
24 just to one class. And that will affect where the  
25 differences in rate of return, if you will, are for the

1 various classes.

2 Q. Well, I'll limit it to the residentials.

3 Will the addition of this plant to rate base  
4 necessitate a significant increase to the residentials?

5 If you say you don't know, I --

6 A. It may require an increase, not  
7 necessarily a relative increase.

8 Q. I asked you whether it would require a  
9 significant increase to the residentials.

10 A. I don't know.

11 Q. Okay. Well, let me just tie it up and  
12 ask you, does Public Counsel take the position here and  
13 now that either there are no significant differences  
14 between the classes' rates of return or that the  
15 differences, whatever they are, are not significant  
16 enough to need to be acted upon?

17 A. That -- I think there were actually two  
18 questions there. If you want a yes or no, can I get  
19 you to split them up?

20 Q. Sure. The first one is, does Public  
21 Counsel take the position that, in fact, whatever we  
22 call this interclass matter -- if we call it a subsidy  
23 or a difference in rate of return -- do you take the  
24 position that that situation just doesn't exist?

25 A. No. I would say that we are where we

1 are because of a stipulation in a previous case. And  
2 our position in this case is based on the commitment  
3 that we believe we made in a previous case. With  
4 respect to the differences in cost allocation, we  
5 believe we made a concession to move toward those based  
6 on a single adjustment that was supposed to occur in  
7 the first case.

8 Q. So you're saying that your position that  
9 there ought to be no further movement in regard to  
10 interclass revenues is based on the commitment that you  
11 made and you believe others made in the stipulation and  
12 agreement?

13 A. I believe it's based on that, and from  
14 my perspective, based on the work I did in the last  
15 case. I think it's justified. I believe it was cost  
16 justified not to move further.

17 Q. So your position is really nothing  
18 further needs to be done on this at this point; is that  
19 right?

20 A. I would say yes.

21 Q. Okay. Now, in your testimony, you  
22 adverted to that stipulation and agreement. This is  
23 your rebuttal testimony, found on Page 3, beginning on  
24 Line 20. You haven't quoted it but you have  
25 characterized it in its effect; is that right?

1           A.     You're talking about which of the  
2 stipulations?

3           Q.     The stipulation --

4           A.     The one from --

5           Q.     -- that you reference at the bottom of  
6 Page 3.

7           A.     I read the one from EO-2005-0329. The  
8 reason I'm asking, there's also a stipulation in the  
9 other case that I participated in, ER-2006-0314. So  
10 we're going to talk about the regulatory plan stip?

11          Q.     Well, I'll tell you what. For purposes  
12 of this cross, let's talk about them both. And let's  
13 say when I refer to the stipulation and agreement, I'm  
14 referring to them both, and I'll ask you to answer in  
15 regard to both.

16          A.     Okay.

17          Q.     Is that understood?

18          A.     Sure.

19          Q.     Okay.

20                 JUDGE PRIDGIN: Mr. Bruder, did you have  
21 a question pending?

22                 MR. BRUDER: Yes, sir. It will just  
23 take me a minute --

24                 JUDGE PRIDGIN: Okay.

25                 MR. BRUDER: -- to find the -- I'm



1     sorry -- the next thing.

2     BY MR. BRUDER:

3             Q.       Under the language of either of the  
4     stipulations, are the parties to those stipulations and  
5     agreements prohibited from considering a rate structure  
6     or a rate design filing that is filed or otherwise put  
7     forward by a non-party to the stipulations and  
8     agreements?

9             A.       Are they prohibited from?

10            Q.       Considering a rate structure or rate  
11     design filing or proposal that is proposed or otherwise  
12     put forward by a non-party to the stipulation and  
13     agreement.

14            A.       By considering, do you mean supporting?  
15     Or do you mean simply considering the relevance of?

16            Q.       Well, I'll tell you what. Both. Let's  
17     say considering the relevance of, considering and  
18     supporting. Are you barred from supporting -- if --  
19     let's put it more specifically and let's get down to  
20     it. If DOE, or if one of the large interveners puts  
21     forward a proposal on rate structure and rate design,  
22     do these terms of these stipulations bar your office  
23     from considering such a proposal?

24            A.       I don't think that we're necessarily  
25     barred from considering what are the ramifications of a

1     proposal.  So just the word "considering" in terms of  
2     just mulling it over --

3             Q.       Let's go to the next one.

4             A.       -- no, I don't think so.  If you're  
5     talking about considering in terms of supporting  
6     potentially, to the extent that a signatory then finds  
7     itself doing something that it agreed not to do in the  
8     original stipulation and agreement -- I mean, I'm not  
9     an attorney, but it seems to me the result is the same.

10            Q.       Where in either of these stipulations  
11    and agreements do you find language that prohibits your  
12    office from supporting a proposal that's made by a DOE  
13    or another large intervener that isn't a signatory to  
14    these agreements?

15            A.       Okay.  Well, I think we're prohibited  
16    from submitting a new or revised cost of service  
17    study -- class cost of service study or proposing  
18    changes in rate structures.  And to the extent that we  
19    would support another party's initial recommendation, I  
20    think then, in fact, we then become a proponent of that  
21    position.  And that's contrary to, I think, what we  
22    agreed to.

23            Q.       I see.  Do you have anything further in  
24    the way of explaining why the stipulation and agreement  
25    doesn't prohibit you to support a non-signatory's

1 proposal?

2 A. I don't think I have anything to add to  
3 the answer I just gave.

4 Q. Okay.

5 JUDGE PRIDGIN: And Mr. Bruder, if I  
6 could interrupt and ask about how much more questioning  
7 you have. I'm trying to juggle schedules.

8 CHAIRMAN DAVIS: Make sure he knows,  
9 he's got as much time as he needs.

10 JUDGE PRIDGIN: Yes, sir.

11 CHAIRMAN DAVIS: If he wants to take all  
12 night, we can stay all night. I certainly support his  
13 right to do that.

14 JUDGE PRIDGIN: All right. I'm not  
15 trying to get you to stop. I'm just trying to juggle  
16 schedules of witnesses that we're taking out of turn.

17 MR. BRUDER: I think I need no more than  
18 ten minutes, tops, to finish. Will that be  
19 satisfactory?

20 JUDGE PRIDGIN: I think so. If you can  
21 try to limit it to ten minutes.

22 BY MR. BRUDER:

23 Q. Does Public Counsel -- well, strike  
24 that.

25 At Page 5 of your rebuttal testimony --

1 if you could get that.

2 A. I'm there.

3 Q. You say that one element of the  
4 stipulation and agreement you reference is that, It  
5 provides certainty to the parties in the process of  
6 bringing Iatan 2 on-line; is that correct?

7 A. Yes.

8 Q. Okay. I refer you now to  
9 Mr. Trippensee's rebuttal at Page 6, Lines 1 through 7.  
10 There, he says that the Commission is in the habit of  
11 excluding items that are known to be measurable. He  
12 says there's no assurance that this plant will ever be  
13 placed in service, nor what its costs will be nor the  
14 impact of cost responsibility on customer class effect  
15 on all system sales. And he says a host of other  
16 factors.

17 Can you tell me, if we cannot know  
18 whether this major plant will be brought on-line nor  
19 what it will cost to construct nor what its impact on  
20 cost responsibility be, how the stipulation and  
21 agreement can provide certainty to the parties in the  
22 process of bringing this plant on-line?

23 A. Well, it provides certainty to the  
24 parties in -- to the extent that whatever cost is  
25 incurred will be distributed to the parties, or to the

1 classes if you will, in a specific way.

2 Q. And that specific way is what?

3 A. That there would be no change in the  
4 rate structures until that fourth case. After the  
5 first case, there would not be an additional change in  
6 the rate structures until the fourth case.

7 Q. The fourth case is when the plant is  
8 going to be brought on-line, isn't it?

9 A. Yes.

10 Q. Well, if that's the case, when it's  
11 going -- that it's going to be brought on-line in the  
12 fourth case and there's all this uncertainty about the  
13 plant, then, again, I ask you, how does the stipulation  
14 and agreement provide certainty in the process of  
15 bringing that plant on-line?

16 A. Well, it brings certainty in the steps,  
17 if you will, that were set forth to bring that plant  
18 on-line.

19 Q. Those steps being what? What happens in  
20 the second and the third cases?

21 A. Yes.

22 Q. Okay.

23 MR. BRUDER: Nothing further. Thank  
24 you.

25 JUDGE PRIDGIN: All right. Thank you.

1                   I normally hate to break in the middle  
2 of a witness, but because we are trying to accommodate  
3 schedules, what I'd like to do is ask Ms. Meisenheimer  
4 to step down. And she will still stand Bench  
5 questions, recross, and redirect. And then I would  
6 like to call Mr. Wood to the stand.

7                   As I had announced, we're going to  
8 depart from the list of witnesses. And I believe the  
9 Bench will have questions of Mr. Wood, Mr. Giles and  
10 Ms. Gregory on the motion for recusal. Commissioner  
11 Appling will not be attending because he was asked not  
12 to. So we will have Bench questions for Mr. Wood.

13                   MR. MILLS: Judge, are we still on the  
14 record?

15                   JUDGE PRIDGIN: We are on the record.

16                   MR. MILLS: Can I ask you to clarify  
17 that last statement? Who asked Mr. Appling not to be  
18 here --

19                   JUDGE PRIDGIN: I don't now.

20                   MR. MILLS: -- Commissioner Appling not  
21 to be here?

22                   JUDGE PRIDGIN: I do not know. The  
23 chief judge asked me to announce that he was asked not  
24 to attend this portion.

25                   I'm sorry. Mr. Chairman.

1 MR. MILLS: It certainly wasn't me --

2 CHAIRMAN DAVIS: It was me, Mr. Mills.

3 MR. MILLS: Okay.

4 CHAIRMAN DAVIS: I just didn't want  
5 there to be any perception of witness intimidation or  
6 anything by the fact that Commissioner Appling would be  
7 present during the whole thing. He can certainly read  
8 the transcript.

9 JUDGE PRIDGIN: All right. Warren Wood  
10 has taken the stand. Is there anything further before  
11 he's sworn?

12 MS. WHIPPLE: Your Honor, do you want  
13 special appearances made at this time, before you swear  
14 the witness?

15 JUDGE PRIDGIN: That's not necessary. I  
16 mean, you can certainly, at the break, fill in an entry  
17 of appearance or whatever you need. But thank you.

18 MS. WHIPPLE: Thank you.

19 JUDGE PRIDGIN: All right. Mr. Wood, if  
20 you would raise your right hand to be sworn, please.

21 (Witness sworn.)

22 WARREN WOOD testified as follows:

23 JUDGE PRIDGIN: Thank you very much.  
24 And Mr. Wood, would you just briefly state your name  
25 for the record and your job duties and where you're

1 employed right now.

2 THE WITNESS: Warren Wood. And I'm the  
3 president of the Missouri Energy Development  
4 Association, based here in Jefferson City.

5 JUDGE PRIDGIN: And what is your  
6 understanding of why you are here to testify today?

7 THE WITNESS: I understand there were  
8 some concerns expressed regarding discussions with  
9 Commissioner Appling at a tour of the Iatan 2  
10 construction site in mid-April.

11 JUDGE PRIDGIN: All right. And do you  
12 recall the date of that visit?

13 THE WITNESS: Mid-April of this year. I  
14 don't recall the exact date.

15 JUDGE PRIDGIN: Okay. Thank you. What  
16 I'd like to do is open this up for whatever questions,  
17 if any, counsel may have. And I believe the Bench will  
18 have questions for you, as well, and then allow counsel  
19 to ask any cross off of those questions, if need be.

20 So are there -- before we go on to Bench  
21 questions, are there questions from counsel of  
22 Mr. Wood?

23 MR. MILLS: I may have questions, but it  
24 sort of depends on what -- I mean, so far, I haven't  
25 heard anything to know what even to ask.



1 JUDGE PRIDGIN: I understand.

2 MR. MILLS: So I'd like to reserve my  
3 questions until the end, if I may.

4 JUDGE PRIDGIN: Absolutely. Absolutely.

5 Is there anyone who wishes questions  
6 before Bench questions? All right. If there are  
7 none -- all right. Mr. Chairman, any questions for  
8 Mr. Wood?

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Mr. Wood, do you recall how the whole  
11 trip to the Iatan 2 plant was set up?

12 A. I recall communications between Kansas  
13 City Power and Light, Commissioner Appling, and myself  
14 in terms of trying to set up a date for a tour. I seem  
15 to recall there was, at one point in time, a date,  
16 maybe a week before the meeting was actually conducted  
17 that was cancelled because of a conflict.

18 I don't recall who initiated the  
19 communications. I remember being associated with  
20 getting the State car reserved and setting up the time,  
21 the date, where we would meet, things like that, to get  
22 to Kansas City Power and Light's office. And I drove  
23 to and from on that visit.

24 Q. Okay. And who else accompanied you on  
25 that visit?

1           A.       Commissioner Appling and Sheryl Gregory.

2           Q.       Okay. And you were employed at the  
3 Commission at that time. Correct?

4           A.       Yes. I was.

5           Q.       Okay. Did your supervisor have  
6 knowledge of that trip? If you don't know, you can say  
7 that.

8           A.       I do not recall if that -- if there had  
9 been communication specific to that site visit with  
10 him.

11          Q.       Okay. And were you with Commissioner  
12 Appling -- or I guess, who from KCP&L was present? Who  
13 did you meet with?

14          A.       Tim Rush, Chris Giles. Brent Davis, I  
15 believe, was at the site. Sheryl Gregory and myself.  
16 Commissioner Appling. And when we first stopped by the  
17 Kansas City Power and Light downtown office to visit  
18 very briefly with either Mr. Downy (ph) or Chesser, or  
19 both -- I don't remember; we were only there for a few  
20 minutes, to say hello.

21          Q.       Okay. So you went to Kansas City Power  
22 and Light headquarters in Kansas City?

23          A.       Yes.

24          Q.       And then you went to Iatan 2?

25                 MR. WOODSMALL: Your Honor, if I may

1 interrupt here briefly. I believe in a past  
2 investigation, the Commission imposed the rule making  
3 other witnesses leave the room. I just noticed  
4 Mr. Giles entered. I think it may be appropriate here  
5 if he wasn't present while -- during this questioning.

6 JUDGE PRIDGIN: Mr. Woodsmall has  
7 invoked the rule and wants Mr. Giles to step out. Any  
8 objections? All right.

9 MR. WOODSMALL: Sorry.

10 CHAIRMAN DAVIS: That's okay. What  
11 about -- do you have any objection -- Mr. Rush was just  
12 referenced.

13 MR. WOODSMALL: Oh. I don't believe  
14 he's going to be called today. I don't know where this  
15 is going.

16 CHAIRMAN DAVIS: We can call him if you  
17 want him.

18 MR. WOODSMALL: I have no intentions of  
19 calling anybody, so --

20 CHAIRMAN DAVIS: Okay. Okay.

21 BY CHAIRMAN DAVIS:

22 Q. All right. So where did you go on this  
23 trip? Every location, in order --

24 A. Okay.

25 Q. -- chronologically.

1           A.       Started downtown at the Kansas City  
2 Power and Light headquarters. Stopped in for a quick  
3 hello. I really don't think we were there for all of  
4 ten to fifteen minutes, tops, including getting to and  
5 from the car.

6                   Then went to a small German restaurant  
7 in Westin, had something to eat for lunch. And then  
8 drove out to the power plant, which is close to there.  
9 Stopped in the break room to view some renderings of  
10 what the expected Iatan 1/Iatan 2 site will look upon  
11 completion.

12                   Looked at what is currently being built  
13 onto Iatan 1 in terms of structural steel; the air  
14 quality control system ductwork mounted onto Iatan 1,  
15 what it's going to look like; what Iatan 2 would look  
16 like.

17                   And then stepped out, took some  
18 elevators in Iatan 1 up to different floors where we  
19 could see where the Iatan 1 modifications were taking  
20 place. And then we went out where you could overlook  
21 the Iatan 2 construction site.

22           Q.       Okay. So when you arrived at the KCP&L  
23 headquarters --

24           A.       Uh-huh.

25           Q.       -- were you with Commissioner Appling

1 the whole time?

2 A. Yes.

3 Q. Did he ever leave to go to the restroom?

4 A. Actually, I think I was going the same  
5 direction he was when we hit the restrooms before we  
6 went to the restaurant.

7 Q. I'm sorry. Did you say restaurant or  
8 restroom?

9 A. Restrooms. I can't recall if we were in  
10 there at the same time, but I know we were all  
11 generally traveling as a group to and from the  
12 elevators.

13 Q. Okay. So when you were at the KCP&L  
14 headquarters --

15 A. Uh-huh.

16 Q. -- did Commissioner Appling meet with  
17 anyone from KCP&L out of your earshot?

18 A. I can't be sure that there wasn't a  
19 moment or so when I wasn't in the immediate vicinity of  
20 communications. But I don't recall any time when we  
21 weren't together there. I mean, it was mid-April. I  
22 don't recall --

23 Q. Okay.

24 A. -- every minute like that. If we were  
25 apart, it was for a very short time period.

1           Q.       And less than five minutes? Less than  
2 three minutes?

3           A.       It would've been less than five minutes.  
4 It would've been less than three minutes, I would  
5 state.

6           Q.       Less than one minute?

7           A.       The granular in my memory isn't as good  
8 as it used to be. One to three minutes, possibly, but  
9 no more than that.

10          Q.       Okay. Okay. At any time in your  
11 presence there at the KCP&L headquarters, was anything  
12 in this present rate case discussed?

13          A.       No.

14          Q.       No. You hesitated. Did you hesitate?

15          A.       I would note that at one point in time,  
16 and I believe it was at the Iatan construction site,  
17 there was a very brief mentioning of the return granted  
18 in the last rate case, but not a reference to any  
19 current filings in this rate case.

20          Q.       Okay. All right. Now, moving, you  
21 left; and it was you, Commissioner Appling, and  
22 Ms. Gregory driving to the German restaurant in Westin?

23          A.       Yeah. A little German restaurant there  
24 in Westin.

25          Q.       Okay. Was anyone from KCP&L there?

1 A. Yes.

2 Q. Who was there?

3 A. I recall Chris Giles. I thought Tim  
4 Rush was there. Brent Davis, who is one of the  
5 construction managers out there, was at the site. I'm  
6 trying to recall if there was another individual, but  
7 those are the ones that come to memory at the moment.

8 Q. Okay. At the German restaurant --

9 A. Uh-huh.

10 Q. -- were you ever separated from  
11 Commissioner Appling?

12 A. No.

13 Q. No?

14 A. No.

15 Q. No.

16 A. We up the stairs, down the stairs, and  
17 sat at the same table the whole time.

18 Q. No restroom breaks, no nothing?

19 A. No. We'd already taken care of that,  
20 and we weren't there very long, so --

21 Q. Okay. So was anything regarding the  
22 present rate case discussed at the German restaurant  
23 there in Westin?

24 A. No. There were a number of interesting  
25 exhibits on past World Wars and an American flag with

1 some interesting historical memorabilia around, and we  
2 largely talked about that the whole time we were there.

3 Q. Largely. Is there anything else?

4 A. I think we may have had -- I may engaged  
5 in some engineering conversations about the -- you  
6 know, what was being built at Iatan 2, the size of the  
7 plant, you know, things like -- just general  
8 engineering sort of questions on the plant status.

9 Q. Okay. So then it was just you,  
10 Commissioner Appling and Ms. Gregory that drove to the  
11 Iatan 2 plant?

12 A. Yes.

13 Q. Okay. And then I think I already asked  
14 this question once. But when you were at the plant,  
15 can you list off the people that you met or saw?

16 A. Brent Davis -- I'm trying to remember  
17 firmly if Tim and Chris were there with us. I seem to  
18 recall they were. And there was another individual who  
19 I don't remember their name who came in and started the  
20 projector and -- or -- then pulled up some of the  
21 slides on the computer to view the Iatan 1 and Iatan 2  
22 pictures that they had available on their computers,  
23 what they would look like when they were done being  
24 built. But I don't recall who that was.

25 Q. Okay. So were you with Commissioner



1     Appling at the -- the whole time during your visit to  
2     the Iatan 2 site?

3             A.       Within sight of one another, yes. I  
4     couldn't always hear what conversations were taking  
5     place between myself or other personnel. The power  
6     plant was operating.

7             Q.       Okay.

8             A.       And you tended to walk around in groups,  
9     within earshots of -- earshot of one another. So I was  
10    within visual of him, you know, all but very few  
11    minutes. We didn't take separate elevators. We were  
12    in the same rooms. I think we took --

13            Q.       Okay.

14            A.       -- separate restroom breaks, that kind  
15    of stuff. So --

16            Q.       Did you --

17            A.       -- he wasn't always with me, and I  
18    can't --

19            Q.       Okay.

20            A.       -- say I heard everything that was said  
21    to or from him, because you only hear the person that's  
22    a few feet from you at any point in time. And he  
23    wasn't always right next to me.

24            Q.       Okay. Did you -- now, you said you  
25    heard a conversation where the ROE from the last rate

1 case was referenced. Can you please give me your  
2 mental impression of what you recall hearing?

3 A. And I'm trying to remember exactly where  
4 it was in that tour, and I don't remember. I remember  
5 at the time trying to put -- I'm trying to remember who  
6 said what, in what order, and I don't know that I  
7 remember that.

8 It was something about the eleven and a  
9 quarter percent, and some communication about, well,  
10 you know, we recognize there was, you know, major  
11 construction projects going on. But I don't remember,  
12 you know, any follow-on to that kind of discussion,  
13 beyond the eleven and a quarter, and there was -- you  
14 know, there was recognizing there was a big  
15 construction project ongoing.

16 And I think the reason that stuck in my  
17 mind at the time is, you know, I was somewhat  
18 concerned. We didn't want to see, you know, the  
19 communications go somewhere where it would be -- you  
20 can't get into the current case issues. You know, I  
21 was on the staff at the time, I was on site, and I  
22 recognize the ex parte regulations.

23 Really, beyond that, once you got to the  
24 Iatan 2 site, it was largely an engineering tour. You  
25 know, see the concrete, see the steel, see the status

1 of the power plant being built.

2 Q. Well, at Iatan 2, did you ever observe  
3 Commissioner Appling off to the side, talking to  
4 Mr. Giles or to Mr. Rush?

5 A. Yes. At different times. And there was  
6 pointing to the construction site and, you know,  
7 looking at the -- talking, Well, are those the boiler  
8 turbine pedestals? You know, Where are the -- you  
9 know, Where's the major equipment going to be? The  
10 turbine pedestal was being constructed, and there was  
11 some discussion about, you know, the status of that  
12 particular piece of equipment.

13 Q. Now, do you recall when the procedural  
14 schedule in this case was filed?

15 A. No. I do not.

16 Q. Okay.

17 CHAIRMAN DAVIS: Judge, I don't think I  
18 have any further questions at this time.

19 JUDGE PRIDGIN: Mr. Chairman, thank you.

20 Commissioner Murray?

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good afternoon, Mr. Wood.

23 A. Good afternoon.

24 Q. You indicated as Staff you were aware of  
25 the ex parte rules, and that you would not be getting

1     into any conversation related to the current rate case;  
2     is that correct?

3             A.       Yes.

4             Q.       Did you at any time while you were there  
5     have any concern that such conversations were possibly  
6     being entered into?

7             A.       No.   Beyond when we heard the eleven and  
8     a quarter percent and recognizing you've got a big  
9     construction project.  I, you know, wanted to see if  
10    hopefully the subject would change and there wouldn't  
11    be some sort of a trail-on conversation that got out of  
12    hand.

13                    And if there was, we had to say, Look,  
14    we can't talk about this.  And that does come up, you  
15    know, in tours, not on an infrequent basis, where we  
16    stop a conversation because it's not always absolutely  
17    clear where that wall falls.  But if there's any doubt,  
18    you say, We're done talking about this.

19             Q.       Now, the conversation that you are  
20    referencing between Commissioner Appling and Mr. Giles,  
21    I believe -- is that -- can you -- what do you recall,  
22    who the conversation was with?

23             A.       I would not be -- I can't state with  
24    certainty who that was with.  It was with a Kansas City  
25    person -- Power and Light person, but I don't recall

1 exactly who that was with.

2 Q. Were you a part of that entire  
3 conversation?

4 A. No.

5 Q. Were you in hearing --

6 A. Yes. I was --

7 Q. -- range?

8 A. -- within earshot of it.

9 Q. The entire time?

10 A. Uh-huh. Yes.

11 Q. And you heard it go to a different  
12 subject shortly after the ROE was mentioned, or --

13 A. Yeah. It was shortly after, hello, and  
14 nice to meet you, and, well, let's go do the tour. And  
15 so I -- it -- there wasn't -- it wasn't a protracted  
16 discussion.

17 Q. And as a staff member there with a  
18 Commissioner, were you attempting to make sure that  
19 somebody didn't inadvertently cross the line?

20 A. Yes. Yeah. And that's -- you know,  
21 that's one of the things that, when there is a tour  
22 like this set up, we like to make certain there's at  
23 least one staff person there just for purposes of if  
24 this kind of discussion comes up, we want to make sure  
25 that, you know, staff was aware of any conversations

1     that took place or we have an opportunity to say,  
2     This -- we shouldn't talk anymore about this.

3             Q.       So did you ever remark to either  
4     Commissioner Appling or the KCP&L employee that there  
5     was any concern?

6             A.       I don't remember expressing any concern.

7             Q.       Thank you.

8                     COMMISSIONER MURRAY:  I think that's all  
9     I have.

10                    JUDGE PRIDGIN:  Commissioner Murray,  
11     thank you.

12                    Commissioner Jarrett?

13                    COMMISSIONER JARRETT:  Yes.  Just one  
14     question.

15     QUESTIONS BY COMMISSIONER JARRETT:

16             Q.       Did -- on the drive back, did  
17     Commissioner Appling ever say anything that gave you  
18     any concern that maybe some improper conversations took  
19     place out of your earshot?

20             A.       No.  It was really more of a  
21     post-engineering visit, talking about, you know,  
22     impressive size and, you know, the magnitude of the  
23     project, and how many megawatts it is and, you know,  
24     things like that.

25             Q.       Thank you.

1 COMMISSIONER JARRETT: That's all I  
2 have.

3 JUDGE PRIDGIN: Commissioner, thank you.  
4 See if there's any cross-examination  
5 from counsel. Any counsel wish to cross this witness?

6 MR. MILLS: Judge, may I ask a question  
7 about procedure?

8 JUDGE PRIDGIN: You may.

9 MR. MILLS: There was some mention  
10 briefly about special appearances. Is someone  
11 appearing here on behalf of someone who is not a party  
12 to the case?

13 JUDGE PRIDGIN: Ms. Whipple.

14 MS. WHIPPLE: I would appear today not  
15 in the case, but only as necessary for counsel for  
16 Commissioner Linward Appling. And Ms. Syler, also from  
17 my office, if necessary, will be appearing specially  
18 for Sheryl Gregory.

19 JUDGE PRIDGIN: All right. Thank you.  
20 Thank you. Okay.

21 Are there any questions, any  
22 cross-examination for this witness?

23 MR. MILLS: I have some questions. I  
24 would prefer to go after counsel for Mr. Appling and  
25 Ms. Gregory.

1 JUDGE PRIDGIN: Okay. Any other  
2 questions from -- Mr. Woodsmall? Any other questions?

3 MS. WHIPPLE: At this time, I have no  
4 questions.

5 MS. SYLER: No further questions here,  
6 either.

7 JUDGE PRIDGIN: All right. Thank you.  
8 Mr. Woodsmall.

9 CROSS-EXAMINATION BY MR. WOODSMALL:

10 Q. Good afternoon, sir.

11 A. Good afternoon.

12 Q. Can you tell me who you are currently  
13 by?

14 A. Missouri Energy Development Association.

15 Q. And can you tell me who the member  
16 participants are of the Missouri Energy Development  
17 Association?

18 A. The four industrial and electric  
19 utilities, Laclede Gas Company, Missouri Gas Energy,  
20 Atmos Energy, and Missouri American Water Company.

21 Q. Okay. And when you said the four  
22 investor-owned electric utilities, one of those would  
23 be Kansas City Power and Light; is that correct?

24 A. Yes. It would be.

25 Q. And the Missouri Energy Development



1 Association is entirely funded by Missouri utilities;  
2 is that correct?

3 A. Or the portions of those utilities that  
4 operate in Missouri, yes.

5 Q. Can you tell me what portion of the MEDA  
6 funding -- and when I use the phrase MEDA, you  
7 understand that to mean Missouri Energy Development  
8 Association?

9 A. Yes.

10 Q. Okay. Can you tell me what portion of  
11 the MEDA funding is funded by Kansas City Power and  
12 Light?

13 A. No. I can't.

14 Q. Okay. Your appearance here today, can  
15 you tell me who called you to inform you that they  
16 would like your appearance here?

17 A. I received a call from Cully Dale.

18 Q. Okay. Were you subpoenaed?

19 A. No.

20 Q. Okay. And --

21 A. And when I was asked, I indicated I had  
22 no objection to coming down to answer any questions on  
23 that visit.

24 Q. When were you called?

25 A. Today.

1 Q. At approximately what time?

2 A. Before ten o'clock, I would guess.

3 Q. Prior to her contacting you, were you  
4 aware of this issue arising?

5 A. Yes.

6 Q. How had you been made aware that this  
7 issue had arisen?

8 A. During the hearing, when I was in the  
9 building doing something else, you know -- I think I  
10 may have been working on a rule-making -- I was outside  
11 of the hearing room. And it was on the day that  
12 Commissioner Appling said something about, I -- you  
13 know, We've discussed these things.

14 And he stepped out of the hearing room  
15 and mentioned that, you know, the OPC was going to ask  
16 for a copy of the transcript. And Chris Giles and I  
17 were there and was like, Oh, on the visit there? He  
18 was like, Yeah. So that's when I first heard about it,  
19 was -- would've been probably a number of minutes after  
20 it happened because I happened to be in the building at  
21 the time.

22 Q. After that point in time, did you have  
23 any further conversation with Commissioner Appling?

24 A. Yes.

25 Q. Can you please discuss when and what the

1 context of those conversations were?

2 A. There was a call to my cell phone. Oh,  
3 it would have been the day that the Kansas City Star  
4 had called and asked him questions regarding it. It  
5 would've been, I think, after OPC's filing. OPC's  
6 filing was on -- was it Friday, after -- around three  
7 o'clock or so?

8 I was told that it was filed that  
9 afternoon, and that the Kansas City Star had called  
10 Commissioner Appling with questions. And he had  
11 called, said, I don't know if you know -- had heard,  
12 you know, that, you know, there's a copy of the  
13 transcript; OPC has made a filing, you know, and, you  
14 know, I expect there will be an article on this.

15 If there's, you know -- if you can  
16 recall anything on this that I did wrong or whatever,  
17 you know, I'd -- you know, I hope there's -- you know,  
18 I hope you wouldn't mind coming down and testifying. I  
19 said I wouldn't object to that.

20 Q. Okay. So that I'm clear, sometime  
21 Friday afternoon, Commissioner Appling called you  
22 personally on your cell phone and communicated with you  
23 about the events in this case?

24 A. I don't know that it was Friday. I  
25 think it may have been -- I want to say it was Sunday,

1 actually, when I got that call.

2 Q. Okay. Putting aside the date --

3 A. Right.

4 Q. -- sometime during the pendency of the  
5 case, in this last week, Commissioner Appling called  
6 you on your cell phone and communicated about events  
7 taking place in this case; is that correct?

8 MR. THOMPSON: I'm going to object,  
9 Judge. That question has been asked and answered.

10 MR. WOODSMALL: I don't believe it's  
11 been asked or answered, and I don't know who this is,  
12 making an appearance in this case all of a sudden. Are  
13 you appearing for who now?

14 MR. THOMPSON: I'm appearing for Staff,  
15 Mr. Woodsmall. Do you have a problem with that?

16 MR. WOODSMALL: No. I just -- we've had  
17 two appearances. I don't know who you're representing.  
18 So that aside, I don't believe it's been asked or  
19 answered.

20 MR. THOMPSON: I renew my objection,  
21 Judge.

22 JUDGE PRIDGIN: All right. Thank you.  
23 I'll overrule.

24 Mr. Woodsmall?

25 THE WITNESS: Could you repeat your

1 question?

2 MR. WOODSMALL: Certainly.

3 BY MR. WOODSMALL:

4 Q. Sometime in the last week -- it's  
5 unclear the date --

6 A. Uh-huh.

7 Q. -- Commissioner Appling called you  
8 personally on your cell phone --

9 A. Uh-huh.

10 Q. -- and communicated with you about  
11 issues taking place in this case; is that correct?

12 A. Specifically to the OPC filing, the  
13 Kansas City Star had called. And, you know, expressed  
14 an interest that, you know, if I would have any  
15 objection to taking the stand and answering questions  
16 on that, and I said I wouldn't.

17 Q. Okay. Do you know if the Commissioners  
18 have your cell phone number? Is that pretty common,  
19 or --

20 A. Well, I think it's the same number that  
21 was on the emergency contact list when I was with the  
22 Public Service Commission, because it's still my  
23 private cell phone.

24 Q. Okay.

25 A. So I think any of them that have the old

1 contact list still have my number.

2 Q. Outside of that one communication with  
3 Commissioner Appling, have you communicated with him  
4 any further on this issue?

5 A. Yes. There was another cell call that  
6 would've been Monday, on the same topic. And there  
7 wasn't anything new in that conversation other than,  
8 You wouldn't have any objection to coming in and  
9 testifying? I said, No, I wouldn't.

10 Q. Okay. And so it's only been the two  
11 communications?

12 A. And one last one this morning. And it  
13 would've been the same topic.

14 Q. Okay. All three of those were to your  
15 cell phone?

16 A. Yes. They were.

17 Q. Okay. Have you communicated other than  
18 you received the call from Secretary Cully Dale, have  
19 you had any further conversations with her?

20 A. Other than here in the back,  
21 scheduling --

22 Q. Okay.

23 A. -- when I could come up, no.

24 Q. Okay. Any other communications with any  
25 other Commissioners since this event arose last week?

1           A.       No. I don't recall any.

2           Q.       Okay. You hesitated.

3           A.       Yeah. I'm trying -- I've been on a lot  
4 of calls, answering questions on rule-making. I'm  
5 trying to think if this subject was in any of them.

6           Q.       I understand. When you went to lunch at  
7 the German restaurant, can you tell me who paid for the  
8 lunch?

9           A.       Well, I paid for mine. I remember  
10 Commissioner Appling or Sheryl, one of them, paying for  
11 theirs. There was a very clear direction to the waiter  
12 to break up the receipts, like we always have to do.

13          Q.       Okay.

14          A.       You know, there was -- to make sure  
15 everybody pays for their own meals.

16          Q.       Okay. Regarding the ROE in the last  
17 case, have you ever read the report and order in that  
18 case on the ROE section?

19          A.       In the report and order?

20          Q.       Yes.

21          A.       I would've read it. I don't recall  
22 when. After it came out, I would always read the  
23 report and orders in big cases like that.

24          Q.       Would you have been aware of who KCP&L's  
25 witness was on that issue in the last case?

1           A.       I do not recall.

2           Q.       Okay. Do you know -- were you aware  
3   what KCP&L's recommendation was for an ROE in that  
4   case?

5           A.       No. I don't.

6           Q.       Okay. Do you know the methodology by  
7   which KCP&L reached its recommendation in that case?

8           A.       No. I don't.

9           Q.       Okay. So would you have been aware that  
10   KCP&L was using the same witness to reach the  
11   Commission's authorized ROE in the last case, using the  
12   same methodologies as used in the last case? Would you  
13   have been aware of that?

14          A.       No. I can't say I would have been.

15          Q.       Okay. So when you say that an 11.25 ROE  
16   discussed in the last case was brought up on this tour  
17   visit, you wouldn't have been aware of similarities  
18   between that case and this case; is that true?

19          A.       Unlikely.

20                   MR. WOODSMALL: I don't believe I have  
21   any other questions.

22                   JUDGE PRIDGIN: Mr. Woodsmall, thank  
23   you.

24                   Mr. Mills?

25                   MR. MILLS: Thank you. Just briefly, to



1 follow-up on that last question.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Would you expect a Commissioner to be  
4 aware of the similarities between the last case and  
5 this case?

6 A. Hopefully they've read the record and  
7 they would be aware of the similarities, yes. I do --  
8 now, I can't speak for if he would or would not, but --

9 Q. I'm just asking you, in general, would  
10 you expect a Commissioner to know those similarities?

11 A. At the time -- you mean at the time of  
12 the tour, back in early '07, or now?

13 Q. At any time after direct testimony was  
14 filed in this case.

15 A. I would not necessarily expect them to  
16 know the similarities at that time.

17 Q. Would you expect them to know things  
18 about what ROE a company is requesting -- what kind of  
19 return, what kind of an increase in revenue  
20 requirement -- sometime shortly after a case was filed?

21 A. No. I wouldn't expect that. It would  
22 be good, but I wouldn't say I have a high expectation  
23 that would always be the case.

24 Q. Now, with respect to the trip that you  
25 were on to the Iatan 2 plant, you said that was in

1 April.

2 A. Uh-huh.

3 Q. Was that the only trip that you took?

4 A. No. I took additional visits after  
5 that.

6 Q. Okay. Did you take additional visits  
7 with -- were commissioners with you?

8 A. No.

9 Q. Okay. So you didn't take a trip to the  
10 Iatan plant with Commissioner Appling in June or July  
11 of this year?

12 A. I think I may have. I was there  
13 additionally for -- there was a pipe rupture that  
14 killed an employee and injured another employee. And  
15 there was a staff investigation on the site. I was  
16 there for the -- shortly after that pipe rupture for  
17 that investigation.

18 And I was also there later for a  
19 construction audit when Dave Price -- there was a new  
20 project manager put on the project, and we were there  
21 to come up to speed on how they were tracking different  
22 accounts, schedule, personnel, safety, major  
23 contractors, where they were in their cost and  
24 scheduled projection indicators on the site.

25 Q. Either I wasn't clear or you didn't

1 understand the question. Were you there at a later  
2 time, later than April, with Commissioner Appling?

3 A. No.

4 Q. Okay. So the only trip that you went on  
5 with Commissioner Appling was in April?

6 A. That's the only one I can recall.

7 Q. Okay. So if there was a later trip, you  
8 weren't on it? A later trip with Commissioner Appling,  
9 it didn't include you?

10 A. True.

11 Q. Okay. Now, you said that on the trip  
12 that you did take with Commissioner Appling there was a  
13 brief mention of the ROE granted in the last case; is  
14 that correct?

15 A. Uh-huh.

16 Q. And I believe you also said you were  
17 concerned about talking about 11.25 percent and the big  
18 construction project; is that correct?

19 A. Well, I was concerned about the  
20 conversations extending into anything like -- you know,  
21 let's say some sort of a conversation started, Well,  
22 you know, in this case, or anything like that, that  
23 would've been hold, put on the brakes, we're done with  
24 this discussion. And --

25 Q. Okay. And why did you go to Iatan 2?

1           A.       I recall an interest in seeing Iatan 2.  
2   I had an interest, and I had not been there since  
3   the -- since quite a bit of work had been done. It had  
4   been several months since I had been there. And I  
5   wanted to see the site. I understood from  
6   communications with Commissioner Appling that he had an  
7   interest in seeing the site, as well. And Kansas City  
8   Power and Light had expressed some interest in doing a  
9   tour. And so I went along.

10          Q.       And it's at least in part because it's a  
11   major construction project. Yes?

12          A.       Sure. And I'm an engineer and enjoy  
13   looking at those kind of projects.

14          Q.       And is it still going on?

15          A.       Oh, yeah.

16          Q.       Okay. Now, if during that -- and I  
17   believe you said that you didn't hear every exchange  
18   between everybody that was on the trip with you; is  
19   that correct?

20          A.       That is true.

21          Q.       So if there was a lot of talk about the  
22   ROE granted in the last talk, you didn't hear all of  
23   it?

24          A.       If that discussion had gone on during  
25   the tour at Iatan 1 where we were looking over Iatan 2,

1     then I would not have heard it, to the degree he was  
2     visiting with somebody else at the time. We were all  
3     within visual shot, but, you know, even you and I from  
4     this distance, on the plant, it's very unlikely we  
5     would've heard each other.

6             Q.     Okay.

7             A.     You really need to be right up next to  
8     each other.

9             Q.     So you heard a brief mention, if  
10    there --

11            A.     But that was during a time when we were  
12    not in a noisy area.

13            Q.     Okay.

14            A.     That was -- we were down -- I think we  
15    were -- we may have been -- that may have been the  
16    portion of our discussion when we were looking at some  
17    of the visuals --

18            Q.     Okay.

19            A.     -- for Iatan 1 and 2.

20            Q.     You didn't hear a long discussion about  
21    it?

22            A.     No.

23            Q.     So if the long discussion took place,  
24    you didn't hear it?

25            A.     Once we got out on the project site,

1    yeah.  And, you know, we weren't really in one place  
2    for very long.  I don't expect there was really time  
3    for a -- you know, more than a three- or four-minute  
4    discussion before we moved to another place, and  
5    whoever was standing next to each other shuffled  
6    around.

7                   Q.       Okay.

8                   MR. MILLS:  Those are all the questions  
9    I have.

10                  JUDGE PRIDGIN:  All right, Mr. Mills.  
11    Thank you.

12                  MR. WOODSMALL:  Your Honor, something  
13    else popped into my mind.  If I could ask that real  
14    quickly.

15    RE-CROSS-EXAMINATION BY MR. WOODSMALL:

16                  Q.       Do you recall any discussion about the  
17    announced merger with Aquila at that time, either with  
18    Downy, Chesser, Giles, anybody?

19                  A.       No.  I don't remember any conversation  
20    about that.

21                  Q.       Okay.  Thank you.

22                  A.       Uh-huh.

23                  JUDGE PRIDGIN:  All right.  Thank you.  
24    Anything further for this witness?  All right.

25                  Mr. Wood, thank you very much.

1 THE WITNESS: Thank you.

2 JUDGE PRIDGIN: This looks to be a  
3 convenient time to break. It is just a little bit  
4 after three o'clock, according to the clock in the back  
5 of the hearing room. We will reconvene at 3:15 and  
6 have Mr. Giles on the stand. Thank you. We're off the  
7 record.

8 (WHEREIN, a recess was taken.)

9 JUDGE PRIDGIN: We're back on the  
10 record. Mr. Giles, if I'm not mistaken, you had  
11 testified previously in this case and been sworn; is  
12 that correct, sir?

13 MR. GILES: That's correct.

14 (Witness previously sworn.)

15 CHRIS GILES has retaken the stand.

16 JUDGE PRIDGIN: Okay. That's my  
17 recollection. And Mr. Giles, could you please restate  
18 your understanding as to why you've been asked to  
19 retake the stand?

20 THE WITNESS: Yes. My understanding is  
21 that the Office of Public Counsel filed a motion  
22 requesting that Commissioner Appling recuse himself  
23 from our rate case.

24 JUDGE PRIDGIN: And did you in fact sign  
25 an affidavit that was attached to a filing that KCPL

1     made, I believe, earlier today?

2                     THE WITNESS:   Yes, I did.

3                     JUDGE PRIDGIN:   All right.   Is that --  
4     does counsel recall?   Was that filed this morning.

5                     MR. FISCHER:   Yeah.   Around nine  
6     o'clock, I believe.

7                     JUDGE PRIDGIN:   All right.   Thank you.  
8     I don't know if Public Counsel had the chance to review  
9     that.   But if not, I mean I certainly want to give them  
10    a chance to look at that.   And with that, let me open  
11    this up to see if we have -- well, first let me ask  
12    counsel would have any questions of Mr. Giles before  
13    Bench questions, or if you would rather wait till  
14    after.

15                    MR. MILLS:   I prefer to wait until after  
16    his direct testimony from the Bench.

17                    JUDGE PRIDGIN:   All right.   Thank you.  
18    If there is nothing counsel, let's see if we have any  
19    questions from the Bench.   Mr. Chairman?

20    QUESTIONS BY CHAIRMAN DAVIS:

21                    Q.     Mr. Giles, for those that may be in our  
22    viewing audience or over the Internet, would you  
23    briefly restate the testimony that you gave in your  
24    affidavit today?

25                    A.     Yes, I will.   The testimony in my



1 affidavit today related to the Office of Public  
2 Counsel's motion for Commissioner Appling to recuse  
3 himself, basically stated that at no time did  
4 Commissioner Appling nor myself discuss the current  
5 rate case proceeding at the Iatan site.

6 In fact, the only comment made  
7 whatsoever to any rate proceeding at the time of that  
8 visit to Iatan was related to a comment Commissioner  
9 Appling made to me that he had supported the rate of  
10 return in our last case based on our construction.

11 The other conversations the two of us  
12 had were strictly limited to construction activities at  
13 the site, the operation of Iatan 1. We also talked  
14 about manpower. We talked about operations, our  
15 performance. At no time did we discuss the current  
16 rate case.

17 Q. Now, you work for KCPL. Right?

18 A. Yes. I work for KCPL. Have been  
19 employed by KCPL for 32 years. And currently my title  
20 is vice president of regulatory affairs.

21 Q. Vice president of regulatory affairs?

22 A. Yes.

23 Q. So you're familiar with regulations.  
24 Right?

25 A. Very familiar with regulations.

1 Q. Very familiar with regulation?

2 A. Yes.

3 Q. Okay. What about statutes?

4 A. I am familiar with the statutes to the  
5 extent that relate to -- to my conversations with  
6 Commissioners. I'm familiar with the ex parte statute.

7 Q. Okay. So you're familiar with the ex  
8 parte statute?

9 A. Yes.

10 Q. Okay. So you were aware that this trip  
11 was being set up. Correct?

12 A. Yes. I set the tour up myself at the  
13 request of Commissioner Appling.

14 Q. Okay. And what was your -- what was  
15 your impression of why Commissioner Appling wanted to  
16 come see the plant?

17 A. He had a variety of interests. When he  
18 first spoke to me he indicated that it might be his  
19 last chance to see a construction project of this  
20 magnitude and of this size. He wasn't familiar with  
21 construction activities and was really looking forward  
22 to seeing some hands-on work up at the site.

23 He also expressed to me that he just  
24 wanted to see how things were going.

25 Q. All right. Now, do you know when the

1 procedural schedule was filed in this case?

2 A. I don't know the exact date the schedule  
3 was filed. I know the date that Commissioner Appling  
4 requested the tour was the date I was here in Jefferson  
5 City talking about the schedule because I recall that  
6 he -- after that meeting, he asked me to stop by and  
7 see him. And that's when I stopped by to see him and  
8 he indicated, Hey, I'd like to set up a tour of Iatan.

9 Q. Okay.

10 A. And I'm not sure of the dates. The  
11 schedule might have been filed before that or after  
12 that. It wouldn't be before that conversation.

13 Q. Now, do you know -- okay. Do you know  
14 what the significance is of the filing of a procedural  
15 schedule as it relates to the statute regarding ex  
16 parte communications?

17 A. I don't in particular. My assumption  
18 has always been that once we filed a case, regardless  
19 of whether a procedural schedule had been set, I did  
20 not talk to Commissioners about the case. So I -- I  
21 assume that once a procedural schedule is filed, that  
22 may be the legal definition, but I always operated much  
23 more conservatively than that.

24 Q. And how long have you worked for Kansas  
25 City Power and Light?

1           A.       Thirty-two years.

2           Q.       Thirty-two years. Do you get paid a lot  
3 of money?

4           A.       Relatively, no.

5           Q.       Do you make an excess of \$100,000 a  
6 year?

7           A.       Yes, I do.

8           Q.       Okay. So why should we believe your  
9 testimony here today?

10          A.       Well, there's a variety of reasons.  
11 One, as you indicated, I've worked for KCP&L for 32  
12 years. I've been involved in regulatory affairs-type  
13 work from all but 5 of those 32 years. I've had many  
14 occasions to participate in rate cases in other  
15 proceedings before the Commission.

16                   I have never had any discussion  
17 whatsoever with a Commissioner about opinion case or  
18 for that matter, a pending complaint or any other  
19 action that we may have brought before the Commission.

20                   Furthermore, I respect the  
21 Commissioners. I respect the process, as does KCP&L.  
22 I've been aware of the ex parte rule as far back as I  
23 can remember from the first day of my employment with  
24 the Kansas City Power and Light Company. So it's never  
25 been an issue for me. I've taken particular effort to

1 make sure that I don't even contact a Commissioner once  
2 we've filed a case on any matter.

3 If a Commissioner or a Staff member were  
4 to ask me to set up a tour, as Commissioner Appling  
5 did, of course I would certainly do that. I think I  
6 could also add that our company is held in very high  
7 regard both from an ethical standpoint and from an  
8 integrity standpoint.

9 It's required of all employees, but  
10 especially officers of the company to hold themselves  
11 to the highest standards of conduct in all their  
12 relationships.

13 CHAIRMAN DAVIS: No further questions,  
14 Judge.

15 JUDGE PRIDGIN: Mr. Chairman, thank you.  
16 Commissioner Jarrett?

17 COMMISSIONER JARRETT: No questions.

18 JUDGE PRIDGIN: Is there any  
19 cross-examination? Mr. Woodsmall, Mr. Mills. Any  
20 others?

21 Mr. Woodsmall?

22 MR. WOODSMALL: Yes, just very briefly.

23 CROSS-EXAMINATION BY MR. WOODSMALL:

24 Q. Putting aside whether something improper  
25 did occur, can you see how a Commissioner taking a tour

1 with a utility employee could give an appearance of  
2 impropriety?

3 A. No. I -- I don't believe that would  
4 indicate any impropriety whatsoever, especially if the  
5 Commissioner is the one that requested the tour. No.  
6 I don't see that.

7 Q. Would KCP&L object to including a  
8 consumer representative when you meet with  
9 Commissioners in such instances?

10 A. No. We wouldn't object at all.

11 Q. Okay. Thank you.

12 JUDGE PRIDGIN: Mr. Woodsmall, thank  
13 you. Anyone else?

14 MR. MILLS: Before I begin my question,  
15 Judge, can I get you to take official notice of the  
16 fact that the Commission issued an order on February  
17 6th, 2007 and set an evidentiary hearing in this case  
18 for September of 2007, and that on April 5th, the  
19 Commissioner issued another order to reschedule the  
20 hearing for the currently scheduled dates?

21 JUDGE PRIDGIN: So you're asking the  
22 Commission to take notice of those?

23 MR. MILLS: Official notice of the  
24 orders.

25 JUDGE PRIDGIN: Any objections?

1                   MR. MILLS: And the dates they were  
2 issued.

3                   JUDGE PRIDGIN: Okay. Hearing no  
4 objections, the Commission will take notice of those  
5 orders.

6 CROSS-EXAMINATION BY MR. MILLS:

7               Q.       Mr. Giles, do you know what Commissioner  
8 Appling was thinking when you and he talked when you  
9 and he were at the Iatan plant?

10               MS. WHIPPLE: Objection, Your Honor.  
11 You can't ask any witness what another person is  
12 thinking. Now, if Mr. Mills wants to restate it and  
13 ask what was said, that would be fine. But you can't  
14 ask what somebody else was thinking.

15               MR. MILLS: I wasn't asking what  
16 Commissioner Appling was thinking because only  
17 Commissioner Appling can tell us that. I'm asking  
18 whether this witness knew what he was thinking.

19               JUDGE PRIDGIN: I think the question was  
20 does he know, and if he does know -- I don't even know  
21 what to say.

22               MS. WHIPPLE: I would ask him to  
23 rephrase the question.

24               MR. MILLS: I phrased the question  
25 exactly as I want. I want to know whether this witness

1 knows what another person was thinking. I think the  
2 answer is fairly obvious, but --

3 JUDGE PRIDGIN: I'll overrule. I'm  
4 sorry. Go ahead. I'll overrule the objection and let  
5 him answer if he knows.

6 THE WITNESS: Notwithstanding whether I  
7 know what he was thinking or not, with regards to what?  
8 I'm not sure -- you're going to have to narrow that for  
9 me a little bit. As regards to a statement or the  
10 entire tour or --

11 BY MR. MILLS:

12 Q. Do you know what he was thinking when  
13 you and he were talking about returns on equity?

14 A. He and I did not talk about return on  
15 equity. Commissioner Appling simply made a statement  
16 to me. We never discussed return on equity. I never  
17 responded to his comment.

18 Q. Okay. Do you know what he was thinking  
19 when he was talking -- when he was asking you questions  
20 and making statements on the records last Monday?

21 A. At the time of the questioning, my  
22 perception was he was talking about the Iatan plant and  
23 the whole construction project. I was --

24 Q. My question called for a yes or no  
25 answer. Do you know what he was thinking?



1           A.       Again, you're going to have to be more  
2       specific. He made a lot of statements on the record.  
3       And if you want to point me to his specific statement,  
4       I can answer your question.

5           Q.       Okay. Do you know what he was thinking  
6       when he said, "You and I talked a lot about this"?

7           A.       I perceived he was talking about --

8           Q.       That's a yes or no question. Do you  
9       know what he was thinking?

10          A.       No. I don't.

11          Q.       Okay. Now, it's your testimony that you  
12       and he did not talk a lot about this whether it be ROE  
13       in this case or ROE in the last case?

14          A.       That's correct.

15          Q.       Okay. All right. Do you recall when  
16       the tour was?

17          A.       April 13th.

18          Q.       Okay. Was there a different time in  
19       which Commissioner Appling met with you later in the  
20       year, in June or July?

21          A.       No.

22          Q.       Okay. Now, with respect to the  
23       cross-examination -- no. I'm sorry, not  
24       cross-examination, the questions that Commissioner  
25       Appling posed to you and the statements that he made on

1 the record last Monday, how did you understand the  
2 connection between what you and he talked about and  
3 this plant tour and the subject of return equity in  
4 this case?

5 A. As I started to say before, my  
6 perception was he was making a general comment about  
7 the whole construction project and not even referring  
8 to return on equity.

9 Q. Have you read Commissioner Appling's  
10 statement that he filed on the record today?

11 A. I read it just before I walked in, yes.

12 Q. Okay. So -- sorry -- and how did you --  
13 how did you arrange to come here today? Who called you  
14 and when?

15 A. I believe the first notice I had, I had  
16 actually called Tim Rush. And he informed me that  
17 Cully Dale had indicated that I may need to come down  
18 here this afternoon on this matter.

19 Q. So Tim Rush told you that Cully Dale had  
20 mentioned that to him?

21 A. Yes.

22 Q. And is that the first time you heard  
23 that you might have to testify in this issue?

24 A. Yes.

25 Q. Okay. How did you become involved in

1 filing an affidavit that was with the -- filed by KCP&L  
2 made this morning?

3 A. When we received the motion Office of  
4 Public Counsel filed on Friday, we talked about --  
5 talked I mean myself and some of our attorneys talked  
6 about the appropriate way to address it; whether we  
7 should offer for me to come back this week and testify,  
8 whether we should take action like we did, just file  
9 and affidavit. And we decided that we would work over  
10 the weekend, put the affidavit together and file it  
11 just as soon as we could this morning.

12 Q. Okay. And did you have any contact with  
13 anyone from the Commission since last Friday?

14 A. No.

15 Q. And by Commission I mean Commission and  
16 Staff.

17 A. No.

18 Q. Did you have any conversation with  
19 Warren Wood since last Friday?

20 A. I had received some e-mails from Warren  
21 on Friday afternoon indicating that this motion had  
22 been filed and I was already aware of that. I  
23 subsequently had several e-mails -- well, two or three  
24 e-mails back and forth.

25 Warren was keeping me up-to-date on what

1 was happening. He indicated that he might have to come  
2 down today to participate in this proceeding.

3 Q. And did he tell you that he been calls  
4 from Commissioner Appling?

5 A. He told me that he had spoke -- I don't  
6 whether he had spoke -- said he had spoken with  
7 Commissioner Appling or whether it was e-mail. He did  
8 indicate he had contact with Commissioner Appling, yes.

9 Q. Now, with respect to the questions that  
10 you got from Commissioner Appling on last Monday, did  
11 you understand that he was asking you questions about  
12 the return on equity that you requested in this case?

13 A. No.

14 Q. What did you -- what did you understand  
15 the nature of his questions about return on equity  
16 were?

17 A. I believe he had a specific question  
18 that asked me what we were requesting in this case. So  
19 to that extent, I knew exactly what he was asking for  
20 and I said 11.25 percent.

21 The other questions and comments he was  
22 making my perception was, like I said before, he was  
23 talking about the overall construction of the plant. I  
24 didn't associate it with any particular ROE. I  
25 certainly didn't associate it with anything to do with

1 this case.

2 Q. Okay. You don't recall a couple of  
3 questions in which he asked you about the ROE in the  
4 last case and about the ROE in this case?

5 A. I think I said he asked me a specific  
6 question of what did we get in the last case. I said  
7 11.25. I believe he asked another question of what we  
8 were requesting in this case, or made a statement  
9 perhaps, of "And you're asking for that same level of  
10 return?" Something to that effect, but I don't recall  
11 exactly. But, yes.

12 Q. Now, refer us back to the regulatory  
13 plan. Is the general framework of the regulatory plan  
14 such that when it was laid out and were expecting to  
15 file the initial case and then the second case almost  
16 immediately after the conclusion of the first case?

17 A. Yes.

18 Q. And that is in fact what happened; the  
19 second case was optional, but you did in fact file it?

20 A. Yes.

21 Q. Okay. And are there different factors  
22 driving the need for rate relief in the second case  
23 than there were in the first?

24 A. Yes.

25 Q. Okay. Are there some of the factors

1 that are the same?

2 A. Yes.

3 Q. Is the Iatan 1 and Iatan 2 construction  
4 is the same -- one of the factors that is the same  
5 between case 1 and case 2?

6 A. Well, the fact that we're in a  
7 construction program at both Iatan 1 and Iatan 2 is the  
8 same, yes. That's right.

9 Q. And is the testimony of -- let me back  
10 up a bit.

11 Did Dr. Hadaway testify in case 1 on  
12 behalf of KCPL?

13 A. Yes, he did.

14 Q. Okay. Did he testify in case 2 on  
15 behalf of KCPL?

16 A. Yes.

17 Q. One of those times on the  
18 appropriateness of the rate of return that the  
19 Commission should allow?

20 A. Yes.

21 Q. And in both cases, did Dr. Hadaway  
22 propose an adder to his calculated return on equity for  
23 KCPL's construction risk?

24 A. Yes, he did.

25 Q. And is the justification in case 1 and

1 case 2 similar?

2 A. Yes, they both had to do with  
3 construction risks. And we requested a 50 basis point  
4 adder in case 1. We requested 50 basis point adder in  
5 case 2.

6 Q. So then the adder for construction risk  
7 was very similar between case 1 and case 2?

8 A. Yes, the amount was identical.

9 Q. The amount was identical, and the  
10 rationale was similar?

11 A. Yes.

12 MR. MILLS: No further questions.

13 JUDGE PRIDGIN: Mr. Mills, thank you.

14 Other questions from counsel? Any  
15 further questions from the Bench?

16 Commissioner Murray, questions?

17 COMMISSIONER MURRAY: No questions.

18 JUDGE PRIDGIN: Thank you. Questions  
19 from counsel?

20 Mr. Fischer?

21 CROSS-EXAMINATION BY MR. FISCHER:

22 Q. Mr. Giles, you indicated that you never  
23 responded back to Commissioner Appling's comment at the  
24 plant whenever he mentioned ROE; is that correct?

25 A. That's correct.





1 Mr. Rush on this topic, Your Honor?

2 JUDGE PRIDGIN: We certainly may if the  
3 counsel has questions or obviously if the Bench has  
4 questions, we certainly can.

5 CHAIRMAN DAVIS: Do you want him,  
6 Mr. Thompson?

7 MR. THOMPSON: Well, I thought I heard  
8 someone say he was present during the discussions.

9 MR. FISCHER: Your Honor, I think he was  
10 present at the Kansas City Power and Light Headquarters  
11 at that was the only extent of his involvement on that  
12 tour.

13 MR. RUSH: That's correct.

14 JUDGE PRIDGIN: If you want to call him,  
15 I mean that's --

16 MR. THOMPSON: I was just asking a  
17 question, sir.

18 JUDGE PRIDGIN: I understand.

19 (OFF THE RECORD)

20 JUDGE PRIDGIN: Ms. Gregory, thank you.  
21 If you'd come forward and be sworn please.

22 (Witness sworn.)

23 JUDGE PRIDGIN: Thank you very much.  
24 Would you please state your name for the record?

25 THE WITNESS: Sheryl Gregory.

1 JUDGE PRIDGIN: And are you employed by  
2 the Commission?

3 THE WITNESS: Yes.

4 JUDGE PRIDGIN: What do you do here?

5 THE WITNESS: I'm designated principle  
6 assistant to Chairman Davis and Commissioner Appling.

7 JUDGE PRIDGIN: And what is your  
8 understanding of why you are here to testify?

9 THE WITNESS: Regarding a trip I made to  
10 Iatan 2.

11 JUDGE PRIDGIN: All right. And let me  
12 see if -- let me verify with counsel -- the first two  
13 witnesses 1 and 2 wait on Bench questions. Do you want  
14 to see what questions we have from the Bench?

15 MR. MILLS: That would be fine.

16 JUDGE PRIDGIN: All right. Thank you.

17 Let me see if we have any questions. Mr. Chairman?

18 SHERYL GREGORY testified as follows:

19 QUESTIONS BY CHAIRMAN DAVIS:

20 Q. Ms. Gregory, did you set up the trip to  
21 Iatan 2?

22 A. Yes.

23 Q. Okay. Okay. And what do you recall  
24 about setting up the trip?

25 A. I was asked to schedule a trip to tour

1 the -- the construction at Iatan 2. So I contacted  
2 Chris Giles' office.

3 Q. Do you recall, were other Commissioners  
4 invited to attend, as well?

5 A. Not that I'm aware of.

6 Q. Did you -- so you accompanied  
7 Commissioner Appling to KCP&L Headquarters, the German  
8 restaurant in Westin and to the Iatan 2 site. Correct?

9 A. Correct.

10 Q. Okay. Anything else?

11 A. (Witness nodded.)

12 Q. No? Okay. At the KCP&L Headquarters  
13 was Commissioner Appling in your sight the whole time?

14 A. Yes.

15 Q. Did he ever leave and go to the  
16 restroom?

17 A. Before we went to the -- whatever floor  
18 it was to meet with William Downy.

19 Q. Okay. So --

20 A. In that instance, he was not in my  
21 sight.

22 Q. Okay. So he wasn't in your sight the  
23 whole time. Okay. Okay. So other -- when you were  
24 meeting with Bill Downy, was he in your sight the whole  
25 time? I'm sorry. I'm sorry.



1 Commissioner Murray, any questions?

2 COMMISSIONER MURRAY: I have no  
3 questions. Thank you.

4 JUDGE PRIDGIN: Thank you. Commissioner  
5 Jarrett?

6 COMMISSIONER JARRETT: I have no  
7 questions.

8 JUDGE PRIDGIN: Cross-examination?  
9 Mr. Mills. Anyone else?

10 Mr. Mills?

11 CROSS-EXAMINATION BY MR. MILLS:

12 Q. Just briefly. Did you know this was  
13 part of your job when you took the job?

14 A. Not exactly.

15 Q. Do you recall any discussion while you  
16 were either -- at any part on the tour about return  
17 equity?

18 A. No, I do not. I read through responses  
19 that said regarding 2006 case.

20 Q. But other than there stuff that's been  
21 filed in this case, you don't have any recollection of  
22 that coming up at all on the tour?

23 A. Huh-uh.

24 Q. Okay. So you don't know whether or not  
25 there was a lot of talk about it or a brief mention of

1 it?

2 A. To the best of my knowledge, I remember  
3 a PowerPoint presentation, touring the plant.

4 Q. Now, you said -- describe for me what  
5 your role was in setting up the tour? Did you -- did  
6 you start from scratch? When you got involved had  
7 Commissioner Appling already talk to Mr. Giles about a  
8 tour, or do you know?

9 A. To the best of my knowledge there was --  
10 there may have been a conversation. I don't remember.  
11 I was asked to call Mr. Giles' office, schedule a time  
12 when he would be available.

13 Q. And so --

14 A. And Mr. Wood.

15 Q. I'm sorry. Go ahead. Now, have you  
16 spoken with Commissioner Appling about this topic since  
17 last Friday?

18 A. My testifying? No.

19 Q. Okay. Have you spoken with him about  
20 the controversy in this case over the conversation he  
21 had on the plant tour?

22 A. I talked with him -- he asked me if I  
23 could remember the exact date when we went on the tour.

24 Q. Okay.

25 A. And I gave him the date of April 13th.

1 Q. Was that the extent of the conversation?  
2 A. To the best of my knowledge.  
3 Q. And when did that take place?  
4 A. Monday night.  
5 Q. Yesterday?  
6 A. A week ago.  
7 Q. A week ago.  
8 A. A week ago.  
9 Q. Okay. Had no further conversations  
10 since last Monday?  
11 A. Since I'm his DBA, I printed documents  
12 for him but we did discuss the case.  
13 Q. Okay. And who asked you if you would  
14 testify today?  
15 A. I believe it was Judge Dale.  
16 Q. Okay. Has anybody else talked to you  
17 about testifying today?  
18 A. Chairman Davis was standing there.  
19 Q. Did Chairman Davis talk to you or was he  
20 just standing there?  
21 A. He was standing there.  
22 Q. All right.  
23 A. Judge Dale was the one that asked the  
24 question.  
25 Q. Okay.

1                   MR. MILLS: I don't have any further  
2 questions. Thank you.

3                   JUDGE PRIDGIN: All right. Thank you.  
4 Any further questions for this witness?

5                   Ms. Gregory, thank you very much.

6                   If I recall correctly, we had  
7 interrupted Ms. Meisenheimer's testimony and she was  
8 going to stand -- excuse me, Bench questions. And then  
9 be available for recross and redirect.

10                  Anything further from counsel before we  
11 resume?

12                  MR. MILLS: Judge, just before we go  
13 back to the previously scheduled programming --

14                  JUDGE PRIDGIN: Yes?

15                  MR. MILLS: Is this the extent of the  
16 presentation of witnesses on this -- on the topic of  
17 commissioner Appling's conversation with Mr. Giles?

18                  JUDGE PRIDGIN: Mr. Chairman?

19                  CHAIRMAN DAVIS: Would you like  
20 something else, Mr. Mills?

21                  MR. MILLS: Well, actually I guess my  
22 question is, is Commissioner Appling going to speak on  
23 this or is his filed response Commissioner Appling's  
24 only word on the topic?

25                  I am certainly not pushing for one or



1 the other. I just want to know if we are done with  
2 this and moving back to the regular hearing?

3 CHAIRMAN DAVIS: Well, I -- those are  
4 the only three witnesses that I had planned on calling,  
5 but certainly if you have a request to make, you can --  
6 it's a -- it's a free country and you have a computer  
7 and an ink pen.

8 MR. MILLS: I don't have any requests to  
9 make at this time.

10 JUDGE PRIDGIN: All right. Thank you.  
11 If there's nothing further.

12 Do we have any Bench questions for  
13 Ms. Meisenheimer?

14 Mr. Chairman?

15 CHAIRMAN DAVIS: Ms. Meisenheimer, good  
16 afternoon.

17 MS. MEISENHEIMER: Good afternoon,  
18 Chairman.

19 QUESTIONS BY CHAIRMAN DAVIS:

20 Q. If I recall before we were interrupted  
21 with various incendiary other things, Mr. Bruder asking  
22 you a lot of questions about the future. Can you tell  
23 the future, Ms. Meisenheimer?

24 A. Unfortunately, I cannot.

25 Q. Okay. If you are holding out on me I

1 would be very disappointed.

2 CHAIRMAN DAVIS: Thank you. No  
3 questions.

4 JUDGE PRIDGIN: Thank you.  
5 Commissioner Murray?

6 COMMISSIONER MURRAY: Thank you.

7 Good afternoon, Ms. Meisenheimer.

8 THE WITNESS: Good afternoon.

9 COMMISSIONER MURRAY: After the last  
10 issue, this is going to make class cost of service  
11 sound like fun.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. I just wanted to ask you -- and I'm not  
14 sure I'm going to know how to phrase this  
15 appropriately, but -- well, I know how to phrase the  
16 first one.

17 You participated in the -- let me get my  
18 thinking clear here about the issue we're talking about  
19 before I ask the question.

20 You participated for Office of Public  
21 Counsel in the stipulation agreement accepting the 2  
22 percent shift to residential consumers; is that  
23 correct?

24 A. Yes.

25 Q. And when parties enter into a

1 stipulation and agreement, they do so understanding  
2 that they may be giving up something, but then they may  
3 be getting something else in return. Is that how you  
4 would characterize a settlement of various issues like  
5 that; that you may give a little here but in turn are  
6 getting something else?

7 A. Yes. I'd say that we regularly give a  
8 little and take a little in coming up with a settlement  
9 that's satisfactory to all parties.

10 Q. Okay. And when you enter into a  
11 stipulation and agreement it is presented to the  
12 Commission and approved, I assume you have an  
13 expectation that that stipulation and agreement will be  
14 in effect; is that correct?

15 A. And honored, yes.

16 Q. Okay. Now, if a party enters into an  
17 agreement that actually provides them a better  
18 advantage than they might get had they gone forward  
19 without making the agreement, is there any argument  
20 that someone who is not a party to the stipulation  
21 agreement should be able to come back and say, They got  
22 too good a deal, we need to rethink -- the Commission  
23 needs to rethink upholding this agreement?

24 A. Well, I'm not exactly sure which party  
25 in particular we're talking about and about whether

1 we're still talking about the 2 percent agreement.

2 Q. Well, I'm just asking you a hypothetical  
3 at this point. But I'm basing it on the fact that we  
4 have a party here who was not a party to the  
5 stipulation agreement trying to make a case, I believe,  
6 that the Office of Public Counsel would not have been  
7 able to get as good a deal for the residential  
8 consumers if the stipulation and agreement had not been  
9 introduced. And that was able to be an issue in each  
10 rate case going forward.

11 Do you think that Office of Public  
12 Counsel should have or did have any expectation that  
13 that stipulation and agreement would be challenged  
14 during the pendency of its term?

15 A. I guess I need to ask my attorney about  
16 settlement -- I mean we discussed a lot of things in  
17 settlement discussions that I don't think we're  
18 supposed to disclose.

19 Q. No. And I know --

20 A. Because it's not fair to other parties  
21 to do so.

22 Q. And I'm not asking you to disclose  
23 anything. I'm just asking you your expectations when  
24 you agree to something in a stipulation and  
25 agreement -- and I am not being very artful in my

1 question, which was what I was afraid of when I  
2 started. So let me try something different.

3 Just assume that the stipulation and  
4 agreement provided for some things that maybe weren't  
5 the best policy -- arguably not the best policy  
6 decisions -- but if the Commission approved that  
7 stipulation and agreement, would it not be incumbent  
8 upon the Commission to uphold that stipulation and  
9 agreement until its term was past?

10 A. Well, I believe that when the Commission  
11 approves a stipulation and agreement, that it  
12 recognizes that it is something that's been negotiated  
13 among the parties and satisfies the interests of the  
14 diverse group of parties that are represented in these  
15 cases.

16 And that in -- you know, I'm not an  
17 attorney and I'm certainly, you know, not sitting where  
18 you are. But I assume that when you make those  
19 deliberations and determine that it's in the public  
20 interest to approve a stipulation or to accept a  
21 stipulation presented by the parties, thus resolving  
22 the case, that you recognize that each party must have  
23 felt that they got enough out of the settlement, and  
24 that it's a reasonable outcome.

25 I mean, I think if you found something

1     glaring that you felt was completely inconsistent with  
2     the public interest that you would reject such a  
3     negotiated agreement.

4             Q.     Okay.  And it's my understanding that  
5     DOE did not sign that stipulation and agreement.  Is  
6     that your understanding?

7             A.     DOE didn't -- was not a signatory to the  
8     original regulatory plan stipulation.  However, through  
9     the process of the proceeding, and as I set forth in my  
10    testimony -- my rebuttal testimony, there was, I think,  
11    clarification that occurred and statements by DOE's  
12    attorney later in their brief that indicated that, in  
13    fact, DOE at some point had at least some of their  
14    concerns clarified or addressed and that, in fact, they  
15    found -- or they said that the Commission could find  
16    that in the public interest.

17            Q.     And they did not oppose the stipulation?

18            A.     They did not.  And I think perhaps you  
19    could even interpret that language to go a little  
20    further than that, in that what the attorney said in  
21    response to Commissioner Gaw's question at the time  
22    regarding whether they supported it, it says --  
23    Commissioner Gaw asked -- well, maybe I should go  
24    back -- the attorney for DOE indicated that they were  
25    not opposed to the Commission approving the stipulation

1 and agreement as proposed.

2 And Commissioner Gaw, narrowing in on  
3 that, Is that the same thing as supporting it?

4 Mr. Phillips said, I think if we look in  
5 the law dictionary, we might be able to differentiate  
6 between one and the other. I'm prepared to say that we  
7 do not oppose it.

8 And then Commissioner Gaw, But not that  
9 you necessarily support it?

10 And Mr. Phillips, I did not say that.

11 So I -- the way I read that, it's an "at  
12 least." At least we don't oppose it. And then later,  
13 they indicated that they believed the Commission could  
14 find it in the public interest. And I certainly don't  
15 know why DOE would put that in there if they themselves  
16 didn't think it was in the public interest.

17 Q. Okay. And that's what I was getting at.  
18 So thank you very much.

19 A. Thank you.

20 JUDGE PRIDGIN: Commissioner Murray,  
21 thank you.

22 Commissioner Jarrett?

23 COMMISSIONER JARRETT: Yes. Thank you,  
24 Judge.

25 QUESTIONS BY COMMISSIONER JARRETT:

1           Q.       I want to direct your attention to  
2 Page 4 of your rebuttal testimony.

3           A.       I'm there.

4           Q.       And where you're answering the question  
5 there at the top of the page as to why should the  
6 Commission reject imposing further interclass revenue  
7 shifts in this case based on the 2006 rate case. Could  
8 you expand on your answer there?

9                    You talk about disproportionate shifts  
10 agreed to in the last case. What was your rationale as  
11 to why we should reject further interclass revenue  
12 shifts?

13          A.       Well, very recently, residential  
14 customers have taken a disproportionate increase  
15 compared to other classes. And another document in the  
16 record so far that indicates that is one of the  
17 attachments to this Staff class cost of service and  
18 rate design report, was the results of the negotiated  
19 stipulation in the last case. And what it shows is the  
20 percentage increase for each class based on what the  
21 total revenue requirement worked out to be.

22                   And so I went back and looked at  
23 documents to find out exactly what that was. And  
24 that's where I got those percentages. I hope that you  
25 got my correction on Line 8, there, that the 9.9 should



1 have actually been 7.7. I don't know whether you were  
2 in the room --

3 Q. No. I wasn't. Thank you.

4 A. -- when I made that correction. But  
5 what it indicates to me, and what Public Counsel  
6 accepted, expecting to be able to go for a number of  
7 cases without additional shifts was that, you know, we  
8 would take disproportionate increase in that first  
9 case, and then we would take another look once we got  
10 to the fourth case.

11 And Mr. Trippensee can explain to you  
12 why we believe it's appropriate to go ahead and wait  
13 until the fourth case in terms of the revenue  
14 requirement and the new plant coming on-line.

15 Q. Right. And so if I understand what  
16 you're saying, then, is that to further shift revenue  
17 to residential customers, it would increase them even  
18 more, just proportionately?

19 A. That's exactly right.

20 Q. All right. Is that what they refer to  
21 as rate shock?

22 A. It can be.

23 Q. Is that something --

24 A. It can be.

25 Q. Is that something in rate design that we

1     should look at and make sure that we try to minimize  
2     any rate shock?

3             A.       Yes.   And in this case, I think one of  
4     the particular considerations is that -- I mean, it's  
5     been a very short time since the last rate case that  
6     implemented an increase.

7             Q.       All right.   Thank you.

8                     COMMISSIONER JARRETT:   No further  
9     questions.

10                    THE WITNESS:   Thank you.

11                    JUDGE PRIDGIN:   Commissioner, thank you.  
12     I'm sorry.

13                    Commissioner Murray?

14                    COMMISSIONER MURRAY:   Ask a little bit  
15     more.

16     FURTHER QUESTIONS BY COMMISSIONER MURRAY:

17             Q.       Ms. Meisenheimer, I'm assuming that by  
18     agreeing to the 2 percent shift in rate back to the  
19     residential customers that Office of Public Counsel was  
20     taking into consideration the fact that rates are going  
21     to be increasing as a result of Iatan 2 construction  
22     progress; and that if there is a continual -- continued  
23     shift to true class cost of service, that the  
24     residential ratepayers would receive a higher  
25     percentage of shift without that agreement in place.

1 And, therefore, entering into that agreement postponed,  
2 in OPC's mind, a more significant increase to the  
3 residential consumers.

4 Would you agree with that?

5 A. I would not agree with that.

6 Q. You would not agree it postponed a more  
7 significant increase?

8 A. That's correct. I would not agree that  
9 it postponed -- I don't think we know that for sure. I  
10 think there was uncertainty. And as I explained in  
11 cross-examination, based on the cost studies I did in  
12 the last case, I wouldn't have characterized  
13 residential as significantly different from cost of  
14 service at that point in time, when those cost studies  
15 were done. So I can't -- you know, I couldn't agree  
16 with it -- with the statement.

17 Q. Okay.

18 A. I just couldn't.

19 Q. Let's just assume hypothetically that  
20 the Commission determined that there had been -- that  
21 the residential ratepayers had been being subsidized by  
22 other classes, and that there was a desire to move  
23 toward true cost of service for each class, would you  
24 agree that the longer that -- well, would you agree by  
25 locking in a rate design for a period of time that that

1 delays any shift to the residential class -- any  
2 further shift?

3 A. I would agree that locking in would  
4 postpone shifts toward residential, if the Commission  
5 had made such a finding and ordered such a shift; or,  
6 you know, from a litigation perspective, if other  
7 parties might attempt to propose shifts, whether or not  
8 they were reasonably based on cost.

9 So, I mean, certainly, you avoid the  
10 risk of additional recommendations for increases.

11 Q. And those are part of what would be  
12 considered, I would assume, in deciding to agree to a  
13 rate design that was agreed to at the time. Is that --

14 A. Certainly, litigation risk is always a  
15 consideration -- one consideration in whether to accept  
16 a settlement. Certainly look for whether we think  
17 that, you know, it's something we can live with  
18 reasonably, as well.

19 Q. And whether or not you agree with the  
20 policy, or whether or not you agree that there are  
21 subsidies for the residential rate should be moving  
22 toward true cost of service for each class, is it your  
23 opinion that there is an agreement that says, this is  
24 how the rates are designed, for the period of time that  
25 was provided in the stipulation and agreement?

1           A.       It is my understanding that we were not  
2   to make changes to rate structure in the two optional  
3   cases.

4           Q.       Thank you.

5                   JUDGE PRIDGIN:  Commissioner Murray,  
6   thank you.

7                   Any further Bench questions?  Any  
8   recross?

9                   MR. BRUDER:  I don't have recross, Your  
10   Honor.  But I did want to say that listening to  
11   Commissioner Murray's line of questioning, it seemed to  
12   me that the questions I asked may have given her, and  
13   perhaps other people, one or two misapprehensions.  I'd  
14   like briefly to address that, if I may.

15                  JUDGE PRIDGIN:  Well, let me first see  
16   if we've got any further questions for the witness.

17                  MR. BRUDER:  Sure.

18                  JUDGE PRIDGIN:  And I might take your  
19   statement later.

20                  Is there any further recross on -- based  
21   on Bench questions?  Redirect?

22                  MR. MILLS:  I will have some redirect.

23                  JUDGE PRIDGIN:  All right.

24                  MR. MILLS:  I don't know if you want to  
25   address what Mr. Bruder is talking about first, or if

1     you want me to do redirect now.

2                     JUDGE PRIDGIN:  Mr. Bruder, could you  
3     make whatever brief statement you need to make, and  
4     I'll let Mr. Mills --

5                     MR. BRUDER:  Sure.  Two things.  
6     Commissioner Murray, it seems to me that from the  
7     questions I asked, you may have formed the view that  
8     DOE has the view that Public Counsel got a better deal  
9     under the stipulation and agreement than it would have  
10    if these issues had gone to hearing.  We don't know  
11    what the -- what it would have gotten at hearing.  
12    That's not our position.

13                    Secondly, and really more importantly,  
14    we did not oppose the stipulation, as is clear from the  
15    record.  Moreover, we don't oppose the stipulation now.  
16    What we're speaking to is not whether the stipulation  
17    stands or falls, but what it means, how it shall be  
18    interpreted.

19                    We believe that most of the parties'  
20    interpretation of the stipulation and agreement is in  
21    line with ours, and that Public Counsel stands alone,  
22    or more or less alone, in what it says.

23                    But my point again is we're not looking  
24    to renege on the stipulation or have to have it cast  
25    aside.  We're merely speaking to the question of how it

1     should be interpreted.

2                     I have nothing further.  Thanks.

3                     JUDGE PRIDGIN:  Okay.  Thank you.

4                     MR. KEEVIL:  Judge, if I could -- what  
5     he said confused me.  I just want to be -- we're  
6     talking about --

7                     MR. MILLS:  I think we found the  
8     infamous slippery slope.

9                     MR. KEEVIL:  There are two stipulations,  
10    as I understood the questioning of Ms. Meisenheimer, in  
11    play here.  And Mr. Bruder kept referring to the  
12    stipulation as though there was only one stipulation  
13    out there.  And I just think it needs to be clear for  
14    the record that she was asked various questions about  
15    two different stipulations.

16                    JUDGE PRIDGIN:  And if I'm not mistaken,  
17    Mr. Bruder, when you're referring to the stipulation --  
18    or were referring to it just a moment ago, you were  
19    talking about the experimental regulatory plan  
20    stipulation; is that correct?

21                    MR. BRUDER:  And the one sentence that's  
22    been --

23                    JUDGE PRIDGIN:  Yes.

24                    MR. BRUDER:  -- included in several of  
25    the testimonies which certain parties read -- certain

1 parties do not read barring any changes to rate  
2 structure and rate design. Yes, sir. Thank you.

3 JUDGE PRIDGIN: Okay. Thank you.

4 Mr. Mills?

5 MR. MILLS: Okay. Well, let's hit that  
6 one first, because I think perhaps Mr. Bruder does have  
7 a misapprehension. And if not, maybe the record is not  
8 clear.

9 REDIRECT EXAMINATION BY MR. MILLS:

10 Q. There was a 2 percent shift to  
11 residential agreed to in what case?

12 A. In the last case.

13 Q. ER-2006 --

14 A. It's the --

15 Q. -- 0314?

16 A. Yes.

17 Q. That was the first rate case under the  
18 regulatory plan?

19 A. Following the -- yes.

20 Q. Okay. So that came later than the  
21 stipulation and agreement in EO-2005-0329, which is  
22 commonly referred to as the regulatory plan?

23 A. Yes.

24 Q. And in the regulatory plan stipulation  
25 in Case Number EO-2005-0329 up here in the language



1 that we've been debating about, no changes in rate  
2 structures and no further class cost of service  
3 studies?

4 A. Yes.

5 Q. Okay. So those are two separate  
6 stipulations and two separate cases?

7 A. Yes. They are.

8 Q. Okay. Now, with respect to questions  
9 that you got from Staff counsel, you were asked some  
10 questions about Mr. Phillips' definitions of rate  
11 structures, as well as Mr. Baumbright's; is that  
12 correct?

13 A. Yes. That's correct.

14 Q. And the section that you were asked  
15 about was specifically, if I got this right, Phillips  
16 talking about Baumbright; is that correct?

17 A. Yes. Actually, what I provided in  
18 response to the Staff data request regarding my  
19 statement and testimony identified that, in fact, I  
20 believe Dr. Phillips or Mr. Phillips, as well as  
21 Dr. Baumbright defined rate structure in a way  
22 consistent with the belief that it encompassed more  
23 than simply naming the rate components.

24 Q. Okay. And is there further support for  
25 that in Mr. Phillips' book, other than the section that

1 Staff counsel directed you to?

2 A. Yes. The Staff counsel specifically  
3 directed me only to a portion of what I provided in  
4 response to data requests to the Staff, when, in fact,  
5 just -- that was just a limited page or two that they  
6 referenced me to.

7 But, actually, there are two chapters on  
8 rate structure in this -- in my version of the book.  
9 And my understanding is that the Staff has a more  
10 current version of this same book that they keep in  
11 their library that is of similar -- contains similar  
12 information.

13 Q. Okay. Is there any significant change  
14 from Volume 2 to Volume 3 that you're aware of, at  
15 least in that aspect?

16 A. Not that I'm aware of. And I attempted  
17 to determine that when Ms. Pyatte brought her copy of  
18 the book down to talk to me about my response to data  
19 requests.

20 Q. Okay. And what is the further  
21 information that you did provide in response to the  
22 data request, in terms of the definition of rate  
23 structures?

24 A. Well, I actually provided copies of all  
25 the pages that were cited in my testimony, you know,

1 specifically, including a definition that described  
2 rate structures including both the setting of rates and  
3 the relationship between rates. And specific to the  
4 issue, which I think is touched on by both Phillips and  
5 Baumbright, that identifies interclass shifts as a  
6 component of setting rate structure.

7 Q. Okay. Now, with respect to questions  
8 from Commissioner Jarrett on Page 4 of your rebuttal  
9 testimony -- and I believe he had some questions  
10 specifically about the numbers calculated in the first  
11 full answer on that page.

12 A. Yes.

13 Q. Can you tell us how you calculated the  
14 numbers on Line 8?

15 A. Yes. I looked back through the case  
16 material to identify what was the increase that was  
17 finally approved by the Commission. Tracked it back to  
18 the stipulation and agreement attachment, which  
19 identified different percentages that would apply to  
20 different classes depending on the total revenue  
21 requirement outcome of the case.

22 I then used those percentages to  
23 calculate the percent, if you will, what was  
24 residential's percent increase relative to other  
25 classes' increases.

1           Q.       Okay. So the 21 percent to 65 percent,  
2     you're not saying that the residentials got a 21 to 65  
3     percent increase?

4           A.       No. And I think I make it clear by  
5     stating, higher than those increases experienced by  
6     other classes.

7           Q.       Thank you.

8           MR. MILLS: Go ahead.

9           MS. KLEITHERMES: No. You've  
10    discontinued the line that was worrisome.

11          MR. MILLS: I guess I stopped too soon.  
12    I believe that's all the questions I have.

13          JUDGE PRIDGIN: All right. Thank you.

14          Ms. Meisenheimer, thank you very much.  
15    I appreciate it.

16          MS. MEISENHEIMER: Thank you.

17          MS. KLEITHERMES: Judge, I would like to  
18    renew Staff's motion to limit the testimony of  
19    Ms. Meisenheimer that was filed this morning.

20          JUDGE PRIDGIN: Yes. Thank you. I'll  
21    show that motion as pending. It was discussed briefly  
22    in agenda, and the Commission is aware of your motion  
23    and it's still pending.

24          MR. MILLS: And Judge, this is the only  
25    appearance that Ms. Meisenheimer will have in this

1 case. And so I would normally offer her testimony, and  
2 I don't know if you want me to do that now or at some  
3 later point in the proceeding.

4 JUDGE PRIDGIN: You may offer it now --

5 MR. MILLS: Okay.

6 JUDGE PRIDGIN: -- if you wish, and  
7 we'll show that Staff still has an objection pending,  
8 and that objection will be taken and not ruled upon  
9 right now.

10 MR. MILLS: Okay. At this time I would  
11 offer Exhibit 204.

12 JUDGE PRIDGIN: All right. 204 has been  
13 offered. Any objection? No objection?

14 MS. KLEITHERMES: My record -- or in --  
15 my objection is noted for the record, I assume.

16 JUDGE PRIDGIN: All right. Thank you.  
17 Any further objection?

18 MR. MILLS: And if I -- just for the  
19 record, can I get Staff to clarify what particular  
20 section of Ms. Meisenheimer's testimony, pages and  
21 lines, that this motion applies to?

22 MS. KLEITHERMES: Of course, I do not  
23 have a copy of that with me, but I can pull it out of  
24 the testimony right here. Sorry for the delay there.

25 That would be -- beginning on Page 7 of

1 Ms. Meisenheimer's rebuttal, on Line 11, beginning with  
2 the word, For. And that should continue through Line  
3 15 on that same page.

4 MR. MILLS: So I know in the past that  
5 the Commission has entered into the record portions of  
6 exhibits and reserved rulings on the rest. Can we, at  
7 this point, reserve -- admit all of Ms. Meisenheimer's  
8 testimony and reserve ruling on only that portion?

9 JUDGE PRIDGIN: I mean, that sounds like  
10 the best solution to me.

11 MR. MILLS: Okay.

12 MS. KLEITHERMES: I might also add that  
13 there is a footnote included to that reference, but the  
14 footnote is referenced in the reference portion.

15 JUDGE PRIDGIN: All right. Okay. Other  
16 than those disputed lines, are there any other  
17 objections to Exhibit 204?

18 Okay. I'll show 204 admitted with the  
19 exception of the lines that Ms. Kleithermes just  
20 pointed out, and the Commission will reserve ruling on  
21 that portion of the exhibit.

22 (WHEREIN; Exhibit No. 204 was received  
23 into evidence with exclusions.)

24 JUDGE PRIDGIN: Okay. I'm sorry.  
25 Ms. Meisenheimer, you can step down.

1 THE WITNESS: Thank you.

2 JUDGE PRIDGIN: Thank you very much.

3 MR. MILLS: And Judge, before we leave  
4 this topic, I was in agenda today. And it -- I  
5 couldn't tell if the Commission would be interested,  
6 but if so, I would be more than willing to present oral  
7 argument on both my motion to strike and the Staff's  
8 countermotion to limit the testimony of  
9 Ms. Meisenheimer, if that would be helpful to the  
10 Commission.

11 MS. KLEITHERMES: As would I.

12 JUDGE PRIDGIN: And -- certainly. And  
13 I'll alert the Commission that counsel has volunteered  
14 that.

15 Let me inquire of counsel -- those  
16 famous last words -- how many questions -- or much  
17 cross-examination would counsel anticipate of  
18 Mr. Trippensee? I'm just trying to determine whether  
19 it's better to move on or to call it a day.

20 MR. FISCHER: KCPL will have no  
21 questions.

22 MR. WOODSMALL: None.

23 MR. BRUDER: I anticipate about 15  
24 minutes, sir. Perhaps 20.

25 MS. KLEITHERMES: Staff has five

1 questions. I reserve the right to extend to six.

2 JUDGE PRIDGIN: Okay. All right.

3 Mr. Trippensee.

4 MR. MILLS: Mr. Trippensee has been on  
5 the stand and doesn't have any corrections. So I'll  
6 tender him for cross-examination.

7 JUDGE PRIDGIN: All right. Thank you.

8 And Mr. Trippensee, you're still under oath, sir.

9 Cross-examination for Mr. Trippensee.

10 Ms. Kleithermes, Mr. Bruder. Any other parties?

11 All right. Just a moment, please.

12 Ms. Kleithermes?

13 (Witness previously sworn.)

14 RUSSELL TRIPPENSEE has retaken the stand:

15 CROSS-EXAMINATION BY MS. KLEITHERMES:

16 Q. Good afternoon, Mr. Trippensee.

17 A. Good afternoon.

18 Q. I am looking at Page 5, beginning around  
19 Line 1 and continuing for the bulk of that page. You  
20 refer to several accounting issues, specifically the  
21 regulatory plan amortization. And my question to you  
22 is: Are those issues significant enough to obviate the  
23 results of the class cost of service studies from  
24 ER-2006-0314 in their entirety?

25 MR. MILLS: I don't have a specific



1 objection, but if we could talk about which testimony.

2 MS. KLEITHERMES: Oh, my apologies.

3 That would be Mr. Trippensee's rebuttal.

4 MR. MILLS: Okay.

5 MS. KLEITHERMES: And if you need a copy  
6 of that, I have several.

7 THE WITNESS: No. I have it. Thank  
8 you. Could you restate your question, please? I'm --  
9 you referenced the whole page, so I was trying to read  
10 it and --

11 BY MS. KLEITHERMES:

12 Q. Oh, well, you discuss accounting issues,  
13 and specifically the regulatory plan amortization that  
14 you say makes it inappropriate to continue the class  
15 cost of service studies from that case, if I understood  
16 it correctly.

17 And my question to you is: Are those  
18 changes significant enough to obviate those results  
19 from the class cost of service studies in that case in  
20 their entirety?

21 A. I guess I'm having a little trouble when  
22 you say "in its entirety." If you do a study from a  
23 revenue requirement standpoint or a rate design  
24 standpoint, and you get a result, that -- if that  
25 result changes, is that in its entirety? I just --

1 I'm -- that's a word I'm not familiar with. The answer  
2 is either, it is what it is.

3 And what I referenced here is, the  
4 regulatory plan amortization is going to generate  
5 significant sums of money that was not even considered  
6 in the rate design test year, which was 2005 or some  
7 component of -- ending in 2005, another 12-year period  
8 there -- 12-month period.

9 Secondly, that period did not reflect  
10 the 100 megawatts of new wind generation which no  
11 utility in this state has ever had. So those two  
12 factors alone are going to give you a significantly  
13 different result than those studies. So if my result  
14 is different, then from my standpoint as a CPA, as  
15 someone that's been in regulation, yes, it's wrong.

16 Q. All right. Does OPC's class cost of  
17 service study from the 314 case indicate that there are  
18 inequalities in rates of return generated among the  
19 classes?

20 A. Inequalities? Could you explain that,  
21 please?

22 Q. Well, we've heard several witnesses  
23 today talk about how some classes will give a certain  
24 rate of return on the company's investment and others  
25 will give -- my question is: Do other classes -- do

1 certain classes give a greater or lesser rate of return  
2 on the company's investment than others?

3 A. I believe that has been testified to by  
4 witnesses today. I would also state that I agree with  
5 Mr. Rush's statements, that service to different  
6 classes of customers present different risk; and  
7 different risk, by definition, in rate of return would  
8 generate a bigger rate of return.

9 Q. All right. If you could refer to Page 6  
10 of your rebuttal, beginning at Line 1 there. Is it the  
11 Office of Public Counsel's position that there's no  
12 need to adjust class revenues unless and until Iatan 2  
13 comes on-line, and possibly not even then?

14 A. It is Office of Public Counsel's  
15 position that the parties in the regulatory plan case  
16 agreed to not change the relationship of rates, i.e.  
17 rate structure, in the second and third cases.

18 When Iatan 2 comes on-line, which will  
19 have, as I mentioned, the 100 megawatts of wind that  
20 has already occurred, potentially another 100 megawatts  
21 of wind, the answer -- and it also significantly change  
22 the operating characteristics of Kansas City Power and  
23 Light because I believe, as Mr. Rush testified earlier  
24 today, Iatan 2 will be their lowest cost unit.

25 What those results are going to be, I

1 don't know. I think Mr. Wood, when he was on the  
2 stand, testified to that in support of the regulatory  
3 plan, as I referenced in my testimony.

4 And so to speculate on what's going to  
5 happen in 2010, as Mr. Watkins has done, isn't  
6 appropriate.

7 Q. I do not believe I've -- well, let me  
8 repeat my question. Is it the Office of Public  
9 Counsel's position that there's no need to adjust class  
10 revenues unless and until Iatan 2 comes on-line, and  
11 possibly not even then?

12 A. And my answer was that the agreement was  
13 in the regulatory plan that there would be no  
14 adjustment in the rate in Cases 2 and 3. And as far as  
15 what will happen with Iatan 2 coming on-line, it will  
16 be what it is when it occurs.

17 Q. All right.

18 A. We do not know what is going to happen  
19 then. There are several factors, because the  
20 regulatory plan encompassed almost \$1.5 billion of new  
21 investment, which will have a significant increase --  
22 or a significant impact on the relationship of cost.

23 Q. All right. To that same reference,  
24 then, Page 6, Line 1, in sequence. Is it OPC's  
25 contention that Staff's position is the only reason

1 class revenue should be adjusted in this case is  
2 because of the possibility of Iatan 2 coming on-line at  
3 some point in the future?

4 A. Is that Staff's only position?

5 Q. My question is --

6 A. Basis --

7 Q. -- is that what you believe Staff's  
8 position to be?

9 A. That is one of the -- that is a  
10 statement that was contained in Mr. Watkins' testimony.  
11 I did not -- it's not all encompassing. No.

12 Q. All right. And, finally, are the terms  
13 "rate structure" and "rate design" synonymous?

14 A. Are the terms "rate structure" and "rate  
15 design" synonymous? I believe I can answer that with a  
16 yes or no, if I can qualify it -- or explain it.

17 And as far -- no, they are not. Rate  
18 structure involves the determination of specific rates  
19 and the determination of rate relationships. Rate  
20 design is almost more the overlying theory of why you  
21 do what you do when you develop your rate structure.  
22 The agreement in the regulatory plan was to not change  
23 rate structure, which is the relationship of rates.

24 MS. KLEITHERMES: No further questions.

25 Thank you.

1 JUDGE PRIDGIN: Ms. Kleithermes, thank  
2 you.

3 Mr. Bruder?

4 CROSS-EXAMINATION BY MR. BRUDER:

5 Q. Okay. We've had a lot of discussion  
6 this afternoon about something that's been called  
7 subsidies, otherwise been called differences in return  
8 among the classes. You're aware of that. Yes?

9 A. Yes. I've been in the room all day.

10 Q. Okay. There is a suggestion, is there  
11 not, by a number of parties that however described,  
12 large users are now paying a great many dollars that  
13 are properly ascribed to the cost of serving  
14 residentials. Is that not an idea that's been --  
15 that's had some currency in this case and before, sir?

16 A. That is an assertion in this case. I'm  
17 not sure what you mean by having some currency.

18 Q. Is it an assertion in this case?

19 A. It is an assertion by certain parties in  
20 this case.

21 Q. Thank you. Is it the position of the  
22 Public Counsel that that assertion is incorrect?

23 A. I believe Ms. Meisenheimer testified to  
24 that earlier today in discussions with you, that she  
25 could not agree with that assertion.

1           Q.       Do you support her in his disagreement  
2     with that assertion?

3           A.       She is the Office of Public Counsel  
4     witness who is intimately familiar with those studies.

5           Q.       I believe you haven't responded to my  
6     question, sir.

7           A.       I believe I have, sir. I cannot answer  
8     yes or no if I did not do due diligence on everything  
9     that Ms. Meisenheimer looked at.

10          Q.       I think the proper answer, sir, is that  
11     you don't know. If you don't know, please say you  
12     don't know.

13                   And now I want to tie that up. I have  
14     asked you whether there has been an assertion in this  
15     case that large users are paying a great many dollars  
16     that are properly ascribed to the cost of serving  
17     residential. You have agreed with me, that that  
18     assertion has been made. You have now said that you do  
19     not know whether Public Counsel's position is whether  
20     that assertion is correct.

21          A.       No.

22          Q.       You had said that I'd have to refer to  
23     Ms. Meisenheimer's testimony.

24                   MR. MILLS: I object to the question,  
25     first, that it's not a question; it's simply a series

1 of statements. And second --

2 MR. BRUDER: Yes. It is. I'm trying --

3 MR. MILLS: -- I think it -

4 MR. BRUDER: -- to find out what the --

5 I'm trying to tie up and find out --

6 MR. MILLS: -- mischaracterizes this

7 witness's --

8 MR. BRUDER: -- what this witness's --

9 MR. MILLS: -- testimony.

10 MR. BRUDER: Well, that's fine. And he

11 can tell me what his testimony is.

12 MR. MILLS: This witness never said, I

13 don't know.

14 MR. BRUDER: He told he couldn't say yes

15 or no. And if you can't say yes or no, I submit it

16 must be that he doesn't know. He told me he doesn't

17 know, that Ms. Meisenheimer knows and I should refer to

18 Ms. Meisenheimer's testimony. I'm willing to do that.

19 MR. MILLS: And that continues the

20 mischaracterization to which I object.

21 MR. BRUDER: It wasn't a

22 mischaracterization.

23 JUDGE PRIDGIN: All right. I'll

24 sustain. And if you can ask -- again, you can ask him

25 yes or no questions. And if he doesn't know the



1 answer, that's fine.

2 BY MR. BRUDER:

3 Q. Has it been asserted in this case that  
4 large users are paying a great many dollars that are  
5 properly ascribed to the cost of serving residential?

6 A. That assertion has been made.

7 Q. Is it your opinion that that assertion  
8 is correct?

9 A. I did not testify on that issue.

10 Q. Well, are you telling me, then, that you  
11 have no opinion? Are you refusing to answer because  
12 you didn't testify to it? Because if you are, that's  
13 all right.

14 A. I said I have no opinion. I don't know  
15 what more you want.

16 Q. I don't want anything if you have no  
17 opinion.

18 Now, at Page 3 of your rebuttal, Lines 5  
19 through 8, you quote, as several people have, certain  
20 language from the stipulation and agreement,  
21 Case No. EO-2005, do you not?

22 A. Yes. I do.

23 Q. Now, I believe it was your testimony  
24 earlier that the effect of this language in this  
25 stipulation and agreement is that there may not be in

1     this case any changes in rate structure or rate design.

2     Is that how you read this contractual language, sir?

3             A.       You stated that there may not be. I  
4     believe the language states that the signatory parties  
5     agree not to file new or updated class cost of service  
6     studies or to propose changes in rate structures. And  
7     then it references the filings.

8             Does that bind this Commission? I am  
9     not a lawyer, but it's my understanding that the  
10    Commission is not bound by this language. The parties  
11    to that case are bound by that language, which is,  
12    again, with my understanding of the Commission rules,  
13    unless a party objects -- and they were a party to that  
14    case and they did not object, you -- the stipulation is  
15    then considered unanimous. DOE was a party.

16            Q.       All right. Since you're not a lawyer,  
17    perhaps you misunderstood. I did not ask you whether  
18    it bound the Commission or bound the parties. I asked  
19    you to read the words and tell me whether the words  
20    say, or can reasonably be interpreted to say, that on  
21    the basis of these words, there can be no rate  
22    structure and rate design changes made in this  
23    proceeding.

24            A.       And only the Commission, sir, can make a  
25    change. And that's what my answer referenced. The

1 Commission is not bound; therefore, if the Commission  
2 so chooses, they can make a change.

3 Q. Then this language, as far as the  
4 Commission is concerned, has no effect at all, sir? Is  
5 that your testimony?

6 A. It has an effect on the parties to this  
7 case -- to the regulatory plan case, who are also  
8 parties to this case, who either signed the document or  
9 who did not oppose the agreement.

10 Q. All right. So we've established that  
11 you think it has no effect on the Commission. Now,  
12 what effect does it have on the parties, sir? May the  
13 parties agree to changes in rate structure and rate  
14 design under this, or not?

15 A. Ethically, no.

16 Q. How about legally, reading the words in  
17 front of you?

18 A. Well, from a CPA, ethics are legal, so  
19 the answer would be no.

20 MR. BRUDER: Your Honor, I'm going to  
21 ask that this witness be directed to answer my question  
22 directly. He knows what I'm asking him. He knows  
23 what's here. To suggest that ethically and legally are  
24 the same in a court of law under oath as he is, is --  
25 isn't apposite. I ask that he be directed to answer

1 this directly.

2 JUDGE PRIDGIN: Okay. And I think he  
3 did. So --

4 MR. BRUDER: No more.

5 JUDGE PRIDGIN: Mr. Bruder, did you have  
6 any more questions?

7 MR. BRUDER: I'm just looking.

8 JUDGE PRIDGIN: Okay. That's fine.

9 MR. BRUDER: I'm just looking.

10 JUDGE PRIDGIN: That's fine.

11 MR. BRUDER: The crossover between the  
12 two witnesses has produced some confusion. I do  
13 apologize.

14 JUDGE PRIDGIN: That's all right.

15 BY MR. BRUDER:

16 Q. In your rebuttal, at the bottom of  
17 Page 4, you say, the regulatory plan revision rate  
18 design and class cost of service being a part of the  
19 first case but not the second and the third cases.  
20 Does that mean that Public Counsel anticipates that  
21 class cost of service will be part of the fourth case?

22 A. Okay. I am sorry for the delay. I had  
23 to find out where you were referring to. You're  
24 beginning on Lines 20, I believe, of Page 4. The  
25 answer to that question was that the fourth case,

1 Public Counsel anticipated that rate design would be  
2 addressed. There was no -- that assumption is  
3 reflected in the regulatory plan by the fact there's no  
4 limitations whatsoever on rate design.

5 Q. In the fourth case?

6 A. In the fourth case.

7 Q. Okay.

8 A. Rate design being the over-arching area  
9 of taking a revenue requirement and converting it into  
10 the tariff sheets.

11 Q. And your rebuttal at Page 6, Line 5.  
12 And tell me when you have it.

13 A. I have it. Thank you.

14 Q. Okay. You say there's no assurance that  
15 Iatan 2 will ever be placed in service. Sir,  
16 realistically, on the basis of your experience, how  
17 likely do you consider that that plant will never be  
18 placed in service?

19 A. Iatan 2 -- hopefully, there's a very low  
20 probability. But in this state, we've had a major  
21 production plant for a water company not make it into  
22 service. We have had -- well, actually, it got put  
23 into rate base and broke 12 hours later and was taken  
24 out. There has been at least one major nuclear plant  
25 in this country that did not make it into service. So

1 it does occur.

2 Q. Shoreman?

3 A. I believe that was correct.

4 Q. All right.

5 A. This -- but as far as a coal plant in  
6 this state, sooner or later, they have gotten in. They  
7 have often -- they have been delayed. I don't believe  
8 it was Kansas City Power and Light. I think it was  
9 their acquisition target, Aquila, had a coal plant  
10 delayed in the '80s by almost a year.

11 Q. All right. I'm looking at Page 6,  
12 Line 7 now where you use the phrase "a host of other  
13 factors." Could you tell us, sir, what at least some  
14 of those other factors might be?

15 A. I think one factor -- it's kind of  
16 referenced in the phrase before -- but the effect --  
17 the phrase before "changes in customary usage," new  
18 appliance regulations, efficiencies are occurring that  
19 affect usage just because of the change-out of old  
20 technology into the current technology.

21 But a factor that hasn't been considered  
22 that was, I believe, in the regulatory plan, are some  
23 environmental act -- proactive programs by the company,  
24 how those will affect customer usage is something  
25 that's unknown.

1                   New technology. Appliances are getting  
2 more efficient, yet customer usage is going up. I  
3 don't know what the people in -- what used to be called  
4 Bell Labs are coming up with these days, how they're  
5 going to find something to sell me to increase my  
6 usage, because I need to have the new gizmo.

7                   There are just -- a utility is a very  
8 complex entity, and it -- because it's a public service  
9 and it interacts not only -- it controls its own  
10 operations to a significant degree, but it does not  
11 control the demand for its service at all times. That  
12 is in the third party. And how those dynamics interact  
13 cannot be forecasted. If it did, we wouldn't have had  
14 multiple nuclear plants cancelled during the '80s -- or  
15 in the late '70s and the early '80s.

16               Q.       Okay.

17                   MR. BRUDER: I have nothing further.  
18 Thank you, sir.

19                   JUDGE PRIDGIN: All right. Thank you.  
20 Let me see if we have questions from the Bench.

21                   COMMISSIONER MURRAY: I don't have  
22 questions.

23                   JUDGE PRIDGIN: All right. Thank you.  
24 Redirect?

25                   MR. MILLS: Just a few brief questions.

1 REDIRECT EXAMINATION BY MR. MILLS:

2 Q. Mr. Trippensee, do you have the -- a  
3 copy of the regulatory plan with you?

4 A. Yes. I do.

5 Q. Mr. Bruder asked you whether or not  
6 class cost of service was contemplated in the fourth  
7 case. And I believe your answer was that there were no  
8 limitations on whether or not it could be?

9 A. That is correct. There's not a  
10 subsection of the fourth filing that is titled --  
11 entitled rate design as there was a subsection under  
12 the first mandatory filing and the second and third  
13 optional filings.

14 Q. Okay. Is there a requirement that KCPL  
15 perform a class cost of service in conjunction with the  
16 fourth case?

17 A. I believe -- without going back to the  
18 document, but my recollection is they are required to  
19 provide a significant amount of data that would allow  
20 any party including themselves to do those  
21 calculations. But there's no requirement that any  
22 party file a class cost of service.

23 Q. Is the requirement for the production of  
24 that data different for the fourth case than it is for  
25 the second and third case?



1           A.       Yes. There is no requirement for the  
2 second and third case, I do not believe.

3           Q.       Now, I believe in response to some  
4 questions by Mr. Bruder about the stipulation and  
5 agreement that's commonly called the regulatory plan,  
6 you testified that the Commission is not bound by that  
7 agreement; is that correct?

8           A.       That's what I believe I testified to,  
9 yes. But as I also indicated to Mr. Bruder, I am not a  
10 lawyer, and stipulations and contractual law are  
11 something that has been discussed on occasion before in  
12 relation to the stipulations and the Commission.

13          Q.       Did the Commission approve that  
14 agreement?

15          A.       Yes. They did.

16          Q.       Under what circumstances would you  
17 suggest the Commission should disregard it?

18          A.       Extreme circumstances. And I think some  
19 of those extreme circumstances -- the regulatory plan  
20 requires KCPL to identify if there's been significant  
21 changes. And there have not been any items identified  
22 by KCPL or any other parties to that matter.

23          Q.       So under normal circumstances, you  
24 wouldn't expect the Commission to disregard a  
25 stipulation and agreement that it had previously

1 approved?

2 MR. BRUDER: Objection, leading.

3 MR. MILLS: I can rephrase.

4 JUDGE PRIDGIN: Thank you.

5 MR. MILLS: In fact, I think he's

6 already answered it. So I have no further questions.

7 JUDGE PRIDGIN: All right. Thank you.

8 If there's nothing further from counsel.

9 MR. BRUDER: One question on recross, if

10 I may.

11 JUDGE PRIDGIN: I don't normally

12 allow --

13 MR. BRUDER: Okay. No problem.

14 JUDGE PRIDGIN: All right.

15 Mr. Trippensee, thank you.

16 THE WITNESS: Thank you.

17 JUDGE PRIDGIN: This looks to be a

18 convenient time to knock off for the day. And if I'm

19 not mistaken, Mr. Price is available Thursday; is that

20 correct?

21 MR. BRUDER: He is definitely available

22 Thursday. There has been some discussion among the

23 parties about his testifying since my understanding at

24 this point is that questions for him will be quite

25 limited. He may testify by telephone if we can agree

1 on that, and if, of course, it's acceptable to you. I  
2 am in the process of trying to talk to him and find out  
3 when tomorrow or Thursday he would be available to do  
4 that if that could be the agreement.

5 JUDGE PRIDGIN: Okay. And I'll  
6 certainly wait to hear from counsel. If that's  
7 something that they agree to do, we'll try to  
8 accommodate.

9 MR. BRUDER: Thank you.

10 JUDGE PRIDGIN: Mr. Watkins, then, would  
11 be the first witness going at 8:30 or so in the  
12 morning? All right.

13 Is there anything further from counsel  
14 before we go off the record?

15 All right. Hearing nothing, we will  
16 stand in recess. We will reconvene at 8:30 in the  
17 morning and have Mr. Watkins on the stand. Thank you  
18 very much. We are off the record.

19 (WHEREUPON; the hearing of this case was  
20 recessed until October 10, 2007 at 8:30 a.m.)

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3 CERTIFICATE OF REPORTER

4 I, LISA M. BANKS, a Certified Court Reporter, within  
5 and for the State of Missouri, do hereby certify that the  
6 witness whose testimony appears in the foregoing deposition  
7 was duly sworn by me; that the testimony of said witness was  
8 taken by me to the best of my ability and thereafter reduced  
9 to typewriting under my direction; that I am neither counsel  
10 for, related to, nor employed by any of the parties to the  
11 action in which this deposition was taken, and further, that  
12 I am not a relative or employee of any attorney or counsel  
13 employed by the parties thereto, nor financially or  
14 otherwise interested in the outcome of the action.

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16 Lisa M.Banks, CCR  
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