

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4

5
6 TRANSCRIPT OF PROCEEDINGS
7 Evidentiary Hearing
8 October 10, 2007
9 Jefferson City, Missouri
Volume 13
10
11

12 In the Matter of the)
Application of Kansas City)
13 Power & Light Company for)
Approval to Make Certain) Case No. ER-2007-0291
14 Changes in Its Charges for)
Electric Service to Implement)
15 Its Regulatory Plan)
16
17

18 RONALD D. PRIDGIN, Presiding,
19 SENIOR REGULATORY LAW JUDGE
TERRY JARRETT,
20 COMMISSIONER.
21

22 REPORTED BY:

23 PAMELA FICK, RMR, RPR, CCR #447, CSR
24 MIDWEST LITIGATION SERVICES
25

1 APPEARANCES:

2

3 JAMES M. FISCHER, Attorney at Law
4 Fischer & Dority, PC
5 101 Madison Street
6 Jefferson City, Missouri 65102
7 (573) 636-6758

6

7 CURTIS D. BLANC, Attorney at Law
8 Kansas City Power & Light Company
9 1201 Walnut - 20th Floor
10 Kansas City, Missouri 64141
11 (816) 556-2483

9

FOR: KCP&L.

10

11

12 DIANA C. CARTER, Attorney at Law
13 Brydon, Swearngen & England
14 312 E. Capitol Avenue
15 P.O. Box 456
16 Jefferson City, MO 65102-0456
17 (573) 635-0427

15

FOR: Missouri Gas Energy, the
Empire District Electric
Company and Aquila, Inc.

17

18

19 DAVID L. WOODSMALL, Attorney at Law
20 Finnegan, Conrad & Peterson
21 428 East Capitol Avenue, Suite 300
22 Jefferson City, Missouri 65102
23 (573) 635-2700

22

FOR: Praxair, Inc.

23

24

25

1 ARTHUR PERRY BRUDER, Attorney at Law
1000 Independence Avenue SW
2 Washington, D.C. 20585
(202) 586-3409

3

4 LEWIS CAMPBELL, Attorney at Law
P.O. Box 51508
5 811 Lamp Post Cir SE
Albuquerque, New Mexico 87181-1508
6 (505) 323-8292
Lcampbell4@comcast.net

7

FOR: U.S. Department of Energy/NNSA.

8

9

10 LEWIS R. MILLS, JR., Public Counsel
P.O. Box 2230
11 200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
12 (573) 751-4857

13 FOR: Office of the Public Counsel
and the Public.

14

15 NATHAN WILLIAMS, Senior Counsel
STEVEN DOTTHEIM, Chief Deputy General Counsel
16 SARAH KLIETHERMES, Rule 13 Certified
P.O. Box 360
17 200 Madison Street
Jefferson City, MO 65102
18 (573) 751-3234

19 FOR: Staff of the Missouri Public
Service Commission.

20

21

22

23

24

25

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

2 JUDGE PRIDGIN: Good morning. We're
3 back on the record. It is October 10th, 2007. We're
4 resuming the hearing in Case No. ER-2007-0291.

5 Something I want to -- to bring to the
6 parties' attention. I was just reviewing an order I
7 had issued earlier -- several months ago as far as
8 the procedural schedule and also listing a briefing
9 schedule, and looking at -- I believe the current
10 briefing deadline would be November 15th, and that
11 would leave me virtually no time to write a Report
12 and Order, as I'm -- as I'm thinking about it.

13 And so what I will do is change that,
14 and I'm going to wait for the transcripts to roll in.
15 I mean, the transcripts are being expedited, and I
16 will at least give you the notice that as the
17 transcripts come in -- excuse me. Once they're --
18 they're finally in, I mean, they're gonna come in in
19 volumes, but once the final day's transcript is in, I
20 will then issue an order for briefs, and that will
21 likely give you 15 days after that to file your
22 briefs.

23 So, for example, you know, if the
24 transcript -- and I wouldn't issue an order until
25 every single bit of the transcript is in, so when the

1 final day's transcript is in and posted on EFIS, I
2 will then issue an order probably that day or maybe
3 the next day saying, okay, now you've got 15 days
4 from now to send in your brief which would roughly
5 put it early November, just to give you a heads-up.

6 That's moving the briefing schedule up
7 probably about two weeks or so. But I thought I
8 would just at least give you an alert that that's my
9 intention to do that so you can plan accordingly.

10 Okay. All right. I understand we would
11 be going on to Mr. Watkins on class cost of service
12 and rate design. Is there anything from counsel
13 before he takes the stand?

14 MR. MILLS: Judge, just -- just with
15 respect to that last issue you brought up --

16 JUDGE PRIDGIN: Yes, sir.

17 MR. MILLS: -- about the briefs and the
18 transcripts. To my knowledge, none of the
19 transcripts are yet in EFIS.

20 JUDGE PRIDGIN: That's correct.

21 MR. MILLS: Okay. So we've gone, what,
22 nine days from the first day and we still don't have
23 transcripts of the first day officially in EFIS,
24 so --

25 JUDGE PRIDGIN: They're not in EFIS. I

1 understand they're actually physically in -- in the
2 adjudication division and --

3 MR. MILLS: Okay.

4 JUDGE PRIDGIN: -- the first day or two
5 might be posted on EFIS perhaps as early as today.

6 MR. MILLS: Because if we're doing a
7 relatively quick briefing schedule, we could get
8 started on some of the earlier issues when the
9 transcripts are actually up and available. So the
10 quicker those get there, the quicker we can get to
11 work on them.

12 JUDGE PRIDGIN: Oh, I agree. I just
13 don't -- I just don't think it's fair to order briefs
14 until the entire transcript is in and everybody --

15 MR. MILLS: Right. I'm just hoping that
16 whoever is in charge of putting them in EFIS --

17 JUDGE PRIDGIN: Yeah.

18 MR. MILLS: -- is not going to wait
19 until the very last day and then put them all in at
20 once because we could -- we could get a head start on
21 some of the earlier issues if we've got them.

22 JUDGE PRIDGIN: Absolutely. And I will
23 double check with someone in adjudication, but it's
24 my understanding that they're aware of that and we'll
25 try to get those posted on EFIS. Again, I think the

1 first day or two maybe have come in, and hopefully
2 those will be posted on EFIS in the next day or two.

3 MR. MILLS: All right. Thanks.

4 JUDGE PRIDGIN: But thanks for bringing
5 that up.

6 MR. BRUDER: If I may, sir?

7 JUDGE PRIDGIN: Yes, sir.

8 MR. BRUDER: Two things I wanted to just
9 touch upon very briefly. First of all, I have talked
10 to all of the parties, and it appears to me that
11 everyone is willing to waive cross-examination of the
12 DOE witness, Mr. Gary Price --

13 JUDGE PRIDGIN: Okay.

14 MR. BRUDER: -- we had thought would.
15 There is one party who is not present, and I don't
16 know the name of the party. The lawyer is Diana.
17 I'm not gonna try to pronounce that last name.

18 MR. WOODSMALL: She won't have
19 questions.

20 MR. BRUDER: Well, she won't have any
21 questions. Okay.

22 JUDGE PRIDGIN: Mr. Woodsmall, on behalf
23 of Ms. Vuylsteke, is --

24 MR. WOODSMALL: And the only reason I
25 state that is because we share a witness.

1 JUDGE PRIDGIN: Yeah. I think -- I
2 think their interests are pretty well aligned, so ...

3 MR. BRUDER: Okay. Then with everyone's
4 permission, I will inform Mr. Price that he need not
5 be present, he won't have to come down from Madison,
6 Wisconsin for one day, and the department and he and
7 I appreciate that very much.

8 JUDGE PRIDGIN: Okay. And is there
9 any -- any objection from counsel? It sounds like
10 Mr. Price will not stand cross-examination?

11 (NO RESPONSE.)

12 JUDGE PRIDGIN: Okay. Hearing nothing
13 from counsel?

14 (NO RESPONSE.)

15 JUDGE PRIDGIN: All right. Thank you.

16 MR. BRUDER: Okay. Second, I'm a little
17 bit concerned with the briefing schedule you've just
18 announced. I had understood, and I may have had it
19 wrong, that there was an order that indicated that
20 the brief would be due like the middle -- like
21 November 15th?

22 JUDGE PRIDGIN: Right.

23 MR. BRUDER: Okay. No, my concern, in
24 all honesty, is that I have some surgery coming up
25 the last two weeks in October, so I'm not quite sure

1 how I would handle this. But it doesn't have to be
2 determined at this moment. I just did want to let
3 your Honor know as early as I could. And I do have
4 that concern and let's see what we can do. Thanks
5 very much.

6 JUDGE PRIDGIN: And you're welcome, and
7 I appreciate it, and I'm not -- I'm not insensitive
8 at all to -- to anybody's schedule. It's just that
9 I -- I have an operation of law deadline and I
10 can't -- there's not much I can do.

11 I mean, I'll certainly -- if you need
12 more time, you're -- you're free to file a motion and
13 I'll certainly do what I can to accommodate you or
14 anybody else who has any extenuating circumstances.
15 But I -- I simply have to get a Report and Order out
16 in December, come hell or high water, so ...

17 MR. BRUDER: I believe I can work around
18 any deadline you set. I just think it's fair --

19 JUDGE PRIDGIN: Sure.

20 MR. BRUDER: -- to inform the court as
21 quickly as possible when we have a situation like
22 this. Thanks very much.

23 JUDGE PRIDGIN: I appreciate it very
24 much. All right. Thank you. Anything further from
25 counsel? I'm sorry. Mr. Keevil?

1 MR. KEEVIL: Yes, Judge. When you
2 mentioned Mr. Watkins was about to take the stand, I
3 think you indicated on class cost of service and rate
4 design or some very broad topic, my understanding was
5 he's being held over from yesterday's issues,
6 actually, and will then take the stand again later
7 today, hopefully, on the issues that were originally
8 scheduled for today. So I just wanted to make sure I
9 understand that right, that we're not lumping
10 everything together but we're continuing according to
11 the schedule.

12 JUDGE PRIDGIN: Yeah, you're exactly
13 right, Mr. Keevil. And Mr. Watkins is due to appear
14 twice. And this is -- what he would appear on first
15 would be yesterday's issues which would be the
16 Stipulation & Agreement on interclass shifts and
17 large power service rate design.

18 So he would stand cross on that and then
19 leave the stand, and then come back and stand cross
20 on -- in what I think everybody is -- is referring to
21 as the Trigen issues, the general service,
22 all-electric tariffs, et cetera, and stand cross
23 separately on that. So he'll be on the stand twice.

24 MR. KEEVIL: Thanks.

25 JUDGE PRIDGIN: Thank you. Thanks for

1 pointing that out. All right. Anything further
2 counsel -- excuse me -- from counsel before
3 Mr. Watkins takes the stand on yesterday's interclass
4 shifts issue?

5 (NO RESPONSE.)

6 JUDGE PRIDGIN: All right. Mr. Watkins,
7 if you would come forward to be sworn, please, sir.
8 If you'll raise your right hand to be sworn.

9 (THE WITNESS WAS SWORN.)

10 JUDGE PRIDGIN: Thank you very much,
11 sir. Ms. Kliethermes, anything before he stands
12 cross?

13 DIRECT EXAMINATION BY MS. KLIETHERMES:

14 Q. Mr. Watkins, do you have any changes to
15 your prefiled testimony or to the Staff's class cost
16 of service and rate design report?

17 A. No, I don't.

18 MS. KLIETHERMES: Tender this witness.

19 JUDGE PRIDGIN: All right.

20 Ms. Kliethermes, thank you. Bear with me just a
21 moment.

22 Okay. Counsel who wish cross. KCPL?

23 MR. FISCHER: Yes.

24 MR. WOODSMALL: (Raised hand.)

25 JUDGE PRIDGIN: Okay. Mr. Woodsmall.

1 MR. BRUDER: Department of Energy.

2 JUDGE PRIDGIN: Mr. Bruder.

3 Mr. Mills, any cross?

4 MR. MILLS: No, sir.

5 JUDGE PRIDGIN: Okay. No further?

6 Mr. Woodsmall.

7 MR. WOODSMALL: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. WOODSMALL:

9 Q. I just have one question for you. Good

10 morning, sir.

11 A. Good morning.

12 Q. Now, I understand your disagreement with

13 Mr. Brubaker's proposal. Putting aside that

14 disagreement for a moment, isn't it true that it is

15 Staff's position that there's nothing in the rate

16 design stipulation that would prevent the Commission

17 from implementing that proposal?

18 A. Absolutely.

19 Q. Okay. There's --

20 A. Free to -- free to propose the changes

21 that he did. Those are not rate structure changes.

22 MR. WOODSMALL: Okay. Thank you. I

23 have no further questions.

24 JUDGE PRIDGIN: Mr. Woodsmall, thank

25 you. Mr. Bruder.

1 CROSS-EXAMINATION BY MR. BRUDER:

2 Q. Good morning, Mr. Watkins.

3 A. Good morning.

4 Q. Does Staff agree, do you agree that all
5 the cost of service studies that have been presented
6 in this proceeding and in the prior proceeding
7 demonstrate that there are significant differences in
8 return between the various classes, especially
9 between the various large user classes and the
10 residential classes?

11 A. Yes. I think I'd categorize it as
12 differences between residential and nonresidential,
13 the differences --

14 Q. Okay.

15 A. -- instead of the large users --

16 Q. Okay.

17 A. -- because I think it's true of the
18 smaller ones as well.

19 Q. Okay. And my -- my question is just --
20 just to tie it up, do all of the studies in these two
21 proceedings demonstrate that?

22 A. I believe so.

23 Q. Okay. Now, does Staff believe that if
24 rates are to be made in accordance with the principle
25 of cost-based ratemaking, that fees, interclass

1 subsidies or whatever we call them, need to be
2 eliminated or at least significantly decreased?

3 A. You can put me in the camp of the folks
4 that hate the use of the word subsidies. To me,
5 what --

6 Q. The use of the word -- I'm sorry. What?

7 A. Hate the use of the word subsidies for
8 the factual situation that you described.

9 Q. That's -- that's all right.

10 A. Okay.

11 Q. Choose -- the word is -- is significant
12 differences in return of the classes. All right,
13 that's fine.

14 A. I'd go along with that. And I'm sorry.
15 I missed your -- the rest of your question. Could
16 you repeat that?

17 Q. Do you agree that if rates are going to
18 be made in accordance with the principle of
19 cost-based ratemaking, that those subsidies, that
20 those differences in return among the classes need to
21 be eliminated or greatly diminished?

22 A. No, I don't. Let me give you two
23 reasons.

24 Q. No, just -- I wanted -- I just wanted a
25 yes or no, thank you.

1 A. Okay.

2 Q. We contemplate in this proceeding that
3 the company will file a third time and then a fourth,
4 and then with the fourth filing, there will be the
5 proposal that a large new coal plant will be added to
6 rate base; is that correct?

7 A. I think that's essentially correct,
8 although I believe the rate filing three is optional.
9 Although, I've heard pretty substantial rumors that
10 they'll file a rate -- rate filing three.

11 Q. Now, assuming the company does, in fact,
12 seek to and does succeed in adding that facility to
13 rate base, will that very likely or definitely
14 necessitate a significant increase or increases in
15 residential rates?

16 A. It's my understanding that the magnitude
17 of the increase in rate base would cause overall
18 rates to increase significantly.

19 Q. And that would include the
20 residential --

21 A. And -- and assuming residential rates
22 were increased anywhere near system average, that it
23 would be a significant increase to them too.

24 Q. Okay. Okay. Do you know roughly how
25 many dollars this new plant, Iatan 2, is likely to

1 add to rate base?

2 A. I don't know that myself. I heard some
3 numbers thrown around yesterday, but I'm not a
4 revenue requirement guy.

5 Q. Now, the fact that there'll be this
6 necessary and significant increase in residential
7 rates, do you think from your years of experience
8 that that will render the Staff and the company and
9 this Commission more reluctant than they might
10 otherwise be to address these interclass differences
11 in -- in return at the same time of this court
12 proceeding?

13 A. I don't know that I have a simple answer
14 to that. In part, what I would -- what I would think
15 the Staff would recommend would, in part, depend on
16 the outcome of this case, and what -- what shifts, if
17 any, were made in this case, okay?

18 There's still a number -- some
19 significant amount of time before rate filing four or
20 the case after it. And I think what -- what we'd
21 likely see in the -- in the case in which Iatan 2
22 comes on line is probably a focus on the cost of
23 Iatan 2, less focus on interclass revenue shifts. I
24 guess my expectation would be is we'd probably
25 address that subsequent to the Iatan case, and

1 probably not recommend making any interclass shifts
2 at that time.

3 Q. Okay. You said you would address it
4 subsequently. When and in what realm do you reckon
5 you'd -- you'd address it? My question being, there
6 are four rate proceedings that are contemplated after
7 that, nothing further, and so I do ask when would you
8 do it after those four proceedings and what would
9 bring that before the Commission?

10 A. I believe Mr. Rush testified yesterday
11 that he envisioned a possibility of a spin-off rate
12 design docket which would include the ability to
13 perform the class cost of service studies with the
14 known costs of Iatan 2 included. That would be
15 probably the most likely possibility.

16 Q. Okay. Well, even if that were done, and
17 obviously procedurally, that's a possibility, isn't
18 it true that the fact that the residentials had got a
19 significant increase in the fourth rate proceeding
20 would lessen the willingness of the Staff, of the
21 company, of the Commission to give the residentials
22 the kind of additional increase that would be
23 required if the allocators showed what we think they
24 will show which is that the residentials return
25 relative to the industrials is low? Want me to take

1 it again? I'll take it again.

2 A. Do you mind? I'm sorry. That was
3 pretty long.

4 Q. Sure, I quite understand. That's why I
5 write everything down.

6 A. I should have been writing too.

7 Q. Well, no, don't do that. What we've
8 posited now is a spin-off, a fifth proceeding or
9 whatever we call it. The fifth proceeding will
10 follow the fourth proceeding and presumably it would
11 happen within a year or so of that.

12 Now, in the fourth proceeding, as we've
13 envisioned it, you and I in this exchange, the
14 residentials will likely get a significant increase
15 because of the addition of Iatan 2.

16 Given the fact that there has been a
17 significant -- there will have been a significant
18 increase in the fourth proceeding, when we get to
19 this contemplated fifth proceeding a year or so
20 later, isn't the fact that the residentials have so
21 recently had a significant increase going to lessen
22 the company's willingness, the Staff's willingness,
23 the Commission's willingness to move revenues in such
24 a way that's -- that the residentials will get
25 another significant increase so soon after the one

1 that they get on the basis of the decision in the
2 fourth case?

3 MR. MILLS: I object. I think it calls
4 for speculation. He's asking this witness to
5 speculate what the Commission might do, as well as to
6 speculate what the Staff might do at some point in
7 the future.

8 JUDGE PRIDGIN: Sustained.

9 MR. BRUDER: Well, if -- if I may say
10 so, what we have is a concomitance of rate cases
11 here, and the sum of the aim of these cases, as I
12 understand it, is to accomplish a number of things.
13 And we have to look at the cases not individually,
14 but as a whole and as to what they're going to do.
15 And that means that the effect of the prior case upon
16 the subsequent case is, in my opinion, very much in
17 play.

18 JUDGE PRIDGIN: Well, all we have
19 pending is the current rate case, so --

20 MR. BRUDER: Okay. All right. Let me
21 pass out something here. This I will ask to be
22 marked DOE/NNSA Exhibit 807.

23 (EXHIBIT NO. 807 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT REPORTER.)

25 BY MR. BRUDER:

1 Q. Mr. Watkins, I show you now this
2 one-page document that has been marked DOE/NNSA
3 Exhibit 807. It is entitled "Data Information
4 Request, Kansas City Power & Light," gives the case
5 number, and it is Staff's response to DOE data
6 request No. 68. It indicates at the bottom that it
7 was answered by you. Do you have that in front of
8 you, sir?

9 A. I do.

10 Q. Okay. Now, I don't want you to
11 speculate, but if I were to ask you the same
12 questions that are posted on this RFI, would your
13 answer or answers be the same as it is here on this
14 page you have before you?

15 A. Yes, they would.

16 Q. Thank you. Now, when this large coal
17 plant Iatan 2 is added to rate base, the overall
18 amount of fixed costs that is demand costs in rate
19 base will increase very significantly; is that
20 correct?

21 A. Well, it's -- it's correct that the
22 amount of fixed costs would increase. And I'm not
23 sure what you mean by demand costs, but I probably
24 don't agree to that.

25 Q. Well, demand costs as opposed to what we

1 generally call energy costs. When I say demand
2 costs, I'm talking about fixed costs of generation
3 that are placed in rate base. That's mostly what a
4 big coal plant like that is, isn't it?

5 A. The fixed generation costs will increase
6 significantly.

7 Q. Okay. Now, the demand allocator to
8 residential of fixed costs or demand costs, if you
9 like, is about 36 percent; is that correct?

10 A. I don't know.

11 Q. Okay.

12 A. But ...

13 Q. Will you accept that subject to check?

14 A. I -- I can assume that, yes.

15 Q. And the energy allocator to residential
16 of what we call variable costs, mostly energy costs,
17 is about 30 percent, is that correct, or will you
18 accept it subject to check?

19 A. Again, I don't know, but if -- I mean,
20 if we can assume those things are true for your
21 follow-up questions, I'm willing to assume that.

22 Q. Good. That's -- that's exactly where
23 I'm going. Fine. Well, given those allocators and
24 if we hold everything else constant and this
25 generation plant is added, what we have called the

1 differences in return to the classes, the large user
2 classes and the residentials, the gap between those
3 is actually going to increase, isn't it? If we call
4 it a subsidy or we call it a difference in return,
5 it's gonna be more marked than it was before; isn't
6 that correct?

7 A. Well, you know, I've thought about that
8 a lot, and -- and I really don't know what to
9 anticipate the results of the studies -- the way in
10 which the results of the cost -- class cost of
11 service studies might change as a result of adding
12 that big chunk of coal plant.

13 I mean, I really don't know how that
14 will affect each class. I mean, there was a point in
15 time when I thought I knew what was likely to happen,
16 but I've since analyzed that more, and I don't. I
17 just don't have any clue.

18 Q. Now, in your rebuttal at page 3, you
19 assert that DOE's proposal would require the
20 Commission to adopt DOE's class revenue targets. Let
21 me give you a minute to get to that.

22 A. Would you tell me where it was again?

23 Q. Sure, your rebuttal at page 3.

24 A. My rebuttal.

25 Q. It's at line 21.

1 A. Yes.

2 Q. To be clear, you don't mean to suggest
3 that DOE is proposing a specific dollar level revenue
4 targets for the classes in this case, in the next two
5 cases, and, in fact, the DOE targets are percentage
6 targets, are they not?

7 A. The targets are percentage shifts in
8 revenues -- classes, yes.

9 Q. Okay. Now, I'll ask you to look, if you
10 have it, at Mr. Price's direct testimony. For the
11 record, Mr. Price is a DOE witness on this subject.
12 That's his direct testimony at page 11, table 3.

13 A. I've found table 3.

14 Q. Okay. Now, it is clear, is it not, that
15 the numbers in columns B, C and D of that table will
16 change if Mr. -- if and when Mr. Price recalculates
17 that table in the next case because the revenue
18 requirement will change and the allocator factors --
19 allocation factors may change; is that correct?

20 A. Could you repeat that again? I want to
21 make sure that I'm answering the question --

22 Q. Absolutely.

23 A. -- about table 3 and not table 4.

24 Q. I quite understand. In looking at
25 table 3, I'm asking is it clear that the numbers in

1 columns B, C and D will change if Mr. Price
2 recalculates the table in the next case because the
3 revenue requirement will change and the allocation
4 factors may change as well?

5 A. That's correct.

6 Q. Okay. Now, in your rebuttal at pages 3
7 through 4 -- I'll wait till you get that.

8 A. I'm there.

9 Q. All right. You say that the Staff
10 proposal is based on a consensus of the results of
11 all the parties' cost-of-service studies in the 2006
12 case. Could you explain, sir, specifically what is
13 that consensus that you refer to?

14 A. I think that was described in the -- in
15 the report more fully, but basically, the shift that
16 we proposed from the residential class to the medium
17 general service class, everyone's study showed that
18 residential rates should be increased at least that
19 much. They showed the medium general service rates
20 should be reduced by at least that much. And that's
21 what I meant by consensus.

22 Q. But when you said -- let me just -- let
23 me just see if I can tie that up. When you say
24 consensus, you mean that's one of the things that all
25 of the studies showed, and because all of the studies

1 showed it, that constitutes a consensus, the
2 consensus that you're talking about?

3 A. Yes, sir.

4 Q. Okay. Now, does that consensus
5 constitute a basis for the Staff's proposal to move
6 only MGS toward a -- a more equal return relative to
7 the other classes?

8 A. That was the primary factor. I'm sure
9 there were other considerations, like what shifts had
10 been made in the last case.

11 Q. Well, let me ask the question more
12 specifically: Why is the Staff proposal limited to
13 moving only the MGS class toward a more equal return
14 and not some other classes?

15 A. Because we saw that is the most glaring
16 problem and we're not really sure there's -- how big
17 a problem, if any, there is for the other classes.

18 Q. Okay. Now, at your rebuttal, page 4 --
19 again, I'll wait until you get it.

20 A. I'm there.

21 Q. Speaking of what would happen if the DOE
22 proposal were adopted. This is beginning at line 4
23 of that page.

24 A. Uh-huh.

25 Q. You say that "Adoption of the proposal

1 would require the Commission not to consider all
2 relevant facts, including customer impact, in setting
3 rates." Please tell me, sir, what relevant facts
4 other than customer impacts do you believe adoption
5 of DOE's proposal would force the Commission not to
6 consider?

7 A. I -- I don't know what those are likely
8 to be. I suppose there are any number of things that
9 could happen that -- my -- my thought there was that
10 the Commission shouldn't decide in this case that in
11 the next case it's going to do a specific thing like
12 move a third of the way to the -- the -- your cost of
13 service study report -- results.

14 It shouldn't decide in this case what
15 it's gonna have to decide in the next case because it
16 needs to consider all the relevant factors in the
17 next case to decide what to do there.

18 Q. Okay. But then the Commission is free,
19 is it not, to choose the percentage target that DOE
20 proposes for this case and this case alone; that is
21 to say, move the one-third in this case and leave the
22 rest of DOE's proposal to be considered in the future
23 or not at all?

24 A. I believe that that's the case.

25 Q. Okay. Now, in this testimony I have

1 quoted, you spoke of it's a customer impact that you
2 were concerned the Commission wouldn't be able to
3 look at. Is that -- the customer impact you
4 referenced there, sir, is that the customer impact
5 for the residential?

6 A. That was the impacts on all -- any
7 customer class or every customer class.

8 Q. All right. I'm going to refer you now
9 to your surrebuttal at page 6.

10 A. Yes, sir.

11 Q. You say beginning at line 6, "In order
12 to adjust class revenues to equal class cost of
13 service, a determination would have to be made by the
14 Commission as to what the appropriate cost of service
15 for each class is." Did I quote that about right?

16 A. Close. I -- I said, "is for each
17 class," but ...

18 Q. All right. Okay. Now, it is clear, is
19 it not, sir, that DOE does not recommend that the
20 Commission in this one single case seek to adjust
21 class revenues all the way to equal cost of service;
22 is that not clear?

23 A. That's my understanding.

24 Q. Okay. And it's also clear that if, as
25 you say, a determination needs to be made as to what

1 the appropriate cost of a class of service from each
2 class is, only DOE has made and provided such
3 determination in this record in this case; is that
4 correct, sir?

5 A. If you mean is -- is DOE/NNSA the only
6 party that filed a new class cost of service study, I
7 agree with you.

8 Q. A new and updated?

9 A. Any kind.

10 Q. Okay. Good. Now, it's also true that
11 the Commission would not have to make a determination
12 of what the appropriate cost of service is for each
13 class in order to order a significant shift toward
14 equal cost of service among the classes, is it not?
15 I can take another crack at it.

16 A. The Staff's proposal can be implemented,
17 for -- for example. I think that's an example of
18 what you're talking about, right? Because the
19 Commission can order shifts in what they believe to
20 be the appropriate direction even though they didn't
21 make a hundred percent of the shift.

22 Q. All right. And, indeed, that's just
23 what Staff is proposing, is it not?

24 A. Right. So the answer is yes.

25 Q. Okay. Okay. I'll ask you now to look

1 at your surrebuttal at page 7. Now, this is
2 complicated. The table at the top, as I understand
3 it, shows what you refer to as "Expected results of
4 the DOE study." Now, as I understand it, that is the
5 DOE study results as the Staff thinks they would be
6 if the DOE study were adjusted by Staff to reflect
7 the impact of the 2006 revenue shifts; is that
8 correct?

9 A. That's close. What it -- what it shows
10 is the DOE cost study filed in the 0314 case as the
11 top one, and how -- how you would expect the results
12 of that study if it were repeated with all conditions
13 exactly the same except for the shifts in class
14 revenues that are indicated in line 2 that were
15 implemented by the Commission in that case.

16 So I mean, I wanted to be fair about
17 what that study said, and the only way I could make
18 it comparable as to what was filed in this case was
19 to adjust the prior study for the revenue shifts to
20 be made.

21 Q. And that's the only adjustment you made
22 of the prior study; is that correct?

23 A. That's correct.

24 Q. And so in the second table at page 7,
25 you purport to demonstrate that the 2007 DOE study

1 varies from the Staff's adjusted 2006 DOE study which
2 appears above it; is that correct?

3 A. That's correct.

4 Q. Now, when the Staff calculated the
5 expected results of the 2006 study that was shown in
6 the first table, it held everything in the 2006 study
7 constant, did we say? Everything except the change
8 of revenues from the 2006 case?

9 A. What -- what was done is more simplistic
10 than that. It wasn't like the study was repeated
11 again or anything. All I did was take the percentage
12 shifts that was a result of the study and subtracted
13 the percentage shifts that were made in the class
14 revenues.

15 Q. Uh-huh.

16 A. So I didn't do anything with the study
17 other than subtract those numbers from the result.

18 Q. Okay. Now, when we look at the DOE 2007
19 study relative to the 2006 DOE study, it did not hold
20 everything constant, did it? In fact, it first
21 adjusted for the revenues agreed upon in the 2006
22 case as you did; is that right? But the 2007 study,
23 DOE's 2007 study also uses cost data for the 2007
24 period rather than the 2006 period; is that correct?

25 A. I believe it uses the cost data for what

1 the company filed in the direct testimony which
2 was -- and I don't remember exactly what time period
3 that was, but I recall the last three or four months
4 were budgeted.

5 Q. All right. Let's put the question more
6 generically. If the 2007 study uses cost data that
7 are different from the cost data that were used in
8 the 2006 case --

9 A. That is correct.

10 Q. -- is that correct? Now, the 2007 DOE
11 study also uses different allocation factors from
12 those that were used in the 2006 study, does it not?

13 A. Well, when you say allocation factors,
14 do you mean the numerical values or the -- the named
15 description of the allocators?

16 Q. I mean numerical values.

17 A. The numerical values are different, yes.

18 Q. Okay. Now, let's look at your
19 surrebuttal at page 7, lines 14 through 15. Tell me
20 when you have it. Have it?

21 A. Yes.

22 Q. Okay. There you say that, "If
23 residential rates had been increased by 16.31 percent
24 in the 2006 case, they now have to be reduced by 5.02
25 percent in this case." Now, the 16.31 percent

1 increase would have been the increase to the
2 residential if the Commission had moved the
3 residential all the way to unity in the 2006 case on
4 the basis of the DOE study; is that correct?

5 A. That's correct.

6 Q. Okay. So that's the source of the 16.31
7 percent increase number?

8 A. Yes.

9 Q. Okay. And did DOE recommend that the
10 residential be moved to unity in the 2006 case alone
11 or at any single proceeding?

12 A. I'm not sure about the 2006 case. They
13 didn't propose that in this case.

14 Q. Did the Commission even adopt DOE's
15 study?

16 A. They did not.

17 Q. Okay. Now, looking again at your
18 surrebuttal at page 7, the table on the bottom of the
19 page.

20 A. Uh-huh.

21 Q. Looking again -- looking again at the
22 figure 16.31 percent of the first column, again, DOE
23 didn't recommend a 16.31 percent increase in the 2006
24 case. Sir, in fact, it recommended one-fourth of
25 that for 2006 or a 4.08 percent increase; is that not

1 correct?

2 A. I don't know.

3 Q. Well, let's take it this way: If DOE
4 were recommending a 16.31 percent increase overall
5 and it recommended that one-fourth be done in the
6 2006 case, how much did it recommend?

7 A. I mean, I guess that's just a math
8 question.

9 Q. Yes, it is.

10 A. I don't -- try not to do math in public,
11 but --

12 Q. Arithmetic. We'll do arithmetic. We
13 have a statistician.

14 A. I mean, yeah, I think it's about 4
15 percent.

16 Q. Okay. Now, in looking at the second
17 table on that page, and there we see the figure of
18 11.29 percent. Again, in this case DOE isn't
19 recommending 11.29 percent increase for the
20 residentials but one-third of that or about 3.76
21 percent; is that not so?

22 A. That's correct.

23 Q. Okay. So let's look a moment -- at the
24 moment now at this deviation that you've calculated
25 in the second table at minus 3.2 percent. Do you see

1 that figure?

2 A. Yes, I do.

3 Q. Well, if we calculated it in the manner
4 that would follow from what we've just said, the
5 deviation would be the 4.08 percent which is the
6 figure we asked for for 2006 and the 3.76 percent?
7 That is to say, instead of looking at 16.31 -- hold
8 on. Let me go back and make sure that I'm clear on
9 this myself.

10 Well, if we recalculated the 3.02
11 percent to reflect what we've looked at before which
12 was the 4.0 percent, and we took from that the 3.76
13 percent which is what was recommended in the other
14 case, then the difference, the deviation would be
15 just a quarter of -- it would be just .32; is that
16 correct?

17 A. I mean, as far as I can tell, all you're
18 talking about is math.

19 Q. Pardon me?

20 A. Well, all you're talking about is
21 mathematics.

22 Q. Yes, sir.

23 A. Yeah. You can do the calculation as
24 well as I can. If -- if the point of what you're
25 saying is because you didn't recommend going the full

1 way in each case, does -- does the 3 percent
2 overstate what that difference is, then the answer is
3 yes.

4 Q. Okay.

5 A. I mean, if it's a third, you can take a
6 third of that and it would be 1 percent.

7 Q. And if it's a quarter, similarly? I'll
8 do the math. Okay.

9 A. Well, yeah, you'd have to figure out how
10 to deal with it being a fourth in one case and a
11 third in the next, but ...

12 MR. BRUDER: Nothing further. Thank
13 you, sir.

14 JUDGE PRIDGIN: Mr. Bruder, thank you.
15 Mr. Fischer?

16 MR. FISCHER: Thank you, your Honor.

17 CROSS-EXAMINATION BY MR. FISCHER:

18 Q. Mr. Watkins, I'd like to follow up, I
19 think, just initially about your comment about
20 subsidy. We've had a lot of discussion on the record
21 about subsidies, and if I understood what you were
22 saying, you don't like to be put in a camp about
23 talking about subsidies in these kinds of
24 proceedings?

25 A. I believe I said I didn't like to be put

1 in the camp of calling whatever those differences are
2 subsidies.

3 Q. That term gets misused a lot from an
4 economist's perspective in the hearing room; would
5 you agree?

6 A. Well, I agree it's not really a very
7 precise technical term.

8 Q. From an economist's perspective, would
9 you agree that a service is not being subsidized if
10 that service is recovering its incremental costs and
11 making a contribution to fixed costs of the company?

12 A. No, I don't think I -- I don't think I
13 agree with that.

14 Q. How would you define subsidy from an
15 economist's perspective?

16 A. It partly depends on the situation. The
17 situation in Missouri with utility rates is that the
18 rates are based on fully allocated embedded costs,
19 okay?

20 Q. Which is an accounting perspective,
21 right?

22 A. Well, it's -- it's the reality, okay?
23 It isn't -- it isn't the same situation as the
24 typical economist's version which is, well, first you
25 assume perfect competition, you know, and then you

1 assume there's no barriers, and et cetera, et cetera,
2 and then here's the theory that goes with that. What
3 you're faced with is in Missouri you have a total
4 lump of costs --

5 THE COURT REPORTER: A total what, sir?

6 THE WITNESS: Lump of costs.

7 THE COURT REPORTER: Oh, thank you.

8 THE WITNESS: That need to be recovered,
9 okay? What -- what the Commission is charged with
10 doing is finding a just and reasonable way to recover
11 those costs from customer classes, so ...

12 BY MR. FISCHER:

13 Q. Well, I'd like to focus just -- since
14 your background is as an economist and you're one of
15 a couple economists in the room, I'd like to focus on
16 it from an -- from an economist's perspective that
17 isn't it true that typically we talk about subsidy
18 maybe as covering your variable costs or your
19 marginal costs and making a contribution to fixed
20 cost, and then if you're covering at least your
21 variable costs, you're not being subsidized?

22 A. I think I -- I thought I answered that
23 and said in Missouri that doesn't really make any
24 sense --

25 Q. I think what --

1 A. -- if you talk about it that way.

2 Q. If I understood what you were saying,
3 and correct me if I'm wrong, that we do set rates on
4 embedded costs and we talk about average costs and
5 all that kind of thing in the hearing room, which is
6 certainly true, but what I'm asking from an
7 economist's perspective, that's not really the
8 definition of a subsidy. It's whether you're
9 recovering your variable or your marginal costs in
10 making a contribution to fixed costs of the company.
11 Isn't that really what an economist talks about when
12 they talk about subsidies?

13 A. Well, with perfect competition there
14 would be subsidies. But I think you're -- I think
15 you're talking about a situation like farm subsidies,
16 you know.

17 Q. Well, I'm talking about whether you're
18 covering your costs or not, and typically I thought,
19 and I may be wrong, that the economists generally
20 look at it from the perspective of either marginal
21 costs or variable costs, incremental costs which are
22 similar terms, whether you're covering those kinds of
23 costs and making a contribution above that toward the
24 fixed costs of the company.

25 A. Okay. If you're talking about a

1 situation where -- in a regulated environment,
2 instead of setting costs on the embedded costs, fully
3 allocated embedded costs, if instead of that you're
4 setting them on marginal costs, okay, you can
5 allocate the cost recovery responsibility to the
6 various customer classes based on a marginal cost
7 study, determines what the marginal cost of serving
8 those customers are, okay? There's no subsidy at
9 that point.

10 The problem -- or the difficulty with
11 what to do next is, you aren't recovering all your
12 costs. And even jurisdictions where they have
13 marginal cost studies, the goal is still to have the
14 utility recover all of their costs. The question is
15 who do you get those -- where do you collect the
16 shortfall? I know I don't -- I don't know that I --
17 I think I would agree with you --

18 Q. Well --

19 A. -- that that shortfall is not really a
20 subsidy in that situation. And whether you give it
21 to one class or another, subsidy is not the right
22 word to use.

23 Q. Okay. Thank you. Were you in the
24 hearing room when Mr. Rush testified that KCPL's
25 parallel generation tariff included a charge of

1 2.4 cents per kilowatt hour?

2 A. Yes, I was.

3 Q. Is it your understanding that a charge
4 of at least 2.4 cents per kilowatt hour would cover
5 KCPL's incremental costs and make a contribution to
6 fixed costs of the company?

7 A. That -- that would cover what I would
8 call their incremental cost. I don't know about
9 making a contribution to margin.

10 Q. Okay. Well, let's -- let's limit it to
11 just covering your incremental costs.

12 A. Okay.

13 Q. So long as KCPL's rates are recovering
14 at least their incremental costs, would you agree
15 that from the economist's perspective, not setting --
16 setting aside a ratemaking, that that service is not
17 being subsidized?

18 A. I don't know what subsidy means.
19 It's -- it's more of an emotional word.

20 Q. I don't mean to be --

21 A. And it doesn't have a technical
22 definition.

23 Q. -- use it in a pejorative way at all.
24 I'm just trying to understand what the economist's
25 perspective is on that term and whether, indeed, if

1 a -- if a service of Kansas City Power & Light is
2 recovering its incremental cost, is it below cost?

3 A. It's not below cost.

4 Q. Okay. The concept of earning the same
5 rate of return on investment would relate to average
6 embedded costs of the company rather than incremental
7 costs that the economists talk about; is that right?

8 A. I mean, I suppose you could use that in
9 each situation, but ...

10 Q. Okay. Mr. Watkins, would you agree that
11 the various electric companies in Missouri have
12 different types of rate structures in effect?

13 A. Yes, they do.

14 Q. Some companies like Kansas City Power &
15 Light have end-use type rates, for example,
16 separately metered space-heating rates or
17 all-electric rates, while other companies like,
18 perhaps, Ameren don't necessarily have end-use rates?

19 MR. KEEVIL: Judge, I'm going to object
20 to this to the extent that we're getting into the --
21 what you called earlier the Trigen issue, the
22 issue 23 issues. My understanding is that's not what
23 Mr. Watkins is on the stand to testify in regard to
24 at this time.

25 MR. FISCHER: Judge, I -- I use the term

1 end-use rates and all-electric rates, and that will
2 be discussed in the next section, but I'm really
3 talking here about rate structures and what's --
4 what's rate structures and how that relates.
5 That's -- that's the topic that Staff is addressing
6 in this part of the case.

7 JUDGE PRIDGIN: I -- I'm gonna sustain
8 and ask that you rephrase the question. I think --
9 if I'm understanding your question, I think you could
10 perhaps get to the same point without stepping on
11 Trigen's toes and starting to talk about the
12 all-electric tariffs that -- that are due to be
13 discussed later.

14 MR. FISCHER: Okay. Well, I can bring
15 those up again if we like the next time.

16 BY MR. FISCHER:

17 Q. If companies don't have end-use rates,
18 is it your understanding that they have a
19 summer/winter differential that would have a lower
20 rate in the winter?

21 MR. KEEVIL: Judge, I think I have the
22 same objection. If he has questions on rate
23 structure, I -- he can certainly ask rate structure
24 questions, but he's -- he's -- once again, he's --
25 he's in the issue 23 issue.

1 JUDGE PRIDGIN: Mr. Fischer?

2 MR. FISCHER: Well, Judge, if it's
3 objectionable, I can certainly ask these questions in
4 just a few minutes, so I'll be glad to do that.

5 JUDGE PRIDGIN: That's fine. That's
6 fine. Thank you.

7 MR. FISCHER: Thank you very much.
8 That's all I have. Thanks.

9 JUDGE PRIDGIN: All right. Thank you.
10 Do we have any questions from the bench?
11 Commissioner Jarrett?

12 COMMISSIONER JARRETT: No questions.

13 JUDGE PRIDGIN: All right. Thank you.
14 Any redirect?

15 (NO RESPONSE.)

16 JUDGE PRIDGIN: All right. Thank you.
17 Mr. Watkins, you may be excused. You'll be recalled
18 later on another issue. We're ready, then, to go on
19 to Ms. Pyatte.

20 MR. BRUDER: Your Honor, if I may, I
21 wanted to offer DOE Exhibit 807.

22 JUDGE PRIDGIN: Okay. 807 has been
23 offered. Any objections?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: Hearing none, 807 is

1 admitted.

2 (EXHIBIT NO. 807 WAS RECEIVED INTO
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 JUDGE PRIDGIN: And Mr. Bruder, I don't
5 believe the bench has any copies. If you could get
6 us copies.

7 MR. BRUDER: Oh, sure.

8 JUDGE PRIDGIN: Ms. Pyatte, will you
9 raise your right hand to be sworn, please?

10 (THE WITNESS WAS SWORN.)

11 JUDGE PRIDGIN: Thank you very much.
12 Please have a seat. Ms. Kliethermes, is there
13 anything before she stands cross?

14 DIRECT EXAMINATION BY MS. KLIETHERMES:

15 Q. Ms. Pyatte, do you have any changes to
16 your prefiled testimony?

17 A. No, I don't.

18 MS. KLIETHERMES: I'd like to tender
19 Ms. Pyatte.

20 JUDGE PRIDGIN: Will KCPL have cross?

21 MR. FISCHER: Judge, how are you
22 handling the motions to strike at this point?

23 JUDGE PRIDGIN: You know, I would like
24 to take -- I would like to take those motions with
25 the case for now. The Commission is aware of the --

1 of the pending motions, and so I would like to
2 certainly take those with the case. And I understand
3 we may have to go in-camera some, you know, depending
4 on what counsel's questions are on -- on her
5 testimony. So I'm sorry. Does that answer your
6 question?

7 MR. FISCHER: Well, it puts counsel in a
8 little bit of dilemma because it's my perspective
9 that at least we're asserting that this is privileged
10 material in her testimony, and it's not appropriate
11 for cross-examination. It's not appropriate to be --
12 even if it's kept out of the record, to be preserved
13 in the record. It's just not appropriate to be
14 talked about in front of the decision-maker.

15 I'm not intending to ask her any
16 questions about that, and I frankly don't have other
17 questions for her, but I'm very uncomfortable waiving
18 the right to get into that if the Commission intends
19 to let privileged material into the record in this
20 case. And I don't know of a good way around it
21 because I frankly don't think it's appropriate to
22 even have it preserved in the record even if it's
23 kept out. So that's my dilemma, but with that, I'll
24 pass.

25 JUDGE PRIDGIN: Okay. I'm sorry.

1 Mr. Mills?

2 MR. MILLS: And I have -- certainly have
3 the same concerns, although, if there is a chance
4 that the Commission will allow it in the record and
5 consider it in making its decision in this case, I
6 think I need to ask her questions about it.

7 I would ask that the Commission, if the
8 Commission ultimately decides that Public Counsel and
9 KCPL are right and this is privileged information,
10 that the Commission actually strike this information
11 from the record, not preserve it as highly
12 confidential, but to remove it from the record
13 entirely -- this portion and the portion we had at --
14 yesterday, I believe.

15 JUDGE PRIDGIN: And understand, I'm not
16 asking anybody to waive any -- any objections or
17 anything, and I mean, the Commission is aware of this
18 issue. I mean, it is still pending. And depending
19 on the resolution of that issue, you are certainly --
20 if it's resolved in your favor, you -- in fact, I
21 would -- I would ask counsel to alert me to say,
22 okay, the Commission has ruled in our favor and
23 therefore, we want this relief, you know, in a -- in
24 a separate motion.

25 MR. MILLS: Okay. Thank you.

1 JUDGE PRIDGIN: All right. Any
2 cross-examination? Mr. Mills. Nobody else?

3 MR. BRUDER: I have a couple.

4 JUDGE PRIDGIN: Okay. Mr. Bruder, when
5 you're ready, sir.

6 CROSS-EXAMINATION BY MR. BRUDER:

7 Q. Good morning. Is it Pyatte?

8 A. Pyatte.

9 Q. Pyatte. I'm looking at your surrebuttal
10 testimony, page 7, lines 15 through 16.

11 A. I'm there.

12 Q. Here we come once again to this much
13 disputed language which you quote at lines -- what's
14 15 through 17, really. So I ask you now, does that
15 language prohibit the parties to the Stipulation &
16 Agreement from agreeing to a change in a rate
17 structure or a rate design if that change is filed or
18 otherwise put forward by a nonparty to the
19 stipulation?

20 A. I don't believe that a nonsignatory is
21 bound by this language, whatever it means.

22 Q. Well, what I'm asking is whether if a
23 nonsignatory puts forward a proposal, may the
24 signatories under this language support that proposal
25 and agree to it as you read this language and as you

1 understand the agreement?

2 A. I think that's a legal question.

3 MR. BRUDER: Okay. Nothing further.

4 Thank you.

5 JUDGE PRIDGIN: Thank you. Mr. Mills?

6 CROSS-EXAMINATION BY MR. MILLS:

7 Q. Good morning, Ms. Pyatte.

8 A. Good morning, Mr. Mills.

9 Q. Do either Mr. Rush or Ms. Meisenheimer
10 use the word "violation" in their testimony when
11 talking about Staff's position in this case?

12 A. I believe they both do.

13 Q. Can you point that to me?

14 A. Well, I see "prohibited" in Mr. Rush's
15 testimony on -- in his rebuttal, page 6, line 10. I
16 see "does not comply" in surrebuttal, page 2, line 7.

17 Q. And Ms. Pyatte, my question doesn't have
18 to do with any of these other -- these other words.

19 I asked you whether or not Mr. Rush or
20 Ms. Meisenheimer uses the word violation or some
21 other variation of that, like violate?

22 A. That's what I'm looking at. I thought
23 prohibit was pretty close. Mr. Trippensee uses the
24 word "prohibit" --

25 Q. I'm not asking you about Mr. Trippensee.

1 My question --

2 MR. MILLS: Judge, if I can have you
3 instruct the witness to answer my question. My
4 question is very specific: Do either Mr. Rush or
5 Ms. Meisenheimer use the word violation or violate in
6 their testimony to talk about the Staff's position?
7 And I'll ask that any of these nonresponsive answers
8 be stricken.

9 JUDGE PRIDGIN: And at your option,
10 Mr. Mills, she's obviously having to look. Do you
11 want her to -- if she doesn't know now, do you want
12 her to say, I don't know, or do you want to give her
13 the time to look?

14 MR. MILLS: Oh, I want to give her all
15 the time she needs to find it or not find it, as the
16 case may be.

17 THE WITNESS: I don't believe
18 Ms. Meisenheimer used that word. I would like to
19 have additional time to look over Mr. Rush's
20 testimony because he has far more testimony than she
21 does.

22 BY MR. MILLS:

23 Q. Okay. I'll wait.

24 A. I see more prohibited, more not
25 consistent where --

1 MR. MILLS: Judge, can I ask that that
2 be stricken?

3 JUDGE PRIDGIN: It's stricken.

4 THE WITNESS: Anyway, no, Mr. Mills, I
5 do not see that exact word.

6 BY MR. MILLS:

7 Q. Now, in your surrebuttal testimony at
8 page 9, line 23, continuing on to page 10, line 1,
9 what reason do you give for revealing what you
10 consider to be otherwise confidential settlement
11 information?

12 A. Can you give me the -- page 3. What was
13 the line reference?

14 Q. Page 9, line -- line twenty -- beginning
15 at line 23.

16 A. The statement is, "By charging Staff
17 with violating specific terms of the KCPL regulatory
18 plan, KCPL and OPC have left Staff with no
19 alternative than to, on advice of Staff counsel,
20 reveal what are otherwise confidential settlement
21 communications that took place during the
22 negotiations of the sentence in question."

23 Q. And again, can you point to me at any
24 place where Staff -- where KCPL or OPC charged Staff
25 with violating specific terms?

1 A. I pointed you to another -- a number of
2 places. You specifically are saying if you don't use
3 that word, it doesn't count. To me, prohibited,
4 violation, have the same meaning --

5 Q. Okay.

6 A. -- to say something is prohibited and to
7 say it's a violation.

8 Q. Is not consistent with the same as a
9 violation?

10 A. No. What I'm saying is, you have said
11 that if I don't use --

12 Q. Okay. My question was a yes or no
13 question and you answered it yes or no. That's all I
14 needed. Thank you. Other than the use of the word
15 prohibited, do either Mr. Rush -- Mr. Rush or
16 Ms. Meisenheimer ascribe any improper motivation to
17 the position Staff takes in this case with regard to
18 this issue?

19 A. Well, the testimony is riddled with --

20 Q. That's a yes, no or I don't know.

21 A. Okay. Say it again.

22 Q. Other than the use of the word
23 prohibited, do either Mr. Rush or Ms. Meisenheimer
24 ascribe any improper motivation to the Staff's
25 position in this case on this issue?

1 A. I don't know.

2 Q. Do you believe that the use of the word
3 prohibited ascribes any improper motivation?

4 A. Yes.

5 Q. So you think that when a witness says
6 that the Staff's position in this case is prohibited
7 by an agreement in a prior case, you think that that
8 ascribes an improper motivation?

9 A. I -- I believe so.

10 Q. Okay. How about the statement that
11 Staff's position in this case is inconsistent with an
12 agreement in a prior case, do you believe that that
13 attributes any improper motivation?

14 A. That's questionable. That's not as
15 strong a statement.

16 Q. But you think it might?

17 A. It might.

18 Q. Do you think that the use of the word in
19 Mr. Rush's testimony is not consistent with in this
20 case ascribes any improper -- improper motivation to
21 Staff in this case?

22 A. Pardon me? Would you repeat that,
23 please?

24 Q. Do you believe that when Mr. Rush states
25 that "The Staff's position on this issue is not

1 consistent with the Stipulation & Agreement in the
2 regulatory plan," that that statement in this case
3 ascribes an improper motivation to Staff in this
4 case?

5 A. I don't know.

6 Q. Did you think it did at the time when
7 you wrote your surrebuttal testimony?

8 A. On -- on advice of counsel, this
9 surrebuttal testimony was written the way it was
10 written.

11 Q. I'm not asking -- that wasn't my
12 question. My question was, did you think that that
13 statement in Mr. Rush's testimony at the time you
14 wrote your surrebuttal testimony ascribed an improper
15 motivation to the Staff?

16 A. I don't know.

17 Q. You don't recall or you didn't know at
18 the time?

19 A. I don't know what people's motivation
20 is.

21 Q. Okay.

22 A. I do know something about what I believe
23 the language means.

24 Q. So at the time you wrote your testimony,
25 you had -- you had no opinion about -- about whether

1 other parties were ascribing improper motivation to
2 the Staff; is that your testimony today?

3 MS. KLIETHERMES: Judge, I'm gonna
4 object on relevancy.

5 MR. MILLS: Judge, I think it's very
6 relevant that the apparent -- the only apparent
7 reason that Staff gave in Ms. Pyatte's surrebuttal
8 testimony for revealing privileged settlement
9 negotiations is that Ms. Pyatte apparently at the
10 time thought that those parties had charged the Staff
11 with violating.

12 Charging someone with violating an
13 agreement is much stronger than saying that their
14 position is inconsistent with an agreement. And I'm
15 trying to explore on what basis she thought that
16 there was a reason to reveal confidential and
17 privileged settlement negotiations, and I think this
18 question goes to her reasons for doing so. It's very
19 relevant.

20 MR. FISCHER: I would certainly concur
21 with Public Counsel on that point too, Judge.

22 JUDGE PRIDGIN: All right. I'll
23 overrule.

24 THE WITNESS: The situation, as I saw
25 it, was parties were claiming that language that

1 we've been arguing about meant something that it
2 didn't mean and that had explicitly been substituted
3 and -- in the midst of negotiations.

4 BY MR. MILLS:

5 Q. And my question was, at the time you
6 wrote your surrebuttal testimony, did you believe
7 that other parties had ascribed improper motivation
8 to Staff in the position that they took?

9 A. I guess the answer is yes.

10 Q. Okay. And did you do that solely on the
11 basis of their filed testimony or did you have some
12 other reason for thinking that people were ascribing
13 improper motivation to the Staff?

14 A. On the basis of the testimony.

15 Q. Okay. Now, in your surrebuttal
16 testimony at page 5, specifically -- specifically at
17 line 6, you make the statement that,
18 "Ms. Meisenheimer did not use the cost data and class
19 definitions specified in the KCPL regulatory plan."
20 What cost data was specified in the KCPL regulatory
21 plan?

22 A. For rate case filing two which was the
23 last case.

24 Q. I'm sorry. Rate case filing --

25 A. Rate case filing -- I'm sorry. One,

1 which was the last case, there was data specified in
2 the reg plan appendix i, "i" like Irene, that
3 specifically laid out the classes we would use, the
4 test year we would use, the time -- well, it was a
5 different test period. It laid out what data the
6 company would provide the parties, what special
7 studies would be done, and that's the data I'm
8 talking about. And I'm very familiar with all that
9 because I wrote appendix i.

10 MR. MILLS: Your Honor, may I approach?

11 JUDGE PRIDGIN: You may.

12 BY MR. MILLS:

13 Q. Ms. Pyatte, I'm going to do -- show you
14 a copy of the Stipulation & Agreement in
15 EO-2005-0329, and ask you to look at pages 33 to 34,
16 if you would. What's the time period specified in
17 that section for the class cost of service study data
18 in rate case filing No. 1?

19 A. 12 months ending December 31, 2005.

20 Q. And what did Ms. Meisenheimer use in her
21 class cost of service study in EO-2 -- ER-2006-0314?

22 A. Let me see. I believe she -- what did
23 she use? I believe this is a situation where the
24 text and the appendix are inconsistent.

25 Q. Do you know what period of time

1 Ms. Meisenheimer used in her testimony in Case
2 ER-2006-0314?

3 A. I know she used the test year that was
4 used for the revenue requirement portion of the case,
5 not for the rate design portion of the case. But
6 what time period, I don't know.

7 MR. MILLS: May I approach again, your
8 Honor?

9 JUDGE PRIDGIN: You may.

10 BY MR. MILLS:

11 Q. Ms. Meisenheimer -- I mean -- sorry.
12 Ms. Pyatte, I'm going to show you Ms. Meisenheimer's
13 rebuttal testimony that was admitted in Case No.
14 ER-2006-0314 and ask you to turn to page 2. Does
15 that reflect -- refresh your recollection of the time
16 period that Ms. Meisenheimer used?

17 A. It says her study -- I'm sorry. "My
18 studies attempt to update information to reflect the
19 test year ending December 31, 2005."

20 Q. And does that refresh your recollection
21 of what she actually did in that case?

22 A. Yes, because it says -- well, yes.

23 Q. Okay. Do you now believe that her cost
24 of service studies used a test year ending
25 December 31st, 2005, in that case?

1 A. Yes.

2 Q. What class definitions were specified in
3 the regulatory plan?

4 A. I believe they were residential, small
5 general service, medium general service, large
6 general service, large power service and I believe
7 lighting, but I don't have appendix i of the
8 regulatory plan in front of me.

9 MR. MILLS: May I approach again?

10 JUDGE PRIDGIN: Yes, sir, you may.

11 BY MR. MILLS:

12 Q. Ms. Pyatte, I'll hand you what's been --
13 what's Exhibit i from the Stipulation & Agreement in
14 EO-2005-0329. Does that confirm that what you just
15 stated for the class definitions was accurate?

16 A. Except that we bundled together lighting
17 and other customers to which known costs are assigned
18 and other costs are allocated.

19 Q. And in the class cost of service study
20 that the Staff did in Case EO -- ER-2006-0314, did
21 the Staff break out lighting as a separate class?

22 A. Yes. We just simply didn't allocate
23 cost to it.

24 Q. And in what way was Ms. Meisenheimer's
25 study not consistent with class definitions?

1 A. She allocated costs to a class she
2 called special contracts which did not exist -- there
3 were no customers in it.

4 Q. So she simply broke out another class
5 out of the large power class; is that correct?

6 A. No -- well, I don't know where she broke
7 it out of, but ...

8 Q. You didn't understand where -- the way
9 she did that -- that in her cost study?

10 A. Well, if you have no customers, when you
11 ask me where did you get them from, I have difficulty
12 answering the question, Mr. Mills.

13 Q. Did either Ms. Meisenheimer's use of the
14 12/31/05 test year or her variation on the use of a
15 class definitions cause her study results to be
16 significantly different from the other parties in
17 that case?

18 A. Something caused them -- something
19 caused her -- one of her two studies to be
20 significantly different.

21 Q. And in your expert opinion, do you
22 believe it was either the different time period in
23 which her data covered or her use of the special
24 contract class?

25 A. I don't know what it was.

1 Q. Okay. Now, Ms. Pyatte, do you have a
2 calculator there with you?

3 A. No. I, like Mr. Watkins, don't do math
4 in public.

5 Q. Well, I'm going to ask you to do a
6 little math in public, and this will -- this will be
7 fairly simple. And this is referring to page 7 of
8 your testimony in the numbers in the table there.
9 Can you subtract 7.7 from 12.7?

10 A. 7.7. Yeah, it's 5.

11 Q. Okay. And what is 5 divided by 7.7?

12 A. I believe what you're referring to is --

13 Q. What I'm referring to is a simple
14 arithmetic question. If you can answer --

15 A. I know what you're saying. I know what
16 you're saying, but it's -- it's a
17 mischaracterization, okay?

18 MR. MILLS: Judge, if I may have
19 a question -- that question answered?

20 JUDGE PRIDGIN: Yes, if you would please
21 answer the question, if you know the answer. If you
22 don't know, you may say you don't know.

23 THE WITNESS: Okay.

24 JUDGE PRIDGIN: He asked you a
25 mathematical question.

1 THE WITNESS: Okay. The question is,
2 what is 5 per --

3 BY MR. MILLS:

4 Q. 5 divided by 7.7.

5 A. -- 5 percent -- 5 percentage points
6 divided by 7.7. I don't know --

7 MR. MILLS: Judge?

8 THE WITNESS: -- the answer, but I will
9 take subject to check that it's 21 percent.

10 BY MR. MILLS:

11 Q. Well, I think you'd be wrong. If you
12 don't know, you can say you don't know.

13 A. Okay. I don't know.

14 Q. Okay. Hypothetically assume that 5
15 divided by 7.7 is .649.

16 A. Okay.

17 Q. If that is true, is 12.7 65 -- 64.9
18 percent higher than 7.7?

19 A. Yes.

20 Q. Okay. Do you consider rounding 64.9 up
21 to 65 to be a misrepresentation?

22 A. Not the rounding.

23 Q. Okay. Now, in your testimony at page 8
24 and continuing on to page 9, you give a definition of
25 rate structure. Does that definition appear in any

1 other Commission case?

2 A. I -- I can't tell you. I mean, we've
3 done 30 years' worth of rate design cases. I can't
4 tell you -- I mean, it's -- it's common language.

5 Q. Do you know whether it appears in any
6 other rate case?

7 A. I don't know.

8 Q. Okay. Do you know whether it's been
9 cited in any -- in any other jurisdictions?

10 A. No.

11 Q. Now, in this case did you request
12 information from Ms. Meisenheimer regarding a
13 statement and associated footnote that appears on
14 page 7, lines 10 through 15 of her rebuttal
15 testimony?

16 A. Ms. Meisenheimer's testimony where,
17 Mr. Mills?

18 Q. Page 7, lines 10 through 15 and the
19 footnote that's associated with that text.

20 A. Yes.

21 MR. MILLS: Okay. Judge, I'd like to
22 have an exhibit marked.

23 JUDGE PRIDGIN: All right.

24 (EXHIBIT NO. 209 WAS MARKED FOR
25 IDENTIFICATION BY THE COURT REPORTER.)

1 JUDGE PRIDGIN: And by my count that's
2 Exhibit 209. Does that sound right, Mr. Mills?

3 MR. MILLS: Yes, I believe it is.

4 BY MR. MILLS:

5 Q. Ms. Pyatte, did I give you a copy?

6 A. No, but that's fine.

7 THE COURT REPORTER: Here. There you
8 go.

9 BY MR. MILLS:

10 Q. Do you have a copy?

11 A. Now I do.

12 Q. Okay. Is that a copy of a data request
13 that you submitted to Public Counsel and the response
14 that you received?

15 A. Correct.

16 Q. Can I get you to -- and just describe
17 for me, if you would, please, what the response to
18 this data request is.

19 A. It's a -- at least one chapter out of a
20 book named, The Regulation of Public Utilities,
21 Theory and Practice, the author being Charles F.
22 Phillips, Jr.

23 Q. And is the Phillips book, The Regulation
24 of Public Utilities generally held to be a -- an
25 authoritative treatise in the field of public utility

1 regulation?

2 A. I believe it's one of them.

3 Q. Can I get you to turn to the sixth page
4 of the response which is page 410 of the regulation
5 of public utilities book?

6 A. Okay.

7 Q. Ms. Pyatte, I want you to look at the
8 second full paragraph on that page. Does the last
9 sentence of that paragraph not state that, "The rate
10 structure thus involves determination of specific
11 rates and determination of rate relationships"?

12 A. That's what it says.

13 MR. MILLS: Judge, with that, I would
14 like to offer Exhibit 209 into the record.

15 MS. KLIETHERMES: I'm gonna object on
16 the basis of the motion filed yesterday, and pending
17 ruling on that, I would continue the objection.

18 JUDGE PRIDGIN: All right. Any other
19 objections?

20 MR. KEEVIL: Yeah, Judge. I would
21 object on the -- join in her -- object on the basis
22 of hearsay. And this is -- appears to be
23 Ms. Meisenheimer's response to a DR, not Ms. Pyatte's,
24 so it's certainly not an admission by Ms. Pyatte and --

25 MR. MILLS: Ms. -- Ms. Pyatte has

1 already authenticated it and identified it as a
2 chapter from an authoritative treatise. I think it's
3 admissible on that basis, of course, pending Staff's
4 objection. But I don't believe that the hearsay
5 objection is relevant because it is an authoritative
6 treatise used by knowledgeable experts in this field.

7 JUDGE PRIDGIN: I will overrule the
8 hearsay objection and note that the Staff objection
9 is still pending.

10 MR. MILLS: Okay.

11 BY MR. MILLS:

12 Q. Now, are you aware that Staff has a
13 later addition of this same reference book in its
14 library?

15 A. Yes.

16 Q. At least one?

17 A. Yes.

18 Q. Okay. When did you become aware that
19 the Staff had that reference book?

20 A. After I talked to Ms. Meisenheimer.

21 MR. MILLS: Judge, I think the rest of
22 the questions I have are going to get into privileged
23 information, and so I would like -- I guess under the
24 Commission's procedures, we don't really have a
25 procedure for talking about privileged information,

1 so if we can go in-camera and at least treat it as
2 highly confidential for this portion, that would
3 afford it some protection, and I would request that
4 we do that.

5 JUDGE PRIDGIN: All right. Any
6 objections to going in-camera?

7 (NO RESPONSE.)

8 JUDGE PRIDGIN: All right. Hearing
9 none, give me just a moment, please.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 Volume 14, pages 1018 through 1023 of the
13 transcript.)

14

15

16

17

18

19

20

21

22

23

24

25

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

3 MR. MILLS: And, Judge, if this would be
4 an appropriate time to recess, I think I can narrow
5 my questions down to just two or three more or
6 eliminate them altogether if I have a few minutes.

7 JUDGE PRIDGIN: I'm sorry. You need a
8 moment to --

9 MR. MILLS: Yeah, if we could -- if we
10 could take a break and then ...

11 JUDGE PRIDGIN: That's fine. If we
12 could come back -- I show 10:10 according to that
13 clock at the back of the hearing room. Let's resume
14 at 10:25.

15 MR. MILLS: Great. Thank you.

16 JUDGE PRIDGIN: Thank you. We're off
17 the record.

18 (A RECESS WAS TAKEN.)

19 JUDGE PRIDGIN: All right. We're back
20 on the record. We took a recess, and Mr. Mills, I
21 think you wanted some time to see if you had any more
22 questions?

23 MR. MILLS: I do have just a few more.

24 JUDGE PRIDGIN: Yes.

25 MR. MILLS: And they should all be in

1 open session. They're just general questions.

2 CROSS-EXAMINATION (CONTINUED) BY MR. MILLS:

3 Q. Now, Ms. Pyatte, do you have a copy of
4 Ms. Meisenheimer's testimony in front of you?

5 A. Yes, I do.

6 Q. Can I get you to look at page 3, lines
7 11 through 12? Does -- does Ms. Meisenheimer take
8 the position there that "any increase be allocated as
9 an equal percent increase to all customers"?

10 A. Those are precisely her words.

11 Q. Okay. And what does that mean to you?

12 A. Well, that has a very precise meaning.
13 It's totally unambiguous. You take each and every
14 rate value on each and every tariff sheet that's
15 subject to change, and you multiply it by whatever
16 the percentage is that's specified.

17 Q. Okay. And you said "that's subject to
18 change." How does -- how does that -- please explain
19 that qualifier.

20 A. In any rate case there are certain rates
21 that are not subject to change. For example, a late
22 payment fee may not be automatically subject to
23 change, or the percentage that's charged on excess
24 facilities.

25 Q. Okay. Now, in terms of designing rates,

1 would you agree that parties in designing rates
2 sometimes propose alternative class designations?

3 A. Yes.

4 Q. Would you agree that in designing rates
5 parties sometimes propose new rate elements?

6 A. If by an element you mean a value, which
7 would mean in my terminology, if you're charging
8 6 cents now per unit and you want to charge 8 cents,
9 yes.

10 Q. Okay. Would you agree that in designing
11 rates, parties sometimes propose alternative terms
12 and conditions of service?

13 A. Yes.

14 Q. Okay. Now, would you agree that -- that
15 if, for example, a company's tariffs did not provide
16 for late fees, that adding a late fee would be a new
17 rate element?

18 A. Technically, yes.

19 Q. Okay. Now, if -- if -- if in a
20 hypothetical case the parties agreed that there would
21 be no rate design changes, then all of those things
22 that we just talked about would not be allowed
23 pursuant to that agreement; is that correct?

24 A. Right.

25 Q. Okay. Now, would you -- would you agree

1 that proposing alternative class designations is a
2 change in rate structures?

3 A. Alternative class designations. I --
4 yeah, I guess I would have to say that. If you were
5 proposing to change from some -- well, yeah.

6 Q. Okay. And how about proposing new rate
7 elements, would that be a change in rate structures?

8 A. If you proposed to add a block, delete a
9 block, yes, that kind of stuff, yes.

10 Q. Okay.

11 A. The simple way to think about it is if
12 it requires new billing units, it's a rate structure
13 change.

14 Q. Okay. So adding a late charge where
15 there was no late charge before, would you consider
16 that to be a change in rate structure?

17 A. Yes.

18 Q. Okay. Now, I'm gonna ask -- I'm gonna
19 throw out a simple hypothetical: A company has a
20 rate -- has -- for a particular class has a series of
21 rates in three blocks. First block is 30 cents per
22 unit, the second block is 20 cents per unit and the
23 third block is 10 cents per unit. Do you understand
24 the hypothetical?

25 A. Yes.

1 Q. Okay. I believe it was your testimony
2 that if, for example, you get rid of the 10-cent
3 block altogether, that would be a change in rate
4 structure; is that correct?

5 A. Well, you can do it two ways: One is
6 you can eliminate the -- the -- the block. The other
7 is you can simply price the two blocks the same way.

8 Q. Okay. Well, let's answer both of those.
9 Is either of those a change in rate structure?

10 A. That's on -- on the edge of -- of what
11 that definition means. The -- on the -- on the other
12 hand, if you decided you wanted to add another block,
13 that clearly is a change in rate structure because
14 you clearly don't have billing ends to do that.

15 Q. Okay. Well, let me -- let me see if I
16 can -- if I can clarify that answer. If you
17 eliminate a block, is that a change in rate
18 structure?

19 A. If you eliminate a block. Probably.

20 Q. Okay. If you price two of the blocks
21 the same, is that a change in rate structure?

22 A. Not necessarily.

23 Q. Okay. You said -- you gave it a
24 qualifier, "not necessarily." Under what
25 circumstances would that be a change in rate

1 structure?

2 A. In this courtroom, a whole lot of people
3 would quibble about whether that is or that isn't.

4 Q. Well, I'm not asking you about other
5 people. I'm asking you in terms of your definition
6 what rate structures are.

7 A. In terms of my definition as the kind of
8 person who sits in the bowels of the place and
9 calculates rates, I would say that if you take
10 existing billing units that have those blocks and you
11 want to charge them the same physical charge instead
12 of two different charges, it's not a change in rate
13 structure.

14 Q. Okay. How about -- in my hypothetical,
15 so you'll recall, the blocks were 30 cents, 20 cents
16 and 10 cents. How about you made a change where the
17 three blocks were priced at 30 cents, 20 cents and
18 zero cents; would that be a change in rate structure?

19 A. No.

20 MR. MILLS: Okay. No further questions.

21 JUDGE PRIDGIN: Mr. Mills, thank you.

22 Let's see if we have any bench questions.

23 Commissioner Jarrett?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: All right. I'm sorry.

1 Mr. -- Mr. Fischer?

2 MR. FISCHER: Yeah, Judge, I'm sorry. I
3 thought I didn't have any, but I do have one or two
4 here.

5 JUDGE PRIDGIN: I apologize for
6 overlooking you.

7 CROSS-EXAMINATION BY MR. FISCHER:

8 Q. Ms. Pyatte, if you eliminate the
9 availability of a rate schedule altogether, would
10 that in your mind be a rate structure change?

11 A. Yes.

12 Q. And Public Counsel asked you about your
13 definition of rate structure that's contained in your
14 testimony on page 8. I believe it's also contained
15 in the Staff's class cost of service rate design
16 report for this case. Were you or someone on your
17 staff the author of those -- that definition?

18 A. I am.

19 MR. FISCHER: Okay. Thank you.

20 JUDGE PRIDGIN: All right. Thank you.
21 Further recross?

22 (NO RESPONSE.)

23 JUDGE PRIDGIN: No bench questions?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: All right. Redirect?

1 MS. KLIETHERMES: Just briefly.

2 REDIRECT EXAMINATION BY MS. KLIETHERMES:

3 Q. Mr. Mills asked you if Mr. Rush or
4 Ms. Meisenheimer used the specific words violate or
5 violation. Do either of these witnesses use language
6 that you take to be alleging that Staff has violated
7 the experimental regulatory plan Stipulation &
8 Agreement?

9 A. Would you -- would you ask the question
10 again? I got the first part but what the question
11 was.

12 Q. Do either Mr. -- I'm sorry. Do either
13 Mr. Rush or Ms. Meisenheimer use language in their
14 testimonies that you -- that you take to be an
15 allegation that the Staff has violated the
16 experimental regulatory plan Stipulation & Agreement?

17 A. Yes.

18 Q. Do either of those witnesses use the
19 terms "prohibited by" or "not consistent with" in
20 reference to Staff's proposals and conformity with
21 the experimental regulatory plan Stipulation &
22 Agreement --

23 A. Yes.

24 Q. -- in your recollection? All right.

25 And I do have one question regarding that text that

1 I've objected to that was contained in Exhibit 209.
2 And given the consideration of the pendency of those
3 motions, would it be acceptable if I asked a question
4 referring to that with the understanding that if the
5 motion to strike is successful, then that too would
6 be stricken? Is that sufficient?

7 JUDGE PRIDGIN: I think I understand
8 your question. I think I understand your -- your
9 question. Is there any comment from counsel?

10 (NO RESPONSE.)

11 JUDGE PRIDGIN: I don't see a problem
12 with it, but -- all right.

13 BY MS. KLIETHERMES:

14 Q. All right. On page 410 of that exhibit
15 there's the sentence, "The rate structure thus
16 involves determination of specific rates and
17 determination of rate relationships." If you accept
18 that definition of rate structure, would the -- would
19 the prohibition of rate structure changes in this
20 case prohibit a general rate increase?

21 A. Under that -- that definition is so
22 broad that I think it could be construed that way.

23 MS. KLIETHERMES: All right. Thank you.

24 JUDGE PRIDGIN: All right. Thank you.

25 There's nothing further?

1 (NO RESPONSE.)

2 JUDGE PRIDGIN: All right. Ms. Pyatte,
3 thank you very much.

4 MS. KLIETHERMES: I would like to offer
5 Ms. Pyatte's surrebuttal testimony in HC and NP
6 versions as Staff Exhibit 111.

7 JUDGE PRIDGIN: 111 has been offered and
8 I understand we have some pending objections, and I
9 will not rule on those at this time. Are there any
10 other objections?

11 MR. MILLS: There are, your Honor.

12 JUDGE PRIDGIN: Mr. Mills.

13 MR. MILLS: With respect to -- and I'm
14 gonna -- this goes to a portion that has been
15 designated as highly confidential which I assert is
16 privileged, but I'm gonna try to make my objection
17 without revealing any information there.

18 But with respect to the -- in particular
19 the language on page 10, line 7 through 10, and the
20 quotation in particular, I believe that is not only
21 hearsay, but it is unattributed hearsay in that
22 Ms. Pyatte has admitted on the stand that she doesn't
23 know who wrote that language. So I want to object to
24 that portion on those two bases.

25 The following portion at lines 11

1 through line 8 on page 11 is all entirely hearsay,
2 and I want to object to it on that basis. Although
3 in those sections it is at least attributed to
4 someone, it is nonetheless hearsay offered for the --
5 for the truth of the assertions made therein, and I
6 object to it as such.

7 MS. KLIETHERMES: If I may respond to
8 that? It is not offered for the truth of the matter
9 asserted therein.

10 JUDGE PRIDGIN: All right. Other
11 objections?

12 (NO RESPONSE.)

13 JUDGE PRIDGIN: Okay.

14 MR. FISCHER: Counsel, could I ask what
15 is it offered -- for what purpose?

16 MS. KLIETHERMES: It is offered to show
17 the discrepancy between drafts, not to allege that
18 either of those drafts or any of those drafts,
19 rather, were ever finally executed or such which is
20 what I believe Mr. Mills is attempting to allege.

21 JUDGE PRIDGIN: Okay. If there's
22 nothing further, the objections that Mr. Mills just
23 made are overruled. The other objections on that
24 same language are still pending and that's not ruled
25 upon.

1 So with the exception of the motions to
2 strike, and I believe it is -- let me be sure I get
3 this right for the record. I believe motions to
4 strike, roughly portions of page 10 and 11 of
5 Ms. Pyatte's surrebuttal testimony; is that -- is
6 that correct, are those the motions that are pending?

7 MR. MILLS: I think they -- there may be
8 some discrepancy between KCPL's motion --

9 JUDGE PRIDGIN: Yes.

10 MR. MILLS: -- and my motion on the line
11 numbers, but they are all -- all on -- around that
12 section on page 10 and 11, yes.

13 JUDGE PRIDGIN: How about I -- how about
14 with the exception of the portions of testimony that
15 are the subject matter of pending motions from Kansas
16 City Power & Light and Office of Public Counsel; is
17 that accurate?

18 MR. MILLS: Yes.

19 JUDGE PRIDGIN: All right. Except for
20 those portions of the testimony, the exhibit is
21 admitted and those other objections will be ruled
22 upon at a later time. All right. Anything further?

23 MR. KEEVIL: Judge, could I just ask for
24 clarification since I wasn't here last week? Has
25 the, I believe it's 103, the Staff's class cost of

1 service rate design study been received?

2 JUDGE PRIDGIN: I don't show that it's
3 been offered or received yet. All right. All right.
4 Ms. Pyatte, thank you very much. You may step down.

5 I believe Mr. Brubaker is the next
6 witness. If you'll raise your right hand to be
7 sworn, sir.

8 (THE WITNESS WAS SWORN.)

9 JUDGE PRIDGIN: Thank you very much,
10 sir. If you would please have a seat. And
11 Mr. Woodsmall, anything before he stands cross?

12 MR. WOODSMALL: Yes, thank you, your
13 Honor.

14 JUDGE PRIDGIN: You're welcome.

15 DIRECT EXAMINATION BY MR. WOODSMALL:

16 Q. Could you state your name for the
17 record, please.

18 A. Yes. My name is Maurice Brubaker.

19 Q. And do you have any changes or
20 corrections to what has been marked Exhibit 601 or
21 Exhibit 602?

22 A. I have one minor typographical error to
23 fix in Exhibit 601.

24 Q. That's your direct testimony?

25 A. It is. It appears on page 4 in line 7.

1 The language is, "Would have usage in the range of
2 100 kWh for," f-o-r. The word "for" should be
3 stricken, and in its place put the word "per," p-e-r.
4 Those are all the changes I have.

5 MR. WOODSMALL: Thank you, your Honor.
6 Tender the witness for cross-examination. And given
7 that this is the only time Mr. Brubaker will be
8 appearing, I would offer Exhibit 601, his direct
9 testimony and 602, his surrebuttal testimony.

10 JUDGE PRIDGIN: Mr. Woodsmall, thank
11 you. Exhibits 601 and 602 have been offered. Are
12 there any objections?

13 (NO RESPONSE.)

14 JUDGE PRIDGIN: Hearing none, Exhibit
15 601 is admitted and Exhibit 602 is admitted.

16 (EXHIBIT NOS. 601 AND 602 WERE RECEIVED
17 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

18 JUDGE PRIDGIN: Let me see who has
19 cross-examination. Staff?

20 (NO RESPONSE.)

21 JUDGE PRIDGIN: Any other parties have
22 cross?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: All right.

25 Ms. Kliethermes.

1 CROSS-EXAMINATION BY MS. KLIETHERMES:

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. Just a simple one for you. Are the
5 terms rate structure and rate design synonymous?

6 A. No, they are not.

7 MS. KLIETHERMES: Thank you.

8 JUDGE PRIDGIN: Bench questions?

9 (NO RESPONSE.)

10 JUDGE PRIDGIN: Can you rehabilitate
11 that witness, Mr. Woodsmall?

12 MR. WOODSMALL: I have a whole bunch.
13 Can we take a break? Thank you, your Honor, no.

14 JUDGE PRIDGIN: All right. No bench
15 questions.

16 THE WITNESS: Thank you.

17 JUDGE PRIDGIN: Thank you very much,
18 Mr. Brubaker.

19 THE WITNESS: Thank you.

20 JUDGE PRIDGIN: All right. Are we then
21 ready to go on to the issues that were slated for
22 today, the general service all-electric tariffs and
23 general service separately metered space-heating
24 tariff provisions? And I understand Mr. Rush will be
25 the first witness, and I think some counsel have

1 expressed a desire to give mini opening statements.
2 Do counsel wish to do that before we proceed with
3 Mr. Rush?

4 MR. KEEVIL: Yes, Judge, but also, I'm
5 going to need to switch tables so I --

6 JUDGE PRIDGIN: Certainly.

7 MR. KEEVIL: -- can have a functional
8 microphone.

9 JUDGE PRIDGIN: Yes, I understand. Yes,
10 and I appreciate that. If we could accommodate
11 Mr. Keevil and give him a microphone.

12 MR. KEEVIL: I'm somewhat soft spoken.

13 JUDGE PRIDGIN: I wasn't gonna say
14 anything. And I'm sorry. Mr. Keevil, you want a
15 mini opening statement; is that correct?

16 MR. KEEVIL: Yeah, just very briefly --

17 JUDGE PRIDGIN: Certainly.

18 MR. KEEVIL: -- and I think Mr. Fisher
19 had one too, if I remember from yesterday correctly.

20 MR. FISCHER: Yes.

21 JUDGE PRIDGIN: All right. Anyone else?
22 Oh, Ms. Kliethermes? Let me refer back to the
23 parties' agreed-upon opening statements. I guess
24 I'll ask Mr. Fischer if you're prepared.

25 MR. FISCHER: Sure.

1 MR. KEEVIL: I'm sorry to interrupt
2 Mr. Fischer, but as -- the openings I agree, Judge.
3 On the order of cross, it's listed on the statement
4 there. On some issues they maybe need to slightly
5 change the order of cross. I would request, Judge,
6 to go last on KCPL witnesses.

7 JUDGE PRIDGIN: Fine with me. All
8 right. I'm sorry. Mr. Fischer?

9 MR. FISCHER: May it please the
10 Commission, I think we're about down to the last
11 issue here, I think. I just wanted to give a brief
12 opening.

13 We discussed yesterday the history of
14 this rate design issue which included the
15 all-electric and space-heating rates as part of last
16 year's case, the 2006 case. Just to refresh your
17 memory, as a part of this -- the settlement in the
18 last case, we were able to resolve most of the rate
19 design issues with the exception of the general
20 service and all-electric winter rate issue. But as a
21 part of that particular stipulation, the general
22 service space-heating rates and the all-electric
23 winter rates were increased by 5 percent --
24 5 percentage points more than each class's general
25 application rates. That agreement reduced the

1 difference between the all-electric rates and the
2 general service rates.

3 In addition, the Commission resolved the
4 other all-electric rate issues that were raised by
5 Trigen in that particular case, and Trigen has
6 appealed that order but we're still awaiting the
7 decision from the Circuit Court, Judge Beetem, in
8 that particular matter.

9 But turning for a moment to the issues
10 that are being litigated in this case, Trigen, for
11 what we believe are competitive reasons, is once
12 again recommending that the general service
13 all-electric tariff rates and separately metered
14 space-heating rates be increased by more than the
15 system average increase that's granted in this case.

16 The company's general service
17 all-electric tariff rates and the separately metered
18 space-heating rates were increased by 5 percent more
19 than the system average in the -- in the 2006 rate
20 case as I just mentioned, and that was by agreement
21 of all the parties, including Kansas City Power &
22 Light.

23 However, in this case we are opposed to
24 increasing that again in this particular case.
25 There -- there's no similar agreement in this case

1 and we're frankly just opposed to allowing Trigen to
2 take another bite at the apple in this case.

3 Similarly, in the last case Trigen
4 opposed the phase-out or proposed -- excuse me, the
5 phase-out of the all-electric rates, and the
6 Commission said no. Trigen asked the Commission to
7 reconsider its decision, and the Commission said no
8 again in that 2006 rate case. Trigen is appealing
9 that part of the decision and the Commission
10 shouldn't now allow Trigen to take another bite of
11 the apple on that issue either.

12 The elimination or even phasing out of
13 all-electric rates would clearly be a change in rate
14 structure no matter how you define it. We believe
15 the signatory parties in the regulatory plan case
16 agreed not to propose such rate structure changes in
17 this case. While Trigen wasn't a signatory, the
18 Staff was, and it's unfortunate that Staff has chosen
19 to endorse this idea when the Commission rejected it
20 just less than a year ago.

21 KCPL believes that Trigen is
22 recommending this proposal to further its own general
23 economic and competitive interests by limiting,
24 modifying or discontinuing the all-electric
25 space-heating rates. As the Commission's decision in

1 the 2000 rate case noted, KCPL's general service rate
2 design has been in place for many years with the
3 approval of the Commission.

4 As a matter of fact, in 1996 when KCPL
5 completed its last rate design case, Trigen agreed to
6 support and endorse before the Commission a
7 Stipulation & Agreement that implemented that rate
8 structure, including the all-electric rates. No
9 party to this case has presented competent and
10 substantial evidence including a cost of service
11 study that would justify the elimination or phase-out
12 of the Commission-approved rate structure including
13 the all-electric rates.

14 If we are to dramatically change the
15 rate structure along the lines being suggested by
16 Trigen, it should only be done when there is a
17 comprehensive cost of service study and in the
18 context and overall look at the company's rate
19 design.

20 Another issue that was recently
21 addressed by the Commission in the 2006 rate case is
22 Trigen's proposal in this case to restrict the
23 availability of the all-electric tariffs to KCPL's
24 existing customers at locations currently being
25 served by such tariffs. The Commission ruled against

1 Trigen on this issue in the 2006 rate case, and the
2 Commission shouldn't give Trigen another bite of the
3 apple on this issue either.

4 One of the most significant effects of
5 the Trigen proposal is the likely increase in rates
6 for all other customers that would result if Trigen's
7 position is adopted. By limiting, restricting or
8 curtailing the application of electric heating,
9 customers will likely turn to natural gas or steam
10 heating. This will result in a reduction of
11 electricity usage in off-peak periods and ultimately
12 increase rates to -- ultimately increase rates to
13 cover the fixed investments previously being
14 recovered by other customers.

15 If the Commission adopted Trigen's
16 proposal, it would directly affect 2,000 KCPL general
17 service customers who have revenues in excess of
18 \$50 million. There are also numerous existing KCL --
19 KCPL customers that are in the process of completing
20 major construction projects in Kansas City. They've
21 already made energy investment decisions assuming the
22 availability of the existing general service
23 all-electric and space-heating rates.

24 If the Commission adopts Trigen's
25 position and restricts or eliminates the all-electric

1 and space-heating rates, it would jeopardize the
2 energy investment decisions made by these major
3 general service customers.

4 KCPL believes that the efforts by Trigen
5 and Staff to restrict the availability of the
6 all-electric and separately metered space-heating
7 rates are premature and totally unsupported in the
8 record in this case. Their recommendations are not
9 based on class cost of service studies or studies
10 directed at the specific design of the separately
11 metered space-heating and all-electric rates.

12 It appears that both Trigen and Staff
13 are trying to undo a rate design that was implemented
14 in '96 with the support of both the Staff and Trigen.

15 Finally, Trigen again is requesting that
16 the Commission order KCPL to do a cost of service
17 study in the next rate case. The Commission ruled
18 against Trigen in the 2006 rate case, and the company
19 believes that it should do that again in this -- in
20 this proceeding.

21 The regulatory plan stipulation lays out
22 the schedule for cost of service studies. And as
23 I've already mentioned, the signatory parties to the
24 regulatory plan stipulation specifically agreed not
25 to file new or updated cost of service studies in

1 rate case No. 3. Such cost of service studies are
2 more appropriate when the Commission reviews the
3 impact of the Iatan 2 plant coming into rate base in
4 the future. Thank you very much for your attention
5 and we'll look forward to your questions.

6 JUDGE PRIDGIN: Mr. Fischer, thank you.
7 Ms. Kliethermes?

8 MS. KLIETHERMES: May it please the
9 Commission. This issue is quite straightforward. Is
10 there any cost justification for general service
11 customers who use electricity for space-heating
12 purposes to pay lower rates than do similar customers
13 who use electricity for other purposes? The Staff
14 has concluded that there isn't. Staff recommends
15 that the Commission whittle away the space-heating
16 and all-electric discounts until KCPL can come up
17 with a credible cost justification.

18 JUDGE PRIDGIN: Ms. Kliethermes, thank
19 you. Mr. Keevil?

20 MR. KEEVIL: It's still morning, right?
21 Yes. Good morning. May it please the Commission.
22 The issues scheduled to be heard today, or the rest
23 of today, are those issues and subissues regarding
24 KCPL's general service all-electric tariff rates and
25 separately metered space-heating rates which I will

1 at times collectively refer to as discounted rates.

2 Now, since I also gave a limited opening
3 statement last Monday, I will try to be very brief
4 here this morning. However, I would refer you to the
5 prefiled direct, rebuttal and surrebuttal testimony
6 of Trigen's witness, Mr. Joseph A. Herz, as well as
7 Trigen's statement of position for a more detailed
8 discussion of these issues.

9 Now, first of all, to respond to a few
10 things Mr. Fischer mentioned in his opening here this
11 morning, I believe Mr. Fischer said that Trigen
12 proposed a phase-out of these rates in KCPL's last
13 rate case. And I believe if you'd look back at what
14 Trigen proposed in that last rate case, you will see
15 that it was not a phase-out proposal, it was an
16 outright elimination, cut and dried, in that last
17 rate case. So I believe Mr. Fischer is wrong in that
18 respect.

19 Also he made reference to the rate
20 design stipulation from the last rate case, and I
21 would just -- I believe he said all parties support
22 it. I believe if you take a look at that, you'll see
23 that Trigen was not a signatory to that rate design
24 stipulation. Now, we did not oppose it, we did not
25 request a hearing on it, but we were not a signatory

1 to that.

2 Finally, in regard to Mr. Fischer's
3 remarks earlier, we submit that Trigen's proposal
4 will not result in a rate increase as KCPL claims,
5 but, in fact, would lower the rates paid by the
6 standard general service tariff customers by
7 eliminating the cross-subsidy that they are providing
8 to these discounted rates.

9 And I don't know whether I'm using
10 subsidy in the proper terminology there for
11 Mr. Fischer's liking or not, but we believe the
12 standard tariff customers are in effect subsidizing
13 the discount customers within the general service
14 rate classes.

15 Now, Trigen submits and believes the
16 evidence will establish that these discounted rates
17 suffer from several substantial flaws, among which
18 are the -- excuse me, let me start that over -- among
19 which are that these discounted rates, first, are
20 unreasonable and unfairly discriminate between
21 customers by charging different rates to similar
22 customers for service under similar circumstances;
23 second, send price signals that favor low load
24 factor, high demand use for selective end-use
25 customers which conflicts with the price signal sent

1 to other customers in the same general service class;
2 and third, as a consequence of these discounted
3 rates, the standard tariff customers are providing a
4 subsidy to those customers receiving the discounted
5 rates, as I mentioned just a moment ago.

6 Now, as I mentioned last Monday in
7 KCPL's last rate case, the Commission stated in its
8 Report and Order that it is concerned that during
9 KCPL's winter season, commercial and industrial
10 customers under the all-electric general service
11 tariffs pay about 23 percent less for the entire
12 electricity usage than they would otherwise pay under
13 the standard general service tariff, and that
14 commercial industrial customers under the separately
15 metered space-heating provisions pay about 54 percent
16 less for such usage than they would pay under the
17 standard general service tariff.

18 Now, to clarify or correct something I
19 may have said last Monday, in this case, KCPL's
20 proposal for an across-the-board increase that is
21 equal to its overall rate increase would have the
22 effect of increasing the size of the rate discounts
23 which we believe is inconsistent with what was done
24 in the last rate case, and certainly does not address
25 the concerns expressed by the Commission in its

1 Report and Order in the last rate case.

2 Turning briefly now to the issues
3 specifically on the list of issues under issue 23,
4 KCPL's discounted rates should be increased more than
5 the corresponding standard general application rates.
6 More specifically, in regard to the all-electric
7 tariff rates, the difference between the standard
8 general application rates and the all-electric tariff
9 rates should be reduced by one-third.

10 In regard to the separately metered
11 space-heating rates, those rates should be increased
12 by 10 percent on a revenue-neutral basis, or in other
13 words, 10 percent more than the corresponding
14 standard general application rates.

15 Also, the Commission should order in
16 this case that the all-electric tariff rates should
17 be phased out over a period of three rate cases
18 starting with this rate case. And the separately
19 metered space-heating rates should be phased out over
20 a two-rate-case period, starting with this rate case,
21 unless KCPL files a cost of service study and
22 analysis which supports these discounted rates prior
23 to the rates being phased out.

24 Now, until these discounted rates are
25 phased out, they should be restricted to those

1 qualifying customers' physical locations being served
2 under such discounted rates currently, currently
3 meaning as of the dates -- as of the date used for
4 the billing determinants in this case. And these
5 discounted rates should only be available to these
6 customers for so long as they continuously remain on
7 that rate schedule.

8 Trigen also submits that KCPL should be
9 required to submit as part of its next rate case a
10 cost of service study and analysis to support these
11 discounted rates. And if not, KCPL should be
12 required to impute the revenues associated with these
13 discounted rates to eliminate the cross-subsidy by
14 standard tariff customers.

15 Also, KCPL should be ordered to
16 determine if the customers served under these
17 discount rates continue to qualify for such rates, to
18 remove those customers which are no longer eligible
19 for the discounted rates and to monitor and police
20 the eligibility requirements of the customers
21 receiving the discounted rates for reporting in
22 KCPL's next rate case.

23 The last subissue, if you will, listed
24 under item 23 on the list of issues states -- or is
25 phrased as whether the Commission should approve

1 KCPL's proposal to rename its general service
2 all-electric tariffs as space-heating tariffs. We
3 submit the answer to that question is no, and I
4 believe Staff is in agreement with us on that one.

5 Now, although I don't want to speak for
6 Staff, I would note that on several of these issues
7 that I've just addressed, not just that last one, but
8 several of them, Staff and Trigen are either in
9 agreement or not that far apart.

10 Also, given the issues that you heard
11 yesterday and earlier this morning, I would like to
12 note that Trigen's proposals do not involve any
13 interclass revenue shifts. Furthermore, Trigen was
14 not a signatory to the stipulation in the KCPL
15 regulatory plan case. I believe Mr. Fischer conceded
16 that in his opening.

17 And in any event, we do not believe that
18 Trigen's proposals constitute changes to rate
19 structure. But as I said, we were not a signatory to
20 that regulatory plan and stip anyway.

21 Trigen's witness, Joseph A. Herz, who
22 has prefiled testimony is here today to sponsor that
23 testimony and take any questions you may have. Thank
24 you.

25 JUDGE PRIDGIN: Mr. Keevil, thank you.

1 Anything further before we move on to Mr. Rush?

2 (NO RESPONSE.)

3 JUDGE PRIDGIN: If you'd come forward,
4 Mr. Rush. And you are still under oath.

5 Mr. Fischer, anything before he stands cross?

6 MR. FISCHER: Judge, I don't think so,
7 but this will be the last time that Mr. Rush is on
8 the witness stand in this case, so I would therefore
9 offer his prefiled testimony at this time which is
10 Exhibit Nos. 19 NP, 20 NP and 21 NP.

11 JUDGE PRIDGIN: Exhibits 19, 20 and 21
12 are offered. Any objections?

13 (NO RESPONSE.)

14 JUDGE PRIDGIN: Hearing none, Exhibits
15 19, 20 and 21 are admitted.

16 (EXHIBIT NOS. 19 NP, 20 NP AND 21 NP
17 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THE
18 RECORD.)

19 MR. FISCHER: I would tender the
20 witness.

21 JUDGE PRIDGIN: Mr. Fischer, thank you.
22 Will Staff have cross?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: Trigen?

25 MR. KEEVIL: Yes.

1 JUDGE PRIDGIN: When you're ready,
2 Mr. Keevil.

3 MR. KEEVIL: Well, I'm the only one?
4 Good.

5 JUDGE PRIDGIN: I'm sorry. No, no. Any
6 others?

7 (NO RESPONSE.)

8 JUDGE PRIDGIN: All right. Thank you.

9 MR. KEEVIL: Am I the only one?

10 JUDGE PRIDGIN: Yes, sir.

11 MR. KEEVIL: All right. Do I win
12 something for that? I apologize. I wasn't -- wasn't
13 prepared to go that quickly.

14 CROSS-EXAMINATION BY MR. KEEVIL:

15 Q. Well, let's start out with some easy
16 questions here, Mr. Rush, and see if we can't find
17 some common ground that we agree on. In KCPL's
18 tariffs, how is the winter season defined?

19 A. It's basically the eight winter months.
20 In essence, I think it starts September 15th through
21 I think it's June 15th. I'm not -- if you want me to
22 be specific to that, I mean, it's eight --

23 Q. Actually, what I was --

24 A. -- it's eight summer [sic] months and
25 then you have a summer period that's four summer

1 months.

2 Q. So it was in the winter --

3 A. It's right in the middle of the month.

4 Q. I'm sorry. The winter is eight months?

5 A. Yes.

6 Q. And summer's four?

7 A. Right.

8 Q. Okay. Now, based on what I heard

9 Mr. Fisher say in his opening, I assume you would

10 agree that Trigen was not a signatory to the

11 regulatory plan's stipulation; is that correct?

12 A. They were not. They were a participant

13 in the regulatory -- the discussions regarding that,

14 and in essence didn't oppose it, and ...

15 Q. They were a party to the case, but they

16 weren't a signatory to the stip, correct?

17 A. Yes, but they were also a significant

18 participant in the negotiations associated with the

19 rate design that was concluded there, and they did

20 not oppose that.

21 Q. Would you also agree that Trigen was not

22 a signatory to the rate design stipulation in KCPL's

23 last rate case just last year?

24 A. Again, the same thing. They were a

25 participant involved -- you're talking about the rate

1 case that we just concluded --

2 Q. Right.

3 A. -- where they had a 5 percent increase
4 to the space-heating classes. They were a
5 significant participant in all of the discussions,
6 but did not sign the agreement and did not oppose it.
7 What they elected to do is take their particular
8 issue -- additional issues to -- before the
9 Commission.

10 Q. Which I believe was specifically
11 provided for in the rate design stipulation?

12 A. Correct.

13 Q. Okay. If I could have you turn to your
14 rebuttal testimony.

15 A. All right.

16 Q. I believe page 10. You refer there to
17 Case No. EO-94-199 which I believe was the rate
18 design case from the mid '90s; is that correct?

19 A. Yes.

20 Q. And you state that -- beginning on
21 line 12 of page 10 of your rebuttal, you state that,
22 "Trigen agreed to support and endorse the results of
23 Case EO-94-199 including any basis offered in the
24 establishment of the all-electric and separately
25 metered space-heating tariffs within the general

1 service classes," correct, that's what you said?

2 A. Yes.

3 Q. And you have attached to that testimony
4 an exhibit -- or excuse me, a schedule -- schedule
5 TMR-4 which is your -- which you represent to be
6 Trigen's indication that it would support that
7 stipulation, correct?

8 A. Yes.

9 Q. Okay. Would you take a look at your
10 schedule TMR-4 and tell me where in that letter it
11 states that Trigen agrees to support and endorse any
12 basis offered in the establishment of the
13 all-electric and separately metered space-heating
14 tariffs within the general service classes?

15 A. Okay. Under item No. 7, it says, "In
16 consideration of the above-discussed agreement,
17 Trigen and Kansas City agrees to immediately withdraw
18 its request for rehear" -- for -- pardon me, "for
19 hearing filed in Case No. EO-94-199, and agrees to
20 support and endorse before the Commission the
21 stipulation/agreement filed by the signatory parties
22 on May 28th, 1996."

23 That -- that stipulation/agreement
24 contained all the elements that you just described
25 associated with the -- the small general service,

1 medium general service, large general service
2 space-heating rates.

3 Q. But that letter there does not -- which
4 is Trigen's agreement according to your testimony,
5 that makes no reference to the bases offered in the
6 establishment of those rates, does it, sir?

7 A. I don't think any of it does. It's -- I
8 think that it all sets a foundation to establish the
9 support for the stipulation/agreement which contains
10 those elements.

11 (EXHIBIT NO. 704 WAS MARKED FOR
12 IDENTIFICATION BY THE COURT REPORTER.)
13 BY MR. KEEVIL:

14 Q. Mr. Rush, I've handed you a copy of
15 what's been marked as Exhibit 704. Do you recognize
16 that to be a copy of the Stipulation & Agreement in
17 Case EO-94-199?

18 A. I recognize it as a component of the
19 Stipulation & Agreement in the overall case. It
20 appears that there are a number of other sections
21 that are associated with this, including
22 appendices -- appendices F and G which contain the
23 rates as set out in paragraph C. There are a number
24 of other components to this, appendix D and
25 et cetera. So my guess is this is a piece of it.

1 Q. Well, the appendix F you referred to was
2 the -- simply the sample tariff sheets proposed as a
3 result of the stip, right?

4 A. That's what it says.

5 MR. KEEVIL: Judge, I would offer
6 Exhibit 704.

7 JUDGE PRIDGIN: 704 is offered.
8 Objections?

9 MR. FISCHER: Judge, I don't have any --
10 I don't have any objection to the offering of this.
11 However, I would ask the Commission to take
12 administrative notice of the entire Stipulation &
13 Agreement which includes all of the appendices,
14 including the specific rates and appendices F and G.

15 JUDGE PRIDGIN: All right. If there's
16 no objection, I'll simply admit the portion of 7 --
17 or Exhibit 704, and the Commission will take
18 administrative notice, and correct me if I misspeak,
19 Mr. Fischer, but the entire Stipulation & Agreement?

20 MR. FISCHER: Yes.

21 JUDGE PRIDGIN: All right.

22 MR. KEEVIL: I have no objection to
23 that, Judge, but I would ask, would -- do you plan,
24 then, to have -- I don't honestly have with me today
25 those appendices. I'm not even sure I have them

1 readily available back in my office. Was Mr. Fischer
2 planning -- will they be put into the record, I
3 guess, is where I'm going?

4 JUDGE PRIDGIN: And Mr. Fischer, I don't
5 know what -- what your preference is. I mean, the
6 Commission can certainly take notice of any of its
7 own cases, so I don't necessarily have to have --

8 MR. KEEVIL: Okay.

9 JUDGE PRIDGIN: -- a party supplement
10 that --

11 MR. KEEVIL: Okay.

12 JUDGE PRIDGIN: -- but you're certainly
13 welcome to.

14 MR. KEEVIL: That's -- that's fine.
15 You're just going to take notice and leave it at
16 that. Okay.

17 JUDGE PRIDGIN: Yes, sir.

18 MR. KEEVIL: That's fine.

19 BY MR. KEEVIL:

20 Q. And Mr. Rush, staying in your rebuttal
21 testimony, for example, at the bottom of page 11 you
22 are referring to KCPL's recommendation regarding the
23 preparation and filing of a class cost of service
24 study; is that correct?

25 A. Well, I'm -- I'm responding to a point

1 made by Trigen, and KCPL's response to that point, if
2 you're talking about starting in line 17 down to the
3 bottom of the page. Is that --

4 Q. Well, actually -- actually, I was --

5 A. Where are you talking about?

6 Q. Yeah, beginning on line 20 --

7 A. All right.

8 Q. -- you state that, "The company," who I
9 assumed is KCPL, "recommends that a study similar to
10 that recommended by Trigen be performed after the
11 last rate case in the regulatory plan when Iatan 2 is
12 placed into rates," correct?

13 A. Yes.

14 Q. Okay. Now, I'm a little unclear as to
15 exactly when your recommendation would result in a
16 study, and I was here yesterday and heard you
17 testify. Are you -- the way I read that testimony,
18 the way I understand that testimony, you're saying
19 that it would not be done in the Iatan 2 rate case or
20 the rate case four under the regulatory plan, but it
21 would be done sometime after that rate case; is that
22 correct?

23 A. It can be done in -- either during the
24 case in which rates are being addressed for Iatan 2.
25 However -- or -- or afterwards. However, I believe

1 during the -- there's been numerous references
2 throughout this case and others that it would
3 probably be -- it would probably be more practical to
4 have it immediately following the Iatan 2 rate
5 implementation, and that we address it.

6 And Iatan is the foundation for that
7 cost of service study and rate design. And so we
8 would use the cost of service and the revenue
9 requirements associated with the Iatan 2 case as a
10 basis for it. And it was even discussed by
11 Mr. Watkins this morning.

12 So I would -- I would see today that
13 that would probably be a preference. We've agreed
14 not to do an updated cost of service for rate
15 structure changes, at least -- even in this case and
16 as well as in the next case in the
17 stipulation/agreement that we entered into the
18 regulatory plan, so it's minimally gonna have to
19 be -- or it cannot be sooner in my mind than the
20 Iatan 2 case. More practical, it would be
21 afterwards.

22 Q. So if the Commission were to order you
23 to do one sooner, you couldn't do one sooner?

24 A. We would have to -- I -- I'm not sure
25 how you address when you have an agreement not to do

1 something in order to do it. I suspect we would be
2 able to do it some way. I'm not sure how that would
3 happen.

4 Q. Well, going -- going back to your, as I
5 understand it, recommendation, it would be done after
6 the Iatan -- now, you and I have been referring to
7 this Iatan 2 rate case. That would be rate case four
8 under your regulatory plan; is that correct?

9 A. It's often referred to that, yes.

10 Q. Right. When would that rate case four
11 under your regulatory plan be filed or when will it
12 be filed?

13 A. Well, it will be filed to reflect the
14 in-service of Iatan 2. It's probably going to be
15 filed in 2009 associated with -- to reflect probably
16 rates going into effect sometime in September. I'm
17 not sure of the exact timing of that, so it might be
18 October of -- it's adjustable, but it's associated
19 with in-service of Iatan 2. Probably 2009 late we
20 would file it to take rates to become effective in
21 2010.

22 Q. So if you filed it in late 2009, then
23 you'd have it -- if the rate case took the length of
24 time it normally takes, you're looking at 11 months
25 basically from the filing --

1 A. That's correct.

2 Q. -- until your rates would be affected,
3 correct?

4 A. Right.

5 Q. So then you're looking at late 2010?

6 A. Sometime in like September, October
7 2010.

8 Q. For the rate case --

9 A. Right.

10 Q. -- for it to be concluded?

11 A. That's right.

12 Q. Okay. So then after September or
13 October 2010, it would be your recommendation -- your
14 current position that the rate design case to address
15 the cost of service study would be filed; is that
16 correct?

17 A. I mean, I guess that would be correct.
18 It's initiated and --

19 Q. Right. It's initiated, okay. Yeah, I
20 can use that term.

21 A. -- is a -- is a filing that's often
22 required.

23 Q. So the initiation of that case would not
24 be until late 2010. And would you agree that those
25 rate design cases normally take a fairly substantial

1 length of time?

2 A. I have seen that, yes, but I -- our last
3 rate design case was done within an 11-month period.

4 Q. Okay. Within 11 --

5 A. I mean, it was actually done in a -- in
6 a case and we just completed that.

7 Q. So if it's filed or initiated in late
8 2010, it would be late 2011 before any results from
9 that rate design case would be implemented, correct?

10 A. Well, there's really no time frame
11 associated with a rate design case, so --

12 Q. Could be later?

13 A. Could be sooner.

14 Q. You believe that to be likely? You said
15 your last one was done in 11 months, correct?

16 A. Well, you know, in a practical matter,
17 if you look at the implementation of the Iatan rate
18 case and the rates associated, you have most of the
19 foundational work already done for a rate design
20 case. All you have to do now is, is -- is how you're
21 going to address those things. It could happen quite
22 reasonably on a very fast pace after that.

23 But again, it's really according to, you
24 know, the parties and their involvement and what
25 you're trying to accomplish in a rate design case.

1 The one that we concluded in 1996 was extensive. It
2 was an incredible process of consolidation of rates
3 and just an overall process, reevaluation of our
4 whole rate structure. That's probably why it took so
5 long.

6 Q. How long -- how long did that one take?

7 A. I believe it took over two years to
8 complete. But it was extensive and it resulted in
9 significant work by both the Staff which was -- they
10 did an incredible amount of work, as well as the
11 company.

12 Q. So once those cases are initiated, it's
13 really not within the control of the company to --
14 well, I mean, I guess you could have an effect on it,
15 but the case could develop into a major undertaking,
16 could it not, completely outside --

17 A. Sure, absolutely.

18 Q. -- of your control?

19 A. Oh, absolutely.

20 Q. So we're probably talking about best
21 case scenario, the results of that case would not be
22 implemented until sometime mid, late 2007, are we
23 not?

24 A. As I said, I don't -- I don't have any
25 idea of that. I mean, our last rate design case, we

1 actually did a class cost of service rate design. In
2 the last case that just concluded, it took 11 months
3 to do that.

4 However, I was just using an example of
5 the prior one where we did extensive significant
6 modifications, and it took quite a long period of
7 time. So, you know, it could take a much shorter
8 period of time. I just do not know.

9 Q. Okay. Would you agree, Mr. Rush, that
10 Trigen's proposals in this case of all the Trigen's
11 proposals in this case, Trigen is not proposing an
12 interclass revenue shift?

13 A. I wouldn't -- wouldn't agree with that.

14 Q. You would not?

15 A. No, I would not.

16 Q. Okay. Can you point me to the Trigen
17 proposal that proposes an interclass revenue shift?

18 A. Any time that you recommend increasing
19 rates to a specific rate category different than
20 another rate category, then options for shifting
21 within classes can occur.

22 Q. I didn't --

23 A. So for example --

24 Q. I didn't ask you about within classes.

25 I'm asking about --

1 A. I'll try to -- I'm trying to answer
2 that. So, for example, if -- within the medium
3 general service class -- I'll use an example. In the
4 medium general service class, if you increase the
5 space-heating rate more than the other medium general
6 service rates, then that customer will look -- those
7 rates that are applied to, because you're talking
8 about when you increase a rate to a class more than
9 somebody else, you're increasing a real customer's
10 rate.

11 The customer that that rate is increased
12 to will then need to look at his alternatives, and it
13 may be better for him to go to the small general
14 service rate in that class -- in that category, or it
15 may be better for him to go to the large general
16 service. It isn't a matter of simply, you know, that
17 they -- they have a higher price. You have
18 interclass shifts, you have intraclass shifts when
19 you do something like this.

20 Q. What -- what you're talking about is
21 commonly referred to as customer migration, is it
22 not?

23 A. Yes, it is.

24 Q. It's really not the revenue shifts that
25 you're talking about, but --

1 A. Well, I think any --

2 Q. -- customer migration?

3 A. I think migration and shifts are

4 synonymous.

5 Q. I'll have you turn to page 6 of your

6 surrebuttal testimony.

7 A. Okay.

8 Q. You got there before I did. Page 6 of

9 your surrebuttal testimony beginning on line 8 there,

10 you refer to the last energy block in the

11 all-electric small general service rate --

12 A. Uh-huh.

13 Q. -- being higher than the corresponding

14 small general service rate that is not all-electric.

15 A. That's right.

16 Q. Then if you -- you go on and say that

17 Trigen's proposal would exaggerate and -- would

18 exaggerate that, correct?

19 A. Yes.

20 Q. I'm trying to find the proper schedule

21 here, Mr. Rush. Bear with me.

22 A. That's all right.

23 Q. Do you have a copy of Mr. Herz's

24 testimony with you?

25 A. I do.

1 Q. If you could turn to, let's see,
2 Mr. Herz's surrebuttal testimony --

3 A. All right.

4 Q. -- schedule JAH-6.

5 A. Okay.

6 Q. Is it not true that if you look at the
7 last energy blocks on that schedule -- by the way,
8 the schedule is the small general service
9 all-electric rate Trigen proposal; is that correct?
10 I'm on -- actually, it's Trigen and Staff but the
11 middle column there is Trigen's proposal.

12 MR. FISCHER: Counsel, what was the
13 number of the schedule again?

14 MR. KEEVIL: It's JAH-6.

15 MR. FISCHER: 6. Thanks.

16 BY MR. KEEVIL:

17 Q. If you look at like line 5 of that
18 schedule and line 10 of that schedule under the
19 column -- what is it, column E, isn't it correct,
20 Mr. Rush, that Trigen's proposal would actually
21 decrease that tail -- what you referred to as the
22 last energy block rate?

23 A. I'm sorry. Help -- help me understand
24 what you're trying to say.

25 Q. Well, in your surrebuttal testimony you

1 say that Trigen's proposal would exaggerate the fact
2 that the last energy block in the all-electric small
3 general service rate is higher than the corresponding
4 small general service rate, correct? And on this
5 schedule, JAH-6, line 5 and line 10, column E, show
6 that Trigen's proposal would, in fact, reduce the
7 last energy block rate, thereby certainly not
8 exacerbating or exaggerating what you referred to as
9 the problem. Would you agree with that?

10 A. Well, I see that schedule. I'm trying
11 to understand how their implementation recommendation
12 addresses that. I -- if you could point me in
13 their -- in Trigen's testimony to what you're -- how
14 they derive those numbers, that would help me.

15 Q. Well, do you -- do you agree that
16 Mr. Herz's testimony was to reduce the difference by
17 one-third?

18 A. I do, yes.

19 Q. So if the tail block -- the last energy
20 block is currently higher to reduce the difference by
21 one-third, you would actually increase -- excuse me,
22 decrease that rate by a third, would you not?

23 A. I think I would agree. Yes, I would
24 agree with that point.

25 Q. Okay. So Trigen's proposal would, in

1 fact, not exaggerate the last energy block rate in
2 the all-electric tariffs being higher than the last
3 energy block in the standard tariff, would it?

4 A. If that's how you would interpret it, I
5 would agree. I mean, if that's how the rate
6 implementation would be addressed, I would agree.

7 Q. Okay. Could I have you turn to your --
8 still in your surrebuttal, bottom of page 7,
9 continuing on to page 8, you state that you disagree
10 with Mr. Herz when he makes the representation that
11 KCPL's across-the-board equal percentage increase
12 will increase the size of the discount, do you not?

13 A. Yes, I do.

14 Q. And over on page 8 beginning on line 5,
15 do you say you disagree with his analysis and you
16 refer to schedule JAH-1 through JAH-4 attached to his
17 rebuttal testimony, correct?

18 A. Yes.

19 Q. Okay. Well, let's look at -- well,
20 let's look at JAH-3. Now, do you understand,
21 Mr. Rush, on J -- schedule JAH-3, column G represents
22 the difference between the current all-electric rate
23 and the KCPL proposed equal percentage increase
24 all-electric rate, correct?

25 A. Say that again. You're saying that the

1 amount in G which is represented by the columns F
2 minus C, that's what you're talking about here?

3 Q. Yeah.

4 A. And you're saying that that represents
5 the -- what, the numeric difference in the price per
6 kilowatt hour --

7 Q. It would be the numeric --

8 A. -- between the two?

9 Q. Yes, between the two.

10 A. I won't disagree, sure.

11 Q. Okay. And then -- so the column H,
12 then, is the percentage --

13 A. Right.

14 Q. -- represented by column G, correct?

15 A. Uh-huh, yes.

16 Q. So that column H refers to the
17 percentage increase in -- between the current and the
18 proposed discounts, correct?

19 A. I believe that percentage is the
20 application of an 8.3 percent increase to each one of
21 those rate components.

22 Q. Well, the top of column H explains how
23 it was derived, I believe, Mr. Rush, if you want to
24 look at that.

25 A. It just says "percentage." You mean

1 above that?

2 Q. Yeah, $G - G - G$ divided by C.

3 A. Yeah, I would agree with that.

4 Q. Okay. So when you say on the -- in your
5 surrebuttal testimony, page 8, that column H
6 represents the overall increase proposed for the
7 all-electric rates are in the range of 8.3 percent,
8 referring to this schedule, for example --

9 A. Uh-huh.

10 Q. What -- what these schedules actually
11 refer to is the percentage change in the difference
12 or in the discount, correct?

13 A. Well, it can be applied to either way.

14 Q. Okay.

15 A. I mean, you can look at it as -- I mean,
16 you'll get the same number if you simply look at the
17 percent increase in the base rate or the discounted
18 rate. This is simply the application of the
19 across-the-board percent increase and what's
20 represented by it.

21 Q. But the difference between the current
22 rates -- or between the rates --

23 A. Between the rates.

24 Q. -- increases by the amount shown in
25 column H?

1 A. And it showed -- and it should if you
2 apply an equal percent increase to all the
3 categories.

4 Q. So --

5 A. That's right.

6 Q. So the -- so the amount of the discount
7 is increasing by that amount, correct?

8 A. No. The amount of the rate increase is
9 increasing by that amount as well as the base rates
10 are increasing by that amount.

11 Q. And --

12 A. All of the rate components are
13 increasing by 8.3 percent, and then that is rounded.
14 So you're not creating an exaggeration by any means
15 unless you want to -- I mean, make some
16 application -- application I'm talking about per
17 units. But this percentage difference is always the
18 same.

19 Q. But do you agree that the columns G and
20 H of schedule JAH-3 are in reference to the
21 difference between the rates and not the rates
22 themselves?

23 A. Well, I think that it's represented by
24 there, but I also think you can get -- you'll get the
25 same number if you look at the base rate increase as

1 well as the space-heating rate -- or the electric
2 heating rate increase.

3 MR. KEEVIL: If I could have just a
4 second, Judge?

5 JUDGE PRIDGIN: Absolutely.

6 BY MR. KEEVIL:

7 Q. Mr. Rush, I -- I guess the schedule will
8 just have to factually show what it shows and we can
9 disagree about that.

10 A. That would -- yeah.

11 Q. Argue about that later.

12 A. Sure.

13 MR. KEEVIL: I have nothing further,
14 Judge.

15 JUDGE PRIDGIN: Mr. Keevil, thank you.
16 Bench questions?

17 COMMISSIONER JARRETT: No questions.

18 JUDGE PRIDGIN: Redirect?

19 MR. FISCHER: Just briefly.

20 REDIRECT EXAMINATION BY MR. FISCHER:

21 Q. Mr. Rush, you indicated in answer to
22 counsel that from your perspective, migration was the
23 same as a customer -- a class shift?

24 A. That's correct.

25 Q. Would you explain why that's true from

1 KCPL's perspective?

2 A. When you do a rate structure change as
3 recommended by -- by Trigen, you're going to alter
4 the bill of one particular group of customers in
5 comparison to other customers. And when you do that,
6 then you have the impact of customers now needing to
7 evaluate the rate that they're on compared to other
8 rate alternatives.

9 And so you'll often have, you know,
10 customers that move within classes. It's -- it's
11 like any other way. When you make a modification
12 different than a percent increase, for example, as
13 what we're proposing in this case, you're going to
14 alter where customers will fit in the categories of
15 particular classes of customers as well as the rate
16 schedules that they qualify for.

17 When you change the qualifications, as
18 Trigen is recommending, for example, in one of their
19 recommendations, you do the same thing of altering,
20 you know, where they might fit within a class or even
21 external to that class.

22 Q. Would that same phenomenon happen if you
23 adopted a proposal that would raise residential rates
24 and lower other classes' rates by a different
25 percentage?

1 A. Absolutely, yes. Now, in -- if you --

2 MS. KLIETHERMES: I'm gonna object as
3 exceeding the scope of the issue at hand.

4 MR. KEEVIL: And exceeding the scope of
5 cross.

6 MR. FISCHER: Your Honor, I -- I'm
7 following up on the -- the definition where he
8 referred to migration as the same as customer shifts,
9 and I'm just following that up.

10 JUDGE PRIDGIN: I'll overrule.

11 THE WITNESS: Okay. I -- I mean, I
12 think I answered that yes.

13 BY MR. FISCHER:

14 Q. I believe you did. You also mentioned
15 in your testimony in answer to counsel, you pointed
16 out that -- on -- I think he asked you about page 6
17 of your surrebuttal where you discussed the fact that
18 the last energy block of the all-electric rate was
19 higher than the corresponding small general service
20 rate?

21 A. Right.

22 Q. Why is that a concern?

23 A. Well, for example, what typically
24 customers look at in rates in evaluating that is, you
25 know, where are they gonna be on an incremental

1 basis. And what they often look at is, you'll have
2 an inconsistency where you'll have a space-heating
3 rate or an electric heating rate different than a
4 general service. And when that tail block is higher,
5 that will cause confusion with a customer and it gets
6 things out of sync.

7 Now, KCPL's rate design is based on
8 end-use rates where we have, as he talks about, these
9 discounted rates. I don't characterize them as
10 discounted but we have different categories. If you
11 look at other utilities, they have different means of
12 addressing electric heat. May come up with the same
13 price, the same evaluation, but different. When you
14 alter that tail block, it will cause confusion for
15 the customer.

16 MR. FISCHER: That's all I have. Thank
17 you, your Honor.

18 JUDGE PRIDGIN: Mr. Fischer, thank you.
19 Mr. Rush, thank you very much.

20 And I show Mr. Watkins as the next
21 witness. And I'm just curious if I could get
22 counsels' estimation, I guess, on how much
23 cross-examination they would think they would have
24 for Mr. Watkins and Mr. Herz. I'm doing that simply
25 to try to determine whether to break for lunch now or

1 a little later or -- or to go ahead. As far as
2 Mr. Watkins, what kind of cross-examination would
3 counsel ...

4 MR. KEEVIL: Mine will be very brief,
5 your Honor.

6 MR. BRUDER: None at all, sir.

7 JUDGE PRIDGIN: Mr. Fischer?

8 MR. FISCHER: Five or ten minutes.

9 JUDGE PRIDGIN: Okay. And as far as
10 Mr. Herz?

11 MR. FISCHER: That may be a while.

12 JUDGE PRIDGIN: Then let's go ahead --
13 well, let's -- let's at least go ahead and do
14 Mr. Watkins and we'll go from there.

15 MS. KLIETHERMES: As this will be
16 Mr. Watkins' last appearance at the stand, I'd like
17 to tender -- or offer his direct testimony, Staff
18 Exhibit 116, his rebuttal as 117, surrebuttal was 118
19 and the Staff's class cost of service and rate design
20 report that he sponsored to Staff, 103.

21 JUDGE PRIDGIN: Okay. Exhibits 116,
22 117, 118 and 103 are all offered. Any objections?

23 MR. MILLS: I have -- I have no
24 objections to 116, 117, 118. I do have objections --
25 objections to Exhibit 103.

1 JUDGE PRIDGIN: Okay. I'm sorry. Any
2 other objections?

3 (NO RESPONSE.)

4 JUDGE PRIDGIN: Okay. Your exhibits --
5 excuse me, your objections to 103?

6 MR. MILLS: With respect to Exhibit 103,
7 and -- well, may I voir dire the witness to establish
8 one point?

9 JUDGE PRIDGIN: You may, and he's under
10 oath, so that's fine.

11 VOIR DIRE EXAMINATION BY MR. MILLS:

12 Q. Mr. Watkins, did you author Exhibit 103?

13 A. No, I did not author it.

14 MR. MILLS: Okay. With respect to
15 Exhibit 103, it was filed at the time that direct
16 testimony was filed. In this case the Staff did not
17 ask for a waiver of the rules that cover the filing
18 of direct testimony, which is 4 CSR 2.130,
19 specifically section 6 which requires that, "Prepared
20 testimony shall be filed separately and shall be
21 accompanied by an affidavit providing the witness's
22 oath."

23 The Staff report on cost of service is
24 anonymous. It does not attribute itself to any
25 particular author, much less being accompanied by an

1 affidavit under oath. So it does not comply with the
2 Commission's rules.

3 Furthermore, in the Commission's
4 scheduling order in this case issued on April 5th,
5 the Commission ordered that -- "The Commission will
6 require the prefiling of testimony as defined in
7 4 CSR 240-2.130. All parties shall comply with this
8 rule, including the requirement that testimony be
9 on -- filed on line-numbered pages. The practice of
10 prefiling testimony is designed to give parties
11 notice of the claims, contention of evidence and
12 issues and to avoid unnecessary objections, delays
13 caused by allegations and unfair surprise at the
14 hearing." The Staff did not ask for a waiver of
15 that -- of that order either.

16 With respect to the report itself, the
17 Staff filed with it a pleading that laid out several
18 points as to why the Staff filed a report as opposed
19 to testimony, and those are that the Commission began
20 the practice of requiring executive testimonies and
21 testimony, requiring prehearing briefs and limiting
22 post-hearing briefs to matters the party did not
23 address in its prehearing briefs.

24 None of those factors are present in
25 this case, and those are apparently that the

3 Because it doesn't comply with the
4 Commission's orders, rules and there doesn't appear
5 to be any valid reason in this case to do it that
6 way, I object to its admission into evidence in this
7 case because it is an anonymous and unsupported
8 report. Mr. Watkins cannot authenticate it because
9 he didn't author it, and for those reasons I object
10 to its admission.

11 JUDGE PRIDGIN: Mr. Mills, thank you.
12 Ms. Kliethermes or Mr. Williams?

13 MR. WILLIAMS: Judge, Staff witness
14 Wells is the one that sponsored the report and
15 he's -- as an expert, he's entitled to rely on the
16 work product of other witnesses, and that's what --
17 or other experts, and that's what he's done with the
18 Staff report. And that Staff report reflects that
19 work product that he relied upon.

20 MR. MILLS: And where is Mr. Wells in
21 all this?

22 MR. WILLIAMS: He has prefiled
23 testimony --

24 MR. MILLS: Okay.

25 MR. WILLIAMS: -- in question-and-answer

1 format.

2 JUDGE PRIDGIN: All right. Exhibits
3 116, 117, 118 are admitted.

4 (EXHIBIT NOS. 116, 117 AND 118 WERE
5 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
6 RECORD.)

7 JUDGE PRIDGIN: Objections to Exhibit
8 103 are overruled. The exhibits -- or excuse me,
9 Exhibit 103 is admitted.

10 (EXHIBIT NO. 103 WAS RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 JUDGE PRIDGIN: Anything further before
13 Mr. Watkins takes cross-examination?

14 MR. MILLS: Your Honor, given that, can
15 we call Mr. Wells that I may question him about this
16 report? He's never been on the stand in this case
17 and I've never had opportunity -- this is the first
18 time I've learned that Mr. Wells had anything to do
19 with this report, and I -- and I -- I would like to
20 cross-examine him with respect to that.

21 JUDGE PRIDGIN: Mr. Williams or
22 Ms. Kliethermes?

23 MR. WILLIAMS: Hold on a minute, Judge.
24 Can we take a break?

25 JUDGE PRIDGIN: How much time do you

1 need?

2 MR. WILLIAMS: I may have misidentified
3 who the witness was who sponsored this report.
4 That's why I want to check.

5 JUDGE PRIDGIN: Okay. Do you know how
6 much time you need?

7 MR. WILLIAMS: Five minutes, I think.

8 JUDGE PRIDGIN: All right. We'll go
9 off --

10 MR. MILLS: And Judge, before we go off
11 the record --

12 JUDGE PRIDGIN: Yeah.

13 MR. MILLS: -- I think that kind of
14 highlights my point. If Staff doesn't know who
15 offered this exhibit, how -- how can we admit it into
16 the record and expect the Commission to rely on it?

17 JUDGE PRIDGIN: I understand. I mean,
18 Mr. Williams has asked for a recess. We'll take --
19 we'll take five minutes.

20 (A RECESS WAS TAKEN.)

21 JUDGE PRIDGIN: All right. We're back
22 on the record. I'm sorry. Mr. Williams, you asked
23 for a brief recess. Are you ready to resume?

24 MR. WILLIAMS: Yes, Judge. I spoke
25 incorrectly earlier. Mr. Wells provided testimony

1 regarding revenues in support of the Staff's cost of
2 service report which is separate from the Staff's
3 class cost of -- service and rate design report.

4 As reflected on page 2 of Mr. Watkins'
5 direct testimony, that report was prepared by Janice
6 Pyatte, and Mr. Watkins relied upon her work product
7 in his testimony.

8 And he's also the sponsor of the report
9 in the sense that he's entitled as an expert to rely
10 on the work product of other experts in forming his
11 opinions and presenting them. And, of course, his
12 testimony is presented in question-and-answer format
13 in accordance with the Commission's rules.

14 JUDGE PRIDGIN: All right.

15 MR. MILLS: Well, Judge --

16 JUDGE PRIDGIN: Mr. Mills?

17 MR. MILLS: -- you've already overruled
18 my objection, but in response to what Mr. Williams
19 just said, he may be entitled to rely on other
20 experts' opinions in forming his opinion; that does
21 not mean that their anonymous opinions are admissible
22 into the record without affidavit and without oath in
23 conformance with the Commission's rules. Whether or
24 not he can rely on them is one question; whether or
25 not they're admissible without any -- any --

1 ascribing any authority to them or being filed in
2 conformance with the Commission's rules is another
3 question.

4 JUDGE PRIDGIN: I understand what you're
5 saying and I think I already ruled, but Mr. Williams,
6 did you have any -- any reply?

7 MR. WILLIAMS: Well, one, Ms. Pyatte is
8 available for any questions that any of the attorneys
9 may have, and whenever you made your ruling, I had
10 incorrectly stated that Mr. Wells was the sponsor to
11 the report, so I ...

12 MR. KEEVIL: Judge, if I could jump in
13 here at the risk of --

14 JUDGE PRIDGIN: Sure.

15 MR. KEEVIL: -- getting in here where I
16 don't want to. Mr. Mills cross-examined Ms. Pyatte
17 concerning that report when she was on the stand,
18 so for whatever bearing that may have --

19 MR. MILLS: Actually, I don't believe I
20 ever referred to that report.

21 JUDGE PRIDGIN: Well, I'll tell you
22 what. I mean, I think I've already overruled the
23 objection and admitted it into evidence, but
24 Mr. Mills, if you do want to cross Ms. Pyatte on that
25 report, I'll certainly give you the opportunity to do

1 that.

2 MR. MILLS: If it's already been
3 admitted, I don't see the point.

4 JUDGE PRIDGIN: All right.

5 MR. WILLIAMS: Judge, I just wanted to
6 make -- make it clear when you made that ruling, I
7 had misstated that it was Mr. Wells --

8 JUDGE PRIDGIN: Yes, sir.

9 MR. WILLIAMS: -- who was sponsoring the
10 report.

11 JUDGE PRIDGIN: And it was actually
12 Ms. Pyatte.

13 MR. WILLIAMS: Correct.

14 JUDGE PRIDGIN: All right.

15 MR. WILLIAMS: Well, Mr. Watkins.

16 JUDGE PRIDGIN: And Mr. Watkins was --
17 yes, I understand what you're saying. I'm sorry.

18 MR. MILLS: I'm sorry. I don't
19 understand what he was saying. Can I have a
20 clarification of that last point?

21 JUDGE PRIDGIN: Yes.

22 MR. WILLIAMS: Mr. Watkins is the one
23 who relied upon the report that was prepared by
24 Ms. Pyatte, and both he and Ms. Pyatte are -- are
25 sponsoring the report. Now, Ms. Pyatte is the one

1 that prepared it. Does that clarify it sufficiently?

2 MR. MILLS: So we have this report
3 sponsored by two witnesses?

4 MR. WILLIAMS: In the sense that
5 Mr. Watkins relied upon the information in the report
6 in forming his opinions, yes.

7 MR. MILLS: Okay.

8 JUDGE PRIDGIN: Anything further before
9 Mr. Watkins stands cross?

10 MR. BRUDER: Yeah, if I may, your Honor,
11 let me offer now DOE Exhibits 805 -- 804, 805 and
12 806. That's Mr. Price's three testimonies, direct,
13 rebuttal and surrebuttal as he will not be
14 cross-examined here.

15 JUDGE PRIDGIN: All right. Exhibits
16 804, 805 and 806 have been offered. Any objections?

17 (NO RESPONSE.)

18 JUDGE PRIDGIN: 804, 805, 806 are
19 admitted.

20 (EXHIBIT NOS. 804, 805 AND 806 WERE
21 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
22 RECORD.)

23 MR. BRUDER: Thank you.

24 JUDGE PRIDGIN: You're welcome. All
25 right. Anything further before Mr. Watkins stands

1 cross?

2 (NO RESPONSE.)

3 JUDGE PRIDGIN: Any questions?

4 Cross-examination. Anyone? Mr. Keevil. Anyone
5 else? I'm sorry. Mr. Fischer -- bear with me,
6 sorry. Mr. Keevil, I'm sorry. When you're ready.

7 MR. KEEVIL: Thank you, Judge.

8 CROSS-EXAMINATION BY MR. KEEVIL:

9 Q. Mr. Watkins, I'm -- I'm just -- I have a
10 quick -- what I think is a clarifying question
11 because I'm not sure from reading your testimony
12 exactly what your testimony is on a certain point.

13 If I could have you turn to your
14 rebuttal testimony at page 5.

15 A. I'm on 5.

16 Q. Beginning on line 10, about two-thirds
17 of the way through line 10, you began the sentence
18 that, "None of any reduction in revenue
19 responsibility for the medium general service (MGS)
20 rate class should be applied to these separately
21 metered space-heating rates." Do you see that, sir?

22 A. Yes.

23 Q. Okay. Now, my understanding is that
24 Staff has proposed a reduction in revenue
25 responsibility for the medium general service rate

1 class and that DOE has proposed reduction in revenue
2 responsibility for not only the medium general
3 service rate class but the small general service and
4 large general service rate classes as well. Is that
5 your understanding?

6 A. Yes.

7 Q. And I realize that you don't agree with
8 DOE's proposal, but hypothetically, if the Commission
9 were to adopt DOE's proposal regarding the reduction
10 in revenue responsibility for all three of those
11 general service rate classes, would the statement you
12 make there in the middle of page 5 regarding medium
13 general service also apply to the small general
14 service and large general service rate classes?

15 A. That would be my recommendation, yes.

16 Q. Okay. And I assume the reason that your
17 prefiled testimony was limited to medium was because
18 your proposal regarding reduction in revenue
19 responsibility is likewise limited to medium; is that
20 correct?

21 A. That's correct.

22 MR. KEEVIL: Okay. Thank you. No
23 further questions.

24 JUDGE PRIDGIN: Mr. Keevil, thank you.

25 Further cross? I'm sorry. Mr. Fischer?

1 CROSS-EXAMINATION BY MR. FISCHER:

2 Q. Mr. Watkins, just to follow up on a
3 couple of questions we had earlier, you've -- I think
4 you agreed earlier today that the various electric
5 companies in Missouri have different rate structures;
6 is that correct?

7 A. That's correct.

8 Q. And some companies like Kansas City
9 Power & Light have end-use rates, for example, which
10 would include separately metered space-heating or
11 all-electric rates; is that right?

12 A. Some do, yes.

13 Q. Other companies, perhaps Ameren and
14 others, wouldn't necessarily have those same kind of
15 end-use rates; is that true?

16 A. That's correct.

17 Q. Now, if companies don't have end-use
18 rates, is it your understanding that they often have
19 summer/winter differentials that would have a lower
20 rate in the wintertime?

21 A. That's correct.

22 Q. The electric heating load would be
23 expected generally to fall on the lower winter rate?

24 A. Lower than the summer, yes.

25 Q. Yes. And often it would be in that tail

1 block in the winter on most rate schedules?

2 A. I'm not sure where it should be, and
3 I -- you'd have to look at where that load is
4 occurring because typically those -- those blocks
5 correspond to time periods. But where it's actually
6 accounted for in the rates, as far as I know, has
7 always been in the tail block in the winter.

8 Q. Okay. The -- would you agree that this
9 type of an issue is generally reviewed in a rate
10 design or a rate case looking at rate design?

11 A. It certainly would -- would be examined
12 in a rate design case.

13 Q. For example, whether it's appropriate to
14 have one type of rate structure or another would be
15 looked at in a rate design case?

16 A. It would.

17 Q. One issue that might be reviewed in a
18 rate design case would be whether the rate structure
19 should include some type of end-use rates or whether
20 usage should be billed under one rate structure for a
21 particular class; would you agree with that?

22 A. Yes, I would.

23 Q. Not all electric companies have the same
24 rate structure for the general service class or the
25 industrial service class for that matter; is that

1 true?

2 A. That's correct.

3 Q. In rate design cases, the Commission
4 might find it appropriate to eliminate end-use rate
5 structures and replace that type of rate structure
6 with a single rate structure that would apply to all
7 usage for a particular class; is that a possibility?

8 A. Certainly.

9 Q. Would you agree that if the Commission
10 decided to eliminate end-use rates and replace them
11 with a single rate schedule that applies to all usage
12 in that class, that decision would be considered a
13 rate structure change?

14 A. I would say yes.

15 MR. FISCHER: That's all I have. Thank
16 you for your patience.

17 JUDGE PRIDGIN: Mr. Fischer, thank you.
18 Bench questions?

19 (NO RESPONSE.)

20 JUDGE PRIDGIN: Redirect?

21 (NO RESPONSE.)

22 JUDGE PRIDGIN: Mr. Watkins, thank you
23 very much. You may step down.

24 MR. FISCHER: Judge -- Judge, if --
25 we've only got one witness left. I'd be happy to try

1 to cut the cross and get through it during lunch to
2 get through it here if you'd rather. But it's up to
3 you, whatever people want to do.

4 JUDGE PRIDGIN: Ask counsels'
5 preference. I see it's right at noon. We can go to
6 lunch or keep going. It doesn't matter to me.

7 MR. FISCHER: I think I probably have
8 about 20 minutes or so.

9 JUDGE PRIDGIN: Okay. There's no
10 preference from counsel?

11 MR. KEEVIL: I mean, that's fine with
12 me. Is he the only one?

13 MS. KLIETHERMES: I have a very
14 brief ...

15 JUDGE PRIDGIN: Okay. If it's all
16 right, we'll just continue on. If I'm not mistaken,
17 Mr. Herz is the last witness on this issue. Do we
18 have other issues left?

19 MR. FISCHER: Judge, I don't think so.
20 I think the amortization's not a contested issue and
21 that was the only thing left on the schedule.

22 MR. MILLS: I believe there are no
23 questions on that issue, although Mr. Trippensee is
24 listed as a witness, and so I don't believe that I
25 have offered his testimony pending his last

1 appearance. If my records are correct, I have not.

2 MR. FISCHER: That may be true of KCPL
3 witness Cline too. I'll have to check.

4 JUDGE PRIDGIN: I don't show
5 Trippensee's as being offered yet.

6 MR. MILLS: Given that there don't
7 appear to be any questions on the amortization issue,
8 at this time I would like to offer Exhibits 207 and
9 208, the direct and rebuttal testimony of Public
10 Counsel witness Trippensee.

11 JUDGE PRIDGIN: 207 and 208 have been
12 offered. Any objections?

13 (NO RESPONSE.)

14 JUDGE PRIDGIN: 207 and 208 are
15 admitted.

16 (EXHIBIT NOS. 207 AND 208 WERE RECEIVED
17 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

18 JUDGE PRIDGIN: I do show that
19 Mr. Cline's prefiled testimony has been offered and
20 admitted.

21 MR. FISCHER: Thank you, that's great.

22 MR. WILLIAMS: Judge, I think we'll take
23 them up at a later time, but we're also going to have
24 some exhibits to offer, in part because of the
25 Stipulation & Agreement.

1 JUDGE PRIDGIN: All right. Thank you.
2 All right. Are we ready to proceed with Mr. Herz,
3 then? All right. If you'll take the stand and be
4 sworn, please. I'll show that your right hand is
5 raised.

6 (THE WITNESS WAS SWORN.)

7 JUDGE PRIDGIN: Thank you very much,
8 sir. If you would please have a seat. Mr. Keevil,
9 anything before he stands cross?

10 MR. KEEVIL: Very briefly, Judge.

11 DIRECT EXAMINATION BY MR. KEEVIL:

12 Q. Would you please state your name for the
13 record, sir.

14 A. My name is Joe Herz.

15 Q. Mr. Herz, are you the Joe Herz who has
16 prefiled direct, rebuttal and surrebuttal testimony
17 which has been premarked as Exhibit Nos. -- and,
18 Judge, correct me if I'm wrong -- 701, 702 NP and HC,
19 and 703?

20 A. Yes, I am.

21 Q. Do you have any changes you need to make
22 to any of those pieces of testimony?

23 A. Yes, I do. I -- I have a correction to
24 my direct and my surrebuttal testimony. On my
25 direct, Exhibit 701, page 18, line 9, the fourth word

1 in should be changed to "differential." The word
2 that's there now is differentiated. That should be
3 corrected and changed to differential.

4 On my surrebuttal testimony, Exhibit
5 703, I have a correction to page 2, lines 10 and
6 11 [sic]. At the end of line 11 between the words
7 space, hyphen, heating and rates, the word
8 "discounted" should be inserted. The word rates --
9 rate should be made plural, "rates."

10 And then on line 12 the word "discounts"
11 should be stricken.

12 Q. I think you said -- before you started
13 there, I think you said lines 10 and 11.

14 A. Oh, I'm sorry.

15 Q. Did you mean 11 and 12?

16 A. 11 and 12, yes.

17 Q. Okay. So the question would read, "How
18 does MPSC Staff's proposal to increase the general
19 service space-heating discounted rates more than the
20 associated standard tariff rates compare to your
21 proposal?"

22 A. Yes.

23 Q. Okay. Do you have any other
24 corrections?

25 A. No, I do not.

1 MR. KEEVIL: Judge, I think this is
2 Mr. Herz's only time to take the witness stand, so I
3 would offer into the record Exhibits 701, 702 NP,
4 702 HC and 703.

5 JUDGE PRIDGIN: Exhibits 701, 702 NP and
6 HC and 703 have been offered. Any objections?

7 (NO RESPONSE.)

8 JUDGE PRIDGIN: Hearing none, those
9 exhibits are admitted.

10 (EXHIBIT NOS. 701, 702 NP, 702 HC AND
11 703 WERE RECEIVED INTO EVIDENCE AND MADE A PART OF
12 THE RECORD.)

13 MR. KEEVIL: Just to clarify for my own
14 records, too, Judge, 704 was also admitted? That was
15 my stipulation that I --

16 JUDGE PRIDGIN: Yes, sir, it was.

17 MR. KEEVIL: Okay. Thank you.

18 JUDGE PRIDGIN: You're welcome.

19 MR. KEEVIL: I would tender the witness
20 for cross-examination.

21 JUDGE PRIDGIN: Okay. Counsel wish
22 cross? Staff? KCPL? Any other counsel?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: All right.

25 Ms. Kliethermes?

1 CROSS-EXAMINATION BY MS. KLIETHERMES:

2 Q. Good midday, sir. Are you generally
3 familiar with Staff's position in this case regarding
4 the so-called Trigen issue?

5 A. Yes.

6 Q. Would Trigen accept the Staff's
7 positions regarding the general service all-electric
8 tariffs and general service separately metered
9 space-heating tariff provisions as a reasonable
10 alternative to Trigen's own positions?

11 A. Yes.

12 Q. And just basic clarification, does the
13 Trigen issue involve residential space-heating rates?

14 A. Yes -- or I'm sorry. Could you repeat
15 the question?

16 Q. Does the Trigen issue involve
17 residential space-heating rates?

18 A. Oh, no, it does not. I'm sorry. Thank
19 you.

20 Q. Okay. You scared me there. And
21 finally, are the terms rate structure and rate design
22 synonymous?

23 A. I believe that they're different.

24 MS. KLIETHERMES: No further questions.

25 JUDGE PRIDGIN: Thank you. Mr. Fischer?

1 MR. FISCHER: Thank you.

2 CROSS-EXAMINATION BY MR. FISCHER:

3 Q. Welcome back. It doesn't seem like it's
4 been a whole year, but I guess it has. Let's --
5 let's go back to a little bit about the 2006 rate
6 case. Trigen did not object to the rate design
7 stipulation that was adopted by the other parties to
8 that rate case; is that right?

9 A. That's correct.

10 Q. And one of the agreements that was
11 contained in the rate design stipulation that was
12 approved by the Commission in that 2006 rate case was
13 the agreement that the general service space-heating
14 and all-electric winter energy rates would be
15 increased by 5 percentage points more than the -- the
16 general class rate?

17 A. That's correct.

18 Q. Okay. And Trigen did not object to that
19 provision in that rate design settlement; is that
20 true?

21 A. That's true.

22 Q. The Commission ultimately adopted the
23 recommendations of KCPL and the other signatories on
24 that particular point; is that correct?

25 A. Yes.

1 Q. Now, on page 5 of your rebuttal [sic] at
2 lines 10 through 11, you recommend on behalf of
3 Trigen that the discounted space-heating rates should
4 be increased more than the standard general service
5 rates in this and in the next two KCPL rate cases so
6 that the discounted rates and standard tariff rates
7 reached parity over KCPL's three rate cases; is that
8 correct?

9 A. Mr. Fischer, I -- did you say page 5 of
10 my rebuttal?

11 Q. I believe I did. Did I misquote it?
12 Maybe it's your surrebuttal. Well, let me ask you,
13 is that -- is that your recommendation wherever it's
14 found in your testimony?

15 MR. KEEVIL: I'm -- I'm going to object
16 to the question. What was -- what was the question
17 again?

18 MR. FISCHER: Okay. My question is, did
19 you recommend on behalf of Trigen that the discounted
20 space-heating rates should be increased more than the
21 standard general service rates in this and the next
22 two KCPL rate cases?

23 MR. KEEVIL: I guess I'm going to ask --
24 have to ask how are you using the term "discounted
25 space-heating rates"? Are you referring to both the

1 all-electric tariffs and the separately metered
2 space-heating tariffs? Because there is a different
3 recommendation.

4 BY MR. FISCHER:

5 Q. Okay. I'm sorry. I'm sorry for the
6 confusion. Let's go to your rebuttal testimony -- I
7 mean your direct testimony, at page 5, lines 10 and
8 11. Do you see that?

9 A. Yes, I do.

10 Q. And there are you recommending on behalf
11 of Trigen that the discounted space-heating rates
12 should be increased more than the standard general
13 service rates in this case -- this and the next two
14 KCPL rate cases so that the discounted rates and
15 standard tariff rates reach parity over KCPL's three
16 rate cases; is that correct?

17 A. Yes, that's what I stated in my direct
18 testimony. Later in my surrebuttal testimony, after
19 seeing Staff's rebuttal testimony, I modified that
20 recommendation so that the all-electric general
21 service rates would be -- essentially reach parity
22 with the standard tariff rates over this rate case
23 and the next two, and with respect to the separately
24 metered space-heating rates for the general service
25 categories.

1 Because of the level of the rates now,
2 if you add another 10 percent as proposed by Staff,
3 that essentially gets to the phase-out. So that
4 would be phased out over the next two rate cases,
5 this case and the next rate case.

6 Q. Okay. So this recommendation in your
7 direct is no longer Trigen's recommendation; is that
8 true?

9 A. It's -- it still is my recommendation
10 with respect to the general service all-electric
11 rates. It has been modified with respect to the
12 general service separately metered space-heating
13 rates.

14 Q. Okay. Well, is it correct to conclude
15 from your statements here and what you've said on the
16 stand that you're recommending once again in this
17 case that the Commission raise the space-heating and
18 the all-electric rates by more than the standard
19 general service rates?

20 A. Yes.

21 Q. If the Commission had adopted your
22 recommendation on that issue, your client Trigen
23 would be in a better competitive position to compete
24 with KCPL for winter heating load; is that true?

25 A. Probably so.

1 Q. Ultimately, Trigen would like to have
2 the Commission, if I understand your testimony, to
3 eventually just eliminate the space-heating and the
4 all-electric rates for KCPL; is that correct?

5 A. I would -- I would suspect so, but the
6 basis for my recommendation isn't based on -- on
7 that. The basis for my recommendation is whether or
8 not there can be a basis that supports charging
9 different rates for similarly situated customers
10 under similar circumstances, and there hasn't been
11 any such basis provided by any party in this or the
12 prior proceeding.

13 Q. Mr. Herz, you're appearing here, though,
14 on behalf of Trigen; is that correct?

15 A. Yes, I am.

16 Q. And I assume you're a paid witness to be
17 here today?

18 A. Yes, I am.

19 Q. Trigen made that same recommendation in
20 the 2006 rate case, didn't they?

21 MR. KEEVIL: Objection. That's a
22 misstatement, mischaracterization of the position in
23 the 2006 rate case.

24 MR. FISCHER: If I'm wrong, he can say
25 so.

1 JUDGE PRIDGIN: I agree. I'll overrule.
2 He can answer the question.

3 THE WITNESS: In the -- in the 2006 rate
4 case, I had proposed that since there was not a basis
5 that -- that supported the discounted rates for the
6 proposed space-heating tariff by the company at that
7 time in a separately metered general -- separately
8 metered space-heating rate for general service
9 customers, I had proposed that -- that those
10 discounted rates be eliminated in their entirety.
11 And the Commission, as -- if I could --

12 BY MR. FISCHER:

13 Q. I think you've answered my question.
14 If -- if the Commission -- and that's what I thought
15 I'd asked you. If the Commission eliminated the
16 space-heating and all-electric rates, would you agree
17 that this step would be a change in the rate
18 structure of KCPL?

19 A. No.

20 Q. Elimination of a rate schedule would not
21 be a change in rate structure?

22 A. Not under my proposal. My proposal is
23 that in this rate case, the Commission --

24 MR. FISCHER: Judge, I would ask for an
25 answer on that, yes or no.

1 JUDGE PRIDGIN: All right. Let's -- and
2 did you get your yes or no answer?

3 MR. FISCHER: I don't think I did.

4 JUDGE PRIDGIN: Okay. Do you want to
5 ask him again?

6 BY MR. FISCHER:

7 Q. If the Commission eliminated the
8 space-heating in all-electric rates in this case,
9 would you agree that this step would be a change in
10 the rate structure of KCPL?

11 MR. KEEVIL: Judge, I'm gonna object to
12 that because he's mischaracterizing our position.
13 The position -- the proposal is not to eliminate the
14 rates in this case; the proposal is to phase them out
15 and to begin with this rate case.

16 JUDGE PRIDGIN: I'll overrule. Let him
17 answer the question yes or no, and you're free to
18 take that up on redirect.

19 THE WITNESS: The answer is no, not
20 under my proposal it would not be a change in rate
21 structure.

22 BY MR. FISCHER:

23 Q. But if the Commission did eliminate the
24 space-heating and all-electric rates, wouldn't you
25 agree that that would be a change in rate structure?

1 A. I -- I'm sorry. I don't know how to
2 answer that, Mr. Fischer, because I only know of --
3 of two proposals, that of myself and that of Staff,
4 and under either of those proposals, that would not
5 be a change in rate structure. So if the Commission
6 were to adopt something different which I'm not aware
7 of or would know what the specifics were, I -- I just
8 don't know how to answer that.

9 Q. Well, if hypothetically they found this
10 to be such a great idea to phase it out and to do it
11 faster and to do it all in this case, wouldn't you
12 agree that that would be a change of rate structure
13 for KCPL?

14 A. It possibly could be, I just don't know,
15 sir. I mean, I'd have to -- I'd have to know
16 specifically what is being proposed or what the
17 Commission would be doing to answer that.

18 Q. At the end of the three cases, if --
19 you're recommending that there not be an all-electric
20 or space-heating rate; is that correct?

21 A. The recommendation is they reach parity,
22 yes.

23 Q. And if -- if the Commission did that in
24 this case, wouldn't you agree that that would be a
25 change of rate structure?

1 A. If -- if -- if the rates were on par
2 with each other, that wouldn't necessarily be a
3 change in rate structure.

4 Q. It would just have a huge impact on
5 customers; is that correct?

6 A. It would just be that the rates would be
7 the same as they're -- there no longer would be a
8 difference in charging customers that are similarly
9 situated for the same usage, different amounts.

10 Q. Mr. Herz, would you agree with me those
11 customers that have those, what you call discounted
12 rates, would have a substantial increase if that
13 happened?

14 A. The customers that are -- that are
15 receiving the benefits of -- of the all-electric
16 general service discounted rates, for instance, if
17 those discounts were eliminated, that would result in
18 a -- in an increase to their winter season energy
19 charges. Of course, that would then be offset by a
20 reduction to the standard tariff customers' charges
21 in the winter season.

22 Q. Is it your understanding, sir, that the
23 signatory parties to the regulatory plan's
24 stipulation agreed not to support changes to the
25 company's rate structure in the second and third rate

1 cases contemplated in the regulatory plan?

2 A. Yes.

3 Q. On page 5 of your direct testimony at
4 lines 16 through 22, you recommend that the
5 Commission should require KCPL as soon as possible
6 but not later than the next -- than its next rate
7 case to present a complete cost of service and/or
8 cost effectiveness studies and analyses of the
9 general space-heating rate discounts; is that
10 correct?

11 A. Yes.

12 Q. Is my memory correct that in the 2006
13 rate case, Trigen also requested the Commission to
14 order KCPL to do a cost of service study?

15 A. I believe that was one of my
16 recommendations in the event the Commission did not
17 eliminate the general service space-heating
18 discounted rates altogether.

19 Q. And the Commission chose not to adopt
20 your recommendation in that 2000 rate case on that
21 point; is that correct?

22 A. I don't recall that the Commission
23 addressed that recommendation.

24 Q. Is it your understanding that the
25 Stipulation & Agreement in the regulatory case, the

1 regulatory plan case that was approved by the
2 Commission included a provision related to cost of
3 service studies related to the third rate case?

4 A. That it -- I'm sorry. Could you repeat
5 the last part there?

6 Q. Certainly.

7 A. Included a provision that relates to the
8 rate case?

9 Q. The cost of studies that would be done
10 in the third rate case.

11 A. Unless you're thinking of something
12 more, I -- I would have to review it again, but as --
13 as I recall -- let me back up. Rate case No. 3 is --
14 is referred to as the 2008?

15 Q. Yes.

16 A. Okay. Yes, thank you. Yeah, there is a
17 sentence -- I'm sorry. I was thinking of 2009. I
18 got mixed up there for a second. There is a sentence
19 in the heading under rate case filing No. 3, 2008
20 case that there would not -- and again, I'm
21 paraphrasing, that there would not be any class cost
22 of service studies or rate structure changes proposed
23 by the parties that signed onto that agreement.

24 Q. Thank you. Mr. Herz, did you include in
25 your testimony in this case any cost of service

1 studies?

2 A. No, I did not.

3 Q. Is it your understanding that KCPL has
4 had general service all-electric rates and
5 space-heating rates in its rate structure for quite a
6 long time?

7 A. I know that the company has had it since
8 the, oh, rate design case, the EO-94-199 that
9 resulted in settlement in 1996, I believe.

10 Q. Yeah, that's what I've been referring to
11 as the '96 rate case -- rate design case.

12 A. Right. And that's where the structure,
13 the general service rate structure as we now know it
14 and the all-electric general service rate schedule
15 and the separately metered provisions, that's where
16 that shows up.

17 Prior to that time period, I -- I --
18 it's my understanding the rate structure was
19 different and I don't know specifically how
20 space-heating-related items were handled. So --

21 Q. At least back to 1996 the company had
22 these space-heating and all-electric rates, as you
23 understand it?

24 A. Yes.

25 Q. Did you participate in that '96 rate

1 design case by chance?

2 A. No.

3 Q. Have you reviewed the rebuttal testimony
4 of Tim Rush, KCPL's witness, that included a copy of
5 a letter agreement between KCPL and Trigen dated
6 June 13th, 1996, in which Trigen agreed to support
7 and endorse before the Commission the Stipulation &
8 Agreement filed by the signatory -- the signatory
9 parties to KCPL's '96 rate design case?

10 A. Yes.

11 Q. And you haven't conducted a cost of
12 service study in this proceeding, but is there any
13 reason why you couldn't conduct a cost of service --
14 service study in the next case if you chose to do so?

15 A. I addressed -- I addressed this in -- in
16 my testimony in that the data that's normally
17 required for these cost of service studies are quite
18 voluminous, and it's -- it's better that if such an
19 effort were to begin by -- you know, by the company,
20 but --

21 Q. It's better for Trigen, isn't that what
22 you're saying?

23 A. Well, I think it's better for all -- all
24 parties. But secondly, I think there would be,
25 because of the company's current rate structure where

1 it already charges customers less in the wintertime
2 for their usage than the summertime, I -- I struggle
3 as to what type or how a study could be done that
4 could provide a basis that would support charging
5 even -- even lower rates than those reduced winter
6 rates to specific end-use customers.

7 Q. But in the last rate case that you
8 participated in, didn't you see a lot of cost of
9 service studies by lots of different parties besides
10 the company?

11 A. Yes. And not a single one of those
12 provided a basis for supporting or -- or identified
13 the cost of serving general service all-electric
14 customers or separately metered space-heating
15 customers, so even though --

16 MR. FISCHER: Your Honor, I think the
17 question has been answered.

18 JUDGE PRIDGIN: I agree.

19 BY MR. FISCHER:

20 Q. And -- and Mr. Herz, would you agree
21 with me the Commission did not adopt that position in
22 this Report and Order?

23 A. What position was that?

24 Q. That there was no support for those
25 rates. It didn't eliminate them as you requested; is

1 that correct?

2 A. The Commission did not eliminate the
3 discounted space-heating rates for general service
4 customers in the last -- in the last case.

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

7 JUDGE PRIDGIN: All right. Mr. Fischer,
8 thank you. Bench questions?

9 (NO RESPONSE.)

10 JUDGE PRIDGIN: Redirect?

11 MR. KEEVIL: Very briefly, Judge.

12 REDIRECT EXAMINATION BY MR. KEEVIL:

13 Q. Mr. Herz, Mr. Fischer asked you some
14 questions about the 1996 rate design case, or what he
15 referred to as the 1996 rate design case, which I
16 believe is the EO-94-199 case and whether or not you
17 participated in that case. Do you recall that, sir?

18 A. Yes.

19 Q. If I could direct you to your direct
20 testimony, page 11. Is it your understanding that
21 the discount rates are based upon the cost of service
22 study done in the 1996 rate design case?

23 A. It's my understanding that -- that they
24 were not.

25 Q. Is it your understanding that those

1 discount rates merely continued past practice, so to
2 speak?

3 A. Yes.

4 Q. Mr. Fischer also asked you, can't you do
5 your own class cost of service study without having
6 KCPL do one, or words to that effect. That's my
7 paraphrase. Do you recall that, sir?

8 A. Yes, I do.

9 Q. And I believe you mentioned that you
10 addressed that matter in your testimony, but could I
11 have you turn to page 15 of your direct testimony.
12 Beginning on line 16 of page 15 and continuing on to
13 the next page, is that where -- is that the reference
14 that you were referring to when you say you addressed
15 why Trigen doesn't prepare its own cost of service
16 study?

17 A. Yes. And also in my surrebuttal
18 testimony where I indicate that it -- it really
19 should be the -- the responsibility of the company to
20 provide a basis for supporting lower rates to
21 specific end-use customers as opposed to Trigen.

22 That -- that -- that really shouldn't be
23 the responsibility of Trigen to -- in response to
24 there not being a cost basis or a basis for
25 supporting the rates for Trigen then to have to

1 produce a study which says that there is no basis or
2 that there can be a basis. So to me, it's backwards.

3 Q. Mr. Fischer also asked you if you
4 didn't -- if you saw several class cost of service
5 studies in the last KCPL rate case. Do you recall
6 that?

7 A. Yes.

8 Q. Did any of those class cost of service
9 studies in the last rate case address the cost --
10 hello? Did any of those class cost of service
11 studies address the cost of -- or provide any cost
12 support for the separately metered space-heating
13 rates or the all-electric discount rates separate
14 from the class -- the small, medium or large general
15 service class as a whole?

16 A. No, they did not.

17 Q. Could you explain what was done?

18 A. In the -- in the last rate case which is
19 similar to what I understood that was done in the
20 rate design case, the EO-94-199, all of the general
21 service customers were put together in one of three
22 categories, that being small, medium, large, with no
23 differentiation between customers that were being
24 served under the standard tariff customers that were
25 being served and billed under the all-electric rates

1 or customers that were taking advantage of the
2 separately metered space-heating provision.

3 MR. KEEVIL: That's all I have.

4 JUDGE PRIDGIN: Mr. Keevil, thank you.

5 All right. Mr. Herz, thank you very much, sir.

6 THE WITNESS: Thank you.

7 MR. KEEVIL: I did offer his testimony,
8 right? My memory is getting terrible in my old age.

9 JUDGE PRIDGIN: I recall that you did
10 and I verified that by looking. I show 701, 702 NP
11 and HC and 703 all offered and admitted.

12 MR. KEEVIL: Thank you. May Mr. Herz be
13 excused? He is from out of town.

14 JUDGE PRIDGIN: Certainly. All right.
15 Thank you. Do my eyes deceive me or have we run out
16 of witnesses?

17 MR. FISCHER: I think we're done.

18 JUDGE PRIDGIN: All right. Is there
19 anything further from counsel?

20 MR. FISCHER: Judge, I just to want make
21 sure all the prefiled testimony's been offered.

22 JUDGE PRIDGIN: Yes, sir.

23 MR. FISCHER: I believe it has but --
24 for KCPL?

25 JUDGE PRIDGIN: Not necessarily

1 everybody, but your -- your client.

2 MR. FISCHER: Yeah.

3 JUDGE PRIDGIN: Let me verify that just
4 a moment. I show KCPL Exhibits 1 through 27 have all
5 been offered and admitted. Let me see if there are
6 any other exhibits. Yes, 28, 29, all the way through
7 35, I show they've all been offered and admitted.

8 MR. FISCHER: Okay. Thank you.

9 JUDGE PRIDGIN: You're welcome. Did --
10 I'm sorry. Did Staff have some exhibits as well?

11 MR. DOTTHEIM: Yes. I think at least
12 there were Exhibits 112, 113 and 114 which were
13 Mr. Traxler's, Steve Traxler's direct, rebuttal and
14 surrebuttal. They hadn't been offered because of the
15 Stipulation & Agreement that had been filed last week
16 and hadn't been offered pending whether any objection
17 or request for a hearing might be filed which I don't
18 believe that there have been any objections or
19 requests for a hearing filed with the Commission. So
20 the Staff would offer Exhibits 112, 113 and 114.

21 JUDGE PRIDGIN: Okay. 112 113 and 114
22 have all been offered. Any objections?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: Okay. Hearing none,
25 Exhibits 112, 113 and 114 are admitted.

1 (EXHIBIT NOS. 112, 113 AND 114 WERE
2 RECEIVED INTO EVIDENCE AND MADE A PART OF THE
3 RECORD.)

4 JUDGE PRIDGIN: Mr. Williams?

5 MR. WILLIAMS: Judge, I'm confident that
6 Exhibit 115 which is the surrebuttal testimony of
7 Graham Vesely has not yet been offered. I'd offer
8 that at this time.

9 JUDGE PRIDGIN: I'm equally confident
10 but I'll show that it's been offered. Objections?

11 (NO RESPONSE.)

12 JUDGE PRIDGIN: No objections. It's
13 admitted.

14 (EXHIBIT NO. 115 WAS RECEIVED INTO
15 EVIDENCE AND MADE A PART OF THE RECORD.)

16 MR. WILLIAMS: And unfortunately, my
17 records aren't that good. Do you have Staff's
18 exhibit list handy?

19 JUDGE PRIDGIN: I do.

20 MR. WILLIAMS: Can you run down it?

21 JUDGE PRIDGIN: I do. I do not -- I do
22 not show Exhibit 110 being offered. That would be
23 Mr. Lange's rebuttal testimony.

24 MR. WILLIAMS: Staff would offer
25 Exhibit 110 at this time.

1 JUDGE PRIDGIN: Objections?

2 (NO RESPONSE.)

3 JUDGE PRIDGIN: Hearing none, that's
4 admitted.

5 (EXHIBIT NO. 110 WAS RECEIVED INTO
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 JUDGE PRIDGIN: And I also show
8 Mr. Wells' direct and rebuttal have not been offered.
9 Those would be 119 and 120.

10 MR. WILLIAMS: Staff offers Exhibits 119
11 and 120.

12 JUDGE PRIDGIN: Objections?

13 (NO RESPONSE.)

14 JUDGE PRIDGIN: Hearing none, those are
15 admitted.

16 (EXHIBIT NOS. 119 AND 120 WERE RECEIVED
17 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

18 MR. DOTTHEIM: Judge, there -- there's
19 another matter. During the trial of the -- or the
20 hearing of the off-system sales issue, there was a
21 Staff data request No. 276 which I believe
22 Mr. Zobrist had indicated that there was a company --
23 a KCPL response dated August 1 of 2007 to that data
24 request. And that data request contains an
25 attachment which is similar to what the company

1 offered, had marked as Exhibit 35.

2 Upon checking the response date of that
3 data request, the response date on that data request
4 is August 31 and not August 1, and the -- the
5 attachment which is similar to Exhibit 35 doesn't
6 contain numbers for the month of August. It doesn't
7 have numbers in the column Less Undistributed RTO
8 Charges.

9 So the -- the Staff wanted to correct
10 the record as far as the date of the company's
11 response to data request No. 276, and I think the
12 company will verify that.

13 MR. FISCHER: My understanding that's
14 correct.

15 JUDGE PRIDGIN: All right. Thank you,
16 Mr. Fischer. All right. Anything further?

17 (NO RESPONSE.)

18 JUDGE PRIDGIN: Okay. If there's
19 nothing further from counsel, once the transcript is
20 in, I will -- I will order briefs, and I believe
21 Mr. Mills, you had asked earlier about transcripts
22 being filed. I did show a couple volumes being filed
23 on EFIS today, so it's already starting to roll in.

24 So I would anticipate the entire
25 transcript would be completed sometime late next week

1 or perhaps early the week after. If you just wanted
2 to project out 15 days from that, that would be a
3 likely date the briefs would be due.

4 Is there anything further?

5 (NO RESPONSE.)

6 JUDGE PRIDGIN: All right. Hearing
7 nothing further from counsel, that concludes the
8 hearing in Case No. ER-2007-0291. Thank you very
9 much. We're off the record.

10 (WHEREUPON, the hearing in this case was
11 concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I N D E X

2

3

ISSUE: EFFECT OF CASE NO. EO-2005-0329
STIPULATION AND AGREEMENT ON INTERCLASS
SHIFTS AND LARGE POWER SERVICE RATE DESIGN

4

5

STAFF'S EVIDENCE

6

JAMES C. WATKINS

7

Direct Examination by Ms. Kliethermes	963
Cross-Examination by Mr. Woodsmall	963
Cross-Examination by Mr. Bruder	964
Cross-Examination by Mr. Fischer	986

10

JANICE PYATTE

11

Direct Examination by Ms. Kliethermes	995
Cross-Examination by Mr. Bruder	998
Cross-Examination by Mr. Mills	999

12

13

JANICE PYATTE IN-CAMERA

14

Cross-Examination (Continued) by Mr. Mills	1021
--	------

15

16

JANICE PYATTE

17

Cross-Examination (Continued) by Mr. Mills	1025
Cross-Examination by Mr. Fischer	1030
Redirect Examination by Ms. Kliethermes	1031

18

19

20

PRAXAIR'S EVIDENCE

21

MAURICE BRUBAKER

22

Direct Examination by Mr. Woodsmall	1036
Cross-Examination by Ms. Kliethermes	1038

23

24

25

1	ISSUE: GENERAL SERVICE ALL-ELECTRIC TARIFFS AND	
2	GENERAL SERVICE SEPARATELY METERED SPACE-HEATING	
	TARIFF PROVISIONS	
3	Mini Opening Statement by Mr. Fischer	1040
	Mini Opening Statement by Ms. Kliethermes	1046
4	Mini Opening Statement by Mr. Keevil	1046
5		
	KCPL'S EVIDENCE	
6		
	TIMOTHY M. RUSH	
7		
	Cross-Examination by Mr. Keevil	1054
8	Redirect Examination by Mr. Fischer	1076
9		
	STAFF'S EVIDENCE	
10		
11	JAMES C. WATKINS	
12	Voir Dire Examination by Mr. Mills	
	(concerning Exhibit No. 103)	1081
13	Cross-Examination by Mr. Keevil	1090
	Cross-Examination by Mr. Fischer	1092
14		
15		
	TRIGEN'S EVIDENCE	
16	JOSEPH HERZ	
17	Direct Examination by Mr. Keevil	1097
	Cross-Examination by Ms. Kliethermes	1100
18	Cross-Examination by Mr. Fischer	1101
	Redirect Examination by Mr. Keevil	1115
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX		
2		MARKED	REC'D
3			
4	Exhibit No. 19 NP Direct testimony of Tim M. Rush	*	1053
5			
6	Exhibit No. 20 NP Rebuttal testimony of Tim M. Rush	*	1053
7			
8	Exhibit No. 21 NP Surrebuttal testimony of Tim M. Rush	*	1053
9			
10	Exhibit No. 103 Rate design report that Mr. Watkins sponsored	*	1084
11			
12	Exhibit No. 110 Rebuttal testimony of Shawn Lange	*	1121
13			
14	Exhibit No. 112 Direct testimony of Steve Traxler	*	1120
15			
16	Exhibit No. 113 Rebuttal testimony of Steve Traxler	*	1120
17			
18	Exhibit No. 114 Surrebuttal testimony of Steve Traxler	*	1120
19			
20	Exhibit No. 115 Surrebuttal testimony of Graham Vesely	*	1120
21			
22	Exhibit No. 116 Direct testimony of James C. Watkins	*	1084
23			
24	Exhibit No. 117 Rebuttal testimony of James C. Watkins	*	1084
25			

1	EXHIBITS INDEX (CONTINUED)		
2		MARKED	REC'D
3	Exhibit No. 118		
4	Surrebuttal testimony of		
	James C. Watkins	*	1084
5	Exhibit No. 119		
6	Direct testimony of		
	Curt Wells	*	1121
7	Exhibit No. 120		
8	Rebuttal testimony		
	of Curt Wells	*	1121
9	Exhibit No. 207		
10	Direct testimony of		
	Russell Trippensee	*	1096
11	Exhibit No. 208		
12	Rebuttal testimony of		
	Russell Trippensee	*	1096
13	Exhibit No. 209		
14	Copy of a data request		
15	that Ms. Pyatte submitted		
16	to Public Counsel and		
	the response that she		
	received	1013	**
17	Exhibit No. 601		
18	Direct testimony of		
	Maurice Brubaker	*	1037
19	Exhibit No. 602		
20	Surrebuttal testimony		
	of Maurice Brubaker	*	1037
21	Exhibit No. 701		
22	Direct testimony		
	of Joseph Herz	*	1099
23	Exhibit No. 702 NP		
24	Rebuttal testimony		
	of Joseph Herz	*	1099
25			

1	EXHIBITS INDEX (CONTINUED)		
2		MARKED	REC'D
3	Exhibit No. 702 HC		
4	Rebuttal testimony		
5	of Joseph Herz,		
6	highly confidential	*	1099
7	Exhibit No. 703		
8	Surrebuttal testimony		
9	of Joseph Herz	*	1099
10	Exhibit No. 704		
11	Copy of the		
12	Stipulation & Agreement		
13	in Case EO-94-199	1058	***
14	Exhibit No. 804		
15	Direct testimony of		
16	Gary Price	*	1089
17	Exhibit No. 805		
18	Rebuttal testimony		
19	of Gary Price	*	1089
20	Exhibit No. 806		
21	Surrebuttal testimony		
22	of Gary Price	*	1089
23	Exhibit No. 807		
24	Staff's response to DOE		
25	data request No. 68	970	995
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			
51			
52			
53			
54			
55			
56			
57			
58			
59			
60			
61			
62			
63			
64			
65			
66			
67			
68			
69			
70			
71			
72			
73			
74			
75			
76			
77			
78			
79			
80			
81			
82			
83			
84			
85			
86			
87			
88			
89			
90			
91			
92			
93			
94			
95			
96			
97			
98			
99			
100			

* Marked for identification in a previous volume.

** Not received into evidence due to motion filed that is still pending.

*** Commission will take notice of this exhibit.