

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 TRANSCRIPT OF PROCEEDINGS

5 Hearing

6
7 November 6, 2002

8 Jefferson City, Missouri
9 Volume 9

10
11 In the Matter of Laclede Gas)
12 Company's Tariff to Revise) Case No.: GR-2002-356
13 Natural Gas Rate Schedules.) Tariff No.: JG-2003-0902

14
15 KEVIN A. THOMPSON, Presiding,
16 DEPUTY CHIEF REGULATORY LAW JUDGE.

17 KELVIN SIMMONS, Chair,
18 SHEILA LUMPE,
19 CONNIE MURRAY,
20 STEVE GAW,
21 BRYAN FORBIS,
22 COMMISSIONERS.

23 REPORTED BY:

24 STEPHANIE L. KURTZ MORGAN, RPR, CCR
25 ASSOCIATED COURT REPORTERS
714 West High Street
P. O. Box 1308
Jefferson City, Missouri 65101
(573) 636-7551

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65101
TOLL FREE 1-800-636-7551
522

1 APPEARANCES:

2

3 MICHAEL C. PENDERGAST, Attorney at Law
4 720 Olive Street
5 St. Louis, Missouri 63101
6 (314) 342-0532

7 -and-

8 JAMES C. SWEARENGEN, Attorney at Law
9 Brydon, Swearengen & England, P.C.
10 312 East Capitol Avenue
11 P. O. Box 456
12 Jefferson City, Missouri 65102-0456
13 (573) 635-7166

14 -and-

15 RICK E. ZUCKER, Attorney at Law
16 5454 West 110th Street
17 Overland Park, Kansas 66211

18 FOR: Laclede Gas Company.

19 DOUGLAS E. MICHEEL, Senior Public Counsel
20 P. O. Box 7800
21 Jefferson City, Missouri 65102-0780
22 (573) 751-4857

23 FOR: Office of the Public Counsel
24 and the Public.

25 THOMAS R. SCHWARZ, JR., Deputy Counsel
26 LERA L. SHEMWELL, Associate Counsel
27 P. O. Box 360
28 Jefferson City, Missouri 65102
29 (573) 751-6434

30 FOR: Staff of the Missouri Public Service
31 commission.

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33

34

35

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65101
TOLL FREE 1-800-636-7551
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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 MR. PENDERGAST: I have just a little touch of
4 laryngitis, so if I need to go back to my coffee cup
5 for a minute, I hope you'll -- you'll bear with me.

6 JUDGE THOMPSON: That's fine. You can -- can
7 bring it up to the podium if you'd like.

8 MR. PENDERGAST: Maybe that would save some
9 time.

10 JUDGE THOMPSON: Sure. Go ahead.

11 MR. PENDERGAST: Okay. Everybody seems to
12 like it when I have laryngitis. I don't know why.

13 If it please the Commission, once again,
14 I -- I want to thank the Commission for acting so
15 promptly on this matter.

16 As we indicated on Monday, with each passing
17 day, the Company does lose a substantial portion of the
18 financial benefit that it bargained for when it
19 received the party's agreement to a November 1st, 2002
20 effective date.

21 So we really do appreciate the extra effort
22 that the Commission and that the Regulatory Law Judge
23 have made to address this matter in an expeditious
24 fashion.

25 I also want to advise you that the Company

1 filed substitute tariff sheets yesterday for the C&I
2 and large-volume customer classes that reflect the
3 rates that were developed by Dr. Proctor last week in
4 consultation with Mike Cline.

5 We, therefore, believe that the only remaining
6 issue relates to the proper winter rate for residential
7 service and what Block 1 therms should be used to
8 calculate that rate.

9 And as to that remaining issue, Laclede
10 believes that you do indeed have the authority and
11 jurisdiction to determine what Block 1 therm level and,
12 hence, what rate for residential service is required to
13 comply with the Commission's order and the stipulations
14 and agreements that were approved by that order.

15 In fact, making certain that the tariffs'
16 rates, rules and practices of the utility are in
17 compliance with the Commission's order is one of its
18 most fundamental obligations. And that obligation does
19 not vary simply because the tariff at issue has
20 resulted from a rate case.

21 And the fact that you have now held the
22 evidentiary hearing that Staff had requested on this
23 matter is something I think you noted in the order
24 yest-- issued yesterday should put to rest any
25 arguments that were previously made by the Staff about

1 your power to decide this matter as you believe it
2 should be decided, based on all of the pleadings and
3 testimony that have been submitted by the parties.

4 As Mr. Schwarz indicated to you Monday, there
5 is nothing in the stipulation agreement which you have
6 heard in this case that explicitly or directly
7 addresses the specific matter of how the therms for
8 Block 1 of the residential rates were to be determined
9 or that would get you to the conclusion that Staff has
10 suggested.

11 What we do have in the stipulation and
12 agreement, however, are provisions, that among other
13 things, recommended a \$14 million increase in revenues,
14 the adoption of weather mitigation rate design set
15 forth and described in the rebuttal testimony of
16 Laclede Witness Cline and use of an annual heating
17 degree norm of 4,718 to calculate the billing
18 determinants for all rate design purposes.

19 The evidence in this case indicates that from
20 the time the final stipulation and agreement for this
21 case was filed on September 5th, 2002 at the time that
22 the Company had intended to file its compliance tariffs
23 on October 15th, 2002, there was only one party, namely
24 Laclede, that it actually developed and circulated to
25 the other parties a set of billing determinants,

1 including Block 1 therms for the residential class that
2 purported to bring all of these elements to the
3 stipulations and agreements together and reflect them.

4 The Staff has acknowledged that the Company
5 sent these billing determinants to the Staff on
6 September 11th, 2002 in a three-page document that
7 ult-- included the cover email that had the same exact
8 level of Block 1 therms for the residential class that
9 the Company ultimately used in its compliance filing.

10 The Staff, as well as Public Counsel, have
11 also acknowledged they received a more expansive set of
12 documents from the Company on September 13th, 2002
13 that, once again, set out the exact same Block 1 therms
14 that the Company subsequently used to calculate the
15 residential rates in its compliance filing, and that
16 were accompanied by an email that specifically
17 indicated that they represented the agreed-upon billing
18 determinants and rates for the residential class. And
19 that included Block 1 therms.

20 Finally, the Staff has acknowledged that it
21 never disputed these billing determinants and Block 1
22 therms or provided its own billing determinants for the
23 residential class until more than a month later on
24 October 15th or 16th.

25 Nevertheless, the Staff has taken the position

1 that it never knowingly agreed to these billing
2 determinants and Block 1 therms, despite its prior
3 comments that they looked okay. And that while they
4 were set out in the documents sent by Laclede, the
5 Company failed to explain exactly how it arrived at
6 that.

7 For the first time on Monday the Staff and
8 Public Counsel also indicated that while it was never
9 referenced in any stipulation and agreement provision,
10 the Company had also agreed in its rebuttal and
11 surrebuttal testimony to use the Staff's method of
12 arriving at billing determinants.

13 Turning to the last contention, first, we
14 think it's clear from the rebuttal and surrebuttal
15 testimony cited by Staff that any comments the Company
16 made in its testimony regarding the use of Staff's
17 method was conditioned on the Commission's adoption of
18 the Company's proposed weather mitigation clause,
19 whereas the Staff's own witness explained it doesn't
20 matter what therms you use, since you always adjust
21 from any deviation from those therms due to weather.

22 In fact, when the issue was first mentioned by
23 Laclede Witness Raab in his rebuttal testimony, he
24 clearly stated the Staff's method could be used -- and
25 I quote "for purposes of the WMC."

1 Since Mr. Raab also discussed the Company's
2 weather mitigation rate design proposal in his rebuttal
3 testimony, this clearly indicates just the opposite of
4 what Staff and Public Counsel suggested, since he did
5 not say that the same method could be used for purposes
6 of weather mitigation rate design.

7 The fact that neither the surrebuttal
8 testimony of the parties nor this alleged commitment by
9 the Company to use Staff's method for arriving at
10 billing determinants was ever referenced in the
11 stipulations and agreements approved in this case, and
12 that Staff did not even raise this contention in, I
13 think, the three pleadings and memorandums that it
14 filed prior to the Monday hearing are further
15 indications of the lack of any substance to this claim.

16 As the Staff contention that it never
17 knowingly agreed to the billing determinants in Block 1
18 terms, the Company sent it on two occasions in
19 mid-September, again, with emails asking them to please
20 review them and call the Company to discuss.

21 All we can do at this stage is accept that the
22 Staff never really reviewed the residential block term
23 amounts that had been calculated by the Company or
24 compared them to what the Staff had previously used,
25 and, therefore, had no reason to dispute them or follow

1 up on them with the Company.

2 And if the Company is to be held partially
3 responsible for that because it provided either too
4 little or conversely too much information to go along
5 with those billing determinants, so be it and we regret
6 that.

7 Hopefully we can all learn from this
8 experience and not have to confront the Commission with
9 a situation like this again.

10 But that still leaves the issue of what
11 Block 1 therms should be used to calculate the
12 residential rates in this case. And we would
13 respectfully suggest that the record in this case
14 supports the use of the Block 1 therms on which we
15 calculated the residential winter rate in our
16 compliance filing. Or at a minimum, it certainly
17 reflects our proposal to split the difference.

18 There was a lot of testimony on Monday
19 regarding the method that Staff used and why we
20 concluded that it did not establish a reasonable therm
21 level for the November cycle billing month, which is
22 where the therms in dispute in this case come from.

23 For its part, the Staff said that it
24 calculated an average for Block 1 normalized therm
25 usage of 58.2 therm per customer during the November

1 cycle billing, based on a regression analysis.

2 As Ms. Krieger and Mr. Buck testified,
3 however, that analysis has serious flaws when used to
4 determine Block 1 therms under the -- the new weather
5 mitigation rate design.

6 Most significantly, it produces results for
7 November that are just plain unrealistic and that bear
8 no absolutely relationship to the actual customer usage
9 that the Company has experienced during the November
10 cycle billing month under real world conditions.

11 As Ms. Krieger testified and as one of the
12 attachments presented by Staff in its November 1st
13 response to the Commission's order demonstrates, one
14 has to go back to 1996 and 1997 when the weather was
15 significantly colder than normal to even approach the
16 levels recommended by Staff in this case.

17 Specifically Attachment A-1 of Staff's
18 November 1st filing shows that the average per-customer
19 usage amount of 58.2 therms that was used by Staff in
20 this case -- or at least what they proposed to use in
21 this case for November -- was based on a normal degree
22 level of 482 degree days for that month.

23 If you go back to November 1996, however,
24 you'll see that it took some 550 degree days to produce
25 an average customer usage amount of just 57.8 therms.

1 In other words, it took 14 percent more degree days in
2 1996 to produce an average customer usage amount for
3 November that is actually lower than the normalized
4 usage amount assumed by Staff in this case.

5 Similarly, if you go back to November 1997,
6 you can see that it took 600 degree days, or about
7 24 percent more degree days, than the normal assumed in
8 this case to produce an average customer usage amount
9 that is just slightly above the one that's been assumed
10 by Staff in this case.

11 The Company has agreed to a number of Staff
12 billing determinants adjustments in this case,
13 including ones that were never in any of Staff's
14 filings or work papers, and that cost Laclede
15 financially because we believe they made sense.

16 However, it could not in good conscience agree
17 to a result like this one for Block 1 therms that was
18 so painfully and obviously inconsistent with what we
19 knew about reality.

20 And if you have -- had no -- and you've had no
21 explanation from Staff or anyone else to suggest how
22 these results can really be squared with reality. In
23 fact, all you heard from Mr. Beck, who incidentally was
24 not the Staff witness, who performed that -- the
25 analysis leading to the 58.2 therm amount was that this

1 was simply the result of Staff's regression analysis.

2 Mr. Buck, however, could not tell you what
3 margin or standard of error is contained in Staff's
4 regression analysis, how the regression actually works
5 or why it should be believed in the face of the real
6 world facts that the Company has presented.

7 He also acknowledged that Staff's regression
8 analysis does not define all of the variables that are
9 necessary to determine Block 1 therms. Nevertheless,
10 Staff never went back and compared the results of that
11 regression analysis, as we did, to how they stacked up
12 in comparison to historical usage and historical therms
13 and -- and -- and degree days.

14 In fact, all that, really, Mr. Beck could do
15 was to suggest that this unrealistic November result
16 was inappropriate -- or at least our elimination of it
17 was inappropriate, because under Staff's regression
18 analysis there were some points below the line that the
19 Com-- that went the Company's way.

20 As Ms. Krieger testified on Monday, however,
21 the Company had looked at the therms calculated by
22 Staff for all of the other winter months and had
23 provided Staff with an analysis showing that there was
24 no significant or comparable deviation from real world
25 results that went the other way. Notably, the Staff

1 has not said a word about that analysis.

2 In contrast, the 54 therm amount used by the
3 Company is far more consistent with these real world
4 conditions and results. Although the Staff and Public
5 Counsel criticized Ms. Krieger for only using two
6 points in her analysis, they, unlike the Company, were
7 not able to show -- in fact, did not even try to show
8 that her approach produced an unrealistic result when
9 compared to actual real world data.

10 And that's probably because as Ms. Krieg--
11 Krieger explained, the two points she chose were the
12 ones that were closest in degree days to the normal
13 used in this case or one that was closest to the usage
14 amount that sugg-- had been suggested by Staff.

15 It should be noted that Ms. Krieger also
16 testified that if you perform a regression analysis to
17 reflect all six year -- years or points in her
18 historical data set, it still produced a much lower
19 customer usage amount than Staff's analysis, ranging
20 from 55 to 56 therms.

21 In view of these results, there is simply no
22 basis for concluding that the use of Company's Block 1
23 therms will result in a rate that is designed to
24 produce more than \$14 million in revenues, and
25 certainly no basis whatsoever for concluding that

1 Staff's therms and rates are -- are, in fact, designed
2 to produce that level of revenue.

3 In -- in any event, these considerations
4 should at a minimum lead the Commission to conclude, as
5 Laclede has proposed, that it can split the difference
6 between the Staff and the Company on this issue and
7 feel that it has done justice.

8 Finally, the Block 1 therms used by the
9 Company are reasonable and appropriate because they are
10 necessary to produce the level of weather mitigation
11 protection that the Company bargained for and thought
12 it had received when its rate design was approved by
13 the Commission.

14 I could go over again the various financial
15 and other concessions that the Company made to obtain
16 this bargained-for level of protections. But as
17 Mr. Cline testified in his Exhibit 76 in this case
18 shows the 85 percent level of weather mitigation
19 protection that he specifically quantified and
20 presented in his surrebuttal testimony as being
21 produced by his rate design was premised on receiving
22 88 protection -- percent protection from
23 weather-related losses for residential customers alone.

24 As Exhibit 76 that's been admitted in this
25 proceeding shows, however, use of Staff's Block 1

1 therms would only afford the Company 80 percent
2 protection, an amount that is significantly less than
3 what the Company bargained for and received when it
4 designed rates.

5 I would note the Public Counsel Witness who
6 did provide her analysis that showed that the Staff's
7 rate design would actually provide the same or even a
8 slightly greater level of weather mitigation protection
9 for the Company -- excuse me for just a moment -- as
10 Mr. Cline explained, though, her analysis simply
11 assumes that we will, in fact, achieve the level of
12 usage that Staff has assumed in calculating its
13 normalized therm amounts for the month of November.
14 And obviously we disagree that that's going to happen.

15 And -- and furthermore, if we believed that we
16 had achieved the same level of weather protection, we
17 wouldn't be here today. We've already proposed that if
18 usage were to go over 54 therms, that that would be
19 treated as gas cost revenue and none of it would be
20 retained by the Company.

21 So we're not here trying to go ahead and make
22 any more money than what we think the \$14 million was
23 that was authorized and get the level of weather
24 protection that we think we bargained for and received.

25 And if we thought we were getting it under

1 Staff's approach, we certainly wouldn't have taken up
2 your time in the manner that this has taken it up.

3 Finally, I'd also like to alert you to the
4 fact that Mr. Cline in his testimony -- and it's
5 reflected in Exhibit 76 that calculated an exposure for
6 the residential class of about \$1.3 million. And
7 that -- that would be remaining exposed to the Company
8 if our weather mitigation design was to be approved.

9 And just to kind of put into perspective how
10 much more exposure we have if you use Staff's therms,
11 if you go back and you look at Attachment A-1 to
12 Mr. Beck's memorandum that he filed on October 1st --
13 or November 1st, excuse me -- in this proceeding, it
14 sets out those six years of usage that we've actually
15 experienced. And it -- it goes ahead and sets out what
16 the degree days were during that period.

17 But if you look at that, just a couple of
18 years ago we had usage of 48 therms during that month
19 of November. And 48 compared to the 58 that Staff has
20 assumed to be -- should be used in this case is
21 10 therms.

22 Well, the 4-therm difference between the Staff
23 and the Company, the 58 and the 54, is worth about a
24 million dollars -- 960,000. But now, if we set it at
25 58 and we have another 48-therm November, you're

1 talking about a 10-therm difference.

2 And if you just want to use rough math, the
3 4 therms is about a million, 10 therms is about worth
4 two and a half million. And that two and a half
5 million is a far cry from the \$1.3 million worth of
6 exposure that we thought we were getting with the rate
7 design that was adopted by the parties and approved by
8 the Commission in this case.

9 For all of these reasons we believe Staff's
10 current allocation is neither reasonable nor consistent
11 with the revenue requirement and the weather mitigation
12 rate design provision of the stipulations and
13 agreements that were approved by the Commission.

14 We would accordingly urge the Commission to
15 either approve the residential rate we included in our
16 compliance filing, or at least one of the two options
17 that we had previously submitted.

18 The one is the split-the-difference option,
19 where we would move half of the therms that Staff has
20 proposed into Block 1 and leave the other half in
21 Block 2. Or the tariff option where if we were to go
22 over 54 therms, those would be treated as gas cost
23 revenues and we would not go ahead and receive any
24 benefit of those.

25 The third option that we had previously

1 mentioned about putting it into effect, subject to
2 refund based on a final Commission decision. It seems
3 as if you already had the hearing that was contemplated
4 by that option.

5 I'm guessing that you're probably not
6 enthusiastic about -- not -- not having another hearing
7 on this issue, and, therefore, I don't believe that
8 issue is probably still relevant.

9 We believe these are all reasonable approaches
10 for resolving a difficult matter that was unexpectedly
11 thrown into your lap at the last minute.

12 Once again, we very much appreciate the effort
13 that you and Judge Thompson have made to address this
14 matter on a prompt basis. And we would only ask that
15 no matter what you decide, that you allow new rates to
16 go into effect in the very new future.

17 Thank you very much.

18 JUDGE THOMPSON: Thank you, Mr. Pendergast.

19 Mr. Micheel?

20 MR. MICHEEL: May it please the Commission,
21 Doug Micheel on behalf of the Office of the Public
22 Counsel.

23 Let me start at the beginning. It's Public
24 Counsel's belief, based on the prefiled testimony in
25 this case that for purposes of the stipulation and

1 agreement that was entered into in this proceeding that
2 we would be utilizing Staff's billing determinants.

3 And that is based on the surrebuttal testimony
4 of Mr. Cline, which states in pertinent part since the
5 parties have agreed on what amount of heating degree
6 days should be used for rate design purposes -- that's
7 the key word, rate design -- key phrase, rate design
8 purposes -- in this case.

9 And as Laclede Witness Raab indicated in his
10 rebuttal testimony, the Company is willing to use
11 Staff's method for turning those degree days into
12 billing determinants.

13 At the time this testimony was filed, the
14 Company had presented two rate designs for this
15 Commission's consideration. One was the weather
16 mitigation clause, one was the weather mitigation rate
17 design.

18 This testimony comes after both of those
19 options were on the table. Public Counsel Witness Hu
20 testified in her affidavit and on the stand that it was
21 Public Counsel's understanding at that time that the
22 Company had agreed.

23 What happened then? The parties entered into
24 the first amended stipulation and agreement where we
25 agreed to utilize the Staff's weather mi-- or the

1 Company's proposed weather mitigation rate design.

2 As all of the witnesses testified, and
3 Mr. Pendergast just told you in his argument, there's
4 no mention one way or the other about what billing
5 determinants were to be used or not used.

6 It was Public Counsel's belief the reason it
7 was not in that first amended stipulation and agreement
8 is because that had been settled in the testimony of
9 Mr. Cline.

10 Why is that important from Public Counsel's
11 perspective? First of all, you've heard a lot of
12 testimony about the September 11th email -- the
13 purported email that had the change in the first block
14 November rates embedded in it.

15 First of all, and importantly, the Office of
16 the Public Counsel did not receive that email. We had
17 no reason to believe that there was going to be a
18 change. We didn't get it. We believed it was the
19 Staff's billing determinants.

20 Subsequent to the September 11th email, we did
21 receive an email on 9/13 from Mr. Cline. Both Ms. Hu
22 and Mr. Bush received that email. The body of that
23 email indicates that the Staff and the Company are in
24 agreement to these billing determinants.

25 The Office of the Public Counsel had no reason

1 to believe that anything had changed from the time the
2 surrebuttal testimony of Mr. Cline had been filed to
3 the time there was an agreement.

4 The first the Office of the Public Counsel
5 heard about the disagreement was on October 16th or
6 18th when the Staff brought this to the Company's
7 attention and the Commission's attention and our
8 attention.

9 Now, you've heard a lot of testimony about
10 whether or not that November change was explicit
11 and -- or embedded. I think you can come to your own
12 conclusions. But I can tell you, I think the evidence
13 in this proceeding clearly demonstrates it wasn't
14 explicitly made.

15 The Office of the Public Counsel was not aware
16 of it until it was brought up on October 16th. And we
17 were operating under our belief that it was the Staff's
18 billing determinants that should be used.

19 Now, subsequently did Mr. Cline testify that
20 his testimony meant something different in our
21 evidentiary hearing, yes.

22 But I ask you to look at the testimony as it
23 stood that day and come to your decision. And that's
24 why Public Counsel has the view that it was already the
25 Staff's billing determinants and that's what we'd

1 agreed on.

2 And this exercise that we're going into about
3 whether Staff's regression analysis are right -- is
4 right or -- or -- or the Company's historical two-point
5 method is right, you don't even need to reach that.

6 Because I think there is enough evidence and
7 testimony that that was the purpose and that was the
8 basis that the stipulation and agreement was entered
9 into.

10 But if for some reason the Commission thinks
11 they need to look at the subsequent evidence that was
12 taken, I think the issue can be boiled down to this:
13 Whether or not the Commission should use Staff's
14 regression method or Laclede's substitute method for
15 determining the November 1st winter block therms.

16 And I think that the record evidence on this
17 matter is clear that Staff's regression analysis method
18 based on test year data is superior to the Company's
19 use of two abstract data points from six years data.
20 There is no explanation on why that is better.

21 And it's important to remember that the
22 Company filed this new rate design proposal in its
23 rebuttal testimony and knew or should have known that
24 it would become important, since the proposal of the
25 new rate design was to move all costs into the first

1 winter block -- that that would be an important item.

2 And yet we have surrebuttal testimony that
3 indicates that they were willing the use Staff's
4 heating degree days for rate design purposes. At --
5 at -- at best they should have looked.

6 But which method is -- is more appropriate,
7 the Staff's method or the Company's method? Ms. Hu
8 testified that, from her expert point of view and
9 opinion that, the Staff's method was more appropriate
10 and more consistent.

11 She testified that it used test year data,
12 that it could be tested, that it was consistent with
13 the first blocking -- the 65 therm first block and --
14 and -- and keeping all of those in.

15 And it's important that what the Company has
16 done is they've accepted eleven months of the Staff's
17 test year data and regression analysis.

18 But from our view, unilaterally they've come
19 in and said, gee whiz, we don't like the result for the
20 November month so now what we're going to do is we're
21 going to mix and match the historical test year data.
22 And for the month of November, we're gonna throw that
23 out and we're gonna say, let's look at actual data.
24 And that's not consistent and that's not good
25 statistical use and good statistical analysis.

1 And I think if the Commission is given a
2 choice between those two, if you -- if you reach that,
3 you should go with the Staff's regression analysis.
4 That's -- that's better and -- and that's what Ms. Hu
5 testified to.

6 Ms. Hu also testified importantly in her
7 affidavit that Staff's method would produce
8 86.6 percent weather protection for the Company.

9 Now, Mr. Pendergast said, well, Mr. Cline got
10 up here and rebutted that. But I ask you to look at
11 the affidavit and look at the attachments to that
12 affidavit.

13 That affidavit is based upon the Company's
14 work papers that were provided to Ms. Hu immediately
15 after the Company filed their rebuttal testimony with
16 their rate design weather mitigation proposal in it.

17 The Office of the Public Counsel wanted to
18 understand how it worked. Mr. Cline testified that
19 those were -- numbers were consistent. Ms. Hu did the
20 analysis and -- and came up with the 86.6 percent.

21 She indicated that even with the change in the
22 Staff's billing therms, that there would not be much
23 movement in the 86 percentage point.

24 Subsequent to Ms. Hu's testimony, the Company
25 admitted into evidence the work papers of Mr. Cline,

1 Exhibit 86, which purports to show that there's only
2 80-percent protection. That's their claim.

3 The problem with Exhibit 76 is the Company
4 indicates that for a 20 percent warmer-than-normal
5 winter the Company would be losing approximately
6 \$896,834. And they subtract that off the
7 normal rev-- the revenues that they would get would be
8 20 percent warmer-than-normal weather affect.

9 What that exhibit fails to do is also subtract
10 that number from the normal weather. And when you
11 subtract it both from the normal weather and the affect
12 of 20 percent warmer-than-normal weather and do the
13 calculation, as Ms. Hu said, the calculation comes out
14 again to the 88 percent.

15 What I'm telling you is that Exhibit 76 only
16 shows half the story. And in order for Exhibit 76 to
17 show the rest of the story, the Company should have
18 subtracted the loss in revenues from billing
19 determinant from a normal billing cyc-- normal weather
20 billing year. And they didn't do that.

21 And if you do that, the calculation comes out
22 the same. And Laclede got the benefit of the
23 bargain -- or their belief of the benefit of the
24 bargain.

25 But let me talk about that and what the

1 evidence is with respect to the alleged benefit of the
2 bargain.

3 First of all, I think the Staff's method gives
4 Laclede their belief of what the benefit of the bargain
5 is. Secondly, the first amended stipulation and
6 agreement in this matter references Mr. Cline's
7 rebuttal testimony.

8 There is absolutely not one iota of
9 quantification in Mr. Cline's rebuttal testimony of
10 what level of weather protection the Company was
11 anticipating. The only place that you see a number is
12 the 85 percent in Mr. Cline's surrebuttal testimony.

13 All of the parties testified -- in fact,
14 Ms. Hu -- one of the criticisms that Mr. Cline leveled
15 in his testimony with respect to Ms. Hu's affidavit
16 was -- and I'm -- I'm specifically talking about
17 Attachment A, page 2 of 2 where we got their underlying
18 numbers for their proposal is, well, those numbers have
19 changed.

20 And -- and -- and I think the record evidence
21 and I believe my opening in the evidentiary hearing
22 went through how all of the billing therm numbers for
23 the Company has changed differently -- we had 209, we
24 had 210, we had 212 -- where the Staff had roughly
25 always been at the 215 billing determinants.

1 But for purposes of the initial information
2 that we received from the Company on August 9th, the
3 email attached as Attachment A, it was 209 therms for
4 the Company.

5 So we all knew that those therms were moving
6 around. And it was clear from the testimony that the
7 tariff sheets attached to Mr. Cline's testimony were
8 specimen tariff sheets.

9 Now, if -- if -- if we want to go through
10 and -- I mean, I think Ms. Hu testified, we'd be happy
11 to give the Company the rates on those specimen tariff
12 sheets if you want to take it that far.

13 But everybody knew those were specimen tariff
14 sheets and those were examples. So I don't -- I don't
15 find that very persuasive.

16 And I think that the Staff's method gives the
17 Company more than what it's bargained for, especially
18 when you correct for the flaw in their Exhibit 76 and
19 take off the revenue from the normal year -- the -- the
20 proper way to do it.

21 Also I think it's important for the Commission
22 to note, at least res-- with respect to the Office of
23 the Public Counsel, that we didn't sandbag you on this
24 issue. We didn't not look at the September 11th email
25 thoroughly, because we didn't get the September 11th

1 email. And it's very hard for us to look at something
2 we did not get.

3 With respect to the September 13th email, we
4 got an email that said the Staff and the Company had
5 agreed. It was our belief that they had already agreed
6 on the residential billing determinants, because
7 Mr. Cline had specifically said in his surrebuttal
8 testimony that for rate design purposes they had
9 agreed.

10 The first amended stipulation and agreement
11 did indicate, however, that there would be some dis--
12 disagreement -- or not disagreement. That's the wrong.
13 That -- that the parties needed to work out the
14 C&I billing determinants, and that's specifically set
15 out in there.

16 And that's what the Office of the Public
17 Counsel understood the agreement to be in the
18 September 13th email.

19 So I think at the end of the day there are
20 two decision points the Commission can make here.
21 First of all, I think going into the stipulation and
22 agreement, Mr. Cline's surrebuttal testimony
23 demonstrates that the Company had affirmatively stated
24 for rate design purposes that they could live with
25 Staff's billing determinants. And I think that should

1 be the end of your inquiry right there.

2 Secondly, if you think there was not a meeting
3 of the minds or we need to look at the further
4 evidence, you can look at the further evidence. And I
5 think the testimony and the exhibits you've had heard
6 clearly -- clearly demonstrate that the regression
7 analysis that the Staff did based on test year data is
8 superior to Laclede's method, and that that regression
9 analysis gives Laclede the benefit of the bargain.

10 Thank you very much.

11 JUDGE THOMPSON: Thank you, Mr. Micheel.

12 Mr. Schwarz?

13 MR. SCHWARZ: May it please the Commission, I
14 think what the Commission is faced with -- with now is
15 a case of buyer's remorse on a scale that -- that most
16 of us have encountered in other everyday lives.

17 That is, you buy a chair at which you think is
18 a good price. And you get it home and it doesn't match
19 the curtains like you thought it would and it doesn't
20 match the rug.

21 You -- you arrange for a nice vacation at the
22 beach and it rains every day. And you think, gee, if
23 I'd only known, if I'd only realized.

24 And understand that Ms. Krieger admitted
25 essentially as much Monday afternoon when she said that

1 having signed the first stipulation and agree-- the
2 initial stipulation and agreement, the first amended
3 stipulation and agreement and the second amended
4 stipulation and agreement, which was signed on
5 September the 5th.

6 It wasn't until just before the September 11th
7 email to Staff that the Company suddenly recognized
8 that using Staff's billing determinants, as they add
9 agreed upon, in conjunction with the rate design that
10 the Company had proposed on August the 2nd in
11 Mr. Cline's rebuttal testimony that, gee, this isn't
12 exactly what we thought we were getting.

13 Let's go through the -- through the details a
14 little bit. First of all, make no mistake that
15 obtaining some kind of mitigation of the negative
16 impact of warm weather on its earnings was a major
17 factor in -- a major goal in Laclede's rate case.

18 Laclede's CEO and chairman of the board,
19 Mr. Jaeger, in his direct testimony on page 8 in
20 response to an inquiry about what steps the Commission
21 should take in this case, says -- beginning at line 17,
22 first and foremost, I believe that it is imperative
23 that the Commission approve our proposals for
24 mitigating the impact of weather on both the Company
25 and its customers.

1 As described in the testimony of Witness
2 M. T. Cline, Laclede has developed and filed a weather
3 mitigation clause in this case that will not raise base
4 rates per se, but rather do nothing more and nothing
5 less than, A, permit the Company to recover those costs
6 and only those costs of providing utility service that
7 have previously been deemed reasonable, necessary and
8 prudent by the Commission.

9 Weather adjustments were clearly a driving
10 force for Laclede in this case. It also became clear
11 to Laclede through the -- through -- by the time the
12 prehearing was held and rebuttal testimony was filed
13 that neither Staff nor Public Counsel was going to
14 agree to the weather mitigation clause they had
15 proposed.

16 But there was some possibility that the
17 parties could -- could strike an agreement on a rate
18 design that would accommodate the impacts of weather.

19 At page 2 of his re-- surrebuttal testimony
20 that was filed on August the 23rd at line 14 -- Ms. --
21 Mr. Cline notes, I did not include the Company's
22 proposed WMC, that's the weather mitigation clause, in
23 this comparison since based on the response of the
24 Staff and Public Counsel to such proposal, the Company
25 has indicated that it is prepared to recommend the

1 Company's rate design proposal as the preferred
2 alternative.

3 Company understood at the time of Mr. Cline's
4 rebuttal in early August that they were shifting from
5 the weather mitigation clause to a rate design solution
6 to what they perceived to be a serious problem.

7 Later in that same testimony on page 18
8 Mr. Cline says -- beginning at -- at line 14 -- there
9 is no reason for this to be an issue in this case since
10 the parties have agreed on what amount of heating
11 degree days should be used for rate design purposes in
12 this case.

13 That's the 4,718 heating degree days that was
14 included in the first stipulation. And as Laclede
15 Witness Raab has indicated in his rebuttal testimony
16 the Company is willing to use Staff's method for
17 turning those heating degree days into billing
18 determinants.

19 As such, this argument should not be used as a
20 reason for not moving forward with the weather
21 mitigation clause. Moreover, should the Commission
22 choose (sic) to adopt the weather mitigation rate
23 design that the Company has recommended, this should
24 not be an issue at all.

25 It is at least clear to Staff from that, that

1 the heating degree days was resolved and that the
2 Company was willing to use Staff's method to transform
3 heating degree days into billing determinants, in this
4 case, therms per revenue requirement per period.

5 Let's go back in time a little. Well, first
6 of all, Laclede uses block rates in its generation
7 of -- of revenue from customers. That is, Laclede
8 charges one rate for gas service up to 65 therms per
9 period and a different rate for usage in excess of
10 65 therms.

11 The bla-- and that's been the -- the case for
12 a long period of time. Staff made Laclede Gas aware
13 of -- of its method of converting heating degree days
14 to therms and the number of billing determinants it
15 used for the first block winter rates and the second
16 block winter rates in work papers that supported
17 Staff's direct testimony filing on June the 20th of
18 this year.

19 Underlying Staff's calculation of those
20 billing determinants what is the 58.2 therms per
21 customer usage in November, based on Staff's regression
22 analysis. That's how that piece fits in.

23 Laclede -- that's the method that Staff used
24 in its recent rate cases. The Company was familiar
25 with that. The Company knew that. And it was set out

1 in -- in Staff's work papers on June 20th.

2 Staff again alerted Laclede to its first block
3 residential winter billing determinants of 215 million
4 therms, as well as the total number of therms in
5 Staff's year in Anne Ross's July 16th spreadsheet.
6 That is the spreadsheet that Ms. Krieger refers to in
7 her September 11th email to the Staff.

8 So it's clear that by -- by -- that the
9 Company acknowledges on September 11th that it has had
10 Staff's 215 million therms for the first winter block
11 since July 16th before Laclede proposed its rate
12 design, before it reached the agreement on the total
13 number of heating degree days in the year and before it
14 agreed in Mr. Cline's testimony to use Staff's billing
15 determinant conversion -- heating degree days to therms
16 in his rebuttal testimony.

17 The -- the effect of the combination of
18 heating degree days and Staff billing determinants
19 could be calculated, as Mr. Beck stated on the stand,
20 not with the first stipulation and agreement -- the
21 original stipulation and agreement, because at
22 that -- that just specified the number of heating
23 degree days the parties were gonna use. It didn't
24 specify how those heating degree days were gonna be
25 converted into billing determinants.

1 But once -- once you have the -- couple that
2 with Mr. Cline's acknowledgment that the Company is
3 willing to use Staff's billing determinants and the
4 second stipulation and agreement as filed, you
5 can -- you can then see any difference between what the
6 Company's proposal would have done and Staff's proposal
7 would have done.

8 And it -- it should have been clear to -- to
9 all concerned at that stage what the difference between
10 Laclede's approach and Staff's approach should be.

11 So basically Laclede shortly before
12 November 11th discovers that, gee, the -- the new chair
13 really doesn't go with the curtains. This is -- this
14 is not good. So what do they do?

15 They send Staff an email, the third page of
16 which is titled, billing determinant summary.

17 Okay. And it starts off with billing
18 determinants per Anne Ross 7/16/02. And it lists a
19 total number of therms in the -- that Ms. Ross had for
20 the test year revenue.

21 But the total number of therms is not the
22 billing determinants. The billing determinants are
23 the -- the -- the one that's really in dispute is the
24 215 million billing therms for the winter first block
25 residential rate.

1 Ms. Krieger then lists adjustments, including
2 an adjustment for the agreed-upon 4,718 heating degree
3 days, which you have to factor into account because
4 Staff's position originally filed was 4,753 --
5 35 heating degree day difference. That's converted.

6 But there is no indication that Laclede in
7 these calculations have -- has changed the billing
8 determinants that were also included on that 7/16 Ross
9 spreadsheet. No indication at all.

10 And that -- and -- and saying that, well,
11 we -- we started with the same number of therms is not
12 the same thing as saying that a million -- a billion,
13 twenty million therms are Staff's billing determinants.

14 Staff's billing determinants are specific to
15 periods. The Company changed it and didn't indicate it
16 in the summary sheet, as Ms. Hu indicated from the
17 stand on Monday.

18 It's not -- when analysts receive spreadsheets
19 that say, hey, I've changed five numbers. What you do
20 is you look at the changed five numbers that they list
21 and see if -- if those correspond as -- as laid out.

22 It's not necessarily expected that you go
23 through and examine every number to see if -- if other
24 items have changed.

25 And along those lines, it's interesting to

1 note that in submitting materials to the Commission the
2 Company circled the number in question. It certainly
3 did not circle the number in question, it did not
4 reveal the number in question, it did not call the
5 Staff's attention to the number in question.

6 In fact, the -- the summary sheet would have
7 tended to lead Staff off in another direction, and
8 indeed it did so.

9 Nor did Laclede call specific attention
10 on -- on the disagreement on the winter first -- block
11 winter therms to Staff's attention at the
12 September 16th on-the-record presentation to the
13 Commission.

14 They didn't bring it to the Commission's
15 attention at 9/16, even though by that time they not
16 only knew that there was a possible mismatch that they
17 had, in fact, moved from the 215 million on Ms. Ross's
18 July spreadsheet to 213 million, so there -- there's --
19 there's no reference at the 9/16.

20 The real bind, I think, that occurs from
21 Staff's perspective is the Commission goes ahead and
22 approves the stip on October 3rd.

23 Finally, when -- when actually comparing
24 calculated rates shortly before Laclede filed its --
25 its compliance tariffs, Staff discovered, because the

1 the num-- denominator is different that, hey, we end up
2 with -- with different rates and there has been a -- a
3 series of filings in the meanwhile.

4 But by that stage, Staff has represented to
5 the Commission that we think that a deal was struck.
6 We have a very clear idea of -- of what that deal was.
7 And we now are faced with Laclede's claim that it's a
8 different deal.

9 We don't believe that the evidence supports
10 Laclede's position. We -- we don't think that if -- if
11 you look at the transactions as they occurred and as
12 they laid out that Laclede's position is tenable.

13 Certainly we concur with Public Counsel -- if
14 the Commission's of a mind to say that there really was
15 no agreement, that Staff's billing determinants on this
16 record are certainly more reliable than Laclede's.

17 That is, Staff's method is the one that we've
18 used in prior rate cases. It's consistent with what
19 we've done in our prior rate cases. It's consistent
20 with what the parties use to settle prior rate cases.

21 It was filed in early Ju-- it -- it was made
22 known to the Company in early -- in -- in mid-June and
23 hasn't changed since.

24 The Company, on the other hand, has suggested
25 that it will accept Staff's approach to things for the

1 first block residential therms in April, March,
2 February, January and December.

3 It's only when you get to November that they
4 suggest that there is some problem with the way Staff
5 has calculated the therms to be used for the -- for --
6 for the billing determinants in the first block winter
7 rate.

8 Now, from Staff's perspective, if that's a
9 problem, you would expect Laclede to use the same
10 methodology that they have historically used in rate
11 cases and on which they based their earlier testimony,
12 but they don't do so.

13 They pick six -- assemble six historical
14 Novembers, pick two and do a linear inter--
15 interpolation and offer that as superior. It -- it
16 just doesn't bear the weight of -- of critical
17 analysis.

18 In closing, I would say Staff believes that
19 the parties reached an agreement in this case. Staff
20 believes that the agreement was to use Staff's billing
21 determinants as presented to the Company in June and
22 July of this year.

23 That after the agreement was reached, the
24 Company finally sat down and did the work that they
25 should have done at the time Mr. Cline filed his

1 testimony. And having done so, have chosen to complain
2 that they're being deprived of the benefit of their
3 bargain.

4 The -- the real problem for Laclede is they're
5 getting the benefit of the bargain that they made, and
6 they're simply now at this late date trying to change
7 the terms.

8 Thank you.

9 JUDGE THOMPSON: Thank you, Mr. Schwarz.
10 Mr. Pendergast?

11 MR. PENDERGAST: Thank you. I just have a few
12 points.

13 There was a -- once again, a number of
14 comments about Mr. Cline's surrebuttal testimony. And
15 apparently Staff and Public Counsel think that for
16 purposes of describing what mitigation level was
17 accomplished by the rate design surrebuttal testimony
18 is completely irrelevant.

19 But for purposes of -- of trying to establish
20 what we allegedly agreed to on billing determinants, it
21 is.

22 What I can tell you is if you go back and you
23 read the rebuttal testimony that Mr. Cline refers to in
24 his surrebuttal testimony of Mr. Raab, Mr. Raab was
25 clearly addressing the weather mitigation clause.

1 And he says, however, should the Commission
2 approve the WMC, the weather mitigation clause, the
3 Company would have no objection to using the Staff's
4 method for determining the component of the clause as
5 suggested by Mr. Russo.

6 He also says at page 19, lines 18, as
7 described above for purposes of the WMC, the Company
8 could agree at this time. He went on to talk about the
9 weather mitigation design briefly.

10 But the only time he ever says we're willing
11 to agree to Staff's billing determinants is when he's
12 talking about the WMC and he says for purposes of the
13 WMC.

14 And then if you go to Mr. Cline's testimony,
15 you may recall that Mr. Russo filed testimony in this
16 case, not only on the weather mitigation rate design
17 issue, but on the WMC, the weather mitigation clause.

18 And the testimony that they're referring to
19 appears in Mr. Cline's response to Staff Witness Russo,
20 who only filed testimony on the WMC.

21 And, once again, at line 16 he says, and as
22 Laclede Witness Raab indicated in his rebuttal
23 testimony after responding to Mr. Russo, the Company is
24 willing to use Staff's method for turning those degree
25 days into billing determinants. As such, this argument

1 should not be used as a reason for not moving forward
2 with the WMC.

3 And as to the claim that we had somehow
4 dropped the WMC completely, I think the words that were
5 used was that was our preferred alternative. It didn't
6 say it was our only alternative.

7 And, in fact, when we filed our surrebuttal
8 testimony, we had not dropped the WMC as a possible
9 option for the Commission. In fact, if you look at
10 Mr. Raab's surrebuttal testimony, he spends seven or
11 eight pages responding to arguments that have been made
12 about the weather mitigation clause, and explaining why
13 he did not disagree with those arguments.

14 Clearly we had dropped the weather mitigation
15 clause at that point. Why the need for the surrebuttal
16 testimony?

17 And the only other thing I'd like to say as
18 far as this kind of an agreement that Staff has
19 alleged, at -- at least one person, it seems, actually
20 looked at what was filed -- or what was sent around by
21 the Commission on September 13th.

22 And noticed that there was a difference
23 between the Block 1 therms, which are the first thing
24 that you see up on the page. That's the thing that's
25 circled. And since you can't circle an email, we

1 didn't circle it when we first sent it to Staff.

2 And -- and I believe Ms. Hu testified that she
3 had submitted testimony, knowing that there was a
4 difference between the Company and the Staff as far as
5 Block 1 therms.

6 The Company was around 210, and that's what
7 our rate design was based on. And those are what the
8 rates that Mr. Cline calculated which -- which were
9 based on existing rate levels.

10 They didn't reflect the 14 million, but they
11 were based on existing rate levels. And -- and she
12 noticed that there was a difference between the 210 and
13 the 215. And she also noticed that when he received
14 the email on September 13th, it purported to say we had
15 reached agreement -- that it was a number that was in
16 the middle.

17 And all I can tell you is that if the
18 215 -- the 215 million number had been agreed upon, one
19 would think that Ms. Hu would have gone ahead and said,
20 wait a minute, that's -- that's -- this -- this 213 is
21 different from what the Staff had proposed.

22 The -- the Company's gone back on its
23 commitment. And, obviously, nothing like that was
24 said. And the reason it wasn't said is because there
25 wasn't a commitment.

1 We didn't sign the -- we filed surrebuttal
2 testimony saying we want 85 percent of weather
3 mitigation protection just to go ahead and agree to
4 something that would deny us that weather mitigation
5 protection.

6 The final thing I'd like to say -- and
7 it's -- it's -- it is an unfortunate situation. And,
8 you know, there's been much made about why this
9 particular block therm amount that the Company had
10 calculated wasn't noticed by the Staff.

11 You know, when Ms. Krieger sent this -- and we
12 have one person that works on revenues, that works on
13 weather normalization in addition to being head of
14 accounting and having to do the books and records.

15 She went ahead and sent a page that set out
16 the -- all the Block 1 therms that she thought were
17 reasonable. And the second number you have up there
18 are the Block 1 therms that we used in our compliance
19 filing.

20 She also specifically referenced Staff back to
21 the Anne Ross information sheet that she had gotten
22 earlier. That, in roughly the same format, set out
23 those Block 1 therms. And, once again, the second
24 thing says 215,599,611. This says 212,988,388.

25 Her expectation was that they would go ahead

1 and compare this sheet to what Ms. Ross had previously
2 provided her, since she mentioned it in the email.
3 They would go ahead and see the differences, not only
4 in that Block 1 therm number, but basically in all the
5 other Block 1 therm numbers and Block 2 therm numbers
6 down here because they all changed.

7 And they would go ahead and -- and -- and
8 compare it. And if they had any questions, they would
9 go ahead and call and let us know. In fact, in her
10 email she said. Please review and call to discuss.

11 And what we heard back from Staff was they
12 look okay. And that's why we sent out the
13 September 13th email, and said, we've reached billing
14 determinant agreement on the residential and we've
15 reached it on the large customer. We still had to go
16 ahead and get the C&I done.

17 And as I said before, we could all probably
18 have done more and done things differently. Hopefully
19 in the future, we will.

20 But it was our expectation for at least a
21 month after we submitted that that we had, in fact,
22 reached an agreement on what those block therms were
23 that we had explicitly set them forth, not just once,
24 but twice, and that's what we used in our compliance
25 filing. And that's why we believe it's reasonable.

1 Once again, thank you very much for your time.

2 JUDGE THOMPSON: Thank you,
3 Mr. Pendergast.

4 Questions from the Bench. Chair Simmons?

5 COMMISSIONER SIMMONS: I don't have any.

6 JUDGE THOMPSON: Commissioner Murray?

7 COMMISSIONER MURRAY: I have a couple of
8 questions.

9 Mr. Pendergast, with the testimony that
10 Mr. Cline gave related to the weather mitigation
11 clause, it's my understanding that there would have
12 been a significant difference when he was referencing
13 the weather mitigation clause versus the weather
14 mitigation rate design, because if the weather
15 mitigation clause had been adopted, then there would
16 have been a true up?

17 MR. PENDERGAST: Yes. That -- that's correct.
18 And if you read Mr. Raab's testimony, in particular, he
19 talks about not just, you know, how you make up the
20 billing determinants, but also what overall degree day
21 level that you want to use.

22 That it really doesn't matter, because no
23 matter what you use, there is always an adjustment
24 that's made later on to go ahead and bring you back to
25 what you've used and to account for any deviation in

1 weather. Something that doesn't happen with the
2 weather mitigation rate design.

3 COMMISSIONER MURRAY: So the Company would --
4 would not have been at risk for a revenue decrease
5 based upon those billing determinants being used in the
6 weather mitigation -- mitigation clause?

7 MR. PENDERGAST: No. Under the weather
8 mitigation clause approach you're protected --

9 COMMISSIONER MURRAY: Okay.

10 MR. PENDERGAST: -- basically 100 percent.
11 And, obviously, under the weather mitigation rate
12 design we were trying to go ahead and achieve an
13 85-percent protection level, knowing that we were still
14 taking some risk for a deviation for weather just
15 because there's a little weather movement in those
16 first blocks.

17 But we had bargained hard to get that
18 85 percent. And the comparison in the surrebuttal
19 testimony was -- ours is 85 percent; Public Counsel's
20 would produce 13 percent. We want ours and we think
21 that's what was ultimately agreed upon.

22 COMMISSIONER MURRAY: And then my other
23 question is -- and -- and I would ask this of all
24 the -- the counsel for each party.

25 But it's my understanding that the parties are

1 all in agreement that the rate design should accomplish
2 the \$14 million revenue increase; is that correct?

3 MR. PENDERGAST: Absolutely.

4 COMMISSIONER MURRAY: Is that correct, Staff?

5 MR. SCHWARZ: Yes, Commissioner, that's
6 correct.

7 MR. MICHEEL: Absolutely.

8 COMMISSIONER MURRAY: So if we were to take
9 the Option No. 2 that the Company has proposed here,
10 and anything over -- usage that was over 54 therms
11 would be treated as gas -- gas cost revenue and would
12 not go to the Company, wouldn't that ensure the Company
13 received the revenue that was provided in the
14 agreement, but not more than that?

15 MR. PENDERGAST: Yes. And that's -- that's --
16 that's why we had gone ahead and proposed that
17 particular approach.

18 I mean, regardless of whether you think
19 Staff's right with the 58 or you think we're right with
20 the 54, if you use the slightly higher rate that we
21 have proposed based on the 54 -- if, for whatever
22 reason, we turn out to be wrong and usage goes above
23 that 54, instead of that going to Laclede's bottom line
24 and us retaining that as revenue, we'd simply go ahead
25 and treat that as gas cost revenue.

1 And it would be used to offset gas costs
2 through the PGA process. So as it -- as it comes down
3 to this difference between us, I think it does
4 absolutely accommodate Staff's concern about the
5 14 million.

6 And it also accomplishes our concern about the
7 weather mitigation protection level that we thought we
8 had bargained for and received.

9 As I understand it, the -- really the only
10 dispute -- and I don't think Staff has disputed either
11 of those points -- but they have said that if you do go
12 over 54, because we don't have separate ACA blocks for
13 each of our customer classes, that some of that revenue
14 would go back to all customer classes.

15 You know, that's just a function of the rate
16 design. We think it's a very small amount. And,
17 furthermore, it had been our proposal to go ahead and
18 establish separate ACA blocks for each of the rate
19 schedules.

20 Staff had referenced a concern with that in
21 their surrebuttal testimony about it not necessarily
22 complicating the PGA. So we eliminated having
23 separate rate blocks for each rate schedule.

24 So I think the concern a little bit would
25 maybe go back to other therm sales customers is only a

1 result of the fact that we eliminated those blocks as
2 Staff suggested.

3 COMMISSIONER MURRAY: Is it too late to put
4 them back in for purposes of anything going back over
5 54?

6 MR. PENDERGAST: Well, I think that -- that --
7 that that might go ahead and be a somewhat complicated
8 thing to do at this point to put those back in.

9 But certainly one thing you could do, if you
10 wanted, was to go ahead and just say if there is any
11 excess revenue, you know, we do have refund provisions.

12 And there might -- might be a way of going
13 ahead and just treating that as a refund to residential
14 customers, if you wanted to try and -- and limit
15 whatever impact was to just residential. We think it
16 would be a pretty small impact, but that -- that's an
17 option.

18 COMMISSIONER MURRAY: Okay. Now, I'll ask
19 Mr. Schwarz -- thank you, Mr. Pendergast.

20 MR. PENDERGAST: Thank you.

21 MR. SCHWARZ: Yes, ma'am.

22 COMMISSIONER MURRAY: Your comments on the
23 op-- Option 2 where anything oth-- over 54 the Company
24 would not receive the benefit of, it would be refunded?

25 MR. SCHWARZ: Well, I think first of all -- I

1 think first of all that -- that any such offer is an
2 offer that Laclede under proper circumstances should
3 make to the other parties in the case.

4 It's not appropriate for a party in a
5 contested case to make an offer to the finder of fact
6 in the case. Offers are made to the other parties.
7 That's the first thing.

8 So I'm not sure that it -- it would be
9 appropriate for the Commission to accept on behalf of
10 the other parties an offer that's properly made to the
11 other parties.

12 Secondly, Staff has some concerns as to the
13 appropriateness of setting and collecting rates for
14 administrative and operating costs downstream of the
15 city gate. And then subsequently declaring that, oh,
16 those are really going to be applied through the -- the
17 separate rate setting mechanism of the PGA/ACA to gas
18 costs. Kind of a -- a transformation of margin rates
19 into PGA rates.

20 One of the -- one of the buttresses of the
21 lawfulness of the PGA/ACA process is that -- that the
22 Commission considers all factors relevant to gas costs
23 and setting gas cost rates, and you will be introducing
24 a different element if you do so.

25 And finally, as -- as this very proceeding

1 should suggest, Staff would want to consider the
2 practical mechanical implementation of any such offer
3 before agreeing to implementing it in practice.

4 That is one of the reasons we're here is
5 because things weren't tied down. And I would say
6 that -- that we -- you know, that's something that
7 Staff would have to consider and -- and is not ready at
8 this time to either agree to or reject.

9 COMMISSIONER MURRAY: And has Staff not been
10 able to consider that since it's -- it was offered
11 sometime ago? I can't recall the exact date.

12 MR. SCHWARZ: Staff's plate is rather full at
13 this stage. And, no, Staff has not sat down and worked
14 out the numbers on an offer, which we're not sure if
15 it's made to us or if it's made to the Commission.

16 We're not sure if the Commission views at this
17 stage that circumstances are such that it's an option
18 for Staff to accept. I mean, Staff's view is we've got
19 an agreement, the Commission approved that agreement
20 and Laclede should abide by the agreement, according to
21 the ter-- to -- to the terms that -- that are binding
22 the parties.

23 COMMISSIONER MURRAY: I just want to ask you
24 about that in terms of the agreements that are binding
25 on the parties. Is it your position that the

1 Commission can't get involved in interpreting
2 stipulation and agreements?

3 MR. SCHWARZ: No, ma'am, it is not. It
4 is -- what Staff is saying is, Commission, we all agree
5 that -- that the stipulations and agreements that the
6 parties have all executed do not say 215 million therms
7 will be used to calculate the first block winter
8 residential rates. It's not there.

9 What -- what Staff is saying is that you can
10 tell by the course of conduct of the parties leading up
11 to the execution of these agreements and the
12 circumstances surrounding these agreements and the
13 representations that the Company made to the Commission
14 and the other parties that this is -- this -- those
15 things flesh out the agreements, and that's what the
16 agreement is.

17 COMMISSIONER MURRAY: Is it not also possible
18 that we could determine that there was no understanding
19 as to what the agreement was on that particular issue,
20 and, therefore, we can determine what would accomplish
21 the \$14 million revenue increase?

22 MR. SCHWARZ: Kinda sorta. I -- I think that
23 the Commission can determine that there was no meeting
24 of the minds, in which case it needs to decide a
25 contested case issue, based on the evidence that the

1 parties have presented to us. And I think there's
2 enough evidence on the record for you to do so.

3 If the Commission finds that there was no
4 meeting of the minds, the Commission can also argue the
5 submission of additional evidence on what an
6 appropriate set of billing determinants would be.

7 COMMISSIONER MURRAY: And we have taken
8 evidence on that?

9 MR. SCHWARZ: Yes. Yeah.

10 COMMISSIONER MURRAY: And we could make the
11 determination that the proposal that Laclede has
12 offered as Option No. 2 did accomplish that result
13 here; do you disagree with that?

14 MR. SCHWARZ: I'm -- I'm -- I'm trying to
15 think. I -- I don't think so, because I think Staff is
16 pretty clearly saying that's not what we think that the
17 agreement meant.

18 And Laclede is saying we don't think that the
19 Staff's billing determinants is what that agreement
20 meant. The Commission can find that -- that there
21 wa-- there -- therefore, there was no meeting of the
22 minds and there's no agreement at all on this issue.

23 What the Commission would then do is say the
24 appropriate billing determinants for the first winter
25 block are 215 million or 213 million or someplace in

1 between -- actually anyplace in between the -- the
2 positions of the parties on the record.

3 But I don't think the Commission can say
4 that -- with Staff saying that Staff's billing
5 determinants are appropriate and the Company saying
6 Staff's billing determinants are supported by
7 particular terms for particular winter months except
8 for November are what we really meant -- that the
9 Commission can then say, well, it's -- it's -- the
10 parties agreed to something else.

11 And I think it's pretty --

12 COMMISSIONER MURRAY: No, I'm not suggesting
13 that we would find that the parties had agreed to
14 something else, and I don't think that's what the
15 Company is suggesting.

16 The Company is not suggesting that you all had
17 agreed that anything over 54 would go back to the rate
18 payers. The Company is suggesting that's an
19 alternative that accomplishes the revenue requirement
20 that was agreed upon.

21 MR. SCHWARZ: Okay. I'm sorry. Then, I -- I
22 misunderstood your -- your phrasing perhaps. I think
23 the Commission cer-- certainly can say that there was
24 no meeting of the minds, and that a just and reasonable
25 determination based on all the evidence in front of us

1 is 214 million therms. Yes, the Commission can do
2 that.

3 But that's a -- that's a Commission decision
4 and you need findings of fact and conclusions of
5 law -- I mean, you know, it's a -- it's a contested
6 case decision, yes.

7 COMMISSIONER MURRAY: Okay. Thank you.

8 Mr. Micheel?

9 THE REPORTER: Judge, can I change my paper?

10 JUDGE THOMPSON: Yeah.

11 (THE REPORTER CHANGED PAPER.)

12 MR. MICHEEL: First of all, let me -- let me
13 start off by saying -- I mean, I think you've got
14 enough evidence now you've had an evidentiary hearing
15 to choose between either the Staff's regression method
16 or Laclede's two-point method.

17 And so -- at -- at -- first of all, I think
18 that's what you should do. With respect to considering
19 Laclede's second option or settlement proposal or
20 whatever it is, first of all, that wasn't the deal.

21 Okay. And as Mr. Pendergast pointed out, I
22 believe the Office of the Public Counsel and the
23 Company had proposed to breaking out each customer
24 class in the ACA and giving a refund. Staff didn't
25 agree with that. It's part of our bargain we agreed to

1 drop that.

2 Okay. So that issue was already raised. The
3 parties didn't agree to that. That wasn't their deal.

4 Okay. Secondly, if you do that without
5 breaking them out, you're going to allow, you know, the
6 revenues of PGA. The refund in the PGA will harm some
7 customers and benefit some customers. And there won't
8 be that one-to-one customer tracking that's necessary.

9 And I think perhaps at least three of the
10 Commissioners were here when we had the contested
11 MGE case where they wanted to use the refunds from
12 pipeline discounts, and unfortunately the Office of the
13 Public Counsel believed its view of the law -- its view
14 of the law hasn't changed.

15 That when you're dealing with refunds, you
16 have to do them to the people that made the payments.
17 Because you're not supposed to be giving any discounted
18 rates to anybody. And absent any ACA-specific
19 blocked -- you know, specific class treatment of which
20 customers, as I told you, some customers would benefit,
21 some customers wouldn't.

22 In other words, you'd have, Customer A may be
23 paying more in and not getting the refund. And I take
24 a dim view of the lawfulness of that, so I have some
25 issues about that.

1 Secondly, like I said, it -- it's -- it's not
2 something that we bargained for. Third, the higher
3 rates that they're talking about for the first block
4 are -- are in all of the winter months, not just for
5 November.

6 And what -- what -- what -- what the second
7 solution says is we're gonna treat all the winter
8 months at the higher rates, other than November in one
9 way, and for November we're going to treat it
10 differently.

11 And that from a -- just doesn't make any
12 sense. So I -- I think there's enough evidence here,
13 Commissioner Murray, where you can decide. And I think
14 that Laclede's second option raises a -- a lot of other
15 issues that we'd need to thrash out.

16 COMMISSIONER MURRAY: Okay. And if -- if we
17 were to decide that the -- there truly was no -- no
18 meeting of the minds as to that issue in the
19 stipulation and agreement, why do we have to decide to
20 accept one proposal or the other that the -- the
21 proposal that one party believed was being accepted or
22 the party that the -- the -- the proposal that the
23 other party believed was being accepted, why can't we
24 choose something else; for example, Option No. 1, which
25 is a splitting of the difference if we believe that the

1 revenue by -- under Staff's proposal would not be
2 sufficient or we believe that the revenue -- revenue
3 under the Company's proposal might be too much?

4 MR. MICHEEL: If -- if the Commission believes
5 that there's substantial and competent evidence in this
6 record to do that, it can do so. But my recollection
7 of all of the testimony that we took on the record,
8 that there wasn't any testimony record or otherwise
9 about that option, Your Honor.

10 So I don't think you have that evidence in
11 this record. And if -- if -- if the Commission wanted
12 to do that, I think, you know, we'd have to have
13 another hearing.

14 COMMISSIONER MURRAY: Well, wasn't there
15 testimony presented as to the revenue that --
16 that -- the -- the differences between the two
17 proposals and the --

18 MR. MICHEEL: The -- the Staff method and the
19 Laclede method, yes.

20 COMMISSIONER MURRAY: So why do we not have
21 enough evidence to show that neither accomplishes the
22 \$14 million revenue?

23 MR. MICHEEL: Well, you may have enough
24 evidence to -- to show that neither accomplish the
25 \$14 million solution. I don't think you have any

1 evidence to say so we're gonna pick some point in
2 between. That's -- that's what I'm trying to say.

3 COMMISSIONER MURRAY: Well, if the evidence
4 shows that one is over and one is under, why wouldn't
5 that be a reasonable solution?

6 MR. MICHEEL: The -- the -- I don't think it'd
7 be a reasonable solution because I -- I certainly
8 didn't proffer a witness that indicated that that --
9 that that would be a reasonable solution.

10 And I didn't have to -- I haven't had a chance
11 to look at -- and this is going on recollection. But
12 I'm just telling you, I'd have to look long and hard in
13 that record to determine whether or not there's record
14 evidence to support it.

15 And my understanding of the testimony we've
16 had is it's the Staff method or the Company method. If
17 you come to that conclusion, Commissioner, that neither
18 one of us is right and you want to have another hearing
19 and put on more evidence where you can find the -- the
20 middle ground, I think that would be appropriate and I
21 think the Commission has -- has the right to do that.

22 COMMISSIONER MURRAY: Well, it certainly --

23 MR. MICHEEL: And the Commission certainly has
24 the right to pick something in the middle. I'm just
25 not gonna tell you today without looking at it that the

1 Office of the Public Counsel would be happy with that.

2 That we wouldn't -- you know, and -- and --
3 and I don't think it would be fair to -- to -- to ask
4 that question to any party 'til we know what the
5 decision is -- on -- on whether or not we're going to
6 appeal, whether or not we feel that there's -- there's
7 record of evidence on that.

8 So I'm not trying to be flip. I'm just
9 telling you -- you -- you can do -- the Commission can,
10 in my view, can do what it chooses to do. Whether it's
11 lawful or not, that's -- that's a decision for -- for
12 the courts to make.

13 COMMISSIONER MURRAY: And I'm just trying to
14 see if we can't arrive at some reasonable conclusion
15 that does not cause the Company to lose revenue that
16 they thought -- honestly thought they had agreed to or
17 that does not allow them to earn more than Office of
18 the Public Counsel had agreed to.

19 MR. MICHEEL: Sure. And let -- let me address
20 that. And I -- and I think that's what everybody
21 wants, Commissioner. That's certainly -- the Office of
22 the Public Counsel in no way, shape or form is trying
23 to reduce the \$14 million that we agreed on.

24 That's the number we agreed on. That's the
25 number we think the Company should be getting.

1 Okay. Our view is that the Staff's rate
2 design gives the Company the opportunity to do that.
3 The Company's view is that its solution to this problem
4 gives it the opportunity to do that.

5 So -- and -- and I don't think that any -- any
6 witness is going to tell you if you utilized Staff's
7 billing determinants with Staff's rates, okay -- that
8 \$14 million would not be produced.

9 Or, conversely, if you utilized the Company's
10 billing determinants with the Company's proposed rates,
11 that \$14 million wouldn't be produced.

12 COMMISSIONER MURRAY: Okay.

13 MR. MICHEEL: So that's where I'm saying
14 you -- you could -- you can choose one or the other in
15 terms of the Staff method -- the Staff's billing
16 determinants and Staff's rates and that produces the
17 14 million, or you can choose the Company's method with
18 the Company's billing and that produces the 14 million.

19 COMMISSIONER MURRAY: All right.

20 MR. MICHEEL: That's my understanding.

21 COMMISSIONER MURRAY: Okay. Now, in that I
22 just asked you about Option 1, I would like to give the
23 other two an opportunity to respond to Option 1, and
24 then I will let the others ask questions.

25 MR. SCHWARZ: I haven't consulted with my

1 clients, so I'm -- but I will tell you nevertheless
2 that I think I -- I think that Staff would be more
3 comfortable if the nature of the Commission's decision
4 were along the lines of Option 1, as opposed to
5 Option 2.

6 I don't think there's any question as -- I
7 mean, it doesn't -- there's no question about the
8 lawfulness of in-- involving the PGA just for starters.
9 There's no problems about trying to make sure that the
10 PGA refunds would go to the people who had paid the
11 margin rates that were excessive. So from that
12 perspective, it's -- it's -- it's easier to deal with.

13 I think that if you focus on what are the
14 proper billing determinants to be used, that there is
15 evidence in the record -- Staff is saying 215 million,
16 Laclede is saying something less than 215 million. And
17 I have not boned up on it recently.

18 And the parties have not had the opportunity
19 to really fully brief a technical issue like that. I
20 mean, you've seen the basis for Laclede's linear
21 interpolation, you've seen Staff's time-tested
22 regression analysis. So you -- you have that
23 information in front of you.

24 But if -- and I'm not sure that this is an
25 appropriate analogy. But it seems to me that if a -- a

1 plaintiff claims \$3 million of damages in a car wreck
2 and the insurance company of the other driver claims
3 \$100,000 of damages and the jury comes in somewhere
4 between and there's some basis to support that in the
5 record that one may be too high and one may be too low
6 that that's a -- a finding of fact that the Commission
7 is entitled to make if supported by the record
8 evidence.

9 And it would be the Commission's explanation
10 of determining a particular billing determinant from
11 the record evidence that would determine whether the
12 Commission's decision is reasonable in arguing the
13 matter to a -- a court on review.

14 That is, is it supported by competent and
15 substantial evidence? Depends on how you reach your
16 decision from the evidence that's on the record.

17 MR. PENDERGAST: Just very briefly. I think
18 Mr. Schwarz indicated that while he hadn't had a chance
19 to consult with his -- his client, that he thought
20 Staff would be more comfortable with the
21 split-the-difference approach than they were with the
22 second option.

23 And quite frankly, if Staff's more comfortable
24 with that approach, that's fine with us. And we had
25 suggested that as our first option. And certainly that

1 resulted for -- for us in a way that we think's
2 appropriate, gives acknowledgment to all parties
3 besides.

4 And as so whether there's anything in the
5 record, I have Mr. Zucker back there looking through
6 the transcript of Monday. But our recollection was
7 that there was a significant amount of discussion about
8 why we had problems with Staff's approach.

9 And -- and -- and there was discussion about
10 why they had problems with what Ms. Krieger did. And
11 it was -- they used more points than she did. And she
12 only used two, rather than the six years' worth of data
13 for her data points.

14 And she indicated in response to that -- and
15 I'm not sure whether it was me that asked her the
16 question or somebody else -- but that she had done a
17 regression analysis that used the six points in
18 addition to the one where she just looked at the
19 two data points.

20 And then when she had done that analysis --
21 and I referred to it in my opening statement -- it
22 still suggested a significantly lower customer usage,
23 average customer usage for Nov-- November than Staff's
24 did.

25 I think she said her analyses came up with a

1 range of 55 to 56 at the top of that range. It's
2 obvi-- obviously right in the middle of the 58.2 -- or
3 close to the middle and the 54 that the Company has
4 proposed.

5 And -- and I think you do have a fair amount
6 of discretion to decide these things. I mean, I think
7 Staff always files its return-on-equity recommendations
8 with a range.

9 And they say basically you can go ahead and
10 conclude that anything between, you know, 9.5 and 10.5
11 is reasonable. Leaving it to your sound judgment to
12 determine whether the higher one or the lower one or
13 something in between is appropriate.

14 And I certainly think that you have the
15 ability to do that here as well, particularly with the
16 evidence that Ms. Krieger had in the record.

17 And I guess my only other comment is, while
18 this is important to the Company, I mean, we are
19 talking about something that's relatively small in the
20 overall therm picture.

21 I mean, we -- we're talking about somewhere in
22 the neighborhood of 215 million therms versus
23 213 million therms. And if you split the difference on
24 that, you're splitting about a percent.

25 And you're saying half goes here and half goes

1 there. And I think those are the -- the kind of
2 judgments that the Commission can go ahead and make.

3 Thank you.

4 JUDGE THOMPSON: Thank you, Mr. Pendergast.

5 MR. SCHWARZ: You -- if I might at this stage,
6 I want to make clear after the -- the tenor of
7 Mr. Pendergast's remarks that the Staff does not accept
8 a split-the-difference proposal.

9 If that was an offer to Staff, I will tell you
10 right now that Staff does not accept that offer.

11 JUDGE THOMPSON: Thank you.

12 Further questions, Commissioner Murray?

13 COMMISSIONER MURRAY: I believe that's all.

14 Thank you.

15 JUDGE THOMPSON: Thank you.

16 Commissioner Lumpe?

17 COMMISSIONER LUMPE: Is there anything in the
18 record -- let me ask each of you: Is there anything in
19 the record that you did on Monday, since I wasn't here,
20 about splitting the difference and what the amounts of
21 money might be in splitting the difference? Would it
22 go over, would it be under, what?

23 MR. SCHWARZ: I do not -- if I may answer for
24 Staff, I do not remember any such discussions or
25 testimony at all. However, there was a lot said on

1 Monday and the transcripts are just now provided.

2 But I -- my recollection is that, no, there
3 was no discussion of the effects of splitting the
4 difference.

5 COMMISSIONER LUMPE: Okay.

6 Mr. Pendergast, do you recall any testimony?

7 MR. PENDERGAST: Yes, Commissioner.

8 COMMISSIONER LUMPE: And what the impact would
9 be?

10 MR. PENDERGAST: Well, I think the testimony
11 to the extent it addressed the issue -- I think
12 everybody acknowledged that the difference between the
13 Staff and the Company relates to the November terms
14 and the -- the difference between the 58.2 and the 54
15 that the Company used. That's what it all comes down
16 to.

17 And I think that to the extent that
18 Ms. Krieger was saying that if you looked at another
19 analysis, regression analysis, that used all
20 six points, that you could go ahead and come up with a
21 55 to a 56.

22 I think if the Commission were to simply say,
23 well, we think something between Staff's 58.2 and the
24 54 that the Company has used is reasonable. We think
25 that 56 or whatever that might be is appropriate. File

1 tariffs in compliance with that.

2 I think that is something that the parties
3 could go ahead and easily admit. I -- the other thing
4 that I would say is that the Staff initially said that
5 the difference between the Company and the Staff for
6 these 2,560,000 therms, I think, and that's what they
7 said in their Motion to Suspend.

8 And it was off of that and our pleadings, at
9 least, that we said, well, we'd be willing to go ahead
10 and -- and split that and you can move half of those
11 therms into the first block and half into the second
12 block.

13 Leave half in the second block. And I think
14 the Staff came back and said, well, your calculation
15 was a little bit off. If you want to go ahead and make
16 it 50/50, it would something a little different than
17 that, and we came back and said fine, 50/50.

18 And we simply divided the therm amount that
19 Staff had in its motion. And I think it continues to
20 go ahead and say, today is the difference. And I think
21 if the Commission were to just simply say Staff has
22 identified 2,560,000 therms, I think that's the number.
23 Split them. Move half of them into the first block and
24 half into the second.

25 There's no evidentiary dispute about that.

1 COMMISSIONER LUMPE: But, Mr. Pendergast,
2 you're -- when you're talking about splitting the
3 difference, you're talking about splitting the number
4 of therms -- the -- the difference between the -- the
5 Company and the Staff on the number of therms.

6 What impact would that have on the
7 14 million? Would it give you more than 14 million,
8 and -- and, if so, what --

9 MR. PENDERGAST: Our -- our perspective on it,
10 it would give us something less than 14 million. I
11 mean, we think to get 14 million, we need something
12 that's based on the 54 and it's based on block therms
13 that we had gone ahead and had included in our
14 compliance filing.

15 Obviously Staff thinks that -- that the therms
16 issue is appropriate and that -- that including fewer
17 therms will -- will go ahead and -- and give us more
18 than 14 million. But that's the essence of the
19 dispute.

20 So we don't believe it would give us more, we
21 believe it would give us slightly less than what we
22 think that -- but, then, in trying to go ahead and get
23 this resolved, we thought that was a reasonable
24 approach for the Commission to take.

25 COMMISSIONER LUMPE: What if it did give you

1 more than 14 million, what would you do?

2 MR. PENDERGAST: Well, I -- I guess what we'd
3 try and go ahead and do on that one was to try and
4 address that with the Option 2 and say that if it was
5 more than 54, we treat that as gas cost revenue.

6 But I -- I think Staff has indicated why they
7 have concerns about that particular approach. And so
8 this was an alternative to try and -- so it's resolved
9 once and for all.

10 And -- and, you know, nobody can sit here
11 today and say that Staff's is gonna go ahead and result
12 in \$14 million worth of revenue to the Company.

13 And I -- I quite frankly can't say that our
14 approach is gonna result in 14 million, because there
15 still is going to be, you know, some impact of weather
16 no matter what you do.

17 I mean, you know, it could go down to
18 48 average therms next time and will not get any -- you
19 know, get a million less than the 14 million or a
20 million five less than the 14 million, or it could go
21 up to 55 or -- or 58 or -- or even 60.

22 I mean, it all depends. I guess what we're
23 trying to do is the best job we can of coming up with a
24 reasonable assumption to make for that.

25 COMMISSIONER LUMPE: Okay. Thank you.

1 MR. PENDERGAST: Thank you.

2 COMMISSIONER LUMPE: Mr. Micheel?

3 MR. MICHEEL: I -- I think you put your finger
4 on it, Commissioner. And in my recollection -- there
5 was a lot happening Monday. There's no evidence in
6 this record and there was no testimony in this record
7 that shows that Option 1, the splitting-the-difference
8 option, is gonna produce the \$14 million that -- that
9 we've all agreed upon.

10 I mean, nobody testified that if -- if you
11 take the Staff 58.2 number and the Company's 54 number
12 and split the difference that, voila, we -- we get
13 14 million.

14 Okay. And -- and, you know, if at some point
15 you're -- you're suggesting, well, what about splitting
16 the difference? Are we gonna get a different number?
17 Then that -- then that would be a problem in my view,
18 because we've agreed -- we've agreed to 14 million.

19 Now, I do remember Ms. Hu testified that you
20 could get a lot of different results, depending on what
21 points you picked with respect to the -- there -- there
22 were six historical points that the Company had and you
23 could get a lot of different results there.

24 But I don't recall any record evidence at all
25 discussing whether or not it's appropriate to

1 pick -- pick the middle and what the result of --
2 of -- of averaging those two points would be.

3 And -- and my recollection of the testimony
4 is -- and -- and let me say, even if you're gonna pick
5 in the middle, the testimony from our witness was that
6 we fundamentally disagree with the idea of taking
7 two historical points and doing the -- I don't know --
8 interpola-- interpolation or whatever that statistical
9 word is -- to -- to come up with a -- a decision.

10 So, I mean, we don't disagree with the
11 starting premise of -- of the Company's adjustment, so
12 that's a problem. But certainly you -- you could
13 always take more evidence and -- and -- and find out
14 what it means if you're gonna split the baby, if you
15 will.

16 COMMISSIONER LUMPE: Thank you, Mr. Micheel.

17 That's all I have, Judge.

18 JUDGE THOMPSON: Thank you, Commissioner
19 Lumpe.

20 Commissioner Gaw?

21 MR. SCHWARZ: If -- if I might, I -- I would
22 like to make a comment. I -- if I heard Mr. Pendergast
23 correctly, he said that the \$14 million was based
24 on -- in Laclede's mind on their compli-- compliance
25 filing therms. This is not possible.

1 Ms. Krieger indicated that it was not until
2 after the stipulations and agreement were -- were
3 signed that Laclede realized the disjoint between
4 Staff's billing determinants and the Company's billing
5 determinants.

6 And the \$14 million was agreed to by the
7 parties on August the 20th. At a time when Ms. Krieger
8 indicated Monday, the Company hadn't -- hadn't yet
9 realized the problem.

10 So whatever the \$14 million that the parties
11 agreed to settle on was based on -- it was not on
12 Laclede's compliance terms.

13 COMMISSIONER LUMPE: Thank you.

14 That's all I have, Judge.

15 JUDGE THOMPSON: Commissioner Gaw?

16 COMMISSIONER GAW: Thank you, Judge.

17 If the Commission comes to the conclusion that
18 there is -- there was not a meeting of the minds on
19 this -- on this particular issue of billing
20 determinants, do the parties have a position about
21 whether the -- the Commission at that point under --
22 under normal interpretation of contract -- in -- in
23 contract law has the ability, then, to go ahead and
24 come up with an answer about what it should be or is
25 the entire instrument, then, to be thrown out by the

1 Commission?

2 And -- and I -- I -- I'm -- I'm trying to --
3 to reckon back to past -- past days, and I'm having a
4 difficult time about at what point in time
5 something -- an element is so material as to set aside
6 the entire contract, because of the failure to -- to
7 have the agreement.

8 And -- and I -- I'm -- would like for you all
9 to address that point, if you would, first. And I
10 don't care who goes first, but, Mr. Schwarz, you seem
11 the most anxious, so go ahead.

12 MR. SCHWARZ: Well, I -- and I think that this
13 kind of goes back to the -- the discussion that
14 Commissioner Murray and I had earlier.

15 I think if the -- the Commission finds that
16 there wasn't a meeting of the minds on the particular
17 issue, then the Commission is -- is -- there is no
18 contract for the -- for the Commission to construe on
19 that issue.

20 The Commission can make its decision based on
21 the record evidence presented to it by the parties, and
22 it will be reviewed by the courts -- the reasonableness
23 of the Commission's decision will be based on the
24 existence of competent and substantial evidence.

25 I don't think that any party has suggested to

1 the Commission at this stage that this particular item
2 would cause the entire case -- now, certainly Staff
3 hasn't suggested that -- that because of the failure to
4 reach this, that -- that the entire agreement fails.

5 And there are ramifications to that that I
6 haven't thought about and I'm not -- but necessarily
7 willing to think about those out loud at this
8 particular time.

9 But it's certainly not Staff's position that
10 we go back to square one or square minus five or
11 whatever square we would be finding ourselves on.

12 So I -- it -- it hasn't been the suggestion of
13 the parties. I think that, yes, there are terms in
14 Restatement Second if you looked, the failure to
15 include particular terms may be so critical that --
16 that the agreement fails.

17 But I don't know that -- that anyone has
18 suggested that at this stage.

19 COMMISSIONER GAW: And I -- okay. Well,
20 I -- I'm not sure that that was a legal analysis,
21 but -- but it may be a position statement.

22 MR. SCHWARZ: The -- the -- the legal analysis
23 is, yes, there can be -- be flaws in an agreement that
24 are so basic that the entire agreement is vitiated. No
25 one has suggested that, to my knowledge, in this

1 particular instance.

2 COMMISSIONER GAW: I haven't heard it
3 suggested at this point either, but -- but I -- I bring
4 it up because the potential exists for that argument to
5 be made at -- at some point in time.

6 Anyone else want to address that for me so
7 I -- just so I -- I'll know kind of where people are on
8 it?

9 MR. MICHEEL: I certainly think, Commissioner,
10 that -- that that is possible with a contract that you
11 can have a key term missing in it that, because of that
12 key term, there's a failure of the meeting of the minds
13 and kind of -- but I don't think that's the legal
14 analysis that you should use in looking at this.

15 And -- and I think --

16 COMMISSIONER GAW: I'm not sure it is either.
17 It just was a basic question I wanted to ask, so --

18 MR. MICHEEL: But let me suggest the legal
19 analysis the way I look at it. It -- that -- that our
20 agreement is ambiguous with respect to this issue.

21 And that you needed to take parole evidence or
22 evidence to resolve that ambiguity. And I think that
23 you did that on Monday.

24 And now that you've taken that evidence to
25 resolve that ambiguity, that's what I would recommend

1 the Commission to do. I -- I don't disagree with --
2 with your restatement of, you know, contract second.

3 Unless it's changed when went to law school, I
4 think you're exactly right. But I don't think that's
5 the analysis that we should be using. I think what we
6 should be saying is that there's ambiguity that exists
7 in the first -- in the sti-- in all of the stipulations
8 and agreements.

9 And because there's ambiguity, you needed to
10 take evidence, which this Commission, I think, properly
11 and correctly did. And now that -- you have the
12 evidence to resolve that ambiguity.

13 COMMISSIONER GAW: All right. I -- I'm gonna
14 come back to that.

15 Mr. Pendergast?

16 MR. PENDERGAST: I guess I -- I'd agree with
17 Mr. Schwarz and Mr. Micheel. First of all, I -- I
18 don't think you could fairly construe that as a fact
19 matter. It -- it's something so material enough to say
20 that there wasn't a meeting of the minds.

21 Secondly, I think that from the perspective of
22 what the parties have requested for to resolve this,
23 I -- I do know that Staff had raised the question about
24 whether we had a meeting of the minds on this
25 particular issue.

1 JUDGE THOMPSON: Mr. Pendergast, please use
2 your microphone.

3 MR. PENDERGAST: Oh, I'm sorry. I apologize.

4 COMMISSIONER GAW: No, you -- you can sit.
5 That's fine.

6 JUDGE THOMPSON: You don't have to come to the
7 podium. Just --

8 MR. PENDERGAST: And I -- and I believe that
9 Staff said that -- that it did not believe that we had
10 a meeting of the minds if -- we had this -- this
11 dispute, but that -- to resolve that impact. And I'm
12 talking just about on his one issue, though.

13 COMMISSIONER GAW: Yeah.

14 MR. PENDERGAST: A hearing was necessary, and
15 that hearing has now been held. And I think it's
16 certainly within the Commission's discretion based on
17 that to fill in this gap with something that it
18 determines as reasonable.

19 COMMISSIONER GAW: My next question, then, is
20 this -- and that is: If you assume that -- that -- I'm
21 hearing all you of say, although we don't have every
22 party here, I'm just -- that there is a -- that -- that
23 you're not asking -- you would be asking for the
24 contract to be set aside, because this element is not
25 so material as to cause that.

1 Then the next -- my next question is: Are the
2 parties suggesting that we should interpret this --
3 this element on -- in a way that would -- that would be
4 an interpretation of ambigui-- am-- ambiguous provision
5 in a contract, or are you asking us to come up with an
6 answer based upon what would be the -- the -- the
7 Commission's view of the appropriate methodology to
8 determine -- to -- for billing determinants in light of
9 what is unambiguous in the contract?

10 And -- and I -- whoever wants to go.

11 MR. PENDERGAST: Yeah, I -- I guess at -- at
12 this point, Commissioner, and as -- as I tried to
13 indicate in my -- my -- my closing statement is -- I --
14 I think you need to go ahead and make a determination
15 with respect to what's in compliance with your order,
16 in this case that approved 14 million and approved the
17 weather mitigation rate design.

18 Obviously you have different views as to what
19 will be specifically in compliance with that. But I --
20 I suppose I look at it from the perspective that you do
21 have contract law.

22 But -- but the Commission always has an
23 obligation to go ahead and make sure that rates are
24 just and reasonable, whether those rates come about
25 because parties have gone ahead and agreed to a

1 stipulation and agreement or even in a situation where
2 there is still one minor matter that has at least not
3 been resolved in the minds of the parties completely.

4 And I think that you now have record evidence
5 that you can use to go ahead and resolve as you would
6 any other issue.

7 And that if for a brief course the -- the
8 Commission at this point is to resolve that one last
9 issue or one last matter that the parties have -- have
10 put before you.

11 And certainly from -- from an overall
12 standpoint, we -- we believe you can do that without
13 violating any requirement law. In fact, we think
14 that's probably something that's required by law.

15 But I just want to emphasize that if anybody
16 were to go ahead and -- and suggest that there wasn't
17 some sort of overall agreement here, obviously the
18 Company would have no choice but to -- to -- to go with
19 the -- you know, what Staff has recommended.

20 I mean, we -- we have a -- well, 90 percent of
21 the rate increase or 95 percent is not subject to any
22 kind of dispute whatsoever and the weather mitigation.

23 So under those circumstances, we -- we --
24 obviously a minimum would be to have that put into
25 effect.

1 COMMISSIONER GAW: Who wants to go? If -- if
2 you remember my question, it was a very narrow one.

3 MR. MICHEEL: I -- I view your question as a
4 two-part question, Commissioner. And I think that's
5 the way I initially approached it in -- in -- in my
6 closing argument. What -- what I -- what I said is,
7 yes, there's some --

8 COMMISSIONER GAW: Let me -- let me stop you
9 for a moment, because -- because I want to -- my
10 question is assuming something that -- that -- that
11 it's -- it's -- I -- I'm just doing for purposes of
12 discussion.

13 And that is that the Commission were to make a
14 determination that there wasn't -- there was not a
15 particular methodology already agreed to, which
16 is -- is still up in the air.

17 If the Commission were to conclude, hey, there
18 was already a determination of -- of what billing
19 determinant methodology to use, that ends the
20 discussion. And -- and so I'm -- I'm moving into that
21 next step with an assumption that the Commission didn't
22 make that conclusion.

23 I'm sorry. To stop you, but I -- I just
24 wanted to make that clear that I -- I was -- my
25 question was posed under that understanding.

1 MR. MICHEEL: And I -- I guess -- I -- I think
2 it's clearer on the face of the -- the stipulations and
3 the agreement that there's no specific term with
4 respect to what billing determinants should be used.
5 So inherently there's an ambiguity in the stipulations
6 and agreements.

7 COMMISSIONER GAW: Well, potentially. You can
8 argue -- you can argue that there isn't, because --
9 because of the reference to the -- to the testimony.

10 MR. MICHEEL: Right. That's where I was --

11 COMMISSIONER GAW: But I understand.

12 MR. MICHEEL: But that's where I was going.

13 COMMISSIONER GAW: Go ahead.

14 MR. MICHEEL: And then you look at the
15 testimony and -- and -- and that was my argument on why
16 the Office of the Public Counsel believed that.

17 As -- as you heard today Ms. Hu pointed out in
18 her surrebuttal testimony that there was a difference
19 between the Staff's billing determinants and the
20 Company's billing determinates.

21 And then we saw in the simultaneous
22 surrebuttal testimony -- the surrebuttal testimony and
23 simultaneously Mr. Cline's statement. And -- and I'm
24 not gonna to re-plow that ground.

25 You've heard our view of it and the Company's

1 view of it and the Staff's view of it. And you're
2 gonna have to decide that for yourself. That will
3 clear up that ambiguity or that would explain why that
4 term was not placed into the stipulation and agreement.

5 I think if -- if you don't do that, you've got
6 enough record evidence now to make a determination on
7 what method would be appropriate and would effectuate
8 the agreement that the parties had.

9 COMMISSIONER GAW: Okay.

10 Mr. Schwarz, anything in addition?

11 MR. SCHWARZ: The -- the Staff -- once the
12 benefit of the bargain that was made, it is -- I mean,
13 Ms. Krieger sat on the stand Monday and said that the
14 calculations that the Company did for the first block
15 winter therms was done shortly before September the
16 11th of this year.

17 And if that's the case, then the Company
18 cannot have relied on those therms in negotiating the
19 \$14 million settlement on August the 20th or the rate
20 design on August the 29th. So Staff wants its benefit
21 of the bargain if --

22 COMMISSIONER GAW: I understand, Mr. Schwarz.

23 MR. SCHWARZ: And otherwise, yes --

24 COMMISSIONER GAW: But that's not in answer to
25 my question.

1 MR. SCHWARZ: Then that -- that being the
2 case, then, yes, the -- the Staff would recommend to
3 the Commission that it reach its decision based on the
4 record in front of it.

5 COMMISSIONER GAW: Okay. Now, let me ask this
6 question, which has already been asked to -- to some
7 degree.

8 In the analysis of the evidence or --
9 and -- and that -- that we heard on Monday, I -- I
10 guess I'm not clear on how much discussion there was on
11 this issue.

12 And I -- and I can go back and look, but on
13 the issue of -- of utilizing additional -- the
14 additional four points, the total six, I -- I need to
15 go back and look at that record.

16 But I'm -- I'm getting -- I'm having trouble
17 recalling that entirely. So I guess we'll -- we'll
18 have that pointed out to us or we can have it
19 looked -- looked for, but it -- if you all have any
20 additional thing to offer on that, I -- I remember a
21 lot of discussion about Staff's methodology and a lot
22 of discussion about the -- the particular adjustment
23 made by Laclede's personnel to their methodology.

24 Although I can't remember a lot of discussion
25 about Laclede's methodology that was ju-- that the

1 adjustment was made to, so -- if you have some help
2 there?

3 MR. PENDERGAST: Yes, Commissioner. I -- I
4 refer you to pages 403 to 404 of the transcript. And
5 that's where Ms. Krieger discusses using a regression
6 on the six points of historical data and the results
7 that -- that she derived by using the six points and
8 references the 55 to 60 -- 56 therms.

9 COMMISSIONER GAW: Okay. And, Mr. Pendergast,
10 is -- can you point out to me where there's an
11 explanation of Laclede's methodology in coming up with
12 the billing determinants in the testimony that we
13 heard?

14 MR. PENDERGAST: Well, you certainly had a
15 characterization of that methodology by Mr. Beck that
16 went along with the chart that he drew.

17 And then I -- I -- I suppose I would say that
18 there was some filled in by Ms. Krieger where we asked
19 her some questions about the two points and -- and why
20 she used the two points, why the -- she felt that
21 the -- it didn't produce -- Staff's didn't produce a
22 reasonable result and why she had done what she did.

23 So I -- I -- it's interlaced throughout here.
24 I -- I -- I -- I can't say, you know, here's the --

25 COMMISSIONER GAW: Well, the reason I'm asking

1 is because it may have been partially a failure on my
2 part to inquire further, but there's -- there was
3 a -- I have some recollection that -- that she -- she
4 stated that they -- that Laclede has always used a
5 different methodology than Staff in coming up with
6 billing determinants. But I -- I'm having difficulty
7 recollecting an explanation of what that methodology
8 actually was.

9 And -- and the reason I'm asking the parties
10 is because there is -- there's argument going on here
11 that the only time Laclede varied in its acceptance of
12 Staff's methodology was in November.

13 My recollection and her testimony is that
14 there was some -- that -- that she made some point that
15 she always used the same methodology, but that there
16 was not a -- a variance between the conclusions of her
17 methodology or Laclede's methodology and Staff's
18 methodology, except in -- in the month of November.

19 And I don't know if I've got that correct. So
20 if you would enlighten me about that, it would be
21 helpful. About whether or not there was a different
22 methodology employed by Laclede or an acceptance
23 if -- if -- if Staff and Public Counsel are correct,
24 that Laclede just accepted Staff's methodology for all
25 the months, but November.

1 MR. PENDERGAST: Well, there was certainly a
2 different -- a different approach that was used in our
3 direct case. And that was also underlying the weather
4 mitigation rate design.

5 And I -- I think it's been established on the
6 record the method that we used produced -- some were in
7 the neighborhood of about 210 million therms versus the
8 215 million therms that Staff had -- I think produced
9 under its particular methodology.

10 And what ultimately Ms. Krieger submitted was
11 something that was between those two methodologies that
12 was of about 213 million or thereabouts.

13 And I think what she testified -- although I'd
14 have to go back and read the transcript -- was that at
15 the time she went ahead and produced those billing
16 determinants, she looked at what methodology we had
17 used and she looked at what methodology Staff had used.

18 And she did a reasonableness test on -- on
19 what the Staff had used and, quite frankly, found that
20 all of it was acceptable and made sense, except for
21 this, you know, strange result in November.

22 COMMISSIONER GAW: Uh-huh.

23 MR. PENDERGAST: And -- and that's when
24 she -- she went ahead and -- and thought that it needed
25 to be adjusted for it to go ahead and come up with a

1 reasonable level of therms that accomplished the
2 weather mitigation and the provision that we thought
3 that would go ahead and produce the 14 million that we
4 thought.

5 And where exactly she discussed that in the
6 transcript, I couldn't tell you, without spending some
7 time going through it.

8 COMMISSIONER GAW: That's fine. Do you want
9 to -- Mr. Micheel?

10 MR. MICHEEL: Yeah, I -- I think -- my
11 recollection of -- of the record evidence on that issue
12 demonstrated that -- and -- and really all we're
13 talking about is the winter months here, you know,
14 because that's --

15 COMMISSIONER GAW: Yes.

16 MR. MICHEEL: -- that's where the -- the --
17 the rate design and issue -- it -- the first block
18 weather mitigation rate design is in place.

19 And I -- and I don't think there's any dispute
20 in the record that for every month, but November, the
21 Company utilized the Staff's method. I don't think
22 there's any dispute in the record -- and I haven't read
23 it, but -- but my recollection is that the Company used
24 a different method for -- for determining billing
25 determinants and therms in its direct testimony.

1 But that method is not the same as the method
2 that the Company utilized for November in making that
3 adjustment. That's my recollection --

4 COMMISSIONER GAW: Uh-huh.

5 MR. MICHEEL: -- of -- of the testimony. And
6 I guess with respect to, you know, the use of the
7 additional four points -- my recollection of the
8 testimony -- and I haven't even received it. I mean,
9 maybe the transcript's on my desk. I don't know. I
10 haven't seen it yet. I -- I mean, Mr. Pendergast has
11 his copy.

12 But my understanding was that Ms. Krieger just
13 testified that, well, yeah, I looked at -- I did a lot
14 of different things with the six numbers, and my
15 conclusion was picking the last two years was the best
16 solution.

17 And that, you know, there wasn't any extensive
18 testimony on, well, I did a regression analysis and
19 this was the result, or I used these two other numbers
20 and this was the result.

21 You know, and it still doesn't resolve the
22 underlying problems about the difference between using
23 test year numbers and then the actual numbers and --
24 and mixing and matching those and using linear
25 regression for some of the numbers and -- and

1 non-linear regression to -- to reach some of the other
2 numbers.

3 And, you know, I mean, if -- if we wanted to
4 go into that, I'm sure my experts would have numerous
5 things to say about that, Your Honor.

6 COMMISSIONER GAW: Sure.

7 Mr. Schwarz, anything else?

8 MR. SCHWARZ: My recollection is pretty much
9 like Mr. Micheel's.

10 COMMISSIONER GAW: Okay. I think that's all I
11 have.

12 Thank you all.

13 JUDGE THOMPSON: Thank you, Commissioner Gaw.

14 Commissioner Forbis?

15 COMMISSIONER FORBIS: I have no additional
16 questions.

17 JUDGE THOMPSON: Additional questions from the
18 Bench?

19 (No response.)

20 JUDGE THOMPSON: Hearing none, I believe that
21 we would be adjourned at this time.

22 WHEREUPON, the hearing of this case was
23 concluded.

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