

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3  
4 ON-THE-RECORD PRESENTATION  
5 AND  
6 TRANSCRIPT OF PROCEEDINGS

7 Hearing

8 November 4, 2002  
9 Jefferson City, Missouri  
10 Volume 8

11 In the Matter of Laclede Gas )  
12 Company's Tariff to Revise ) Case No.: GR-2002-365  
13 Natural Gas Rate Schedules. ) Tariff No.: JG-2003-0902

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

17  
18 CONNIE MURRAY,  
19 STEVE GAW,  
20 BRYAN FORBIS,  
21 COMMISSIONERS.

22 REPORTED BY:

23 STEPHANIE L. KURTZ MORGAN, RPR, CCR  
24 ASSOCIATED COURT REPORTERS  
25 714 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

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  
19 FOR: Laclede Gas Company.

20 DIANA VUYLSTEKE, Attorney at Law  
21 Bryan Cave, L.L.P  
22 211 North Broadway, Suite 3600  
23 St. Louis, Missouri 63102  
24 (314) 259-2543  
25  
26 FOR: Missouri Industrial Energy Consumer.

27 DOUGLAS E. MICHEEL, Senior Public Counsel  
28 P. O. Box 7800  
29 Jefferson City, Missouri 65102-0780  
30 (573) 751-4857  
31  
32 FOR: Office of the Public Counsel  
33 and the Public.

34 THOMAS R. SCHWARZ, JR., Deputy Counsel  
35 LERA L. SHEMWELL, Associate Counsel  
36 P. O. Box 360  
37 Jefferson City, Missouri 65102  
38 (573) 751-6434  
39  
40 FOR: Staff of the Missouri Public Service  
41 Commission.

42 ASSOCIATED COURT REPORTERS  
43 (573) 636-7551 JEFFERSON CITY, MO 65101  
44 TOLL FREE 1-800-636-7551

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

2 (Written Entries of Appearance filed.)

3 JUDGE THOMPSON: Good morning, Ladies and  
4 Gentlemen. We'll go on the record now. We are here in  
5 the matter of Laclede Gas Company's Tariff to revise  
6 Natural Gas Rate Schedules, Case No. GR-2002-356.

7 My name is Kevin Thompson. I'm the Regulatory  
8 Law Judge assigned to preside over this matter. We  
9 will begin with oral entries of appearance from  
10 counsel.

11 Why don't we begin with the Company, please.

12 MR. PENDERGAST: Thank you, Your Honor.  
13 Michael C. Pendergast, Rick Zucker and James  
14 Swearingen, appearing on behalf of Laclede Gas Company.  
15 My business address is 720 Olive Street, St. Louis,  
16 Missouri 63101.

17 JUDGE THOMPSON: Thank you.

18 Staff for the Commission.

19 MR. SCHWARZ: My name is Tim Schwarz. My  
20 address is P. O. Box 360, Jefferson City, Missouri  
21 65102, and I am here representing the Staff of the  
22 Commission.

23 JUDGE THOMPSON: Thank you.

24 Office of the Public Counsel.

25 MR. MICHEEL: Douglas E. Micheel, appearing on

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

1   behalf of the Office of the Public Council and the  
2   Public, P. O. Box 7800, Jefferson City, Missouri  
3   65102-7800.

4           I also received a call from Jan Bond, the  
5   counsel for Pace Union, and she indicated that she  
6   would not be here today, inasmuch as they didn't have  
7   an interest in this matter at this time.

8           JUDGE THOMPSON: Thank you, sir. I also  
9   received telephone calls from counsel for two of the  
10  other parties.

11           Are there any of the intervenors present?

12           (No response.)

13           JUDGE THOMPSON: Okay. We will proceed  
14  without them. The first thing we need to do is decide  
15  exactly what the order of proceedings will be today.

16           This is what we call an on-the-record  
17  presentation. The primary purpose of an on-the-record  
18  presentation is for the Commissioners to ask questions  
19  of counsel.

20           However, in view of what has transpired in  
21  this case over the last week or so, I anticipate that  
22  perhaps some parties will have testimony that they wish  
23  to offer.

24           Mr. Schwarz, what does Staff propose to tell  
25  us this morning?

1           MR. SCHWARZ: Well, I would -- I would suggest  
2   that the first order of business would be for counsel  
3   to present the -- the parties' positions to the  
4   Commission. We certainly have available Dan Beck of  
5   the Staff, who would be available if the Commission  
6   needs to ask questions of -- of witnesses.

7           And I guess I would recommend that the order  
8   be Company, Public Counsel and then Staff. I haven't  
9   checked with the others. I don't know if that's --

10          JUDGE THOMPSON: All right.

11          Mr. Pendergast?

12          MR. PENDERGAST: That sounds fine to me, Your  
13   Honor.

14          JUDGE THOMPSON: So you would propose  
15   essentially an opening statement in the order of  
16   Company, Public Counsel and the Staff; is that correct?

17          MR. SCHWARZ: Yes.

18          JUDGE THOMPSON: Mr. Micheel?

19          MR. MICHEEL: Your Honor, we, I guess, were  
20   gonna enter a reply with an affidavit today, and I  
21   didn't know what -- when the appropriate time to do  
22   that will be.

23          JUDGE THOMPSON: Well, now will work.

24          MR. MICHEEL: I -- okay. I've provided copies  
25   to the parties that are here and I have an original of

1 the affidavit of Hong Hu.

2 JUDGE THOMPSON: Okay. Now, have you filed  
3 this with the Data Center?

4 MR. MICHEEL: I have not.

5 JUDGE THOMPSON: Okay. We will recess in a  
6 few moments when I go get the Commissioners. At that  
7 time, why don't you file that with the Data Center and  
8 then we can go ahead and mark it as an exhibit and  
9 receive it after we go back on the record with the  
10 Commissioners here.

11 MR. MICHEEL: Do I need to file the original  
12 with the Data Center, Your Honor?

13 JUDGE THOMPSON: If you would.

14 MR. MICHEEL: Okay.

15 JUDGE THOMPSON: Thank you.

16 MR. MICHEEL: And then I --

17 MR. PENDERGAST: And, Your Honor, we also have  
18 a responsive affidavit, too, so I can assume we would  
19 follow the same instruction?

20 JUDGE THOMPSON: Same treatment. Yeah,  
21 anybody who has anything to file, let's go ahead and  
22 follow that treatment.

23 Thank you.

24 I have a -- somewhat of a problem with the  
25 order that the parties have proposed, because it seems

1 to me that the Staff really has the affirmative here  
2 with their Motion to Suspend.

3 MR. PENDERGAST: If I can weigh in, Your  
4 Honor, I think that's a perfectly appropriate course of  
5 action, too.

6 MR. SCHWARZ: Without necessarily concurring  
7 with that analysis, I'm perfectly willing to go first  
8 if that's the --

9 JUDGE THOMPSON: Okay. Well, I think  
10 that -- I think Staff really needs to explain so that  
11 the Commissioners and I can understand, and -- and  
12 understanding that I'm not a mathematician or an  
13 engineer or an economist, exactly what is wrong from  
14 Staff's point of view with the tariffs that were  
15 presented for approval in compliance with the  
16 Commission's earlier order.

17 Okay. I think that would be most helpful as a  
18 starting point. And then Company and Public Counsel  
19 should explain their points of view, remembering always  
20 that really what's before the Commission are two  
21 things, a set of tariffs and Staff's motion with  
22 respect to those tariffs.

23 That's what's on the table right now. And  
24 that's what we need to hear about.

25 MR. PENDERGAST: Your Honor, if we're changing

1 the order, the only additional request I would have is  
2 that it appears from the affidavit that the Public  
3 Counsel has handed out today that they're more closely  
4 aligned with Staff now, certainly than they are with  
5 the Company.

6 So I think it would be appropriate for the  
7 Staff and Public Counsel to go first, and then we  
8 follow after that, if nobody has any objection.

9 JUDGE THOMPSON: Okay. Is that acceptable to  
10 you, Mr. Micheel?

11 MR. MICHEEL: It's super-duper.

12 JUDGE THOMPSON: Okay. All right. Now that  
13 we've got all that worked out, I'm gonna go get the  
14 Commissioners. So we will adjourn for a few moments --  
15 probably ten minutes and then we'll be back and start  
16 the presentation.

17 (A RECESS WAS TAKEN.)

18 JUDGE THOMPSON: Mr. Schwarz, please proceed.

19 MR. SCHWARZ: May it please the Commission, my  
20 name is Tim Schwarz. I'm here today representing the  
21 Staff of the Public Service Commission.

22 We're here this morning on order of the  
23 Commission to address Staff's Motion to Suspend the  
24 compliance tariff filings of Laclede Gas Company in  
25 this case.



1           And I think that I'll start it at the  
2 beginning in my explanation. And that is first of all,  
3 this -- this case was resolved by stipulation and  
4 agreement of the parties.

5           And the stipulation and agreement is a  
6 contract among -- among the parties which the -- in  
7 which the Commission's role is to review and determine  
8 that the results of that stipulation and agreement are  
9 just and reasonable. The party -- or the PSC is not a  
10 party to the stipulation and agreement.

11           With respect to the compliance tariff filings,  
12 Laclede asserts that the stipulation and agreement  
13 means one thing for billing units, and the Staff argues  
14 that it means another. This raises two possibilities  
15 in my view.

16           First, that a contract was made, but with a  
17 vague term that requires construction, or that no  
18 contract at all exists with respect to this issue,  
19 which means that it must be heard and determined by the  
20 Commission in the first instance.

21           Because the stipulation and agreement has been  
22 treated as a unanimous one disposing of all issues  
23 under Public Service Commission rules, and because the  
24 Commission's -- has ordered Laclede to comply with the  
25 terms of the stipulation and agreement and to file

1 tariffs in compliance with the stipulation and  
2 agreement, Staff is not in a position to renegotiate  
3 the terms of the stip in the guides in -- in reviewing  
4 compliance tariffs.

5 That is, Staff entered into and executed the  
6 stipulation and agreement with the step -- set of  
7 reasonable expectations as to the meaning of the  
8 contract and how Laclede needs to comply with it.

9 Likewise, because the Commission is not a  
10 party to the stipulation and agreement, Laclede cannot  
11 extend an offer to be accepted by the Commission, nor  
12 can the Commission accept an offer from Laclede.

13 Offers in this matter must run to the parties,  
14 not to the Commission. As a result of -- of the state  
15 of affairs, the Commission must do two things.

16 It must determine if there was an agreement on  
17 these issues or if there was no agreement on billing  
18 units. That's the first item.

19 If there was an agreement but the terms are  
20 not clear, then the Public Service Commission must  
21 construe the stipulation and agreement as a matter of  
22 fact on record evidence in the contested case.

23 If there was no agreement, then the Commission  
24 must hear and determine the issue after a contested  
25 case hearing.

1           It is Staff's position that there is a  
2   contract on this issue and that all signatories agree  
3   that Staff's computation of billing determinants would  
4   be used in the computation of rates.

5           Staff believes that the evidence firmly  
6   establishes this fact. That evidence is found in -- in  
7   several places. In -- in the on-the-record  
8   presentation on the stipulation and agreement the  
9   Commission admitted into the record all prefiled  
10  testimony in this case.

11           Thus what I'm about to read to you is already  
12  on-the-record evidence. And the first passage I will  
13  draw to the Commission's attention is that of Paul H.  
14  Raab, his rebuttal testimony, filed in August.

15           At page 19 of that testimony, line 18, he  
16  says, as discussed above, for purposes of the WMC,  
17  weather mitigation clause, the Company could agree at  
18  this time to use the per-customer per-heating degree  
19  day estimates that Staff has supported in this case, as  
20  long as the same values are applied in the rate setting  
21  process.

22           Similarly, in the surrebuttal testimony of  
23  Mr. Cline of Laclede at page 18, beginning at line 14.

24           I certainly cannot disagree with Mr. Russo  
25  from a technical standpoint. However, there is no

1 reason for this to be an issue in this case, since the  
2 parties have agreed on what amount of heating degree  
3 days should be used for rate design purposes in this  
4 case.

5 And as Laclede Witness Raab indicated in his  
6 rebuttal testimony, the Company is willing to use  
7 Staff's method for turning those degree days into  
8 billing determinants.

9 In addition, the Staff and Laclede and Public  
10 Counsel and other parties have settled many cases --  
11 many Laclede general rate cases in the past few years.  
12 This approach to settlement is consistent with the past  
13 dealing of the parties in determining rates pursuant to  
14 stipulations and agreement.

15 And I suggest to the Commission that as you  
16 take a look at the construction of this contract by  
17 stipulation and agreement that you keep in mind the  
18 past dealings of the parties.

19 Staff's approach to this issue is -- has been  
20 consistent from its direct testimony through its  
21 surrebuttal and in its review of the compliance filings  
22 in this case.

23 I think that it certainly should have been  
24 incumbent on Laclede that if it was changing its  
25 position from the testimonies of Mr. Raab and Mr. Cline

1 in this case, that it should have notified the Staff  
2 that it -- it was changing its position in that regard.

3 Laclede attached as Attachment 1 to its  
4 October 30th response to Staff's reply and request for  
5 hearing a copy of an email from Ms. Patricia Krieger of  
6 Laclede.

7 And the last page -- page 3 of that attachment  
8 indicates a number of adjustments that were made. And  
9 notably missing from those adjustments is this change  
10 to the calculation of the billing determinants.

11 I think that if you consider as well the  
12 chronology of events that the construction needs to be  
13 that Staff's billing determinants are the ones that the  
14 parties agreed to.

15 On August the 2nd, the Company filed the  
16 rebuttal of Raab, which I've -- I've read a pertinent  
17 excerpt from, as well as the rebuttal testimony of  
18 Mr. Cline.

19 And it's the rebuttal testimony of Mr. Cline  
20 that's recited in the stipulation and agreement as the  
21 basis for the terms of the settlement.

22 On August the 20th the parties filed a partial  
23 stipulation and agreement that addressed \$14 million of  
24 revenue requirement. It addressed discon-- changes in  
25 terms of discontinuance of service in order to ensure

1 that safety inspections are done.

2 It settled pensions and OPEBs. It's settled  
3 the emergency cold-weather-rule tracker. It settled  
4 depreciation. It settled AAOs. It settled off-system  
5 sales and capacity release. It settled on  
6 4,718 heating degree days to be used for billing  
7 determinants in the case.

8 It settled cost of service studies to be  
9 performed in the future. It agreed that Laclede energy  
10 services costs were not to be charged to Laclede Gas  
11 customers when those costs were incurred to serve  
12 others.

13 It included a resolution that the -- that  
14 Laclede's weather accounting authority order, the case  
15 would be dismissed. It specifically said that it left  
16 unresolved class costs of service, allocations, weather  
17 mitigation, rate design and Public Counsel's proposed  
18 GSIP.

19 That's on the 20th of August. On the 23rd of  
20 August Mr. Cline filed his surrebuttal. The -- the --  
21 containing the quote that I read into the record  
22 earlier that Laclede would agree to use Staff's billing  
23 determinants.

24 On the 29th of August, six days after Cline's  
25 surrebuttal, the first amended stip was filed, which

1 included weather mitigation. And the parties agreed  
2 specifically to the position of Cline's rebuttal  
3 testimony, not his surrebuttal testimony, and agreed to  
4 do changes to commercial and industrial rates if  
5 billing determinant information became available  
6 quickly enough. Also agreed to follow up as needed  
7 with certain ACA/PGA information.

8           It adopted Public Counsel's gas apply  
9 incentive plan as modified per the Staff's David  
10 Sommerer, including monitoring reports, acknowledge  
11 that weather mitigation affects risks and could be  
12 argued in return on equity in future cases, and imposed  
13 a rates moratorium.

14           On September the 5th, the second amended  
15 stipulation and agreement was submitted, which  
16 allocated the rate increase to the various customer  
17 classes and recommended -- recommended an effective  
18 date of November 1st.

19           On September the 11th shortly before the  
20 on-the-record presentation to this Commission, Laclede  
21 sent spreadsheets, as I've referenced earlier, with  
22 notice of changes and several billing determinants.

23           But noticeably absent from that was the  
24 proposed change in the first block residential winter  
25 rates.

1           And as noted in Mr. Beck's affidavit filed  
2   last week, the first direct notice that Staff received  
3   from Laclede Gas Company that there was a change in the  
4   billing determinants for revs in the first block winter  
5   rates was October the 16th.

6           So I -- I -- I think that the chronology of  
7   events certainly supports Staff's expectation when it  
8   executed each of these three stipulations and  
9   agreements that the billing determinants were to be  
10  calculated as they had in the past, according to the  
11  approach filed by Staff.

12           I think that there is enough information in  
13  the record, particularly Mr. Raab's and Mr. Cline's  
14  testimony, to support the Staff and the Commission in  
15  rejecting the compliance tariffs filed by Laclede and  
16  directing Laclede to again calculate and file tariffs  
17  that comply with the terms of the stipulation and  
18  agreement.

19           Thank you.

20           JUDGE THOMPSON: Thank you, Mr. Schwarz.

21           Would you like to hear from all of the parties  
22  before you have questions?

23           COMMISSIONER MURRAY: I have one question  
24  right now.

25           JUDGE THOMPSON: Mr. Schwarz?

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



1           COMMISSIONER MURRAY: Mr. Schwarz, you  
2 indicated, I think accurately, that the first amended  
3 partial stipulation and agreement says that the method  
4 as defined -- or as set out in Mr. Cline's rebuttal  
5 testimony would be used; is that correct?

6           MR. SCHWARZ: The -- that's in the  
7 second -- no, that's in the first amended stipulation  
8 agreement, correct.

9           COMMISSIONER MURRAY: And what you quote in  
10 support of Staff's position is Mr. Cline's surrebuttal  
11 testimony; is that right?

12          MR. SCHWARZ: That's correct. That's on  
13 a -- on a slightly different issue, though.

14          The -- the parties agreed -- what the parties  
15 referenced Mr. Cline's rebuttal testimony for was  
16 the -- the shift in revenue requirement from the second  
17 block to the first block to provide a level of  
18 mitigation of the effect of weather in general rates  
19 coupled with a shift in design of rates in the  
20 PGA/ACA process so that the overall bill impact would  
21 be minimized.

22          And it's that general proposal in Mr. Cline's  
23 rebuttal testimony that was agreed upon in the first  
24 amended stipulation and agreement.

25          It -- I -- I believe it's a separate question

1 as, once you've agreed on that structure, the actual  
2 computation of the rates.

3 And certainly at the time that the first  
4 amended stipulation was executed, Mr. Cline's  
5 surrebuttal had already been filed saying that the  
6 parties -- or La-- Laclede would agree to use the  
7 Staff's methodology of turning heating degree days into  
8 billing determinants for use in setting rates. So  
9 it's -- it's --

10 COMMISSIONER MURRAY: All right.

11 MR. SCHWARZ: -- separate.

12 COMMISSIONER MURRAY: Thank you for  
13 clarifying.

14 JUDGE THOMPSON: Commissioner Gaw?

15 COMMISSIONER GAW: Thank you. Thank you.

16 Mr. Schwarz, is -- is there just one issue  
17 here in regard to the -- a disagreement of the  
18 parties? Is there just one issue?

19 MR. SCHWARZ: I believe so. It's my  
20 understanding that the com-- there was al-- there has  
21 also been some ongoing discussion about the rates to be  
22 charged in the commercial and industrial block.

23 But it's my understanding this morning that  
24 the Company has agreed to Staff's latest computation in  
25 that regard. So my understanding is as we currently

1 sit, that -- that the only remaining issue is  
2 residential first block winter rates.

3 COMMISSIONER GAW: All right. And would you  
4 state the issue to me in a sentence?

5 MR. SCHWARZ: The issue is the calculation of  
6 first block winter rates consistent with the  
7 expectations of the parties at the time the stipulation  
8 and agreement which settled this case were executed.

9 COMMISSIONER GAW: Now -- and I want you to  
10 throw that word "expectations" out. What was in this  
11 document that addressed the issue of first block winter  
12 rates?

13 MR. SCHWARZ: There's nothing specific --

14 COMMISSIONER GAW: Nothing in stip?

15 MR. SCHWARZ: Nothing specifically in the  
16 stip.

17 COMMISSIONER GAW: Nothing in the order?

18 MR. SCHWARZ: Correct.

19 COMMISSIONER GAW: But there is a reference to  
20 testimony in the stip; is that correct?

21 MR. SCHWARZ: As -- that's correct. As I was  
22 explaining to Commissioner Murray, that deals with the  
23 overall shift -- rate design shift to collect more  
24 revenues from the first block as a measure of  
25 mitigation of weather risk.

1           That's -- that's the -- the reference in the  
2 stipulation and agreements. It is the -- the  
3 stipulation is silent on the issue of how the -- the  
4 rate design is to be converted into actual rates, which  
5 is -- which is --

6           COMMISSIONER GAW: And you're saying there's  
7 nothing referenced from the stip in the testimony that  
8 answers that question?

9           MR. SCHWARZ: The -- the stip does not  
10 reference Mr. Cline's surrebuttal or Mr. Raab's  
11 rebuttal testimony indicating Laclede's acceptance of  
12 Staff's methodology of converting heating degree days,  
13 the measure of the weather, into billing units Laclede  
14 billed by therms.

15           So that's the conversion of heating degree  
16 days into therms.

17           COMMISSIONER GAW: All right. And -- and  
18 your -- Staff's position is that there is just nothing  
19 there in any of the written documents that were -- that  
20 were admitted into evidence or into this -- or in the  
21 stip or in the order?

22           MR. SCHWARZ: There is nothing explicit on  
23 this issue in writing in any of those documents.

24           COMMISSIONER GAW: So that's our -- that's  
25 the -- the reason we're here, because there's nothing

1 that gives us guidance in those documents and there's a  
2 disagreement of the -- among the parties as to what  
3 they intended?

4 MR. SCHWARZ: That's correct. This is -- this  
5 is basically a construction of the stipulation and  
6 agreement.

7 COMMISSIONER GAW: Well, okay. I just asked  
8 you if there was anything in there about it, and you  
9 said there wasn't. So how is it a matter of  
10 construction?

11 MR. SCHWARZ: Well, certainly the parties  
12 clearly anticipated that rates would be filed as a  
13 result of the stipulation and agreement. And the  
14 way -- and they -- and the parties also actually  
15 stipulated the number of heating degree days that were  
16 to be used, 4,718 heating degree days.

17 And so I think that it's plain that the  
18 parties expected those heating degree days to be  
19 converted into therms and used to generate rates.

20 COMMISSIONER GAW: Does that answer you  
21 to -- does that answer the question that -- that you  
22 said was at issue if you -- if you use that logical  
23 progression that you just stated?

24 MR. SCHWARZ: I -- I --

25 COMMISSIONER GAW: Does that --

1 MR. SCHWARZ: Yes.

2 COMMISSIONER GAW: -- answer the question?

3 MR. SCHWARZ: I believe that there was a  
4 contract. I believe that there was a meeting of the  
5 minds. I think the Company has done some post-hoc  
6 rationalization.

7 And I think that if you look at -- at the  
8 Company's testimony and the prior dealings of the  
9 parties, which you're perfectly entitled to do in  
10 construing this document, that the conclusion you need  
11 to reach is that Staff's Motion to Suspend is -- is  
12 well founded and the Company should be ordered to file  
13 rates consistent.

14 COMMISSIONER GAW: Well, okay. So did you  
15 answer my question yes? Is that what was -- was that  
16 your answer? Was it a yes?

17 MR. SCHWARZ: I'm -- I'm not sure I'm clear  
18 on --

19 COMMISSIONER GAW: You don't remember my  
20 question, do you?

21 MR. SCHWARZ: I'm not clear on your question.

22 COMMISSIONER GAW: I don't know if I do  
23 either.

24 But my que-- my -- what I'm asking you is  
25 whether or not you can take the stipulation, the order,

1 the evidence that was submitted into the record that  
2 was referencing the stip and get to your -- your  
3 conclusion -- the Staff's position?

4 MR. SCHWARZ: The answer is no. I don't  
5 believe the evidence that you need is referenced in the  
6 stip. I think the evidence that you need is contained  
7 in the record and you're entitled to consider it.

8 I think that the -- the reference in the stip  
9 is to a rate design issue, as opposed to a rate  
10 computation issue.

11 COMMISSIONER GAW: Okay. Well, if it's not  
12 there, then how is it -- what -- how -- how is the  
13 Commission supposed to make a determination about what  
14 was intended if the parties never reduced any  
15 intentions to writing?

16 MR. SCHWARZ: Well, I think that -- I --  
17 the -- the Company certainly, prior to the execution of  
18 the stipulation and agreement, had indicated in a  
19 public declaration to this Commission that Staff's  
20 computations to take heating degree days and turn them  
21 into therms was acceptable to the Company.

22 COMMISSIONER GAW: Where was that?

23 MR. SCHWARZ: That's in Mr. Cline's  
24 surrebuttal testimony and Mr. Rap's -- or Raab's --  
25 excuse me -- rebuttal testimony that I read into the

1 record earlier.

2 Not -- those two things are not directly  
3 referenced in the stipulation and agreement. They are  
4 nevertheless part of the course of dealings of the  
5 parties in -- in reaching the stipulation and  
6 agreement.

7 COMMISSIONER GAW: Is there contrary testimony  
8 by the Company to that?

9 MR. SCHWARZ: No, sir.

10 COMMISSIONER GAW: All right. Now, take me  
11 through the calculation.

12 MR. SCHWARZ: For that I would defer to  
13 Mr. Beck. But I -- I -- I would sug--

14 COMMISSIONER GAW: The -- well, let me ask you  
15 this -- but he can do that in a little bit, but --

16 MR. SCHWARZ: And I -- I think it may be  
17 explained in his filing.

18 COMMISSIONER GAW: Well, I'm looking at this  
19 Motion to Accept Staff's Response to the Commission's  
20 October 31st Order and Directing Filing.

21 MR. SCHWARZ: Correct.

22 COMMISSIONER GAW: And I -- and I need an  
23 explanation of C and D under there. Can you do that?

24 MR. SCHWARZ: I mean, the division -- the  
25 division as to the --



1 COMMISSIONER GAW: I understand.

2 MR. SCHWARZ: As to the derivation -- as to  
3 the derivation of the numbers, I wouldn't --

4 COMMISSIONER GAW: Between C and D. I --  
5 that -- that -- I want to understand what the  
6 difference is between what you're saying and C and D.

7 MR. SCHWARZ: I would defer that to Mr. Beck.

8 COMMISSIONER GAW: All right.

9 I guess that's all I have right now. Maybe  
10 somebody can develop that for me.

11 JUDGE THOMPSON: Yes, sir.

12 Commissioner Forbis?

13 COMMISSIONER FORBIS: I want to keep going and  
14 then go back.

15 JUDGE THOMPSON: Okay.

16 Mr. Schwarz, before you sit down, I have a  
17 couple questions for you.

18 First of all, when I look at the first amended  
19 stipulation and agreement, I read what's marked as  
20 paragraph 2 immediately under the heading weather  
21 mitigation rate design.

22 It states, the parties agree to the  
23 establishment of the weather mitigation rate design as  
24 set forth and described in the rebuttal testimony of  
25 Laclede Witness Michael T. Cline. As modified in

1 accordance with the recommendation set forth in the  
2 surrebuttal testimony of, one, David M. Sommerer  
3 relating to the preservation of existing actual cost  
4 adjustment ACA and refund factors.

5 And, two, Michael S. Proctor relating to the  
6 billing of the PGA. Are you familiar with that?

7 MR. SCHWARZ: Yes.

8 JUDGE THOMPSON: And as I review the rebuttal  
9 testimony of Michael T. Cline, I find in there this  
10 specimen tariff sheet for residential general service.

11 So I guess my question to you is, did the  
12 parties not agree on this computation?

13 MR. SCHWARZ: No.

14 JUDGE THOMPSON: And how can you say that in  
15 accordance -- in the face of what I just read to you?

16 MR. SCHWARZ: Well, it had, A -- it's the rate  
17 design and not the rates that the parties agreed to --  
18 that the first.

19 Secondly, Mr. Cline's rebuttal testimony is  
20 not modified as proposed by Mr. Sommerer or  
21 Mr. Proctor.

22 There had been certainly no agreement at that  
23 time as to how this -- the weather mitigation was gonna  
24 be implemented for commercial and industrial customers  
25 primarily because of problems with the billing

1     determinant data.

2             The settlement, if recollection serves, has  
3     established some new classes in the C&I group, and that  
4     data had not yet been reviewed.

5             So the -- the tariff sheet that you show  
6     is -- is setting out rates and, no, no one was agreeing  
7     or expecting that those rates were --

8             JUDGE THOMPSON:   Okay.  What is it -- what is  
9     it that Staff is asking the Commission to do?

10            MR. SCHWARZ:  Staff is asking the Commission  
11     to -- actually we've asked them to suspend the  
12     compliance filings because, in fact, they don't comply  
13     with the stipulation and agreement.  And to direct the  
14     Company to file rates that do comply with the  
15     stipulation and agreement.

16            JUDGE THOMPSON:  And there's a request for a  
17     hearing.  What's --

18            MR. SCHWARZ:  Well --

19            JUDGE THOMPSON:  What does the Staff want the  
20     hearing on?

21            MR. SCHWARZ:  Well, I -- I think that the --  
22     the Staff wants a hearing on whether the filing, in  
23     fact, complies with the stipulation and agreement.

24            However, I think that on further reflection  
25     that Mr. Raab's and Mr. Cline's testimony is probably

1 adequate evidence to reject tariffs that are computed  
2 on the basis, other than the Staff's.

3 JUDGE THOMPSON: And, in your opinion, how  
4 long can the Commission suspend the compliance tariffs  
5 for?

6 MR. SCHWARZ: Eleven months.

7 JUDGE THOMPSON: Okay. Do you have any  
8 authority cites for that?

9 MR. SCHWARZ: No, sir. But I would -- would  
10 point out that the Commission rejected the tariffs that  
11 were filed to initiate this rate case.

12 JUDGE THOMPSON: Very well. Thank you.

13 MR. SCHWARZ: And I want to make clear also  
14 that Staff is not suggesting that -- that there should  
15 be any kind of a suspension for any extended period of  
16 time on this matter.

17 I'm certainly not advocating eleven months or  
18 thirty days. If -- if the Commission acts promptly on  
19 this matter, the -- the tariffs were filed with an  
20 effective date of November 23rd, I think that's -- if  
21 Staff gets enough time to review what Laclede might  
22 file in compliance, certainly I think it -- it can be  
23 done pretty promptly.

24 JUDGE THOMPSON: Very well.

25 COMMISSIONER MURRAY: I --

1 JUDGE THOMPSON: Yes, ma'am.

2 COMMISSIONER MURRAY: I would like to --

3 JUDGE THOMPSON: Commissioner Murray?

4 COMMISSIONER MURRAY: -- to ask some questions  
5 at this point.

6 Mr. Schwarz, you -- in your opening statement,  
7 you referenced the Attachment 3 -- or Attachment 1,  
8 page 3 to Laclede's October 30 filing?

9 MR. SCHWARZ: Yes, ma'am.

10 COMMISSIONER MURRAY: And where should --  
11 where -- where do you claim the adjustment should show  
12 on that page?

13 MR. SCHWARZ: Well, I think it should show  
14 anywhere on the list. I don't know that it should be  
15 the first item or the last item, but it should be an  
16 item.

17 COMMISSIONER MURRAY: What would it show?

18 MR. SCHWARZ: It would show that the -- that  
19 Laclede has made an adjustment to the first block  
20 winter billing determinants.

21 And I folded that up and --

22 COMMISSIONER MURRAY: And what would that  
23 adjustment be?

24 MR. SCHWARZ: I -- my recollection is about  
25 two-and-a-half-million therms, but I'm not -- it would

1 certainly indicate under adjustments -- adjustment to,  
2 you know, first block of winter determinants.

3 COMMISSIONER MURRAY: And can you give me  
4 a -- a basic definition of billing determinants?

5 MR. SCHWARZ: We tread on dangerous ground --  
6 yes. It's -- it is the -- billing determinants are the  
7 units by which the revenues required by the Company are  
8 converted into rates.

9 In Laclede's case, they compute and send their  
10 bills to customers based on the number of therms  
11 consumed. Other companies use cubic feet of gas.

12 So it -- it can vary from company to company.  
13 But it's -- it's basically the units of consumption  
14 used to determine rates given that you have a -- a  
15 required revenue.

16 COMMISSIONER MURRAY: All right. And it's  
17 Staff's position, is it not, that -- that there is a  
18 formula for calculating those utility determinants, so  
19 it has been used in the past?

20 MR. SCHWARZ: Yes.

21 COMMISSIONER MURRAY: And where did that  
22 formula come from?

23 MR. SCHWARZ: Staff witnesses developed the --  
24 over time. I couldn't -- I couldn't tell you the  
25 niceties -- if it's changed since 1996 or if it's been

1 constant since 1996.

2 Certainly the approach that Staff has used has  
3 been, I think, consistent for five or six years.

4 COMMISSIONER MURRAY: And can you state that  
5 formula?

6 MR. SCHWARZ: No, ma'am.

7 COMMISSIONER MURRAY: So it has no --

8 MR. SCHWARZ: I can't honestly --

9 COMMISSIONER MURRAY: -- mathematical --

10 MR. SCHWARZ: No, ma'am. You asked if I could  
11 state it, and the answer to that is no.

12 COMMISSIONER MURRAY: That -- could someone  
13 else?

14 MR. SCHWARZ: I believe Mr. Beck could explain  
15 it to you.

16 JUDGE THOMPSON: Is Mr. Beck here with you?

17 MR. SCHWARZ: Let me step right out of the  
18 line of fire.

19 COMMISSIONER MURRAY: All right. I'll hold  
20 that one 'til later then.

21 And this al-- also may be a question for  
22 Mr. Beck, but I don't understand, what are the specific  
23 billing determinants and Block 1 therms that Staff  
24 alleges should have been used? Is that for Mr. Beck?

25 MR. SCHWARZ: Yes, ma'am.

1           COMMISSIONER MURRAY: And in the Company's --  
2 I believe it was their October 30 filing -- yes, it  
3 was -- they offered three suggested options.

4           Now, I understand what you said today that the  
5 Commission, as a non-party to the stip and agreement,  
6 cannot take one of those options and impose it over the  
7 objection of one of the parties to the agreement;  
8 however, the parties could agree to one of those  
9 options, could they not?

10          MR. SCHWARZ: That's correct. However, we are  
11 now in a compliance filing framework. That is, it is  
12 Staff's position that we reach an agreement with the  
13 parties.

14          It was our understanding on this particular  
15 item, even though it wasn't specifically in the  
16 stipulation and agreement, there is certainly the past  
17 history and other cases and the Company's  
18 representations and testimony in this case.

19          Our expectation was that we had agreed on the  
20 number of heating degree days and Staff's method of  
21 con-- converting those heating degree days into billing  
22 determinants and hence rates was going to be used.

23          Staff does not feel that it -- it is free when  
24 it has an order from the Commission to review the  
25 tariffs to see if it complies with the agreement to



1 start negotiating another deal.

2 Compliance tariffs either comply or they don't  
3 comply. If -- if the issue is determined to be  
4 unsettled by -- you know, its -- its -- it hasn't been  
5 settled, in fact, by the parties, that's the  
6 Commission's determination.

7 Then the parties are free to negotiate and  
8 reach a -- a settlement and submit that settlement to  
9 the Commission. But we don't view the -- the posture  
10 of the case at this point in time as being a situation  
11 which would permit negotiation without reopening the  
12 issue formally.

13 And that's not -- that's not the status of the  
14 case at this time.

15 COMMISSIONER MURRAY: So if -- if after this  
16 presentation the Commission decided that it is indeed  
17 an issue that was not addressed directly in the stip  
18 and agreement and there is no agreement as to that  
19 issue, the parties could negotiate --

20 MR. SCHWARZ: The parties could --

21 COMMISSIONER MURRAY: -- and accept one of  
22 those positions or some other position at that time?

23 MR. SCHWARZ: That's correct. Or could  
24 litigate it.

25 COMMISSIONER MURRAY: In Staff's filing of

1   October 29th, which was Staff's Reply to Laclede's  
2   Response to the Staff Re-- Staff and Request for  
3   Hearing.

4               MR. SCHWARZ:   Sounds like a Gilbert and  
5   Sullivan song.   I -- I have it here somewhere.

6               Yes.

7               COMMISSIONER MURRAY:   You had an  
8   Attachment A there, which was a verified statement of  
9   the Staff by Mr. Beck.

10              MR. SCHWARZ:   Wait a minute.   I'm sorry.  
11   I'm -- what -- what's the document again?

12              COMMISSIONER MURRAY:   It is the October 29  
13   filing of Staff -- Staff's Request to Laclede's  
14   Response.   At least I -- my copy is stamped hand-filed  
15   on the 29th of October.

16              MR. SCHWARZ:   Okay.   Yes, ma'am.

17              COMMISSIONER MURRAY:   And Attachment A on this  
18   second page of that attachment it discusses the billing  
19   units that were sent to Staff on September 11.

20              And then about in the middle of that paragraph  
21   it references a spreadsheet.   It says, since this  
22   spreadsheet was an enhanced version of a spreadsheet --  
23   do you find that language?

24              MR. SCHWARZ:   Uh-huh.   Yes, ma'am.

25              COMMISSIONER MURRAY:   That was in the

1 Company's direct filing work papers. Staff chose to  
2 spend a significant amount of its time looking at the  
3 nine additional sheets that were added.

4 And -- and my question to you there -- and I  
5 think as counsel you would know that -- did Staff see  
6 the Company's direct filing work papers while the case  
7 was pending?

8 MR. SCHWARZ: I'm sure they did.

9 COMMISSIONER MURRAY: So that wasn't new at  
10 that point -- the --

11 MR. SCHWARZ: Yes.

12 COMMISSIONER MURRAY: -- the work papers?

13 MR. SCHWARZ: They --

14 COMMISSIONER MURRAY: And on page 3 -- and  
15 probably if I had looked at this a little longer, I  
16 could determine this myself, but the first full  
17 paragraph on page 3 speaks about the conference call  
18 where Staff was informed of Laclede's "new and unique  
19 allocation of block therms."

20 Do you see that language? It's in the middle  
21 of that first full paragraph on page 3.

22 MR. SCHWARZ: Yes.

23 COMMISSIONER MURRAY: Was that before or after  
24 the -- the on-the-record presentation?

25 MR. SCHWARZ: That was after. My recollection

1 is -- is that phone call was October the 16th.

2 COMMISSIONER MURRAY: Okay.

3 MR. SCHWARZ: And -- and if I'm wr-- I might  
4 just by way of clarification. Staff had seen the  
5 Company's direct filing work papers at the time the  
6 direct testimony was filed.

7 I think that what Mr. Beck is suggesting here  
8 is that we had an additional nine sheets that we hadn't  
9 seen before that were provided on September the 11th.

10 COMMISSIONER MURRAY: Okay. And is there  
11 quantification that the Company's proposed tariffs  
12 would, in fact, result in higher rates than were agreed  
13 upon?

14 MR. SCHWARZ: The Staff's conclusion is that,  
15 yes, they will.

16 COMMISSIONER MURRAY: And Staff -- the Staff  
17 can quantify that?

18 MR. SCHWARZ: Yeah, I -- that's quantified in  
19 the questions and answers that were filed last week.

20 COMMISSIONER MURRAY: What was the filing  
21 date?

22 MR. SCHWARZ: November 1st.

23 COMMISSIONER MURRAY: Okay. I have several  
24 questions on that, which I assume would be better  
25 addressed to --

1           MR. SCHWARZ: To Mr. Beck.

2           COMMISSIONER MURRAY: -- Mr. Beck?

3           MR. SCHWARZ: Yes, ma'am.

4           COMMISSIONER MURRAY: And then I -- I believe

5 all the rest of my questions would be better addressed

6 to him. Thank you.

7           JUDGE THOMPSON: Thank you, Commissioner

8 Murray.

9           Commissioner Forbis?

10          COMMISSIONER FORBIS: I just want to start

11 right off with a quick question. Maybe I'm splitting

12 hairs and I'm getting somewhat confused about all of

13 this. Also I know I can't get that song out of my

14 head, so thank you very much.

15          MR. SCHWARZ: It's better than the Pirates of

16 Penzance.

17          COMMISSIONER FORBIS: Well, those were -- it's

18 a dual between those two, and I haven't decided is

19 gonna win -- which one's gonna win yet.

20          You're saying that the rates that were

21 submitted were out of compliance with -- with what we

22 expected. Is it that the -- that the rates are not in

23 compliance or that the revenue that the rates will

24 generate is not in compliance?

25          MR. SCHWARZ: We --

1 COMMISSIONER FORBIS: I mean --

2 MR. SCHWARZ: It's both. We think that the  
3 rates are not in compliance.

4 COMMISSIONER FORBIS: Okay.

5 MR. SCHWARZ: And that if you apply those  
6 rates to, I guess, normal weather --

7 COMMISSIONER FORBIS: Uh-huh.

8 MR. SCHWARZ: -- that they will -- instead of  
9 generating an increase of revenue of \$14 million, it  
10 will generate -- I think, Mr. Beck's number here is an  
11 additional \$932,000.

12 COMMISSIONER FORBIS: All right. Yeah, but  
13 that's still being and placed against -- and I'm trying  
14 to grab one in your hand and, you know, it's first  
15 X number of therms is 14 cents and -- and the Company  
16 submitted that rate.

17 But the argument is that they're applying that  
18 rate to what the Staff believes is a smaller number of  
19 therms and, therefore, you'll generate actually more  
20 revenue -- the Staff's estimate for therm uses apply?

21 MR. SCHWARZ: Not exactly.

22 COMMISSIONER FORBIS: Okay.

23 MR. SCHWARZ: Exactly it is that the Company  
24 was to --

25 COMMISSIONER FORBIS: Okay.

1           MR. SCHWARZ: In calculating its rates, the  
2 Company was to use the methodology of translating the  
3 agreed-upon heating degree days into the billing  
4 units --

5           COMMISSIONER FORBIS: Right.

6           MR. SCHWARZ: -- using Staff's methodology.  
7 The Company did not do that. Consequently the rates  
8 are not correct.

9           They're not in compliance with the stipulation  
10 and agreement and the Commission's order directing  
11 Laclede to comply with the stipulation and agreement  
12 and to file tariffs in compliance with the stipulation  
13 and agreement.

14          COMMISSIONER FORBIS: I'm still struggling  
15 that the rates are not correct.

16          MR. SCHWARZ: Okay. You -- you get the rates  
17 by dividing required revenue --

18          COMMISSIONER FORBIS: Uh-huh.

19          MR. SCHWARZ: -- by the number of billing  
20 determinants or billing units.

21          COMMISSIONER FORBIS: Right.

22          MR. SCHWARZ: Okay.

23          COMMISSIONER FORBIS: This is that letter C in  
24 the most recent?

25          MR. SCHWARZ: Yes.

1 COMMISSIONER FORBIS: Okay.

2 MR. SCHWARZ: Yes. And as a consequence, the  
3 rates are incorrect. If you -- if -- and its Staff's  
4 position that if you use the rates submitted by the  
5 Company, the Company will.

6 COMMISSIONER FORBIS: Okay.

7 MR. SCHWARZ: -- will recover more than was  
8 agreed upon.

9 COMMISSIONER FORBIS: So when you do this  
10 calculation, then this rate is the -- this rate is  
11 different -- this sort of general rate that I'm seeing  
12 in the tariffs, this gets to the specific per-therm  
13 charge, if you will? I mean, if you do the math --

14 MR. SCHWARZ: Well, you will see --

15 COMMISSIONER FORBIS: -- you get your extra  
16 million dollars back?

17 MR. SCHWARZ: You will see different rates in  
18 the tariff filing -- the compliance filing that Laclede  
19 made --

20 COMMISSIONER FORBIS: Uh-huh.

21 MR. SCHWARZ: -- that Staff is contending  
22 there in part C.

23 COMMISSIONER FORBIS: Okay. Thanks. I'll  
24 leave it at that.

25 JUDGE THOMPSON: Thank you, Mr. Schwarz.

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



1           And, Mr. Beck, we'll get around to you before  
2 we're done.

3           Mr. Micheel.

4           MR. MICHEEL: May it please the Commission,  
5 earlier today you should have in front of you the  
6 affidavits of Hong Hu that we have filed today.

7           I apologize to the Commission for the delay,  
8 but the way this matter unfolded, the Office of the  
9 Public Counsel did not become aware that there was a  
10 dispute between the Staff and the Company with respect  
11 to the billing determinants until October 16th.

12           And we worked as expeditiously as possible to  
13 dig through all of the records and all of our various  
14 emails and correspondence with the Company and the  
15 Staff and to go through the various pleadings to arrive  
16 at what we think is the right decision and what  
17 reflects what should have been done in the stipulation  
18 and agreement.

19           Let me say generally that the Office of the  
20 Public Counsel supports Staff's position. And I'd like  
21 to start, as they say, at the beginning.

22           And at the beginning is when this case was  
23 initially filed by Laclede Gas Company. On or about  
24 July 25th of this year the Company provided to the  
25 Office of the Public Counsel its work papers that

1    showed its first block winter therms for the  
2    residential customers.

3               And that's what we're taking about here.  And  
4    I guess -- I know Commissioner Gaw has gone, but the  
5    way that I would frame the issue for the Commission's  
6    decision here -- let me start there and then I'll go  
7    into my facts -- is whether or not the Commission  
8    should use Staff's first block winter therms or Laclede  
9    Gas Company's first block winter therms to derive the  
10   first block winter rates.  Because that's what we're  
11   talking about here.

12              As -- as you know, this rate design that we've  
13   developed is not applicable in the summer months,  
14   so -- and as you know, we split the blocks into first  
15   block with -- with the usage charge and then the second  
16   block is a zero block rate.

17              So we're talking about the first block winter  
18   therms here.  And that's the way I would frame the  
19   issue.

20              When the Company initially filed its case in  
21   this proceeding, it provided work papers that showed it  
22   had -- and this is all in Mrs. Hu's affidavit  
23   also -- had first winter block therms for residential  
24   customers of approximately 210,846,000.

25              We received the Staff work papers for their

1 filing, because the Office of the Public Counsel -- due  
2 to our limited resources, we don't do these  
3 calculations. We don't have enough people to do it.

4 On 7/31 we received Staff's first block winter  
5 therm calculations for residential customers and it was  
6 roughly 215,599,000 winter therms.

7 It's my understanding that the Staff number  
8 throughout has not changed throughout this proceeding,  
9 but that the Company number has moved around. And --  
10 and I'll get to that.

11 And as Mr. Schwarz said on August 2nd of  
12 '02 -- it's Exhibit No. 4 in the record -- Mr. Cline  
13 filed his rebuttal testimony. And in that testimony  
14 they had the rate design that we agreed upon.

15 And the testimony clearly provides that it is  
16 a "example of how the proposal would work" and he also  
17 attaches what are clearly listed as specimen tariff  
18 sheets.

19 And I would point out to the Commission that  
20 those specimen tariff sheets do not -- do not verbatim  
21 reflect what was filed for compliance here. So my  
22 point is, everybody knew that those were specimen  
23 tariff sheets.

24 I think Judge Thompson had asked a question of  
25 Mr. Schwarz about that. On 8/9 of '02 Mr. -- Mr. Cline

1 provided Ms. Hu with a work paper supporting his  
2 rebuttal testimony. And that is shown as attachment --  
3 Attachment A to Ms. Hu's affidavit.

4 And we were curious when -- because the  
5 proposal -- the rate design proposal was first brought  
6 out in Mr. Cline's rebuttal testimony to get the  
7 background information.

8 And so you'll see Ms. Hu asked for the  
9 percentage of weather variation. And if you look at  
10 page 2 there, you see under the first column heating  
11 and A/C. You see the 209,503 number and that is our  
12 understanding of the first block winter therms that  
13 Mr. Cline utilized in his example.

14 Okay. So that was on shortly after filing  
15 of -- of the rebuttal testimony, some seven days after  
16 the filing of the rebuttal testimony. And again, that  
17 shows a corresponding rate of about 35-and-a-half  
18 cents.

19 On 8/20/02 you heard -- that's August 20th --  
20 we entered into the partial stipulation and agreement  
21 with the specific billing degree -- or the heating  
22 degree days -- the 4,718 that you've heard -- and the  
23 revenue requirement number, the 14 million.

24 Then on 8/23 Mr. Cline filed his surrebuttal  
25 testimony, and that's been admitted into the record as

1 Exhibit 5 in this proceeding.

2 And there's been a lot of banter about what  
3 the intended coverage would be for the rate design.  
4 And that's's the only place in any testimony where  
5 there's any sort of quantification.

6 And the quantification provided in the  
7 surrebuttal testimony of Mr. Cline is that the proposal  
8 eliminates 85 percent of weather-related losses.

9 And so, you know, we've heard numbers of 88  
10 percent and 80 percent weather coverage, but -- but in  
11 Mr. Cline's rebuttal testimony I've -- I've read it  
12 over numerous times and there is no explicit  
13 recognition of any sort of percentage in the testimony.

14 The only evidence that I can find in the  
15 record is the 85 percent referenced in the surrebuttal  
16 testimony of Mr. Cline.

17 This becomes important in the date. On 8/23  
18 Public Counsel also filed their surrebuttal testimony  
19 and Ms. Hu's surrebuttal testimony, which has been  
20 admitted in the record as Exhibit 70.

21 Pointed out that both Staff and Laclede Gas  
22 Company had different first block winter therms; in  
23 other words, there was still a discrepancy between the  
24 first block winter therms.

25 But importantly, Mr. Cline's surrebuttal

1 testimony, as Mr. Schwarz read you, indicates that the  
2 Company was willing to live with the Staff's winter  
3 therms.

4 I -- you know, it -- it -- I think -- and  
5 that's in Ms. Hu's affidavit. And that's the only  
6 statement that we've been able to find bad and  
7 Mr. Raab's statement that the Company was willing to  
8 live with the Staff's number, the 215 number.

9 After -- subsequent to the filing of the  
10 surrebuttal testimony on 8/29/02, Public Counsel signed  
11 the first amended partial stipulation and agreement  
12 establishing the weather mitigation rate design.

13 And it says in there as the judge read today,  
14 as set forth and described in the rebuttal testimony of  
15 Michael T. Cline.

16 But as we're -- all come to realize  
17 unfortunately, the stipulation was silent on the number  
18 of therms to be used. Although the parties should have  
19 been aware of what was written in the surrebuttal  
20 testimony, certainly Public Counsel was aware of  
21 Mr. Cline's statement.

22 And Ms. Hu in her surrebuttal testimony  
23 pointed out as of rebuttal testimony there was a  
24 difference between the Staff's number and the Company's  
25 number.

1           Moreover, Public Counsel in the stipulation  
2   and agreement recognized that we were agreeing to the  
3   concept of the weather mitigation, because these were  
4   specimen tariff sheets. And we still had to compute  
5   the billing determinants and things like that.

6           So I don't think anybody is gonna say that the  
7   concept still has not been whether you go with the  
8   Staff number or the Company number. And I think that's  
9   important, because Ms. Hu has got a calculation in her  
10   affidavit where she indicates that, I believe, if you  
11   utilize the Staff's billing determinants, you get an  
12   86.4 coverage, and if you utilize the Company's, you  
13   get 86.2 coverage for the weather mitigation.

14          So according to Ms. Hu -- and -- and she's  
15   here to testify today and she'll take you through those  
16   numbers. But I would point out that that is more than  
17   the 85 percent -- either one of them is more than the  
18   85 percent, and that's a number that -- that appears in  
19   Mr. Cline's surrebuttal testimony.

20          And importantly -- I think it's important to  
21   point out that the first amended stipulation and  
22   agreement was filed after -- after the surrebuttal  
23   testimony was filed. So we all knew what was in the  
24   surrebuttal testimony.

25          Next what happens in this progression

1 and -- and this is where Public Counsel kind of becomes  
2 mushrooms, because we're not privy to the information.  
3 So we're a little bit in the dark.

4           It's my understanding on 9/11 of this  
5 year -- September 11th, the -- Patricia Krieger from  
6 the Company sent an email to Staff Witnesses Beck and  
7 Ross with the billing determinant numbers in there and  
8 made a list -- proved a list of certain adjustments  
9 that the Company made, but excluded, for whatever  
10 reason, the adjustment that they made to the November  
11 billing determinants.

12           Again, we were unaware of that email's  
13 existence until the paper started flying in -- in this  
14 proceeding -- proceeding.

15           On 9/13 -- and this is attached to Ms. Hu's  
16 affidavit -- we did receive an email from Mr. Cline.  
17 And it was to all parties, both Ms. Hu and Mr. Bush,  
18 received it. And it says -- impertinent part -- that  
19 both the Company and the Staff have agreed to the  
20 billing determinants.

21           So on 9/13 we get an email, and it's  
22 Attachment B, that says the -- the Staff and the  
23 Company have agreed to billing determinants.

24           And it's important -- and this is where the  
25 numbers change yet again. It's my understanding that



1 the numbers for the winter therms on -- on this  
2 document are 212 million and -- and some. So you can  
3 see the progression has changed.

4 You know, the Company started out with 210,  
5 the Staff was at 215. The Company with their next  
6 proposal was at 209. Staff, my understanding, stayed  
7 at 215. And then for the compliance tariff purposes,  
8 now the Company is at 212.

9 Okay. So to me that indicates that there was  
10 never any firm agreement at least with respect to the  
11 Company, because they were -- they had different  
12 billing determinants throughout. And so we received  
13 that.

14 Since it indicated, as -- as I indicated,  
15 we -- the Office of the Public Counsel is usually not  
16 intimately involved in figuring out the billing  
17 determinants and the rates. Unless there's a problem  
18 then, obviously like today, our people take a look at  
19 it and -- but we had no reason to believe, because the  
20 email said it was faxed and the Company had agreed.

21 So if there's agreement, there's no need for  
22 us to look. So here we are today. And there's a  
23 dispute.

24 And the dispute centers around the -- my  
25 understanding is the month of November, and what winter

1   therms should be there. And that the Company made an  
2   adjustment. And you'll see in Ms. Hu's affidavit that  
3   she does not agree with that particular adjustment.

4           And it's been our understanding based upon  
5   testimony and -- and progression that it was the Staff  
6   numbers that -- that we had agreed upon, although  
7   it -- it is correct that this stipulation and agreement  
8   is silent on that matter.

9           So that's where we are. Again, I apologize  
10   for the affidavit not being filed, but we wanted to  
11   make sure that at least the way we saw them, we got our  
12   facts in a row. And we did it as expeditiously as  
13   possible.

14           I'm more than willing to answer any questions  
15   that you have.

16           JUDGE THOMPSON: Thank you, Mr. Micheel.

17           Commissioner Murray?

18           COMMISSIONER MURRAY: Is a part of what you're  
19   saying that even if Staff's numbers were used, the  
20   215-plus million, that the weather mitigation coverage  
21   would be greater than 85 percent?

22           MR. MICHEEL: That's what Ms. Hong's -- or  
23   Ms. Hu's calculation indicates that Staff's final  
24   billing determinants would generate an 86.6 percent  
25   weather -- weather mitigation protection.

1           And we're not -- we're not troubled by that,  
2   because we knew from Public Counsel's view that there  
3   wasn't specific agreement on this.

4           And we knew it was the concept and we knew it  
5   would be in the 80 percent range. But that's what her  
6   calc-- and she'll tell you what she put into her  
7   calculation and how she arrived at that.

8           COMMISSIONER MURRAY: And she -- okay.

9           MR. MICHEEL: It's on page 9 of her affidavit,  
10   I believe, Your Honor, in paragraph 14. And it's the  
11   calculations contained in Attachment C.

12          COMMISSIONER MURRAY: And this is probably a  
13   question that will be better addressed to her, but in  
14   that there is two-tenths of one percent difference  
15   between what she says Staff's calculations would result  
16   in and the Company's calculations would result in, and  
17   yet this has become a very contentious issue, that  
18   two-tenths of one percent must amount to a significant  
19   difference in rates?

20          MR. MICHEEL: It -- it's my understanding the  
21   quantification is in the 900 and -- \$900,000 range, I  
22   believe, Your Honor.

23          COMMISSIONER MURRAY: Of revenue generated?

24          MR. MICHEEL: Yes.

25          COMMISSIONER MURRAY: And this may be

1 something that I just haven't gotten a good concept of  
2 yet, but if the rates are determined based upon the  
3 therms that are used in the different blocks in order  
4 to generate a certain amount of revenue, I'm wondering  
5 why placing more ther-- or fewer therms in Block 1  
6 would amount to such a change. I -- and that's not  
7 phrased very well.

8 MR. MICHEEL: Well, for the mathematical  
9 reasons, I mean, I can -- I mean, the fact of the  
10 matter is I believe if -- if you have less therms in  
11 the first block, that means you need to generate for  
12 revenues to get to the level of weather mitigation.

13 So that -- that's -- but I would rather leave  
14 that to the people that know and it's certainly not me  
15 that knows with certainty.

16 COMMISSIONER MURRAY: All right. I -- I think  
17 that's all the questions I have. Thank you.

18 JUDGE THOMPSON: Thank you, Commissioner.  
19 Commissioner Forbis?

20 COMMISSIONER FORBIS: No. Thank you.

21 JUDGE THOMPSON: Mr. Micheel, I have some  
22 questions for you.

23 MR. MICHEEL: Sorry, Your Honor.

24 JUDGE THOMPSON: That's quite all right.

25 You heard me ask Mr. Schwarz what -- what did

1 Staff want the Commissioners to do and I -- I assume  
2 you heard his answer?

3 MR. MICHEEL: Yes, sir.

4 JUDGE THOMPSON: So my request would be, tell  
5 me what it is that the Public Counsel would like the  
6 Commission to do.

7 MR. MICHEEL: Well, I think we would like the  
8 Commission to effectuate the -- the stipulation and  
9 agreement. And since we believe that the Staff's  
10 billing determinants reflect the -- the agreements of  
11 the parties to -- to put the Staff's billing  
12 determinants into -- into effect.

13 I mean, and -- if you -- if the Commission  
14 feels they need a hearing to do that, we would  
15 certainly be more than willing to present evidence. I  
16 think the Commission does have some affidavits that  
17 have been filed by all of the parties.

18 And this on-the-record presentation  
19 you're -- you're getting some sense of -- of I would  
20 say oral argument of -- about the issue in terms of  
21 positions to be taken.

22 JUDGE THOMPSON: Just so I understand, what is  
23 the Commission's other options?

24 MR. MICHEEL: Well, I -- I think it's --

25 JUDGE THOMPSON: In other words, if the

1 Commission chooses not to suspend the tariffs, is the  
2 Commission's other option simply to approve the  
3 tariffs?

4 MR. MICHEEL: Certainly the Commission could  
5 approve the tariffs that's filed. And let me give my  
6 view. In -- in paragraph 3 of -- of your order, Your  
7 Honor, this Commission specifically rejected the  
8 tariffs filed by Laclede on January 25th, 2002.

9 And I think the Commission has acted  
10 appropriately within the eleven-month time frame  
11 allowed by statute.

12 And what the Commission did in its order, it  
13 said -- in my view, it said, we reject these tariffs.  
14 So the Commission has acted and -- and the order was  
15 order was final, I believe, on October 13th.

16 And -- but the Commission said, if you come in  
17 here with tariffs that comply with this order, meaning  
18 the 14 million, the -- the GSIP, and all of the various  
19 other agreements, and, of course, this agreement also,  
20 we will approve them by either -- you know, obviously  
21 the Commission -- a company can file a tariff and if  
22 the Commission takes no action, those tariffs go into  
23 effect.

24 It's my understanding that these compliance  
25 tariffs have an effective date, I believe, of

1 November 23rd. And if this Commission does not act to  
2 either suspend or say, once again, we reject these  
3 filed like this, those tariffs go into effect.

4 So by doing nothing, the Commission could let  
5 the tariffs go into effect. But I don't think  
6 that -- I think the next time frame would be the  
7 eleven-month time frame for another rate case. Because  
8 that's -- that's what I see that this order did. It  
9 rejected certain tariffs --

10 JUDGE THOMPSON: So it's your opinion --

11 MR. MICHEEL: -- and filed new tariffs.

12 JUDGE THOMPSON: It is your opinion the  
13 Commission could suspend for anywhere up to the eleven  
14 months?

15 MR. MICHEEL: Yes. I'm not -- let me say  
16 this, Your Honor, I am not requesting that to happen.

17 JUDGE THOMPSON: I understand that.

18 MR. MICHEEL: And I hope that we can as  
19 expeditiously as possible get this dispute behind us  
20 and -- and allow Laclede to get their rates into  
21 effect.

22 JUDGE THOMPSON: And is it your position that  
23 the -- the agreement the parties reached -- that the  
24 Commission approved on October 3rd -- is it your  
25 position that that agreement essentially included the

1 billing determinants to be used or did not include it?

2 MR. MICHEEL: I -- I think the agreement was  
3 silent on that, but I -- I think based on what was said  
4 in -- in the surrebuttal testimony of Mr. Cline,  
5 we -- the Office of the Public Counsel believed it was  
6 going to be the Staff billing determinants, based on  
7 their statement that they would not object to the Staff  
8 billing determinants.

9 That was consistent with Mr. Raab, R-A-A-B --  
10 his -- his rebuttal testimony. And I think Ms. Hu has  
11 that in her affidavit, and certainly Mr. Schwarz read  
12 the pertinent parts of that testimony into the record,  
13 Your Honor.

14 JUDGE THOMPSON: Thank you very much.

15 COMMISSIONER MURRAY: Judge --

16 JUDGE THOMPSON: Yes, ma'am.

17 Commissioner Murray?

18 COMMISSIONER MURRAY: Sorry. I want to ask a  
19 couple more questions.

20 Does Office of the Public Counsel take the  
21 same position as Staff does as to this Commission's  
22 authority at this stage to accept alternate proposals  
23 by one party?

24 MR. MICHEEL: I -- I think that's probably  
25 correct, Your Honor. I mean, what we have with the



1 stipulation and agreement is a contract between the  
2 parties. And, you know, without a party's agreement, I  
3 don't think the Commission has authority to alter that  
4 contract.

5 And I guess -- and I apologize for not  
6 addressing this, but with respect to the first two  
7 offered -- alternate proposals, Ms. Hu has a paragraph  
8 in her affidavit expressing our view of why those first  
9 two alternatives are not appropriate.

10 And with respect to the third one, making  
11 rates somehow retroactive to November 1. I think we  
12 stand here on November 4, and I'm not really interested  
13 in making some sort of an agreement with retroactive  
14 rates.

15 I think that -- that raises some -- some legal  
16 issues that -- that wouldn't be appropriate. And  
17 with -- with respect to the first example, I think  
18 it -- it results in, again, more rates being collected  
19 than -- then we agreed to.

20 And I believe with the second example, that  
21 would con-- require continuous monitoring and -- and a  
22 whole host of other unpalatable things.

23 I mean, I think what the Commission should do  
24 in -- is determine this dispute. I think you're gonna  
25 get enough evidence and testimony to determine what the

1 appropriate billing determinants should be for that  
2 first winter block of -- of -- and -- and -- and make a  
3 decision.

4 COMMISSIONER MURRAY: All right. And then my  
5 other question for you is, do you think that time was  
6 of the essence in the stipulation and agreement?

7 MR. MICHEEL: Certainly, Your Honor, we had  
8 agreed to make sure our attempt to get the rates in on  
9 November 1. Okay. And that's in there.

10 But I guess that assumed that we all had a  
11 meeting of the minds with respect to the compliance  
12 tariffs and that the compliance tariffs complied with  
13 what all the parties thought their agreement was.

14 COMMISSIONER MURRAY: But if for some reason  
15 the tariff or tariffs that are filed were to be  
16 suspended up to eleven months, wouldn't that pretty  
17 much negate the rest of the terms of the stipulation  
18 and agreement?

19 MR. MICHEEL: Well, certainly everybody  
20 wouldn't be getting what they bargained for. I -- I  
21 would agree with that.

22 But I -- I do not believe that it's going to  
23 take eleven months to resolve this dispute, Your Honor.

24 COMMISSIONER MURRAY: Thank you.

25 JUDGE THOMPSON: Thank you, Mr. Michael.

1           Mr. Pendergast.

2           MR. PENDERGAST: Thank you. I just know I'm  
3 gonna drop something before it's all over.

4           Your Honor, we also submitted an affidavit.  
5 We did go downstairs and file it. I don't know if the  
6 Commission's received their copies from downstairs yet.

7           I do have three additional ones here for  
8 the -- for yourself and the two Commissioners who are  
9 here, two of which are a filed copy and one that is  
10 just an additional copy.

11           If I could pass those out?

12           JUDGE THOMPSON: Certainly.

13           MR. PENDERGAST: If it please the Commission,  
14 I'd like to begin by making two brief comments, if I  
15 may.

16           First, on behalf of Laclede, I want to thank  
17 the Commission for taking such prompt action to address  
18 the dispute that has arisen between the Company and  
19 Staff relating to the Company's compliance filing in  
20 this case.

21           As we have pointed out, on several occasions  
22 implementation of new rates by November 1st, 2002 was a  
23 key financial element of the settlement reached in this  
24 case.

25           That's why we bargained for and received the

1 role of the parties -- active parties to this case and  
2 recommended a November 1st, 2002 effective date as one  
3 of the terms of the stipulations and agreements that  
4 were approved by the Commission.

5 And with each passing day the new rates are  
6 not in effect, we lose tens of thousands of dollars in  
7 financial benefit of that bargain, and our customers  
8 also lose the benefit of the weather mitigation rate  
9 design that was approved by the Commission.

10 So we very much appreciate the Commission's  
11 efforts to address this matter in an expeditious  
12 matter. And we respectfully request, that no matter  
13 what you decide in terms of whether the Company is  
14 correct, the Staff is correct or whether one of the  
15 options offered by the Company should be adopted, that  
16 you permit new rates to go into effect as soon as  
17 possible.

18 And with that, I would note, as Mr. Schwarz  
19 did earlier, that the Company and Staff do have an  
20 agreement on C&I tariffs.

21 I think Staff's review of those tariffs was  
22 completed sometime mid last week, and Staff has come up  
23 with a way of establishing what we believe is greater  
24 rate continuity between those three classes.

25 We think that Dr. Proctor's approach makes

1 sense. And -- and we're certainly willing to go ahead  
2 and use those rates. We would request that we be  
3 allowed to do that, since they are Staff's rates as  
4 substitute tariff sheets and those be approved as  
5 quickly as possible.

6 I would also note that Staff has offered what  
7 it believes is the correct residential rate as well.  
8 While we disagree that that's the correct residential  
9 rate, the Commission does have a rate in front of it.

10 And at a minimum, I would hope that those  
11 rates would be -- be able to be places into effect as  
12 soon as possible, if the Commission, for whatever  
13 reason, is not inclined to go ahead and approve the  
14 rates that the Company believes are appropriate.

15 Second, I want to make it very clear that the  
16 Company -- that while the Company strongly disagrees  
17 with Staff's claim that our tariffs were not in  
18 compliance with the agreements approved by the  
19 Commission in this case, we fully recognize that  
20 sometimes honest and honorable people can have honest  
21 differences of opinion.

22 We also hope that this last-minute  
23 disagreement will not overshadow what we continue to  
24 believe was a commendable and successful effort on  
25 everyone's part in this case to reach common ground on

1 the many challenging issues that were presented in that  
2 case.

3 With that said, I'd like to lay out the  
4 Company's perspective on the dispute before you. I'd  
5 also like to note that we have Mr. Cline and  
6 Ms. Krieger and any other Company personnel here today  
7 who could answer any questions you may have regarding  
8 any of the factual matters I'll be discussing or that  
9 we brought up in our prior -- prior pleadings.

10 I'd like to begin, first of all, by just  
11 responding to both the comments that were made by  
12 Mr. Schwarz, as well as Mr. Micheel about the  
13 significance of the surrebuttal testimony and rebuttal  
14 testimony of Mr. Raab.

15 I think it was noted that that particular  
16 testimony wasn't cited in the stipulation and  
17 agreement. But more importantly, I think it's  
18 important for the Commission to recognize that we had  
19 two weather mitigation proposals in this case.

20 As you may recall, one was a meta-- weather  
21 mitigation clause, or WMC, and the other was the  
22 weather mitigation rate design that was included in  
23 Mr. Cline's rebuttal testimony and that the parties  
24 ultimately agreed upon.

25 Those two weather mitigation features operated

1 in different fashions. With the weather mitigation  
2 clause you would go ahead and basically adjust for any  
3 deviation from normal degree days in their entirety.  
4 And you would go ahead and reconcile back to whatever  
5 was established in the case.

6 And so it really ended the guessing game and  
7 it didn't really matter what level of therms you had in  
8 Block 1 or Block 2. Whatever it was, the weather  
9 mitigation clause would adjust in order to make sure  
10 that you recovered your costs due to any deviations in  
11 weather.

12 And under those circumstances, it was really  
13 fairly immaterial whose Block 1 or Block 2 therms were  
14 used or what overall therms were used, because you'd  
15 always reconcile back to the same place.

16 And I will note that if you look at Mr. Raab's  
17 testimony that was cited earlier, he says there, as  
18 discussed above, for purposes of the WMC -- and once  
19 again, that's the weather mitigation clause -- the  
20 Company could agree at this time to use the  
21 use-per-customer per-HDD estimates that Staff has  
22 supported in the case, as long as the same values are  
23 applied in rate-setting process.

24 So I would point out that when he made that  
25 statement, he was referring specifically to the weather

1 mitigation clause and not to the weather mitigation  
2 rate design.

3 By the same token, if you look at Mr. Cline's  
4 surrebuttal testimony, he references this back to  
5 Mr. Raab who was discussing the weather mitigation  
6 clause, and that was in the part of his testimony where  
7 he was responding to Mr. Russo.

8 And Mr. Russo had filed testimony on the  
9 weather mitigation clause. So I just want to go ahead  
10 and make that clarification for the Commission.

11 I think that the Commission did a good job of  
12 honing in on the dispute in this case with its  
13 October 31st, 2002 order directing filing in which it  
14 directed the Staff to provided answers to  
15 four questions.

16 And I would like to use those questions to  
17 gather with Staff's answers and the brief response that  
18 Mr. Cline provided today as a road map for my  
19 discussion.

20 As you can see from the answer provided by  
21 Staff on page 2 of its memorandum, in response to  
22 Question D, what the issue boils down to is that in  
23 calculating the winter distribution rate for its  
24 residential general service customers in its compliance  
25 tariffs, the Company used Block 1 therms of



1 212,988,388.

2 In contrast, the Staff believes that a higher  
3 therm level -- I believe it's 215,508,388 therms should  
4 be used. Since under the new rate design that was  
5 recommended by the parties and approved by the  
6 Commission in this case, the entire volumetric charge  
7 for distribution service during the winter applies only  
8 to usage in the first block.

9 The amount of usage that one assumes will  
10 occur in the first block versus the second block will  
11 effectively determine the distribution rate that will  
12 be charged for winter service.

13 All else being equal, to the extent that one  
14 assumes that lower therms can occur in the first block,  
15 a higher rate will result since there will be fewer  
16 volumes to spread the cost of service over.

17 And conversely, to the extent one assumes that  
18 more usage and hence more therms will occur in the  
19 first block, a lower rate will result since there will  
20 be more therms to spread the cost of service over.

21 As Staff notes at page 2 of its November 1st  
22 memorandum in this case, the difference in therms --  
23 the Company included in the first block versus what the  
24 Staff believes should be included amounts to about  
25 two-and-a-half million therms.

1           If one assumes that the amount of therms the  
2   Company included in the first block is correct, then it  
3   follows that the rates we filed are designed to collect  
4   the \$14 million that was authorized by the Commission  
5   in this case.

6           If on the other hand, one assumes that the  
7   Staff's estimate of Block 1 therms is correct, then and  
8   only then, could one conclude that the Company's rates  
9   are designed to collect the approximate \$932,000 in  
10   additional revenue above the 14 million that Staff  
11   claims and has quantified at page 2 of its memorandum?

12           In the end, it all depends whose block one  
13   believes should be used. We obviously believe that our  
14   Block 1 therms are correct. That our rates are,  
15   therefore, designed to collect the 14 million that was  
16   authorized by the Commission, and that the use of  
17   Staff's Block 1 therms would result in a residential  
18   rate that is designed to collect approximately \$932,000  
19   less than the 14 million authorized in this case.

20           Just as significantly, we also believe that  
21   the Block 1 therms we used were necessary to provide  
22   the level of weather mitigation protection that was  
23   supposed to be produced by the weather mitigation rate  
24   design approved by the Commission in this case.

25           Achieving that level of weather mitigation

1 protection was very important to the Company in this  
2 case particularly in view of recent downgrades that had  
3 emphasized the impact of weather.

4 And we believe we made significant concessions  
5 to get it in the form of accepting a lower overall  
6 revenue requirement, agreeing to a rate moratorium, and  
7 agreeing that the impact of such a rate design would be  
8 taken into consideration, along with other factors in  
9 arriving at the Company's ROE in future cases.

10 And we were also specific about what level of  
11 additional weather mitigation protection would be  
12 produced by that rate design as evidenced by the  
13 quantifications that Michael Cline provided in his  
14 surrebuttal testimony in this proceeding.

15 I believe Mr. Micheel referenced the  
16 85 percent figure that was included in Mr. Cline's  
17 surrebuttal testimony. And that was 85 percent  
18 protection for both the residential and the  
19 C&I classes.

20 And as we have indicated in our prior  
21 pleadings and as Mr. Cline has indicated in his  
22 affidavit, that assumed a level of weather mitigation  
23 protection for the residential class alone of  
24 88 percent.

25 And if you use Staff's Block 1 therms, our

1 calculations -- and Mr. Cline would be happy to discuss  
2 with you in detail -- would show that that the weather  
3 mitigation protection declines to 80 percent.

4 I'm aware that Public Counsel's witness has  
5 gone ahead and put in an analysis that purports to go  
6 ahead and show what the impact is, and that it doesn't  
7 change.

8 But it's my understanding, based on our very  
9 brief opportunity to review that, that that analysis  
10 simply assumes that the Block 1 therms that Staff has  
11 proposed actually materialize.

12 In other words, if Staff is right, then we get  
13 the weather mitigation protection that we bargained  
14 for. But obviously we don't believe that that's going  
15 to happen.

16 And as a matter of pure mathematics, you can  
17 go ahead and compare what the lowest usage is that  
18 we've experienced in the recent past and compare it to  
19 therms that Staff says we should have.

20 And you can calculate what the difference is  
21 on weather mitigation protection. You don't assume a  
22 level. You look at the actuals and you can go ahead  
23 and make that determination.

24 And we also believe that we've been very  
25 consistent throughout this proceeding in reflecting our

1 views. And quite frankly, we were taken aback and  
2 upset by Staff's assertion in its October 24th Motion  
3 to Suspend that the Company's use of 212,988,388  
4 Block 1 therms to calculate the residential winter rate  
5 in our compliance tariff had come as a surprise of to  
6 Staff and was the result of some new adjustment.

7 As Staff later acknowledged in its  
8 October 29th Reply to the Company's Response to Staff's  
9 Motion to Suspend our compliance tariffs, the Company  
10 never included in either its direct case or in  
11 developing its weather mitigation rate design in  
12 addition to therms that Staff now says should be added  
13 to Block 1.

14 In that same reply, the Staff also  
15 acknowledged that these were the very same therm levels  
16 that were provided to Staff prior to the  
17 September 16th, 2002 on-the-record presentation that  
18 was held in this case to consider the stipulations and  
19 agreements submitted by the parties.

20 Specifically Staff acknowledged that they had  
21 been provided by the Company as an attachment to a  
22 September 13th, 2002 email from Mike Cline in which  
23 Mr. Cline indicated that they represented the agreed-to  
24 billing determinants for purposes of calculating final  
25 rates for the residential class.

1           And if you'll look at the materials that are  
2   attached to Mr. Cline's affidavit, you'll see that  
3   September 13th, 2002 email with the attachment with the  
4   therms that we have used in our compliance filing, it's  
5   circled.

6           And in response to pointing that out, Staff  
7   basically said that the email from Mr. Cline contained  
8   some 24 pages of attachments, was comprised of  
9   thousands of figures and that it was unreasonable to  
10  assume that Staff could have assimilated all of this  
11  information and been sufficiently apprised of the  
12  billing determinants that the Company was using for  
13  Block 1.

14          In response to that, we filed a pleading on  
15  October 30th noting that the billing therms used by the  
16  Company in the September 13th, 2002 email for Block 1  
17  of the residential rates was provided as the second  
18  number on the first page of the attachments. A  
19  circumstance, at least in our view, should have made it  
20  pretty difficult to miss.

21          We also indicated as we had in our earlier  
22  pleading, the September 13th, 2002 email was simply a  
23  follow-up to an earlier three-page email that Pat  
24  Krieger of Laclede had sent to Staff on September 11th,  
25  2002.

1           In that email we had one page that showed the  
2   specific therms we proposed to use for each rate block.  
3   In doing so, we referred to and used essentially the  
4   same format that Staff had used reflect its rate blocks  
5   on a single page that had been provided to the Company  
6   several months ago.

7           We also outlined the adjustments that had been  
8   made to the overall therms. Once again, this  
9   September 11th correspondence is attached to Mr.  
10   Cline's affidavit.

11           And if you look at that, what you will go  
12   ahead and see is the Block 1 and Block 2 therms, broken  
13   down for each rate schedule in essentially the same  
14   format as what Staff had provided us several months  
15   ago.

16           And it was our expectation that -- when we  
17   sent that to Staff, that Staff would go ahead and  
18   compare the page we had sent to the page it had  
19   previously sent us, because we had referenced it in the  
20   email.

21           And if it had any concerns about the specific  
22   Block 1 or Block 2 levels -- and here it is circled,  
23   212,988,388 -- that's exactly what we included in our  
24   compliance filing.

25           And you can see -- here's what Staff had

1 previously sent us with the 215,599,611. They would  
2 sit down and compare these two pages. They would go  
3 ahead and note the adjustments that we made -- made the  
4 numbers on here. And if they had a problem with those  
5 differences, they would have gone ahead and informed  
6 us.

7           Rather than saying that they had a problem,  
8 however, based on a subsequent discussion -- I believe  
9 it was the next day -- we were advised that billing  
10 determinants looked fine.

11           And that's why we sent out the September 13th  
12 memorandum or -- or email to all the parties,  
13 indicating that it included both billing determinants  
14 and a calculation of rates for the residential class  
15 that we believe were final and that we believe that the  
16 parties had agreed upon.

17           And, to my knowledge, the only criticism that  
18 Staff has leveled against the September 11th,  
19 three-page memorandum is that it didn't have enough  
20 detail in it in contrast to the September 13th, which  
21 apparently had too much detail in it.

22           Well, maybe the Company provided too little  
23 detail, maybe it provided too much detail. We think we  
24 provided more than adequate detail to determine what  
25 the billing determinants were that we were using, and



1     that we were consistent in that.

2             And the fact is that somebody had to put  
3     billing determinants together during that.  We -- we  
4     had just filed the final stipulation and agreement on  
5     September 5th, 2002.

6             And as I think all of the parties recognize at  
7     the time we did so, there was a need to put together a  
8     set of billing determinants and rates, particularly for  
9     the residential class, so that by the time the  
10    Commission held its on-the-record presentation on  
11    September 16th, 2002, we would be in a position to  
12    advise it of the impact of the rate increase on  
13    residential customers.

14            So the Company put together what it believed  
15    were billing determinants that properly reflected the  
16    revenue requirement, weather mitigation design and  
17    class cost of service agreements in this case and sent  
18    them to Staff on September 11th, 2002.

19            As I indicated earlier, we heard back that  
20    they were okay, and we followed through with the  
21    September 13th email submission that reflected that.

22            Well, when we found out they weren't  
23    apparently okay on October 15th in the form of email  
24    that we received from Staff that had a new set of  
25    billing determinants for the residential class that

1 were different from what we had sent on the 11th and  
2 the 13th.

3 And although we were surprised to see Staff  
4 submit something that was different from what we  
5 thought we had reached agreement on, we tried to work  
6 things out.

7 For example, we accepted Staff's proposal to  
8 add some one million therms to the first block for the  
9 rates for the C&I customers, even though I think Staff  
10 itself had never before allocated those therms to  
11 Block 1 something that will cost us approximately  
12 \$300,000.

13 Staff had indicated, however, that its failure  
14 to initially allocate these therms to Block 1 had been  
15 due a mistake. And because we concluded such an  
16 approach was reasonable, we accepted Staff's change.

17 And we tried to resolve our differences,  
18 differences that we thought had long since been laid to  
19 rest over the calculation of the residential rate.

20 We have offered to essentially split the  
21 difference by moving half of the disputed therms into  
22 the first block. And to our knowledge, we've addressed  
23 Staff's only stated objection to that option by  
24 clarifying that it would be an exact 50/50 split.

25 We have always proposed to place tariff in

1 effect that would ensure that the average usage in  
2 Block 1 during the disputed cycle billing month of  
3 November -- and that's where nearly all of the volumes  
4 relate to that are in dispute in this case -- that if  
5 actual usage exceeded the amount that's been assumed by  
6 the Company, that any money collected on that increase  
7 usage would be treated as go-- gas cost revenue, rather  
8 than retained by the Company.

9 This accommodates and argued both Staff's  
10 stated concern regarding whether the rates are designed  
11 to collect more than \$14 million, as well as our  
12 concern regarding obtaining the level of weather  
13 mitigation protection that we bargained for and that we  
14 thought we had received.

15 We're not trying to make out here. We're not  
16 trying to go ahead and get more money than what the  
17 Commission has authorized. And we think our rates make  
18 sure that that happens.

19 But if anybody has a different opinion on  
20 that, we have offered a solution that ensures we will  
21 not get any more money than what the Commission has  
22 authorized, as a result of the design of the rates.

23 And, to our knowledge, Staff's primary concern  
24 about that was that if there was excess revenue, it  
25 would be spread across all firm sales customers, rather

1     than simply limited to residential customers.

2             And that's a function of the fact that we  
3     don't have separate ACA blocks for each of the rate  
4     schedules in our ACA that would go ahead and preserve  
5     all revenues produced by each rate block for gas cost  
6     purposes.

7             And the reason we don't is that Staff had  
8     recommended in this case that the Company's proposal to  
9     establish those ACA rate blocks not be adopted, and we  
10    agreed to do that on the theory that it would  
11    unnecessarily complicate the PGA.

12            Under those circumstances, I think it's  
13    difficult to give a great deal of credence to Staff's  
14    concern that is entirely related to the fact that those  
15    rate blocks present its -- it suggests they don't exist  
16    any more.

17            Finally, we proposed to take a page out of the  
18    AmerenUE complain case. And if the Commission believes  
19    additional hearings are required to sort this out to  
20    make any Commission decision resolving this issue  
21    retroactive to the date the tariffs go into effect.

22            Once again, while Staff has opposed this  
23    option, and Mr. Michael voiced some opposition to it, I  
24    don't believe anybody's offered a single meaningful  
25    distinction to show why it's not a legal, fair and

1     workable alternative that can be employed in this case  
2     just as successfully as it was in the UE case.

3             Unfortunately Staff's primary response to the  
4     Company's efforts to work this situation out and  
5     provide options for doing so, has been to suggest that  
6     these efforts are either a sign of weakness on the  
7     Company's part and simply an indication that no  
8     agreement was ever reached on this issue.

9             We're here to suggest that if the Company  
10    wants to put tariffs in effect on a -- a quick basis  
11    and without a prolonged delay or at least some delay  
12    that would deprive the Company of hundreds of thousands  
13    of dollars of revenue, then our only option is to go  
14    ahead and try and convince Staff that they're wrong and  
15    that their approach is wrong.

16            Well, we've tried to do that by showing Staff  
17    that its assumptions that the Company's residential  
18    customers will have average usage of 58.2 therms in the  
19    November billing cycle assuming that normal weather is  
20    completely inconsistent with the actual customer usage  
21    that has been experienced by the Company under real  
22    world conditions.

23            Indeed the information that Staff itself has  
24    presented from the Company in this case shows that the  
25    last time the Company even approached this level of

1 usage was in 1996 and 1997 when temperatures under our  
2 calculations were some 14 to 24 percent colder than the  
3 normal use in this case for that month.

4           These efforts and other efforts, however, have  
5 obviously been not-- to no avail. So we're here today  
6 asking you to resolve this matter, because that is the  
7 only option available to us short of accepting Staff's  
8 position on this matter in its entirety.

9           Based on the foregoing, we believe that the  
10 Commission has ample grounds for determining that our  
11 tariffs and the residential rates set forth therein are  
12 in full compliance with the Commission's October 3rd,  
13 2002 order in this case and the stipulations and  
14 agreements that were approved by that order just as we  
15 believe they were in compliance for more than a month  
16 prior to the time we made our compliance filing.

17           I say that only with the caveat, as I  
18 mentioned before, of adopting Dr. Proctor's rates on  
19 the C&I.

20           And failing that, the Commission cannot  
21 hesitate to put into effect one of the common sense  
22 options that we've proposed to address this situation.  
23 At a minimum, however, we respectfully request the  
24 Commission resolve this matter as soon as possible so  
25 that we can put whatever rates the Commission believes

1 are appropriate into effect, begin to receive the  
2 benefit of the rate increase that was approved by the  
3 Commission and bargained by for the Company and provide  
4 weather mitigation protection for our customers.

5 Thank you. And I'll be happy to answer any  
6 questions that you have.

7 JUDGE THOMPSON: Thank you, Mr. Pendergast.  
8 Commissioner Murray?

9 COMMISSIONER MURRAY: Mr. Pendergast, you said  
10 that we need to look at actuals in order to determine  
11 who is correct; is that what you said earlier?

12 MR. PENDERGAST: It -- well, I -- I'm saying,  
13 yes, that as we've tried to respond to Staff's request,  
14 that we convince them that they're not correct, we have  
15 used actual data.

16 And I believe that if you look at the  
17 attachment to Staff's November 1st response, it will  
18 show figures for the last five years of what the usage  
19 during November has actually been -- what the degree  
20 days have been over that period of time.

21 And we just don't think that that information  
22 is consistent with Staff's 58.2.

23 COMMISSIONER MURRAY: So the real issue is the  
24 numbers that we use to generate the \$14 million revenue  
25 increase; is that correct?

1 MR. PENDERGAST: Right.

2 COMMISSIONER MURRAY: And there is evidence in  
3 the record as to the numbers that would, in fact,  
4 generate that?

5 MR. PENDERGAST: I don't think there's  
6 evidence in the record that would set forth the  
7 specific billing determinants that would generate that  
8 because, of course, the \$14 million was a -- a  
9 compromise of the parties.

10 And, to my knowledge, no testimony was  
11 subsequently filed saying here's \$14 million and here  
12 are the billing determinants necessary to achieve that.

13 COMMISSIONER MURRAY: But there is evidence in  
14 the record as to the actual usage over the last  
15 five years from which to determine an estimate that  
16 would generate the 14 million; is that accurate?

17 MR. PENDERGAST: We have certainly provided  
18 that in our affidavits. I would have to go back and  
19 examine the record to see what might have been in the  
20 direct case on that.

21 And I can't tell you for sure how much and how  
22 far back the actual evidence of temperatures would go.

23 COMMISSIONER MURRAY: How far back do you  
24 think we should go?

25 MR. PENDERGAST: Well, for -- for -- from our



1 perspective, certainly the five years that were  
2 included by Staff in its affidavit based on a worksheet  
3 that was provided by Ms. Krieger. It's a -- a November  
4 1st affidavit that gives you a pretty good look, and I  
5 think spells out pretty well what our actual per-therm  
6 usage has been over that period of time, what  
7 the de-- associated degree days were and how those  
8 compare to the 58.2 and the 54 that the Company used.

9 COMMISSIONER MURRAY: All right. The  
10 September 11th document that was emailed --

11 MR. PENDERGAST: Yes.

12 COMMISSIONER MURRAY: -- and that was attached  
13 to Staff's October 30th filing as Attachment 1, the  
14 Staff counsel indicated earlier that there should have  
15 been an adjustment shown on page 3 of that document.

16 Can you tell me why an adjustment to the  
17 billing determinants was not referenced on that page?

18 MR. PENDERGAST: Yes. Well, if -- if you look  
19 at the next page, I think, that -- well, let me get to  
20 the right set of documents here.

21 What we showed were adjustments to the overall  
22 therms in the case, and that can be shown on the second  
23 page. And it has at the top, bills, therms, demand  
24 therms. And then it goes down and shows what impact  
25 they had on the overall therms.

1           As far as the impact on the specific rate  
2 blocks, Block 1 and Block 2, I -- I suppose you can,  
3 you know, look at it in all different kinds of ways as  
4 far as whether an adjustment was shown.

5           I guess our expectation was that the best way  
6 to go ahead and reflect the adjustment we were making  
7 was to -- or the therms we were using was to go ahead  
8 and actually provide the actual therms, go ahead  
9 and -- and we did that for the first and second block  
10 for the residential, for the commercial industrial, we  
11 did it for both November and April and the May and  
12 October period.

13           And I suppose if you look at that and you  
14 compare it to the sheet we had gotten earlier from the  
15 Staff that had various blocks on it, we could have  
16 provided something that said, okay, here's how you  
17 reconcile each one of these numbers that are down here  
18 to each one of these numbers that are down here  
19 (indicating). And -- and have gone into significant  
20 detail about that.

21           But our view was that the Staff would go  
22 ahead, take that, compare it to the sheet that we had  
23 referenced and they had provided before, look at what  
24 the results were of our analysis, what the results were  
25 of their analysis, and if they had any questions, get

1 back and ask us.

2 And, in fact, they did get back and ask us  
3 about certain aspects, I believe, with the larger  
4 customers and provided additional information.

5 But we never heard back from them on the  
6 quantification of therms that we had provided on the  
7 residential. In fact, we heard that the billing  
8 determinants were okay.

9 So our assumption was they had gone back,  
10 compared it to the other sheet here, looked at, you  
11 know, these 30 or 40 numbers, looked at how they  
12 changed and arrived at a conclusion that they thought  
13 it was reasonable.

14 COMMISSIONER MURRAY: And was the  
15 quantification of therms something that had to be done  
16 after the stipulation and agreement?

17 MR. PENDERGAST: Yes. I mean, to -- to  
18 ultimately calculate rates you had to do it and --  
19 sooner or later and we tried to do it sooner.

20 COMMISSIONER MURRAY: So is it your position  
21 that Staff had -- should have had no expectation that  
22 the number of therms in the first block and the number  
23 of therms included in the second block would have been  
24 the same as any other set of numbers that they had seen  
25 before?

1           MR. PENDERGAST: No. I mean, when you get  
2 right down to it, you would have had to make -- by the  
3 time we had revenue requirements settled and we had the  
4 weather mitigation rate design issue settled and we had  
5 class cost of service settled, you had to go ahead and  
6 take the number of things that we'd agreed upon,  
7 including what the overall degree-day level was that  
8 was going to be used, we needed to go ahead and make  
9 some adjustments relating to the large customers and  
10 some of the others that are reflected on here and take  
11 those overall agreements and changes that had been made  
12 and turn them into billing determinants.

13           And the one thing you probably did know was  
14 that they were definitely gonna change from what  
15 anybody had gone ahead and had before because you had  
16 to incorporate these new elements.

17           And so we went through that process. We went  
18 ahead and reflected what we thought were reasonable  
19 Block 1 and Block 2 therms for all the classes and  
20 provided that to Staff and expected them to take a look  
21 at it and tell us whether they agreed with them, based  
22 on the same format that they had used.

23           COMMISSIONER MURRAY: And what were some of  
24 the other numbers that would have been changed or that  
25 would have been calculated in the -- in the document

1 that you sent to Staff?

2 MR. PENDERGAST: Well, as I -- as I look  
3 through here, I think virtually every -- almost every  
4 number has been changed on the first and second blocks  
5 on the therms from what was in Staff's original  
6 document here that they had sent to the Company.

7 I can tell you that -- that some of  
8 those -- that those changes were reflected at least on  
9 an overall basis on the various adjustments that were  
10 outlined here.

11 And I can't tell you if there was some  
12 additional ones that as you work the overall therms  
13 down into therms per block that were made. But Pat  
14 Krieger and Mike Cline are here and they can certainly  
15 help you out on that.

16 COMMISSIONER MURRAY: And on the email itself  
17 that was sent on September 11 by Patricia Krieger, it  
18 says attached are billing determinants.

19 Now, the billing determinants are the block  
20 therms that we are talking about; is that correct?

21 MR. PENDERGAST: Yes.

22 COMMISSIONER MURRAY: And a summary of the  
23 adjustments that had been added to the determinants  
24 prepared by Anne back in July. The summary of the  
25 adjustments is -- is that the page that is page 3 of

1 Attachment 1 to the Staff's October 30 follow-up?

2 MR. PENDERGAST: Yes.

3 COMMISSIONER MURRAY: And your statement is  
4 that the Company showed these adjustments to the  
5 billing determinants in the first line or -- I'm  
6 sorry -- you showed the billing determinants per Anne  
7 Ross July 16 on the first line.

8 And then the other adjustments --

9 MR. PENDERGAST: That's correct. I mean,  
10 we -- we -- we showed -- well, I mean, we showed what  
11 billing determinants we were using for each of these  
12 rate blocks that we thought were reasonable. And we  
13 referenced it back to what Anne Ross had sent us  
14 previously.

15 And, as I said, our assumption was that the  
16 Staff would compare the two, and if they had any  
17 questions, let us know.

18 COMMISSIONER MURRAY: But this page of the  
19 summary of adjustments doesn't show any adjustments  
20 between the first and second blocks?

21 MR. PENDERGAST: It does not. And I -- as  
22 I -- well, now, are you talking about -- let me -- are  
23 you talking about this page (indicating)?

24 COMMISSIONER MURRAY: Page 3, yes.

25 MR. PENDERGAST: Yes. No, that page is

1 adjustments to the overall therms and to go ahead and  
2 see how the various blocks -- Block 1 and Block 2 were  
3 adjusted, you have to look at this page.

4 COMMISSIONER MURRAY: Page 2.

5 And that page does show the adjusted block  
6 therms?

7 MR. PENDERGAST: It does. It shows the therms  
8 that we thought were reasonable and consistent with the  
9 weather mitigation rate design and that should be used  
10 in this case.

11 COMMISSIONER MURRAY: So the language in the  
12 email that says attached are the billing determinants  
13 and the summary of the adjustments that have been  
14 added, when you summarize the total adjustments --

15 MR. PENDERGAST: Yes.

16 COMMISSIONER MURRAY: -- is that what you're  
17 refer -- you're --

18 MR. PENDERGAST: Yes.

19 COMMISSIONER MURRAY: -- referring to?

20 MR. PENDERGAST: Yes.

21 COMMISSIONER MURRAY: Did Staff challenge any  
22 of the other numbers that were calculated after the  
23 stip and agreement?

24 MR. PENDERGAST: My understanding is that at  
25 the time we provided this until we filed the

1 September 13th, that they did not -- that they did ask  
2 some additional questions about the larger ones. And  
3 that -- that we provided them with information and they  
4 were okay with it.

5 As I have indicated, though, around  
6 October 15th or 16th we did receive some different  
7 determinants for the C&I class that proposed to move, I  
8 think, a million therms back into the first block,  
9 which we accepted.

10 And at that time we also received residential  
11 determinants that we declined to go ahead and adopt,  
12 because we did not think they were appropriate.

13 COMMISSIONER MURRAY: All right. And the  
14 three offers that the Company has proposed as a  
15 solution -- if the dispute is based upon -- which set  
16 of numbers would collect the correct amount of revenue?

17 If the parties were to agree to a set of  
18 numbers that is a compromise between the two parties'  
19 positions, wouldn't the parties be, in effect, agreeing  
20 to tariffs designed to achieve the \$14 million?

21 MR. PENDERGAST: I think that's correct. And  
22 I think -- I think in -- in proposing to split the  
23 difference option that we had suggested -- I mean,  
24 you -- you have to realize the dispute here is over  
25 2.5 million therms out of more than 212 -- 215 million



1    therms.

2                   So we're talking about a one-percent  
3    difference here in those therms.  And we had proposed  
4    to move half a percent basically into Block 1 and leave  
5    the other half percent.

6                   And we've indicated in our prior pleadings  
7    that from our perspective, that's probably something  
8    that's well within the margin of error of anybody's  
9    analysis here anyway.

10                  And, yeah, we think that's something that the  
11   parties could do and -- and ought to do.

12                  COMMISSIONER MURRAY:  And the change that you  
13   agreed to make to the C&I calculations, isn't -- isn't  
14   that the same kind of a change?

15                  MR. PENDERGAST:  Yes, I think it is.  And the  
16   only caveat I would give with the C&I is that, you  
17   know, we did have to provide additional information to  
18   Staff on the C&I.

19                  And in the stipulation an agreement, it  
20   actually contemplated that additional information  
21   regarding billing determinants would be provided on the  
22   C&I.

23                  Because, as you may recall, we were breaking  
24   those into three separate classes.  And I think people  
25   were a little bit concerned about being able to have

1 the information necessary to establish rate continuity  
2 and that sort of thing.

3 And that's in contrast to what we had with the  
4 large customers and what we had with the residential  
5 where we thought those -- those matters had been  
6 basically resolved.

7 COMMISSIONER MURRAY: But you had submitted  
8 tariffs for the C&I that you thought accomplished the  
9 result with the stipulation --

10 MR. PENDERGAST: We did. We did.

11 COMMISSIONER MURRAY: -- and agreement?

12 MR. PENDERGAST: We did. And as I indicated,  
13 we've had some additional discussion with Dr. Proctor,  
14 I think, that probably concluded last week. He's come  
15 up with some rates that -- that we think are fine and  
16 that we're willing to go ahead and -- and have use for  
17 those.

18 And we just hope that we can file those as  
19 substitute tariff -- tariff sheets. And since their  
20 Staff rates happen -- approved pretty quickly.

21 COMMISSIONER MURRAY: And if you were to agree  
22 upon the residential block terms, one of the -- the  
23 solutions that -- that the Company has proposed, for  
24 example, it is your position, is it not, that that  
25 still would be in compliance with the terms of the stip

1 and agreement?

2 MR. PENDERGAST: Yeah, I think it would. I  
3 think it's a -- a reasonable way of interpreting and  
4 implementing the stipulation and agreement, which  
5 has -- has been indicated -- did not specifically  
6 describe what the billing determinants would be.

7 COMMISSIONER MURRAY: And because it did not  
8 specifically set out the billing determinants in the  
9 stip and agreement, that was the calculation that had  
10 to be made following the stip and agreement?

11 MR. PENDERGAST: Yes.

12 COMMISSIONER MURRAY: And if the parties did  
13 not agree on that calculation, their -- I assume that  
14 the parties would contemplate some kind of a  
15 negotiation to come to agreement on those billing  
16 determinants; is that your understanding?

17 MR. PENDERGAST: Well, and -- and -- and,  
18 quite frankly, that's what we tried to go ahead and  
19 accomplish once we learned that -- what we had thought  
20 was an agreement on the residential Block 1 and  
21 Block 2 was wasn't viewed as having been an  
22 agreement by the Staff to try and work something out  
23 and the options that we presented to the Commission --  
24 at least the first and second one weren't seen by you  
25 for the first time without having gone ahead and run

1    them by the Staff as well.

2               I think as Mr. Schwarz may have indicated,  
3    Staff has some concerns.  And I don't want to speak for  
4    them about their ability to do something at this stage,  
5    since they're in compliance and they believe that they  
6    have to go ahead and simply provide to the Commission  
7    what their best analysis of what is in compliance with  
8    the tariffs are.

9               But I think if the Commission were inclined to  
10   tell the parties that they do believe it's appropriate  
11   work this out, that it could be worked out.

12              COMMISSIONER MURRAY:  Do you have any  
13   calculation or does anyone at the Company have any --  
14   an estimated calculation as to the amount of -- of  
15   revenue that is lost each day beyond November 11th in  
16   which the new tariffs are not effective?

17              MR. PENDERGAST:  Under normal weather, it's my  
18   understanding -- and we can ask Mr. Buck to come up, if  
19   you'd like and provide some additional information, but  
20   I believe it would be around \$150,000 a day.

21              And the one caveat I would give to you -- give  
22   to you on that and full disclosure is that assumes  
23   normal weather.  And it has been a bit colder than  
24   normal here over the last week or so, so that has some  
25   mitigating impact on that.

1           But -- but generally speaking, if it were  
2   normal weather, it would be in that neighborhood.

3           COMMISSIONER MURRAY:   And with colder than --  
4   than normal weather, is that loss eliminated or do you  
5   know?

6           MR. PENDERGAST:   It -- it's mitigated.   It's  
7   mitigated.   I don't believe it's been completely  
8   mitigated by the colder than normal weather, but -- but  
9   that -- that does help.

10          COMMISSIONER MURRAY:   And the rate design that  
11   is in effect prior to the new tariffs becoming  
12   effective, are the different classes of customers  
13   affected differently by the rates that are collected  
14   than they would be under the new tariffs?

15          MR. PENDERGAST:   Since we tried to design the  
16   new rate design to have as little customer impact as  
17   possible, I would think there -- there would be less of  
18   a difference over the long term, though, they do lose  
19   the benefit of the weather mitigation.

20          But I think it would probably be best for  
21   Mr. Cline to -- that answer that one, if you would  
22   prefer.

23          COMMISSIONER MURRAY:   All right.   Thank you  
24   very much.

25          JUDGE THOMPSON:   Okay.

1 Commissioner Forbis?

2 THE REPORTER: I need to change my paper.

3 JUDGE THOMPSON: Yeah, we're -- we're well  
4 passed time for a break. Do you mind?

5 COMMISSIONER FORBIS: You want to take a break  
6 now? Sure. That's fine.

7 JUDGE THOMPSON: We'll take ten minutes at  
8 this time.

9 (A RECESS WAS TAKEN.)

10 JUDGE THOMPSON: Mr. Pendergast, come back up,  
11 please. Did you have any questions, Commissioner  
12 Forbis?

13 COMMISSIONER FORBIS: I did. I just had one  
14 or two. I just wanted to clarify something,  
15 Mr. Pendergast, as you're heading in this direction.

16 When you first started your statement, you  
17 mentioned the C&I tariffs -- there'd been an agreement  
18 on that basically and we should go ahead and approve  
19 those.

20 Then you said that you -- did I understand you  
21 to say the Company would also be willing to accept if  
22 the Commission just went with the Staff position on the  
23 original tariffs?

24 You -- you said sort of -- sort of barring  
25 anything else?

1           MR. PENDERGAST:  What -- what I meant to say  
2   there, if I gave that impression --

3           COMMISSIONER FORBIS:  Okay.

4           MR. PENDERGAST:  -- I -- I -- I didn't mean  
5   to.  What I did mean to go ahead and say is that at a  
6   minimum what the Commission should do is allow all of  
7   those tariffs to go into effect to the extent that they  
8   are not subject to dispute.

9           And as I indicated, we're losing a significant  
10  amount of money every day, because we have the dispute  
11  over this \$962,000 issue and --

12          COMMISSIONER FORBIS:  Right.

13          MR. PENDERGAST:  -- that Staff has identified.

14          And -- and what I was trying to indicate was  
15  that while we would prefer that you take our position  
16  on the residential tariff, at a minimum we would like  
17  the Commission to authorize at least what the Staff has  
18  said is a reasonable rate, so that we don't continue to  
19  go ahead and lose the benefit of that November 1st date  
20  forever.

21          I mean, we think the Commission could go ahead  
22  and decide to go with our residential tariff.  But what  
23  we don't want to do is -- is while that -- if the  
24  Commission is not inclined to do that, if it thinks  
25  that additional proceedings are necessary, that we

1 don't at least get the benefit of the tariffs that  
2 Staff says are appropriate.

3 That's what I was trying to indicate.

4 COMMISSIONER FORBIS: So approve the Staff  
5 tariff pending additional hearings, is what you're  
6 saying?

7 MR. PENDERGAST: I'm -- I'm saying -- yes. If  
8 you -- if you do not accept either one of the  
9 three options we've offered or you don't accept the  
10 residential tariff that we have submitted, at a minimum  
11 you should do at least that much.

12 COMMISSIONER FORBIS: But that's not your  
13 position that that would be the end of it -- that  
14 your -- the Company would still want to have something  
15 to go on to try this?

16 MR. PENDERGAST: That's correct, yeah.

17 COMMISSIONER FORBIS: Okay. Okay. Because I  
18 was unclear if that -- if that was your position,  
19 approve the Staff tariff and move ahead. You're saying  
20 if I -- if we approve the Staff tariff -- the tariff as  
21 an option, but then have additional discovery, if you  
22 will -- hearings over what the answer should really  
23 be -- the end be?

24 MR. PENDERGAST: That's correct. If you're  
25 not inclined to go with our residential tariff.



1           COMMISSIONER FORBIS:  Okay.  That was my  
2 question.

3           And one other point, my -- just so -- I'm  
4 trying to understand this.  The for-- what you were  
5 saying if I -- if I got it right, the \$14 million was  
6 this negotiated end point, and so what everybody is  
7 doing, then, is "backing into a rate structure that  
8 will get you \$14 million?"

9           MR. PENDERGAST:  That's correct, Commissioner.

10          COMMISSIONER FORBIS:  And so your position is,  
11 then, a change of some sort should have been expected  
12 because when the \$14 million was negotiated, the  
13 backing into that number is going to necessitate some  
14 kind of work to get there?

15          MR. PENDERGAST:  Certainly.  There was no  
16 question about that.  You were going to have different  
17 billing therms basically for all rate schedules in any  
18 event in order to go ahead and implement that  
19 14 million -- other aspects of the stipulation  
20 agreement, and, in addition, the weather mitigation  
21 rate design.

22          COMMISSIONER FORBIS:  And then the question  
23 becomes how many therms will be used in November, and  
24 that's where this disagreement is basically, your  
25 Company says No. A, Staff says No. B?

1           MR. PENDERGAST: That's where most of the  
2   disputed therms are located -- in fact, all of the  
3   them, I think --

4           COMMISSIONER FORBIS: In November?

5           MR. PENDERGAST: -- are in the November  
6   billing cycle.

7           COMMISSIONER FORBIS: Right. Okay.

8           Thank you.

9           JUDGE THOMPSON: Does -- does that mean  
10   there's no dispute over what's gonna happen in the  
11   December billing cycle?

12          MR. PENDERGAST: Well, that certainly wasn't  
13   anything that -- that created a difference between the  
14   Staff and the Company. The Staff might have a  
15   different view about whether one month is interrelated  
16   with another.

17          JUDGE THOMPSON: I -- I -- I'm not trying to  
18   be flip. I'm just trying to understand the extent and  
19   the scope of the nature of the disputes.

20          So am I correct, then, in -- in characterizing  
21   the dispute as basically differing predictions as to  
22   exactly how cold in the November billing cycle is gonna  
23   be?

24          MR. PENDERGAST: That's -- absolutely. It's  
25   really what -- what kind of normal usage under normal

1 weather you expect in November, as I indicated what  
2 underlyed (sic) our Block 1 therms was an assumption of  
3 54 average usage per customer, Staff had 58.2 average  
4 usage per customer.

5 And as I tried to indicate. The last time we  
6 got up to 58.2 was back in '96 or '97 when it was, I  
7 think, 14 to 24 degrees colder than normal, as opposed  
8 to normal, which is why we, you know, don't believe  
9 that 58.2 is reasonable.

10 JUDGE THOMPSON: And -- and if I can show off  
11 my -- my growing understanding a little bit more and at  
12 a risk of falling flat on my face.

13 If November is warmer than expected, then you  
14 sell less gas?

15 MR. PENDERGAST: That's correct.

16 JUDGE THOMPSON: And because under the weather  
17 mitigation rate design all your fixed costs are loaded  
18 into the first block, the danger is you will not  
19 realize revenue sufficient to cover your fixed costs?

20 MR. PENDERGAST: That is correct.

21 JUDGE THOMPSON: Okay. And Staff's concern is  
22 that if November is, in fact, colder than anticipated,  
23 that you will realize a windfall?

24 MR. PENDERGAST: Well, I think -- and -- and  
25 Staff can certainly speak to this, but I think their

1 concern is that if you're sitting there trying to go  
2 ahead and generate \$14 million worth of revenue, their  
3 assumption is that we're going to go ahead and have  
4 average usage of approximately 58.2 therms in November.

5 JUDGE THOMPSON: Which is a direct reflection  
6 of the weather for that cycle?

7 MR. PENDERGAST: Well, which is a reflection  
8 of what they think the weath-- the normal weather would  
9 be.

10 JUDGE THOMPSON: Okay.

11 MR. PENDERGAST: Under any parties' approach,  
12 whether it's the Staff or the Company, if it's colder  
13 or warmer than normal, it can vary from that.

14 The key issue is what assumption are you using  
15 as to what it would be under normal weather? And  
16 they've used 58.2; we've used 54.

17 And for the reasons I've previously stated, we  
18 think 54 is more reasonable.

19 JUDGE THOMPSON: And that's based on past  
20 experience?

21 MR. PENDERGAST: It -- it -- it's based  
22 on -- on -- on a review of past experience. It was  
23 based on a review of what billing determinants were  
24 necessary to give us the level of weather mitigation  
25 protection that we thought we had bargained for.

1           And just to give you an example of that, you  
2   know, we have a \$962,000 difference -- I think that's  
3   the right thing -- between the 54 and 58 therms in this  
4   case.

5           If you go ahead and you look at the data, as  
6   far as what the November cycle billing month average  
7   usage has been over the last 50 years, I believe it's  
8   gotten as low as 48 therms per customer.

9           And if you do the math on that, that's  
10  10 therms versus 4 therms. And if you go ahead and  
11  assume that the difference -- potential exposure to  
12  weather is between 58 and 48 we've actually experienced  
13  in the past, that's gonna be roughly equivalent to  
14  about \$2.5 million.

15           And we never thought that weather exposure for  
16  residential would -- would ever exceed \$2 million, let  
17  alone get up that high.

18           JUDGE THOMPSON: Help me understand this term  
19  "billing determinants," if you would. Now, I  
20  understand that you divide required revenue by billing  
21  determinants to develop a rate; is that correct?

22           MR. PENDERGAST: I believe that's correct, but  
23  I, like Mr. Schwarz, would like to have some assistance  
24  from Mr. Cline on exactly how those operate.

25           JUDGE THOMPSON: Well, will Mr. Cline answer

1 in words that I can understand?

2 MR. PENDERGAST: I'm -- I'm reasonably  
3 confident that he will.

4 JUDGE THOMPSON: Okay. Thank you very much,  
5 Mr. Pendergast.

6 MR. PENDERGAST: Thank you.

7 JUDGE THOMPSON: Any further questions from  
8 the Bench?

9 (No response.)

10 JUDGE THOMPSON: Okay. You've all brought  
11 technical witnesses with you today and what we'd like  
12 to do is -- is, I think, proceed directly into an  
13 evidentiary hearing on the question of whether or not  
14 the compliance tariffs filed and presently pending in  
15 front of the Commission comply or do not comply with  
16 the Commission's order.

17 So without further adieu, why don't we have  
18 Mr. Beck join us on the stand.

19 You have filed at least one affidavit,  
20 Mr. Beck, is that correct, or perhaps two by now?

21 Okay. So that can take the place of your  
22 direct testimony, although I will permit Mr. Schwarz to  
23 develop any other issues that he would like.

24 Raise your right hand, please.

25 (Witness sworn.)

1 JUDGE THOMPSON: Please take your seat.

2 Mr. Schwarz?

3 DANIEL BECK testified as follows:

4 DIRECT EXAMINATION BY MR. SCHWARZ:

5 Q. Mr. Beck, would you state your occupation and  
6 position, please.

7 A. Yes. My name is Daniel I. Beck, and I am a  
8 utility regulatory engineer with the Missouri Public  
9 Service Commission Staff.

10 Q. And you have filed direct, rebuttal and  
11 surrebuttal in this case; is that correct?

12 A. That's correct. And I actually filed a --

13 Q. And did you also file, since the close of the  
14 evidentiary record, two affidavits that were attached  
15 to various Staff pleadings in this case?

16 A. That's correct.

17 Q. I take it that -- that your -- your area in  
18 this rate case has to do with the determination of  
19 billing determinants?

20 A. One of my areas in this rate case, yes.

21 Q. Okay. And you have been sitting here this  
22 morning and have heard the various discourses of  
23 myself, Mr. Micheel and Mr. Pendergast?

24 A. That's correct.

25 Q. I don't exactly know where to begin.

1           The Staff's suggesting that, I believe, it's  
2   58.2 therms per customer is normal expectation of  
3   billing units in the month of November; is that  
4   correct?

5       A.   That is correct.

6       Q.   And when was that position first revealed to  
7   the Company?

8       A.   That was laid out in June -- in the direct  
9   testimony of Staff on June 21st, 2002.

10      Q.   So that the Company had Staff's work papers  
11   showing that figure June 21st of 2002?

12      A.   On or about that date, yes.

13      Q.   Okay. Let me ask you this: Have you looked  
14   at the -- at the Company's work papers supporting their  
15   compliance filing in this case?

16      A.   Yes, I have.

17      Q.   And does the Company use Staff's billing  
18   determinants for all months except November?

19      A.   The -- the method that they use is -- is the  
20   Staff's for all months, yes.

21      Q.   And they use a method to calculate billing  
22   determinants for November that's different than that  
23   used by Staff and the Company for the other  
24   eleven months of the year; is that correct?

25      A.   That -- that's correct. I guess I would



1 actually say what they do is they use Staff's method  
2 for November and then they make an additional  
3 modification to that. And that -- that would be how I  
4 would characterize it.

5 Q. Well, your characterization is -- is what  
6 we're concerned with.

7 Can you -- can you tell from the work papers  
8 that were submitted with Mr. Cline's rebuttal testimony  
9 in early August what billing determinants the Company  
10 was using?

11 A. I guess the -- the work papers that -- that  
12 were provided really kind of encompass the -- those  
13 documents that directly supported that testimony, and  
14 then some additional documents that were supplied.

15 And those -- as stated earlier, those -- those  
16 numbers were around the 210 level, but there -- there  
17 was some numbers that were 209. There was a couple  
18 different numbers floating out there that they had for  
19 first block therms.

20 Q. Those therms weren't based on the ultimately  
21 settled 4,718 heating degree days per year, though,  
22 were they?

23 A. No, they were not.

24 Q. Could -- can you tell if the Company was using  
25 Staff's methodology on -- to estimate billing

1 determinants to support the rebuttal filing of  
2 Mr. Cline?

3 A. Based on my review, it -- it was -- it was  
4 obvious that they were not.

5 Q. Okay. And let -- let me -- you have seen the  
6 September 11th email that the Company has attached to  
7 its October 30th filing? Do you have that with you?

8 A. Yes, I do.

9 Q. Would you look at Attachment 1, page 2?

10 A. Yes.

11 Q. At the top of the page the number 212,988,388  
12 is circled?

13 A. That -- that's correct.

14 Q. And was that circled when it was transmitted  
15 to you in Sep-- in early -- mid September?

16 A. No, it was not.

17 Q. Would you explain to the Commission what you  
18 checked that September 11th sheet for?

19 A. At -- at the time, I was trying to work  
20 with -- with multiple Staff witnesses to -- to go ahead  
21 and -- and verify the numbers. As stated earlier,  
22 almost all of these numbers had changed.

23 And so we were looking at -- at how those were  
24 all calculated and I was trying to work with multiple  
25 people. And I guess I would put that all in the

1 context that we were trying to prepare for the  
2 on-the-record stip presentation, which we considered to  
3 be a very important presentation.

4 So we were looking at these values and -- and,  
5 to be honest, what I did was I was looking at that --  
6 the total number of sales for the residential class  
7 as -- as a gauge to find out whether there was any  
8 problems.

9 And looking at that total number, it was  
10 extremely close to where Staff was at the time. When I  
11 say extremely, it's my recollection that it was within  
12 about 100,000 therms, which is a very small amount.

13 And given the fact that we had that  
14 on-the-record presentation, that seemed to be well  
15 within the errors of just rounding and calculations.

16 Q. So you looked at the gross number, but you  
17 didn't look at calculations on, say, a -- a first block  
18 versus second block or winter versus summer basis?

19 A. That -- that's correct.

20 Q. And -- but there was no communication from  
21 the -- from the Company at that time that although  
22 the -- the numbers -- the -- the aggregate numbers were  
23 close to Staff's -- that there was a dispute as to what  
24 would be used in the first block of the winter rate  
25 determinations?

1       A.    That correct.  And I guess I would even point  
2   to the third page of that attachment.  And if you look  
3   at the adjustments that were pointed out, their --  
4   their dollar value, their effect.

5           The first one is talking about the double  
6   counting bills.  The approximate value that -- of that  
7   issue is about \$30,000, maybe a little bit more --  
8   maybe more, like, \$40,000.

9           You know, the next one is adjusting for large  
10  customer loads.  There's very little dollars in therms  
11  for those customers.  The -- the demand therms are more  
12  important there.

13          And as you can see from the following line,  
14  the next adjustment only accounts for a  
15  \$300,000 adjustment.

16          And then, lastly, Staff had already made their  
17  calculations for normal degree days on an approximate  
18  value.  And we knew that that was -- that was in the  
19  range of half-a-million dollars that we were really  
20  talking about there.

21          So, you know, quite frankly looking at these  
22  numbers, the biggest two adjustments were the last  
23  two and we knew about those, we thought.

24          It was only in hindsight that I can now say  
25  that the -- there's really -- in my mind, there's an

1 extra adjustment there that's a million dollars -- or  
2 \$932,000, excuse me.

3 Q. You've participated in a number of recent  
4 Laclede rate cases?

5 A. Yes.

6 Q. Is it safe to say that most of those have  
7 settled?

8 A. That's correct.

9 Q. In the settlement of those rate cases, how was  
10 the conversion from the agreed-upon heating degree days  
11 to billing determinants made in those cases?

12 A. In -- in almost all of those cases Staff made  
13 a computation of -- of the -- the adjusted level, which  
14 would be the -- specifically an adjustment to -- to its  
15 direct case.

16 And that adjusted level was then applied to  
17 the blocks. And realistically as in, for example, the  
18 last case, it was impli-- it was applied entirely to  
19 the second block, the adjustment was.

20 So that's -- that's what we're used to seeing.

21 Q. And is that practice in -- in settling prior  
22 rate cases consistent with Mr. Cline's representation  
23 in his surrebuttal that the Company is willing to use  
24 Staff's method for turning those degree days into  
25 billing determinants?

1           A.    I -- I would assume that that's -- that's what  
2 he was referring to.

3           Q.    Is it consistent --

4           A.    Oh.

5           Q.    -- with past practice --

6           A.    Yes.  Certainly.

7           Q.    -- in settled rate cases?

8           A.    Certainly it's consistent with past-- past  
9 practice.

10          Q.    And I -- I can't remember if I've asked this  
11 so I'll ask it a -- anyway.

12                   And the Company's therms for each month are  
13 Staff's with the exception of November?

14          A.    Yes, that's correct.  I guess I would add one  
15 thing to that.

16          Q.    Please.

17          A.    And that's that -- when I say that it was the  
18 Staff's number for each of the other months, it's  
19 really something more than that.

20                   It's -- it's using the Staff's meth--  
21 methodology, which includes all the months in a  
22 regression analysis.

23                   Regression analysis is really nothing more  
24 than -- than taking the high points and the low points  
25 and -- and putting a line or a curve through them and

1 predicting where that number should go.

2 And that's what Staff did was it used that  
3 method for each and every month of the year. And to  
4 somehow exclude one of the points would seem to be  
5 illogical to me that -- that you could exclude it --  
6 the methodology for just one month of your choosing.

7 Q. So the -- the Company uses the same method  
8 that Staff does for eleven of the twelve months  
9 and -- and makes some additional adjustment just for  
10 the month of November?

11 A. That's correct.

12 MR. SCHWARZ: I don't think I have anything  
13 further.

14 JUDGE THOMPSON: Thank you, Mr. Schwarz.

15 I think for order of cross-examination, we'll  
16 take Laclede first. And then we'll go to the Office of  
17 the Public Counsel.

18 But before we start, I noticed that one of the  
19 intervenors has -- has joined us. Could you please  
20 make your entry of appearance?

21 MS. VUYLSTEKE: Yes. I apologize, Judge  
22 Thompson, because I initially asked to be excused --

23 JUDGE THOMPSON: That's quite all right.

24 MS. VUYLSTEKE: -- and then decided to come.

25 I'm entering my appearance for the Missouri

1 Industrial Energy Consumers. Diana M. Vuylsteke of the  
2 firm Brian Cave, 211 North Broadway, Suite 3600,  
3 St. Louis, Missouri 63102.

4 JUDGE THOMPSON: Thank you. And then I would  
5 propose to then have you last in the order of cross if  
6 you have any questions; is that acceptable?

7 MS. VUYLSTEKE: That's fine.

8 JUDGE THOMPSON: Laclede?

9 MR. PENDERGAST: Your Honor, just a point of  
10 order here, if you will. Since it appears that Public  
11 Counsel is aligned with Staff here, I don't know if the  
12 Commission's general prohibition against friendly cross  
13 is going to apply in this instance.

14 JUDGE THOMPSON: I'm glad you asked that  
15 question. The prohibition of -- on friendly cross  
16 always appeared in what was called a hearing  
17 memorandum.

18 And as you know, we no longer have a hearing  
19 memorandum, so there really is no rule or agreement of  
20 the parties prohibiting friendly cross.

21 I will permit Mr. Micheel to ask whatever  
22 questions he wants, so far as they help develop the  
23 record for the Commission to understand this matter and  
24 resolve it. And if at any time you believe it's --  
25 it's abusive, please object.



1           MR. PENDERGAST: In light of that, Your Honor,  
2 I was wondering if it would be appropriate for us to  
3 follow Public Counsel, then, in cross. If they do ask  
4 some questions, we have an opportunity to just clarify.

5           JUDGE THOMPSON: All right. That's fine.  
6 Very well. Then we will take Public Counsel next.

7 CROSS-EXAMINATION BY MR. MICHEEL:

8           Q. Good afternoon, Mr. Beck.

9           MR. MICHEEL: Can I do it from here or do I  
10 need to stand up or --

11          JUDGE THOMPSON: Go ahead and do it from  
12 there.

13          MR. MICHEEL: All right. Great. Excellent.  
14 This is a good change.

15 BY MR. MICHEEL:

16          Q. Mr. Beck, do you have a copy of the  
17 September 11th email from Patricia Krieger to yourself  
18 and Ms. Anne Ross?

19          A. Yes, I do.

20          Q. On the face of -- of that email, is there any  
21 way to tell that the Company has made a specific  
22 adjustment to November?

23          A. No.

24          Q. Does the specific therm adjustment that the  
25 Company made to November -- let me ask you this: What

1 would you have to know to know that there was an  
2 adjustment in November?

3 A. You would have to know the previous number of  
4 block therms, but you would also have to know how that  
5 number is affected by any of the other adjustments that  
6 are included on page 3.

7 So you'd have to know several pieces of  
8 information.

9 Q. Was it your understanding when you received  
10 this email that all of the adjustments that the Company  
11 had made to the billing determinants were included on  
12 page 3?

13 A. That was my assumption.

14 Q. And did you receive any communication from the  
15 Company prior to October 16th, 2002 that indicated to  
16 you that the Company had adjusted Staff's November 1st  
17 winter therms?

18 A. Do you mean billing month of November --

19 Q. Yes, billing month.

20 A. -- for the first block ther-- therms?

21 Yes, that -- I did not receive any indication  
22 prior to Octo-- October 16th.

23 Q. And did the Company explain to you why they  
24 did not include the November change in the  
25 September 11th email?

1       A.    The -- the Company just indicated that they  
2    would have assumed we would have contacted them at some  
3    point about that topic.

4       Q.    So at no time prior to October 16th -- you  
5    didn't receive any sort of affirmative indication from  
6    the Company that the change had been made?

7       A.    No.

8       Q.    Was it your understanding that the Company had  
9    agreed to utilize the Staff billing determinants?

10      A.    That's correct.

11      Q.    And what do you base that understanding on?

12      A.    I guess I based it on several things.  One is  
13   my prior experience with these cases.  You know,  
14   certainly just the discussions that we had throughout  
15   the -- the hearing -- or throughout the prehearing  
16   process, there was never any -- any indication of a  
17   problem in November.

18           And -- and I guess -- you know, partially I --  
19   I guess I would say that -- that I was -- also relied  
20   on my discussions with other Staff, which I suspect  
21   some of them were influenced by the -- by the testimony  
22   that was -- the surrebuttal testimony and rebuttal  
23   testimony as well.

24           I certainly read that testimony at some point.  
25   But I didn't specifically recall it until -- until I

1 re-- re-read it yesterday.

2 Q. When the Staff initially filed their billing  
3 determinant number, was -- for November, was that  
4 number the 58.3, to the best of your recollection?

5 A. 58.2, that's correct.

6 Q. Excuse me. The 58.2 number?

7 A. Yes.

8 Q. And at any time during the proceedings, did  
9 the Staff receive any input or was there any testimony  
10 on behalf of the Company that indicated that they  
11 disagreed with that 58.2 number?

12 A. No. There -- there was no indication of that.

13 MR. MICHEEL: That's all I have, Your Honor.

14 JUDGE THOMPSON: Thank you, Mr. Micheel.

15 Why don't I go ahead and take Ms. Vuylsteke,  
16 just in case she aligns herself with Staff as well.

17 MS. VUYLSTEKE: No --

18 JUDGE THOMPSON: Do you have any questions?

19 MS. VUYLSTEKE: We have no questions. And I  
20 would just add that we are not asserting a position in  
21 this dispute. We're simply protecting our interest as  
22 the dispute evolves.

23 Thank you.

24 JUDGE THOMPSON: Very well. Thank you very  
25 much.

1           Laclede?

2           MR. PENDERGAST: Thank you, Your Honor.

3 CROSS-EXAMINATION BY MR. PENDERGAST:

4           Q. Good morning, Mr. Beck.

5           A. Good morning.

6           Q. I've just got a couple of questions that I'd  
7 like to ask you.

8           JUDGE THOMPSON: Make sure you talk into your  
9 microphone, Mr. Pendergast, for our viewers across the  
10 world.

11          MR. PENDERGAST: Is that better?

12          JUDGE THOMPSON: That's very much better.

13 Thank you.

14          MR. PENDERGAST: Thank you.

15 BY MR. PENDERGAST:

16          Q. Do you have a copy of Mr. Cline's affidavit  
17 that was handed out today, by any chance, Mr. Beck?

18          A. Yes, I do.

19          Q. Fine. I'd just like to ask you a couple of  
20 preliminary questions here.

21                 Just, first of all, there's been some  
22 discussion about the September 11th email that was sent  
23 to Staff.

24                 And I'd just like to go ahead and have you  
25 verify for me, if you will, that email that is attached

1 to Mr. Cline's affidavit, is that the email from  
2 Patricia A. Krieger, dated September 11th that we're  
3 talking about?

4 A. That would be the first email that is attached  
5 as a part of that.

6 Q. Okay. Fine. Thank you.

7 And does that email in the -- the beginning of  
8 it say, please review and call to discuss?

9 A. That's correct.

10 Q. Thank you.

11 And if we look at what was actually attached  
12 to that email and we look at the breakdown of the block  
13 terms for each of the rate schedule blocks, the  
14 circled amount at the top 212,988,388 is -- is that, in  
15 fact, what was used by the Company in calculating its  
16 rates in its compliance filing in this case?

17 A. That is the number, yes.

18 Q. Okay. And you've indicated about not being  
19 aware of -- of whether an adjustment had been made. Do  
20 you -- if you would turn two pages in, do you also see  
21 the sheet that was provided by Anne Ross, I believe it  
22 was back in July, that reflected the Staff's block  
23 term volumes?

24 A. Yes. I can't say that I've seen this sheet  
25 before, but it certainly appears to be the type of

1 sheet that Staff would run.

2 Q. Okay. Now, if you were to simply look at what  
3 was under the block therm quantification given for  
4 residential general November through April as attached  
5 to the September 11th email sent by Ms. Krieger and  
6 compared it to the sheet that's two pages back that was  
7 provided by Ms. Ross, would you -- would you notice a  
8 difference in those block therm volumes?

9 A. Did you say if I -- for -- for first block  
10 November through April?

11 Q. Yes.

12 A. Yes, there -- there is a difference.

13 Q. A difference of approximately two-and-a-half  
14 million therms; is that correct?

15 A. Yeah. I think it's actually a little higher  
16 than that. 2.6.

17 Q. But in the ballpark?

18 A. 2.6 million therms.

19 Q. Okay. Very good.

20 And did -- if you -- if you just look down at  
21 the block therm numbers there, there was also change  
22 obviously to the second block compared to what was sent  
23 on September 11th to what Ms. Ross had provided before?

24 A. Yes, of approximately half-a-million therms.

25 Q. And there was a change in the May to

1     October 1st block and May to October 2nd block from  
2     what Ms. Ross had before to what the Company provided?

3             A.     That's correct.

4             Q.     And there were also changes in the first and  
5     second block for commercial and industrial; is that  
6     correct?

7             A.     That's correct.

8             Q.     In fact, there was a change in virtually every  
9     one of these numbers, wasn't it?

10            A.     I think that's correct. And I think, you  
11     know, not just therms, but also bills and billing  
12     demands, all of those categories.

13            Q.     And just to clarify, is the 212,988,388 block  
14     therms -- that's the second figure on the sheet that  
15     was sent with the September 11th email, to your  
16     knowledge, also included in the September 13th email  
17     that was sent by Mr. Cline to the parties in this case?

18            A.     Yes, it was.

19            Q.     And if I could ask you to go ahead and look at  
20     the first page in Attachment 1, which is denoted  
21     compliance filing worksheet. Do you recognize that as  
22     the worksheet underlying the Company's compliance  
23     filing that was made in this case?

24            A.     I recognize that as being a portion of the  
25     calculation to determine rates.



1 Q. Okay. And if we, once again, go up to general  
2 service residential and look at Block 1 therms, is that  
3 212,000 -- 212,988,388, once again, consistent with  
4 what was provided in the September 11th and the  
5 September 13th email and atta-- and attached  
6 documentation to the Staff?

7 A. That's correct.

8 Q. And we talked -- I -- I think you mentioned  
9 something about the Block 1 and Block 2 therms for all  
10 the various rate schedules would have to change in  
11 order to go ahead and accommodate the various  
12 agreements that were reached, the weather normal and so  
13 forth and so on.

14 Is -- is -- is it your understanding that most  
15 every block therm amount would have to change to some  
16 degree and every Block 2 therm amount to, then, go  
17 ahead and reflect what the parties agreed upon in order  
18 to implement the weather normal and that type of thing?

19 A. Given the fact that there was a weather  
20 adjustment, a growth adjustment and then low change  
21 adjustments, it -- it would be likely that the -- that  
22 they would change. I don't think it would have to, but  
23 certainly would be likely.

24 Q. Okay. And can you tell me when was the first  
25 time -- you know, we've gone through when the Company

1 had its Block 1 and Block 2 therms that took all of  
2 these other factors into consideration.

3 And I think that we've established that they  
4 provided it to Staff on September 11th, and the other  
5 parties on September 13th.

6 When was the first time that the Staff  
7 presented Block 1 or Block 2 billing determinants that  
8 reflected everything that had been agreed upon in the  
9 case?

10 A. The first time that -- that -- to my knowledge  
11 that it was provided was October 15th.

12 Q. Okay. Now, you talked about what has  
13 customarily been used in -- in prior cases in trying to  
14 establish billing determinants.

15 Did any of those prior cases involve a weather  
16 mitigation rate design of the kind that has been  
17 adopted in this case?

18 A. Would that be the settlement or the -- the  
19 case itself?

20 Q. Now, I'm -- I'm -- I guess what I'm asking you  
21 is, did any prior cases before this one that we're  
22 involved in right now, contain an agreed-upon weather  
23 mitigation rate design similar to this one?

24 A. That there -- no, there was no agreed-upon  
25 weather mitigation.

1 Q. And you're familiar, are you not, that the  
2 Company filed both a weather mitigation clause, as well  
3 as a weather mitigation rate design in this case?

4 A. That's correct.

5 Q. And can you briefly indicate how the weather  
6 mitigation clause operates that was proposed by the  
7 Company, if you know?

8 A. The -- the clause basically operates similar  
9 to the PGA/ACA process in which there will be a  
10 calculation that would pro-- provide for a raising or  
11 lowering of rates to -- to collect a certain level on  
12 an after-the-fact basis.

13 Q. And does it purport to go ahead and account  
14 for all deviations, including normal weather?

15 A. Assuming you can agree on what normal is,  
16 that's correct.

17 Q. But once you've established whatever you're  
18 going to use for normal and you build it in, anything  
19 that deviates from that up or down will be accounted  
20 for in the clause; is that correct?

21 A. That's correct.

22 Q. Is the same thing -- thing true with the  
23 weather mitigation rate design?

24 A. No, that is not -- not the same.

25 MR. PENDERGAST: One moment, please.

1 BY MR. PENDERGAST:

2 Q. And you're -- you're aware in this case that  
3 the Company filed for more than \$14 million?

4 A. That's correct.

5 Q. And the Staff proposed something less than  
6 \$14 million?

7 A. That's correct.

8 Q. And, once again, the parties agreed on  
9 \$14 million; is that correct?

10 A. That's correct.

11 Q. And would you also agree with me that --  
12 reflect, once again, what the parties agreed to is you  
13 had to establish billing determinants to implement  
14 that -- billing determinants that had never been  
15 related to 14 million before?

16 A. I -- I guess I -- I'm a little -- when you say  
17 related to the 14 million, in my mind, billing  
18 determinants stand on their own.

19 They're not something that you -- that you  
20 determine what your rate increase is and then -- and  
21 then decide what billing determinants really get you  
22 right -- get you there.

23 The billing determinants just are what they  
24 are. They're -- they're a reflection of -- of -- of  
25 the revenue that the Company generates and -- on

1 current revenues.

2 And so I guess that's why I'm a little --

3 Q. Well, let --

4 A. -- hesitant.

5 Q. Let me rephrase it this way. You had to go  
6 ahead and -- and make adjustments that reflect, for  
7 example, the weather normal that the parties agreed to  
8 in the case, would that be correct?

9 A. Yes. And that would be an adjustment to  
10 current revenues and -- and then billing units.

11 Q. Right. And -- and, once again, the first time  
12 Staff presented something that purported to do that was  
13 approximately on October 15th or October 16th?

14 A. A final computation of that number, that would  
15 be to my knowledge, yes.

16 Q. Okay. And do you recall when we had the  
17 presentation of the stipulations and agreements in this  
18 case that the Company had indicated to the Commission  
19 its intention to try and file compliance tariffs by  
20 October 15th?

21 A. That's correct.

22 MR. PENDERGAST: Okay. One moment.

23 BY MR. PENDERGAST:

24 Q. And if I could just refer you, I think it's to  
25 some information you provided in your affidavit on

1 November 1st, and I think that as you've indicated,  
2 Staff has recommended November's cycle billing therms  
3 of 58.2; is that correct?

4 A. That -- that would be the resulting  
5 calculation. It -- it's not something that Staff  
6 specifically set out, but that -- well, when you look  
7 at the calculations, that is -- that is what a normal  
8 predictive value would be.

9 Q. Okay. But it's not something that the Staff  
10 specifically set out anywhere?

11 A. It would be in Staff's work papers -- the  
12 details of that. I just didn't want to imply that it  
13 was written in testimony somewhere.

14 Q. Okay. And can you tell me when the last time  
15 was that the Company actually had usage per therm of  
16 58.2 for the November cycle billing month?

17 A. Well, I guess my problem with that is -- is  
18 that Staff didn't look at historical November data,  
19 much less December data, January data, February data.

20 Instead what we did is we looked at test year  
21 data. And so we have a spreadsheet. And I certainly  
22 attached that to this document. And I -- I would  
23 certainly point that out.

24 And -- and given that sheet, that -- that it  
25 was -- sorry -- I can't lay my hands on it right now.

1 But it was 1997 that -- according to the Company's  
2 data.

3 But Staff has in no way attempted to verify  
4 that data.

5 Q. Okay. And Staff did not look at any  
6 historical data involving its recommendation?

7 A. The -- the historical -- the only historical  
8 data we would have looked at would have been weather.

9 Q. And finally, there was some discussion about  
10 the Block 1 therms utilized by the Company and -- can  
11 you tell me, did the Company in any of its filings,  
12 either in its direct filing or in its -- in its weather  
13 mitigation rate design filing include Staff's  
14 215 million therms for Block 1?

15 A. Not to my knowledge, no.

16 MR. PENDERGAST: Thank you.

17 I have no further questions.

18 JUDGE THOMPSON: Thank you, Mr. Pendergast.

19 Questions from the Bench. Commissioner  
20 Murray?

21 COMMISSIONER MURRAY: Thank you.

22 QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Good afternoon.

24 A. Good afternoon. Is -- is it afternoon yet?  
25 It is.

1 Q. It is.

2 The rate -- weather mitigation rate design, is  
3 that based upon or -- or is that -- is that based upon  
4 an allocation between Block 1 and Block 2 therms?

5 A. What it -- what it really is in -- that would  
6 a -- a kind of a quick way to describe it is -- is that  
7 for margin rates, which is usually the important things  
8 that we're dealing with in rate cases -- that between  
9 the customer charge and the first block you would  
10 collect all of the revenues a comp-- a company would be  
11 required.

12 And so you would have a zero rate for the  
13 second block. So that -- that would be how I would  
14 describe it.

15 Q. And that would be accomplished by an  
16 allocation of more or less therms to the first block;  
17 is that correct?

18 A. The -- the way you'd accomplish reaching the  
19 right levels would be that you would -- in my mind,  
20 would -- you would determine what normal billing  
21 determinants are, in this case first block therms, and  
22 then you would determine a -- a rate that gets you to  
23 the right revenue target.

24 Q. So --

25 A. You -- you wouldn't adjust the billing units,



1     you'd adjust the rate.

2           Q.     So in your calculation, you would leave the  
3     therms and the blocks exactly the same and just adjust  
4     the rate?

5           A.     Once those -- once those therms in the block  
6     or -- are -- are normalized, that's correct.

7           Q.     Okay. Take me how those therms in the block  
8     are normalized.

9           A.     Okay. Basically there's several issues in --  
10    in a normal rate case that -- that -- that are current  
11    revenue issues. Those current revenue issues have  
12    revenue adjustments, positive, negative.

13                   And those revenue adjustments, in turn, almost  
14    always have billing unit adjustments to go with them as  
15    well.

16                   So you would start with actual billing  
17    determinants. And for each of those adjustments, you  
18    would apply a billing unit adjustment to that. Sum up  
19    all those and your answer, then, would be a normalized  
20    billing determinant.

21           Q.     And that would be rate, not number of therms?

22           A.     No, that just -- no, that -- that would be  
23    number of therms, number of customers, number of demand

24                   Those are the type of things that -- that a  
25    billing determinant would be. It would be those type

1 of numbers. It would not be rate at all.

2 Q. Okay. So an adjustment of billing  
3 determinants would involve an adjustment of the number  
4 of terms within the blocks; is that right?

5 A. That -- that would be one of the adjustments  
6 of billing deter-- determinants, that's correct.

7 Q. And when the Staff entered into the  
8 stipulation and agreement, was it Staff's understanding  
9 that those billing determinants would have to be  
10 calculated after the stip and agreement?

11 A. That -- that's correct. Now, when I say that,  
12 there -- there were actually three different documents  
13 that -- that make up the stipu-- stip and agreement.

14 And after the first document, current revenues  
15 and the rate increase were agreed to. So at that  
16 point, there should have been enough information to  
17 make that calculation.

18 Q. But the first amended stipulation and  
19 agreement was the one that contained the weather  
20 mitigation rate design, was it not?

21 A. That's correct.

22 Q. And didn't that weather mitigation rate design  
23 involve some kind of an allocation between the first  
24 and second block?

25 A. No. That's -- the -- depending on how that

1 allocation of first and second block, you know, what --  
2 what those numbers were the -- the ultimate -- I'll use  
3 the Company's word "risk" that the -- that the Company  
4 would still face would ultimately flow out of that.

5 But -- but the billing units would be tied to  
6 the current revenue units, not to the settlement  
7 itself -- not to the weather mitigation proposal.

8 Q. But you had to determine a normalized weather  
9 calculation; is that right?

10 A. That's correct.

11 Q. In order to determine what the --

12 A. The --

13 Q. -- rate blocks were?

14 A. In order to determine what the billing  
15 determinant -- normal billing determinants were, which  
16 included block billing determinants.

17 Since the rate design -- not only the weather  
18 mitigation, but then the third -- well, I think it's  
19 called second amended stipulation, that's the one that  
20 actually dealt with things like revenue shifts between  
21 the classes and that type of thing.

22 And so until you knew that third piece of  
23 information, you couldn't calculate rates. You have to  
24 know -- you have to know that -- that piece as well.

25 Q. So it was contemplated by the parties that

1    when the stipulation and agreement was signed that  
2    there would be calculations of billing determinants  
3    following that --

4           A.    That's correct.

5           Q.    -- is that correct?

6                   And those calculations would include an  
7    allocation between the first and second blocks?

8           A.    For all the -- all the issues that were  
9    settled out, which included weather -- weather  
10   normalization, load changes, growth, all of those  
11   things.

12          Q.    So when the Company submitted its filings to  
13   you, you would have known that there was a calculation  
14   in there determining how many therms to assign to  
15   Block 1, as well as how many to assign to Block 2,  
16   would you not?

17          A.    I guess I -- I'm hesitating when you say would  
18   have known the calculation was in there, because what  
19   we got was just numbers.  There -- there were no  
20   formulas or calculations or any explanation like that.

21                  But I think -- you know, underlying that, I  
22   guess, it'd be safe to assume that there would -- there  
23   would be some calculation that would get you to that  
24   number.

25          Q.    So wouldn't it be logical for Staff to look at

1 those numbers?

2 A. I -- I think that -- that it would. I think  
3 the -- the real question in my mind is -- is when does  
4 that effort take place?

5 And I can only say personally I was worried  
6 about making some example calculations for the  
7 Commission September 16th the -- on-the-record  
8 presentation.

9 Q. But you did indicate, I believe, that Staff  
10 was in agreement with what the Company had submitted,  
11 did you not?

12 A. I said that -- actually I -- what I had told  
13 the Company was is that we had a small difference in  
14 total therms, but it didn't look like enough to worry  
15 about. And that would be about 100,000.

16 Q. Okay. And is that the -- that is the issue  
17 that, I believe, in your -- I can't lay my hands on it  
18 right now.

19 But in one of your later pleadings, I guess it  
20 was.

21 I just realized another problem with the  
22 printing documents off of EFIS, and that is that you  
23 don't -- you don't have the file-stamped date on the  
24 front.

25 A. That's correct.

1 Q. Okay. The 31st of October apparently was when  
2 this reply -- Staff's reply was filed and you mentioned  
3 that -- at paragraph No. 15 as -- as another reason for  
4 the Commission to deny Laclede's request to approve its  
5 tariff?

6 A. The -- the paragraph 15 that you refer to  
7 discusses the \$100,000 reduction to the small general  
8 service class.

9 Q. Was that the first time Staff raised that?

10 A. The -- the reduction was part of the stip.  
11 The fact that -- that the revenues -- that the -- that  
12 the Company's rates didn't -- didn't get you to that  
13 \$100,000 number, that was the first time that Staff  
14 raised that issue.

15 Q. October 31st?

16 A. That's correct.

17 Q. And is that the issue that Mr. Pendergast  
18 referenced when he said the Company had accepted the  
19 Staff's proposed tariffs or is that a different issue?

20 A. No, that -- that is -- that -- I believe that  
21 would be the issue that he said he accepted the Staff's  
22 proposed rates, and I think he indicated that he would  
23 like to file substitute tariff sheets to attempt to  
24 meet those rates.

25 Q. What was the date, again, that the stip

1 agreement was approved, do you recall?

2 JUDGE THOMPSON: October 3rd.

3 COMMISSIONER MURRAY: October 3rd.

4 BY COMMISSIONER MURRAY:

5 Q. And the date that the stip -- stips were  
6 filed -- signed and filed?

7 A. Let's see if I can lay my hands on -- oh,  
8 excuse me. There were actually three different --

9 Q. The final.

10 A. The final one, which would specifically  
11 address those revenue shifts that -- that we just  
12 discussed, September 5th was the -- the date that  
13 the -- the class revenue shifts and the final rate  
14 design.

15 Q. So eight days later was when the Company  
16 presented the calculations to Staff; is that correct?

17 A. That's correct. I -- I -- I guess to put it  
18 in context I would actually say that that was  
19 approximately 21 days, 22 days later than when the  
20 stipulation involving revenue requirement was agreed --  
21 agreed -- reached, excuse me.

22 Q. But didn't the following stips have to be  
23 approved in order for those calcu-- or have to be, not  
24 approved, but entered into in order to have all of the  
25 things that would go into those calculations?

1       A.    No, not to -- not to determine billing  
2   determinants. To determine final rates, yes, but not  
3   to determine billing determinants.

4       Q.    And was there any agreement as to when those  
5   calculations would be filed or would be given to you?

6       A.    No -- no, there was not.

7       Q.    When did you expect them?

8       A.    What I fully intended was that -- that both  
9   Staff and the Company would make their calculations and  
10  then discussions would take place between the  
11  two parties.

12      Q.    When did Staff make its calculations?

13      A.    The first time that I'm aware they -- that a  
14  final calculation tying together the input from all the  
15  witnesses was done was the October 15th date.

16      Q.    Approximately 35 days after the Company's  
17  calculations were given to you?

18      A.    That's correct.

19      Q.    On your verified statement that you filed with  
20  the October 29 filing -- do you have that?

21      A.    Yes, I do.

22      Q.    The last paragraph on that page talks about  
23  the allocation of therms between rate blocks used in  
24  Mr. Cline's rate design testimony. Are you disputing  
25  that the billing determinants the Company claims were



1 actually used by Mr. Cline?

2 A. No. I'm certainly not disputing that they  
3 were act-- that they were actually used by the Company.

4 Q. And the next page of that verified statement,  
5 the bottom paragraph is a partial paragraph on that  
6 page. Well, I've already asked Mr. Schwarz that  
7 question and he said that Staff did see the work --  
8 direct filing work papers while the case was pending;  
9 that is correct -- is that right?

10 A. That's correct.

11 Q. And is it Staff's -- it's -- it's apparently  
12 Staff's testimony that if the Company's numbers were  
13 used, the Company would receive approximately  
14 900-and-some-odd-thousand dollars additional revenue;  
15 is that right?

16 A. If -- if the subsequent year was normal,  
17 that's correct.

18 Q. Normal according to Staff's normal figures?

19 A. Normal according to the 4,718 degree days with  
20 Staff's calculation.

21 Q. Let's see. That -- those degree days -- I  
22 want to go back to the document that was attached to  
23 the email -- September 11 email.

24 Now, what did you say the normal -- Staff's  
25 normal degree days were just now in your ans-- 4,718;

1 is that what you said?

2 A. For -- for the annual, yes.

3 Q. Okay. And the -- the page No. 3 that the  
4 Company had included its billing determinant summary,  
5 it -- is said adjust normal degree days to 4,718; is  
6 that right?

7 A. That's correct.

8 Q. So there's no disagreement as to the normal  
9 degree days between the Company and the Staff?

10 A. That -- that -- that was part of the  
11 stipulation. I think, you know, it even indicates with  
12 the ast-- double asterisk about the 35 degree days.  
13 That 35-degree day change would be from Staff's filed  
14 position.

15 Q. Okay. But there is a dispute between the  
16 54 therms per customer and the 58.2 therms per customer  
17 for a normal -- that's a normal month; is that correct?

18 A. That -- that would be a normal billing month  
19 for the month of November. And the reason why I  
20 specify the billing month is because different  
21 customers get billed at different times.

22 And so some of those customers -- their bill  
23 is almost entirely from October days, but it's called a  
24 November billing month because that's the month that  
25 they receive the bill.

1       Q.   Now, I thought I heard you earlier say that  
2   Staff did not look historically month by month, but  
3   looked at the historic normal annually.

4               Did I misinterpret what you said earlier?

5       A.   We -- we calculate the -- the historical  
6   analysis that -- that we do is historical weather.  
7   And, in fact, Staff uses a 30-year history to deal with  
8   the -- the calculation of normal weather.

9               But a -- as far as a first block usage per  
10   customer, that's not -- that's not something that Staff  
11   analyzed over many years, but instead we used  
12   the -- the actuals for the test year and ran a  
13   regression on the nine months -- excluding the summer  
14   month, but the nine months that -- that have heating  
15   degree days in them.

16       Q.   So you really didn't look specifically at  
17   November?

18       A.   Certainly not.

19       Q.   And on pa-- on the next page, I believe --  
20   they're not numbered, but I think that's page 3 of your  
21   verified statement of October 29. I guess that -- it  
22   would be page 4.

23       A.   Okay.

24       Q.   The fourth full paragraph on that page. You  
25   say, finally, this proposal would result in higher

1 rates than Staff advocates for all weather months, not  
2 just the month of November?

3 A. That's correct.

4 Q. And why -- why is that?

5 A. You -- you compute rates based on --  
6 in -- based on how the billing data and -- and the rate  
7 design agreement was reached.

8 In this case the agreement was that there  
9 would be a single rate for all winter months -- or  
10 single set of rates.

11 And so any change that you make for any given  
12 month's billing determinants is going to affect all  
13 months.

14 Q. But I thought you said the Company used  
15 Staff's numbers for all months, except November and  
16 made an adjustment just for November?

17 A. To the billing months, that's correct.  
18 The -- the problem is -- is that when you calculate  
19 rates, you are calculating on a total winter basis.

20 The -- the concept of -- of how much it was  
21 November and how much was December -- really the  
22 only -- the only way that it matters is the fact  
23 that -- that it has input into the total winter number.

24 And that total number -- total winter number  
25 is what's important.

1 Q. So if there is an adjustment that reduces the  
2 number of therms in November, it's going to increase  
3 them in some other month?

4 A. That's -- if you changed the billing months in  
5 November, you're gonna affect all of the months. And  
6 in this case, if you reduce the billing months in  
7 November, you're gonna increase the rates for all  
8 winter months.

9 Q. Because the rate carries through for all of  
10 the months?

11 A. That -- that's correct. Since you have a  
12 revenue target that is a total winter and you're gonna  
13 have to hit that target, changing the billing  
14 determinants for one month is going to affect the rate  
15 for all months.

16 Q. Now, is it -- is the adjustment made in  
17 November applicable to all the rest of the year?  
18 Is -- is -- is the adjustment made to the month of  
19 November -- because that's the first winter billing  
20 month, is that why that adjustment is made and set down  
21 and allocated to the month of November?

22 A. My -- my opinion is -- is the adjustment made  
23 to November is because that value is higher than --  
24 than what the Company would like it to be.

25 There's other months within the winter that

1 are lower than, I think, their method would result in.  
2 They had no problem with those.

3 Q. But if they make the adjustment to one month,  
4 it's gonna carry through to all of the months; is that  
5 what you're saying?

6 A. That's right. And I -- it carries through  
7 two ways. One is it carries through with that rate  
8 that we just talked about and how the rate is a total  
9 winter rate.

10 But it also, in my mind, carries through a  
11 second way and that is that since Staff's analysis to  
12 determine a normal November was based on nine months'  
13 worth of data to then exclude one month of data, then  
14 you would have to re-run those calculations for all  
15 other months.

16 Q. And that's a part of the dispute and it's part  
17 of the reason that you're not in agreement that what  
18 the Company filed achieves the revenue requirement set  
19 out in the stip and agreement, is that right, because  
20 it's only calculated based upon one month?

21 A. For -- that -- I think in my mind that the  
22 dispute is about -- over the fact that the Company  
23 make -- the Company made an adjustment to Staff's  
24 method for a special adjustment we've never seen before  
25 for one month.

1       Q.    Okay.  And that's where I'm -- I'm still  
2   running into confusion.  Because we keep saying the  
3   adjustment was for one month, but it was really for the  
4   whole year?

5       A.    Well, and I think that's -- I think  
6   that -- in -- personally, in my mind, that's why I keep  
7   saying that first there's two adjustments going on  
8   here.

9               One adjustment is adjusting for weather and  
10   what Staff agreed to for weather.  And based on the  
11   Company's work papers, Staff and Company are in  
12   agreement that you apply that adjustment to the tail  
13   block -- to the second block therms.

14              Then there's a second adjustment, which is to  
15   change Staff's November value.  That's a new adjustment  
16   that we hadn't seen before -- were never told was in  
17   there.

18              And that's to me why a lot of the confusion  
19   comes about is because we're really dealing with  
20   two separate adjustments.

21              Now, the fact that -- you're exactly right,  
22   though, that -- that at the same time rates -- if you  
23   change the value for one month, rates get affected for  
24   multiple months.  But that's due to the rate design.  
25   The fact that the winter season is treated as one big

1 group.

2 Q. And this second adjustment that you're talking  
3 about that you weren't contemplating was an adjustment  
4 to the therms -- the allocation of therms between the  
5 first and second block for the month of November; is  
6 that correct?

7 A. That -- it was -- it was an adjustment between  
8 the first and second blocks and, subsequently, the  
9 Company told us that it was for November, that's  
10 correct.

11 Q. And the reason it would have been based upon  
12 one month, the month of November, would have been --  
13 what -- what factors would have been included in  
14 that? What would have been in that calculation to make  
15 that adjustment?

16 A. To -- oh, to -- how -- how to make that  
17 adjustment. The way the Company made that adjustment  
18 was they did a -- a linear interpolation of -- of the  
19 six years of history that they showed and then they  
20 multi-- and that came up with a first block therm  
21 per-customer calculation.

22 And then they multiplied that by customer  
23 numbers. And I guess I would also point out at that  
24 point that they used 600,000 customer -- customer  
25 numbers -- a customer number of 600,000, which was not



1 a number that was used by Staff in this case.

2 Q. What number did Staff use?

3 A. For normalized values, they use  
4 5,900 -- excuse me -- 593,253 -- 5-9-3-2-5-3.

5 Q. So Staff used fewer customers?

6 A. And I would point out that -- but the Company  
7 also agreed to Staff's growth in residential customers,  
8 so there should be no dispute there.

9 Q. Because if a Company used more customers, it  
10 would result in a lower rate, wouldn't it?

11 A. No. No, it would result in a higher rate,  
12 because it's a negative adjustment to the first block.

13 Q. It would reduce the number of therms in the  
14 first block?

15 A. That's right.

16 Q. Okay. And your -- your number 58.2 for  
17 average use in November, the normal billing month, do  
18 you know if that's the highest rate that's ever been  
19 reported in November -- highest usage?

20 A. I can only say, based on the data that I was  
21 provided by the Company that -- which, you know, we  
22 were provided in the last couple of weeks, that it was  
23 not the highest, no.

24 Q. Is it on the high end?

25 A. Yes.

1 Q. And is normal somewhere near the middle,  
2 rather than either on the high or the low end?

3 A. That -- that would be what you would expect  
4 normal to be.

5 Q. So is it possible that Staff's average is a  
6 little bit above normal?

7 A. Well, what Staff's method was, was to take the  
8 actual value experience for the month of November,  
9 which may be a little bit higher than -- than you would  
10 expect for that temperature or maybe a little bit  
11 lower, whatever it is, and apply a weather adjustment  
12 to that. And --

13 Q. Which November did you use?

14 A. Oh, the -- the November for 2001 -- the test  
15 year November.

16 Q. You didn't attempt to make any average?

17 A. Well, if you -- if you adjust -- adjust that  
18 to normal weather, what -- what the -- what you're  
19 attempting to do at that point is to -- is to reflect a  
20 normalized value. So --

21 Q. But where do you get the normalized  
22 value? Where do you get the 58.2 as an average use?

23 A. You -- you determine between the actual  
24 heating degree days, the -- that were experienced in  
25 normal --

1 Q. In November 2001 or --  
2 A. Yeah, November 2001.  
3 Q. Was that a normal winter?  
4 A. Oh, no. So you have to make an adjustment for  
5 that. So you take the actual that you experienced for  
6 November 2001 and you add to that a -- an adjustment to  
7 reflect normal weather.  
8 Q. And where do you get the number that you use  
9 that you add to the actual to come up with normal?  
10 A. That -- that's -- that's where you do the  
11 regression analysis on multiple months in a test year  
12 to determine what is the -- what is the change due to  
13 weather -- due -- due to cor-- due to -- due to  
14 normalizing the weather.  
15 Q. But somewhere in that is your 58.2?  
16 A. Yeah. And in this case, that would be -- you  
17 know, Staff made an adjustment of approximately  
18 8.1 therms per customer to move the actual value to a  
19 normal value.  
20 Q. But you have to accept the premise that 58.2  
21 is a normal billing level for November?  
22 A. I -- I think what you actually have to do is  
23 you have to accept the val-- the -- the premise  
24 that -- that the actual experience in 2001 just needs  
25 an adjustment for weather.

1       Q.    But don't you have to accept the  
2   adjustment -- you have the agree on the adjustment?

3       A.    You certainly -- you certainly do, but  
4   that's -- you know, but that's the -- the reason why  
5   we're frankly here today is not because the Company  
6   believes that an eight-degree adjustment is -- is -- or  
7   eight therms per -- eight-therm adjustment was  
8   incorrect for November.

9            But instead the reason is -- is -- is they  
10   don't like the fact that the -- starting with 50 and  
11   adding 8 to it gets you to 50 -- 58.2.

12           It -- it's -- if we wouldn't add it to that --  
13   to the starting value, there wouldn't be a problem.  If  
14   we would adjust their starting value to begin with,  
15   what was actually experienced, everything would be  
16   fine.

17       Q.    You lost me there, but I won't pursue that  
18   right now.

19       A.    Okay.  I'm sorry.

20       Q.    It -- it appears from some of the things in  
21   the record that prior Laclede filings were based on  
22   210,846,057 therms in the first block.  Would that be  
23   an accurate statement?

24       A.    To -- to the best of my recollection, yes.

25       Q.    And then if the compliance filings here were

1 based on 212,988,388 therms in the first block; is that  
2 correct?

3 A. That's correct.

4 Q. So that's a difference of a -- of, as I  
5 calculate it, 2,142,331 therms that were added to the  
6 first block from Laclede's prior filings. Would you  
7 agree with that?

8 A. I -- I will accept your math.

9 Q. Okay. But it is an additional --

10 A. Yes.

11 Q. -- to what Laclede had --

12 A. Clear -- clearly

13 Q. -- previously filed?

14 So then for the compliance filing in this  
15 case, if Laclede reduced the first block by  
16 two-and-a-half million, roughly, my calculations show  
17 that that leaves a net reduction to the first block of  
18 something like 337,000 -- or 377,000 -- closer to  
19 378,000 therms reduced from the first block.

20 Why is it not that number you're looking at  
21 rather than the -- just the two-and-a-half that you're  
22 looking at?

23 A. The -- the -- the -- the problem with your  
24 assumption is -- is that you're applying the  
25 two-and-a-half million negative adjustment to the

1 Company's final number. But that final number -- final  
2 number already includes that two-and-a-half million.

3 So in reality what you really would have is  
4 that they had a number -- and I -- this was included  
5 in -- in Question D, but they started with a number of  
6 215,508,388, and that number they, then, subtracted  
7 2,520,000 therms from.

8 Q. And where do you get the starting number of  
9 215?

10 A. That is Staff's number that was conveyed on  
11 July 16th.

12 Q. And why did Staff come in at 215 when the --  
13 the Company -- and I'm just rounding these --

14 A. Yeah.

15 Q. -- obviously -- when the Company had  
16 previously been filing 210 in the -- in the first  
17 block -- why was there that difference?

18 A. The primary difference between the -- the 210  
19 and -- and the 215 that they used was -- is they  
20 abandoned their method and went with Staff's method  
21 of -- of computing first block sales.

22 Q. And when did they do that?

23 A. That was -- that was part of the stipulation  
24 and agreement -- the first step.

25 Q. Where specifically?

1       A.    I -- I -- I guess -- I mean, it was -- in my  
2   mind, it was part of the stip.  I guess the best place  
3   that I could point you to would be to the attachment --  
4   the -- the Pat Krieger email.

5       Q.    No, I'm saying in the stip.

6       A.    Okay.  In the -- in the stip, the -- the only  
7   language there was that -- that the normal billing  
8   degrees, 4,718, would be reflected.  So there was  
9   nothing that addressed specifically first block therms.

10            But there was -- there was language -- and I  
11   don't have the document in front of me.  But there was  
12   language about accepting Staff's load adjustment, and  
13   that -- that would be part of that calculation, but it  
14   would only be a -- a piece.

15       Q.    So I just want to understand what Staff was  
16   expecting in the filing that they got from the Company.  
17   Were they -- in the tariff filing.  Were you expecting  
18   that the first block would contain Staff's number  
19   215,000 or whatever therms?

20       A.    That's correct.

21       Q.    And you thought that the stip and agreement  
22   said that -- or basically implied that?

23       A.    That -- that's correct.  And I thought the  
24   only dispute really would be -- and I -- I say --  
25   I -- I'll take back the word "dispute," and I would say

1 the only difference would be the calculation of the  
2 35 heating degree days.

3 And that -- I expected that difference to be  
4 so small that it would be irrelevant.

5 Q. But in order to accomplish the revenue  
6 that -- that was agreed to -- the rates, you were  
7 expecting the rates, then, to change; is that correct?

8 A. That's right.

9 Q. So you were expecting the Company to provide  
10 figures that accomplished the \$14 million revenue  
11 increase through an adjustment in rates only, and not  
12 any adjustment to the blocked therms?

13 A. That's correct.

14 Q. And -- and it was my understanding that a part  
15 of the stip and agreement was to accomplish weather  
16 mitigation through the Company recovering its fixed  
17 cost in the first block; is that -- is that accurate?

18 A. I think that the -- it -- it's not totally  
19 accurate, because what the Company actually does is  
20 they recover for the residential class almost half of  
21 their revenue through the customer charge.

22 And then with this rate design, they would  
23 collect the rest of their -- of their margin rates or  
24 have the opportunity to collect the rest of their  
25 margin rates through this -- through the first block



1 charge.

2 Q. And one way to accomplish that would be  
3 through higher therms in the first block; is that  
4 right?

5 A. Certainly if you -- if you monkey with the  
6 therms, you can get any dollars you would like, but,  
7 you know, that -- that -- that's not the way that --  
8 that -- you would then have to compare that to current  
9 revenues to -- to understand what it is that you're  
10 agreeing to.

11 COMMISSIONER MURRAY: That's all I have.

12 Thank you.

13 THE WITNESS: Okay.

14 JUDGE THOMPSON: Thank you, Commissioner.

15 It's time for a break at this time for the  
16 reporter, so if we could come back in about ten minutes  
17 and we will continue with questions from the Bench at  
18 that time.

19 Let me hear if you would like a lunch recess  
20 at this time or whether you'd like to get as much of  
21 this hearing done prior to the lunch recess.  
22 What -- what do you parties prefer?

23 Mr. Schwarz?

24 MR. SCHWARZ: I'd defer to Mr. Beck.

25 JUDGE THOMPSON: Mr. Beck, are you -- are you

1 fainting?

2 THE WITNESS: No --

3 JUDGE THOMPSON: Do you need some lunch?

4 THE WITNESS: -- I'm not fainting.

5 JUDGE THOMPSON: I'm always ready for lunch

6 myself, so --

7 MR. PENDERGAST: We can -- we can go either

8 way, Your Honor.

9 MR. SCHWARZ: So I guess it's --

10 JUDGE THOMPSON: There you have it, the ball's

11 back in this court.

12 COMMISSIONER GAW: I don't care. Can we do it

13 in 30 minutes, if they want to eat? You want to take a

14 break later?

15 JUDGE THOMPSON: Well, why don't we go ahead,

16 then, and take an hour for lunch and we'll see you

17 back. All right.

18 MR. PENDERGAST: Thank you.

19 JUDGE THOMPSON: All right.

20 (A RECESS WAS TAKEN.)

21 JUDGE THOMPSON: We'll go back on the record

22 and we're continuing with questions from the Bench.

23 Commissioner Gaw?

24 COMMISSIONER GAW: Thank you, Judge.

25 QUESTIONS BY COMMISSIONER GAW:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. I'd like to -- if you would, I want me -- I  
4 want you to come up here. And you can turn this any  
5 direction you want to. And I hope we've got a marker  
6 somewhere.

7 COMMISSIONER GAW: Do we have a marker  
8 somewhere?

9 JUDGE THOMPSON: Those aren't even real  
10 markers over there.

11 BY COMMISSIONER GAW:

12 Q. For the record, I'm asking the witness to come  
13 up to the easel -- pardon my voice.

14 Mr. Beck, I need you to work -- to walk me  
15 through this problem. And so -- and I -- I want you to  
16 focus exclusively on the problem and not everything  
17 else that -- that's -- that's contential (sic) to it.

18 A. Okay.

19 Q. And what I'd like for you to do is work  
20 through the problem on -- with the Staff's position,  
21 and then I'd like for you to work through the problem  
22 with Laclede's position so that I can see where my  
23 questions should be focused.

24 Because up to this point in time I'm having a  
25 difficult time understanding.

1           A.    Yeah.

2           Q.    Okay.  And I'm not gonna make this one sided,  
3   so whenever Laclede gets ready to -- to work -- I'll  
4   see if I've got an agreement on what the question is.

5                    So if you would, Mr. Beck?

6           A.    Okay.

7           Q.    And explain as you're writing so the -- so the  
8   record will show that.

9           A.    Okay.  The -- I mean, not to be argumentative  
10  or whatever, but I think the ultimate problem really  
11  is, is that -- is that there's this debate about the  
12  November data point that we were never aware of.

13                   But to explain what's going on with this  
14  November date of point.

15          Q.    Well, in order for me to see how that impacts  
16  everything --

17          A.    Yeah, you need to understand it.

18          Q.    -- I need to see it in -- in the calculation.

19          A.    Okay.

20          Q.    I know you all have tried to do that to some  
21  extent with what you've supplied us.

22          A.    Okay.

23          Q.    But it will be easier for me to understand it  
24  if you'll work through it.

25          A.    Okay.  Would you like me to explain how it is

1 about the rates and the dollars and those type things  
2 or first explain this 58?

3 Q. I need to see something on that board.

4 A. Let me grab a piece of paper then.

5 JUDGE THOMPSON: Start wherever you think you  
6 need to start for us to follow.

7 THE WITNESS: Okay.

8 BY COMMISSIONER GAW:

9 Q. Try not to go too far away from the place  
10 where the -- the particular entry that's in question  
11 comes into the calculation.

12 A. Okay. I -- I would start -- I would start it  
13 there (indicating) with a bunch of data points that  
14 basically describe what happens. And this would be the  
15 therms per customer and this would be weather  
16 (indicating).

17 Q. So -- so your X axis is therms per customer,  
18 your Y axis is what?

19 A. Heating degree days is what --

20 Q. You've got a little graph thing up there?

21 A. Yes. And so basically, you know, you look at  
22 these data points. And what Staff does is say, okay,  
23 we fit a regression line through them. And that  
24 regression line basically says that as the weather gets  
25 colder, your therms per customer in the first block

1 goes up.

2 Q. Okay. So on your Y axis there, you -- you  
3 would have degrees -- you would have degrees of  
4 temperature?

5 A. Yep. Or actually heating degree days, so  
6 monthly heating degree days.

7 Q. So what -- what is that? Tell -- tell me  
8 what --

9 A. Like what range of numbers we're talking  
10 about?

11 Q. No. Actually on a calculation, what -- what  
12 is that? Is that -- is that degrees per -- what --  
13 what is it? I want to know what that is.

14 A. It's actually -- heating degree days are --  
15 for any given day, it's 65 minus the actual temperature  
16 of that -- that day if the temperature is less than 65.

17 The -- the av-- so 65 minus the average  
18 temperature of that day, assuming that day is less than  
19 65.

20 Q. All right. Now, is this -- is this over  
21 the -- what period of time --

22 A. The --

23 Q. -- are we talking about?

24 A. In the graph you --

25 Q. The graph that you have?

1       A.    The graph that we would -- we would -- would  
2   have would be -- would be test year data points.

3       Q.    Test year.

4        Okay.  Is that for the whole year for winter?

5       A.    What -- what actually happens is --

6       Q.    You're only talking about days under 65?

7       A.    We run the regression for nine -- nine months.  
8   There's -- August, July and June or just right there,  
9   because there's no heating.  You know, they're all  
10   just -- so we don't -- we exclude those to kind of make  
11   sure they don't have any undue effect on the rest of  
12   the --

13      Q.    At the beginning where the line touches the --  
14   the Y axis --

15      A.    Uh-huh.

16      Q.    -- what -- what would that reading be?

17      A.    I'm just guessing, but I think it would be a  
18   value of about 30 -- well, the -- the -- the -- I think  
19   I've got my -- sorry.  Bear with me just a minute here.

20      Q.    That's okay.

21      A.    I'm trying to figure out how to correct my --

22           MR. SCHWARZ:  Your axes are switched?

23           THE WITNESS:  Yeah, my axes are switched.

24   BY COMMISSIONER GAW:

25      Q.    You can start on the other page, if you'd

1     like.

2           A.    I -- I'm gonna have to.

3           Q.    Go to page 2.

4           A.    Okay.  Let me just give myself something here  
5   to keep myself --

6           Q.    If you'd learn to write with your other hand,  
7   that would be no problem.

8           A.    That's an old problem.

9           MR. MICHEEL:  That's not a problem.

10           THE WITNESS:  Okay.  Now, let me put in  
11   my -- okay.  So -- okay.  So I've switched the axes.  
12   The heating degree days across here, therms across here  
13   (indicating).

14   BY COMMISSIONER GAW:

15           Q.    So now your therms are on the Y axis?

16           A.    Yes.

17           Q.    Heating degrees on your X axis?

18           A.    Yes.

19           Q.    And how --

20           A.    And basically what I'm -- what I'm showing  
21   is -- is that -- that the -- doesn't matter how little  
22   temperature there is in a given month, there's gonna be  
23   some level of -- of base usage.

24                   And more -- and -- and just as importantly,  
25   we're talking about the -- a rate that -- the first



1 block rate that we have defined is no more than 65 per  
2 customer, so it's impossible to -- to go above the 65.

3 And the reality is there's always some  
4 customers that are using a little bit less that aren't  
5 weather sensitive that just have a meter hooked and  
6 don't have anything -- all the reasons.

7 Q. Maybe they've got a meter hooked up, but  
8 nobody's living there?

9 A. That's right.

10 Q. So it -- it doesn't -- even on the real  
11 cold -- in the cold winter --

12 A. Yeah.

13 Q. -- you're not achieving it, so you can't get  
14 above 65?

15 A. Yeah. So in reality --

16 Q. We're really not gonna get quite up to that  
17 particular --

18 A. Yeah, 63 -- in between 63 and 64 is -- is --  
19 is kind of maxing out.

20 Q. Okay.

21 A. Okay. So that's why we have this. What Staff  
22 does is we fit a curve to that -- that -- that ensures  
23 basically that you don't go above that 65. And  
24 reflects the fact that you've got some base level, no  
25 matter how low temperature that is.

1           Okay. That's -- that's -- that's the whole  
2 basis behind what Staff does. And we actually use  
3 percentages to make these calculations, but  
4 that's -- that's the whole point of what we do.

5           Now, what -- what happens in this case is --  
6 let's just, for example, assume that this data point  
7 here (indicating) represents our -- our infamous  
8 November point that's giving us so much (sic) problems.

9           Q.    Okay.

10          A.    And --

11          Q.    Why don't you put a little A by that or  
12 something -- something to designate?

13          A.    How about an A?

14          Q.    Okay. That's fine.

15          A.    Okay. Okay. There's our November point.  
16 Then we go ahead, and what Staff does is we say, okay,  
17 that November the heating degree days were here, but in  
18 a normal November we expect them to be about there  
19 (indicating).

20          Q.    Can you -- okay. Now, again, so we can --

21          A.    Yeah.

22          Q.    Somebody else follows you up here, they can  
23 see what you've done, why don't you put something down  
24 there to indicate --

25          A.    Okay.

1 Q. -- where those marks are?

2 A. Actual weather, normal weather, both of those  
3 being November (indicating).

4 Q. All right.

5 A. Okay. So what Staff does is we can to --  
6 through the regression process, it'll tell you from  
7 here (indicating) where actual weather is on the -- on  
8 the line and where normal weather is on the line  
9 (indicating) how many therms you have to add.

10 And we simply add that value to this end, so I  
11 will call it N star.

12 Q. So N plus N star --

13 A. N --

14 Q. -- is that what you're doing?

15 A. Well, that would be --

16 Q. Or is that the total of N plus something?

17 A. N star --

18 Q. All right.

19 A. -- equals N --

20 Q. That's what I'm looking for.

21 A. -- plus the adjustment. And the adjustment is  
22 therms -- some number of therms like in this case --

23 Q. Well --

24 A. -- seven or eight therms.

25 Q. That gets you to -- to your normal weather?

1       A.    Yeah.

2       Q.    Position on therms?

3       A.    Okay.

4       Q.    Which is N star?

5       A.    Yeah.

6       Q.    Am I following you?

7       A.    Okay.  And I think that really what -- what's

8       causing a lot of the -- the problems and disagreements

9       with Staff's numbers is -- is that this -- this little

10      X is above that line.

11      Q.    The little X that you're pointing to is what?

12      A.    N star.

13      Q.    N star.

14      A.    Is --

15      Q.    Is above what line?

16      A.    Is the above the -- the line that we put

17      through the whole set of data points.

18      Q.    All right.

19      A.    Okay.  The Staff does linear regression and

20      put curves to it, but that's -- a linear regression is

21      no more than you make sure put lines -- points above

22      and below the line so that the line in between --

23      Q.    The line --

24      A.    -- follows the path.

25      Q.    The line -- doesn't the line sort of average

1 out those numbers and -- and -- and end up with  
2 a -- with a -- well, I don't know what to say here.  
3 Aren't you averaging this over -- over time  
4 has kind of passed because your -- your HDD down there  
5 you're -- you're progressing through -- through months  
6 as you're moving, aren't you?  
7 A. Yeah. And that's -- you know, what -- what  
8 you need, you know, to -- we know that -- you know,  
9 N was the -- the actual number of therms experienced --  
10 first block therms experienced in the month of  
11 November.  
12 Everyone agrees that that number needs to be  
13 corrected.  
14 Q. So in -- in this case, too, that's an absolute  
15 number? There -- that's a number that may or -- we --  
16 we know when it happens?  
17 A. Yeah.  
18 Q. Everybody has agreed this is a reading we  
19 take. There's not a dispute about that -- that  
20 particular figure?  
21 A. That -- that's right.  
22 Q. All right. The N star figure that you've got  
23 up there, there is a dispute about?  
24 A. That's right.  
25 Q. Okay.

1       A.    And that's ultimately, I think, what's causing  
2   a -- a lot of the -- the problems.  And -- and I guess  
3   Staff's point is -- is that -- that we fit this curve  
4   through so there's high points and there's low points,  
5   but where the points -- but -- but ultimately the line  
6   explain -- or the -- does the best fit of following  
7   that path.

8               Implicit in that is that some points are gonna  
9   be high and some points are gonna be low.

10       Q.    All right.

11       A.    But there's other things that -- that cause  
12   changes in usage, not -- weather is not the only thing  
13   that -- that makes people respond differently.

14               We're not trying to predict everything that  
15   people do.  We're just gonna accept that part as -- as  
16   a given, in our opinion.

17       Q.    Oh.

18       A.    And so we're just simply making that  
19   adjustment to get -- to get -- to reflect the -- the --  
20   th changing in heating degree days.

21       Q.    Okay.  Then is -- how do you determine --  
22   pardon me -- how do you determine N star?

23       A.    Okay.

24       Q.    How do you calculate that?

25       A.    Obviously N that -- that's -- that's easy.

1 You know, you -- that -- that's our actual value  
2 that -- then the question is how do you determine the  
3 adjustment?

4 And basically how you determine the adjustment  
5 is when you do a regression through here, it tells you  
6 the equation you need to move along this -- this curve.

7 And you simply calculate the difference  
8 between here and here (indicating) -- between actual  
9 and normal weather.

10 Q. What's the difference between your  
11 calculation, then, and Laclede's?

12 A. What Laclede does is they look at -- the first  
13 thing is -- is they look at a -- a series of  
14 points -- well, let me back up just a minute.

15 What Laclede does is they accept our method  
16 for every month except for November. Notice that  
17 November is one of the high points on this curve.  
18 There's some other points that are on the low side of  
19 that curve, just by a rule. They don't seem to have a  
20 problem with those points.

21 But they want to pick out that one point and  
22 they want to take that one point and they want to go  
23 ahead and modify it.

24 And at that point what they do is they say,  
25 okay, let's look at six years worth of history. Ignore

1 that curve, draw a curve very similar to it, but it has  
2 six data points that are -- that are November points.

3 It's gonna still have some of the same  
4 characteristics, still can't be above 65 and still  
5 gonna bottom out at about 30 or so. But what they then  
6 say is, given that fact, they're gonna pick two points  
7 out of that data set and they're gonna draw a line  
8 between them.

9 And that's -- and then they're gonna figure  
10 out where that -- between that line they're gonna  
11 figure out where normal weather is and that's the --  
12 that's the proper answer.

13 I mean, the first problem I have with that  
14 is -- is it doesn't -- if you draw a line between  
15 two points, it doesn't reflect what's happening with  
16 the whole curve.

17 Second problem I have is -- is you pick any  
18 two points and you get a different line. So I think  
19 the method to me -- be -- being the person that I am, I  
20 did the computations.

21 And if you've got six different points and  
22 you're gonna pick two of them to draw a line through,  
23 you can come up with 15 different combinations. So we  
24 can just -- we can calculate all 15 of them and pick  
25 whichever value suits your fancy I guess.



1           I -- I don't know. But in my mind, that's --  
2   that's why a linear -- a graph like this that takes  
3   into account all of the data points is a much better  
4   way to represent this.

5       Q.   So -- so -- so there's a dispute -- part of  
6   the question is a dispute in how -- in -- in how you  
7   calculate the N star in your --

8       A.   That's right.

9       Q.   -- as you've used?

10           And -- and then that you use to calculate it.  
11   It's -- it's not -- it's not just a -- a thing  
12   about -- there's some disagreement over certain  
13   assumptions, it's also a disagreement over method of  
14   calculation?

15       A.   That's right.

16       Q.   Or is it also a disagreement over something  
17   besides method of calculation? I should have phrased  
18   it that way.

19       A.   Well, I -- I -- I think at that point, you  
20   know, you really get into the whole idea of this --  
21   this contract that -- that we thought we had and we  
22   thought we had an understanding of what our method was.

23           Clearly the Company is willing to use our  
24   method for the other eleven months of the year. It's  
25   just this one month that -- that snuck up on us and

1 surprised us.

2 Q. Okay. But from the standpoint of -- of -- of  
3 the inputs --

4 A. Yeah.

5 Q. -- and putting the dots that you have up there  
6 on it, is there a disagreement about where those --  
7 where those entries would be not the calculations,  
8 but --

9 A. I -- I think --

10 Q. -- the wrong data?

11 A. I think -- yeah, I think the only difference  
12 would be is the -- the Company would draw a  
13 different -- a graph that would look very similar, but  
14 it would be six years of history. For this one month  
15 they want to look at the six years of history.

16 Q. All in November?

17 A. All in November. All the other months look --  
18 we're not looking at that, but -- but for that one  
19 month, that's what we need to do.

20 Q. Okay. Now, let me ask you this: You referred  
21 to an equation to get that when you're looking at that  
22 line?

23 A. Uh-huh.

24 Q. Did you get the equation from the --  
25 what -- where do you get the equation?

1           A.    You get that from a regression analysis.

2           Q.    How do you do that?

3           A.    You -- you actually come up with your -- all  
4 your data points --

5           Q.    Okay.

6           A.    -- and you calculate the sum of squares  
7 difference between the line and the point.  So you take  
8 the difference between the line and the point and  
9 you -- you figure out what that value is for each point  
10 and then you sum up that.

11                   And when you sum that in total, that sum will  
12 equal zero, because you've got high points and you've  
13 got low points.

14          Q.    Can you write that equation on there?  Not  
15 with the values in it.

16          A.    Yeah.  I'm trying to -- I --

17                   JUDGE THOMPSON:  Does this remind you of your  
18 dissertation defense?

19                   THE WITNESS:  Well, luckily I -- I'm an  
20 engineer, we don't -- and as a bachelor degree, I  
21 didn't get to experience that.

22                   I -- I think I -- I -- I don't have a real  
23 good explanation that -- that's -- that's short and  
24 sweet that -- that defines the minimizing the sum of  
25 squares calculation for a regression, other than it

1 just basically just describe the --

2 BY COMMISSIONER GAW:

3 Q. You came up with the calculation, didn't you?

4 A. It -- you -- you actually -- the way you  
5 actually do it is -- is there's a regression analysis  
6 equation in Lotus and Excel and all of that.

7 Q. So you don't have to do it, you just click in  
8 the numbers?

9 A. I -- I -- I've done it and it's very painful.  
10 The computers are great things.

11 Q. The -- the computer does it for you?

12 A. That's right. That's exactly right. And --  
13 and I'd have to review my book.

14 Q. Then show me what you plug in then.

15 A. So -- but ba-- basically what -- you know,  
16 what you're -- what you're -- what you're coming up  
17 with is an equation is -- you know, would give  
18 you -- okay.

19 Okay. The equation that -- that you're gonna  
20 calculate is therms per customer equals some constant  
21 value. That's this point (indicating) we talked about.

22 Q. Okay.

23 A. Plus your heating degree days times W. And  
24 W is -- is the value to follow that shape.

25 Q. Okay.

1       A.    Now -- now, there's a step that we have to do  
2   because this is a non-linear curve where we have to  
3   convert that to -- so the regression can be run on a  
4   linear basis. And that's -- that's an added step that  
5   the -- is in there.

6               But basically what you're trying to do is  
7   you're trying figure out for each heating degree --  
8   degree day how much of an affect does it have.

9               And that's -- and that -- that value, you  
10   know, which is pretty small -- that value is -- is --  
11   then if you know the change from N to N star from --  
12   from actual to normal weather, excuse me, you can take  
13   the difference between the actual normal weather.

14              Let's say it's, you know, 162 heating degree  
15   days, for example -- that's what the Company's  
16   representation is -- multiply it times W and that tells  
17   you at that point how much of a weather adjustment you  
18   need to make.

19       Q.    And again, what is W?

20       A.    W is just a -- a calculated value from your  
21   regression that's really the slope of the curve.

22       Q.    You want to flip that over and -- and show me  
23   the chart as -- as -- as La-- as Laclede would have it?

24       A.    I --

25       Q.    If you could do that or do you want them to do

1 that?

2 A. Well, I think what's -- I think really what --  
3 Laclede's chart would be very similar in that they  
4 would have the therms per customer, they would have the  
5 heating degree days and they would have the 30 and the  
6 65.

7 The difference is that just for this  
8 one month, they want to look at six data points, those  
9 being the last six Novembers.

10 And then, you know, once again, they've got  
11 a -- I don't know where -- where the point is, but  
12 they've got an actual -- and they've got a normal  
13 November heating degree day number.

14 They've got to predict what that value is. So  
15 what they do is they say, okay, let's pick two points.  
16 Whichever two points they pick, they're gonna draw a  
17 line through those two points.

18 I -- you know, I don't -- I'm not trying to  
19 represent which two they did or didn't pick. But you  
20 draw a line through those two points and you say, okay,  
21 heating degree day is -- there is -- there is --  
22 they're N star. There is their normal value and that's  
23 just following that line (indicating).

24 And the problem I have with that is  
25 depend-- depends on which two points you pick, you can

1 get a different line each time. And so N is gonna keep  
2 moving.

3 And, you know, you end up just picking one.  
4 Now, the -- I -- I'm not trying to -- I had this  
5 conversation with their witness and -- and they had a  
6 story behind why they picked their two points.

7 I -- I just -- I struggle with the idea of how  
8 do I know which two points are the magic two points to  
9 pick?

10 Q. Okay. Have you used this method of  
11 calculation for this purpose before?

12 A. Never. The -- the --

13 Q. Do you know anybody else that does?

14 A. The -- no. The Company doesn't use it --  
15 did -- did not use that in their direct filing.

16 Q. And from that point forward, then, in the  
17 calculations it's just a matter of plugging this  
18 figure, whatever the figure is, into that?

19 A. You -- you would hope so, but turns out that  
20 they used a different number of customers that -- of  
21 600,000 instead of 593,000 and that inflates the number  
22 just a little bit more.

23 Q. So there's another -- another issue?

24 A. Little small issue there. Not nearly as big  
25 as the 50 -- the difference between 58 and 54.

1 Q. Okay. So there is some disagreement over that  
2 part. Is that -- is that in front of us, to -- to your  
3 knowledge?

4 A. I -- I think -- I think really -- I think  
5 really the total -- whether this 2,520,000 should be in  
6 there or not is -- is the issue kind of in front of you.  
7 And so that extent it's in there, but it's a very small  
8 piece of it.

9 COMMISSIONER GAW: Yeah. I think I'm gonna  
10 stop right now.

11 JUDGE THOMPSON: Okay.

12 COMMISSIONER GAW: Yeah.

13 Thank you, sir.

14 JUDGE THOMPSON: You can return to  
15 the -- let's see whether I can --

16 MR. SCHWARZ: Is your TV remote at home that  
17 big?

18 JUDGE THOMPSON: We've -- we've clearly left  
19 the limit of my technical knowledge. We'll proceed  
20 with the hearing, viewing the chart. I'm sure viewers  
21 across the world will appreciate that.

22 QUESTIONS BY JUDGE THOMPSON:

23 Q. Mr. Beck, I have some questions for you.

24 A. Okay.

25 Q. And -- and as you can see from my struggle



1 with the video system, I'm having a hard time following  
2 the technical details of this dispute.

3 So your job involves reviewing gas company  
4 tariffs --

5 A. That's correct.

6 Q. -- is that correct?

7 And you have education and training and  
8 experience that fits you to do that?

9 A. That's correct.

10 Q. Okay. And have you had an opportunity to  
11 review the compliance tariff sheets filed by  
12 Laclede -- Laclede Gas Company in this matter on  
13 October 22nd?

14 A. That's correct.

15 Q. I believe there were 24 sheets; is that  
16 correct?

17 A. That sounds correct. I counted them at  
18 one point, but I've since --

19 Q. We --

20 A. -- forgotten that number, but I -- yes, 24.

21 Q. You don't need to recount them now, but if  
22 I -- if I told you that I think there's 24 sheets,  
23 would you have any reason to disagree with that?

24 A. No. No.

25 Q. Okay. And have you had an opportunity to form

1 an opinion as to whether or not those sheets comply  
2 with the Commission's order approving the stipulation  
3 and agreement that was entered, I believe, on  
4 October 3rd?

5 A. Yes, I have.

6 Q. What is that opinion?

7 A. It is my opinion that they do not comply in  
8 two areas, both the residential and the commercial --  
9 the commer-- the -- the commercial rates.

10 Q. Okay. Now, let me look through this pile of  
11 papers here (indicating). I think I have some -- a set  
12 of the tariffs here.

13 So does that mean that there is some number of  
14 these 24 sheets that the Commission could have approved  
15 last week, as far as you're concerned?

16 A. As -- as a Staff member, I guess the question  
17 is always posed to us that a package of tariffs,  
18 whether they're in compliance or not -- so I guess that  
19 I've always viewed the question as being one of -- of  
20 they conform or they don't.

21 It would seem to me that -- that if one sheet  
22 doesn't comply, then -- then we can't say that they  
23 comply with the Commission's order.

24 Q. I see that. And I -- and I appreciate Staff's  
25 outlook on that. And I'm not --

1           A.    Yeah.

2           Q.    -- saying it's right or wrong.  But -- but I'm  
3 asking you if you have an opinion as to whether any of  
4 these sheets taken individually conform with the  
5 Commission's order?

6           A.    Well, I guess as -- as -- as one of the  
7 parties in the case, you know, we accepted the tariff  
8 sheets.  The -- the -- the stipulation was a total  
9 agreement.

10                  And if -- you know, if all of a sudden one  
11 facet of that agreement was breached, I think we'd all  
12 have to go back and decide whether we really wanted to  
13 follow with the stip or not.

14          Q.    Okay.

15          A.    So I -- I -- I -- it seems like that would  
16 be -- seems like it would -- you -- you couldn't accept  
17 some without accepting all or --

18                  JUDGE THOMPSON:  Does anybody have a set of  
19 the tariff sheets that they could share with Mr. Beck?

20                  MR. MICHEEL:  I do.

21                  JUDGE THOMPSON:  Thank you, Mr. Micheel.

22 BY JUDGE THOMPSON:

23          Q.    I'm looking at the -- the table of contents.  
24 Do you see that, Mr. Beck?

25          A.    Yes.

1 Q. And I see, for example, that Sheet 32 has to  
2 do with large volume transportation and sales service.  
3 Do you see that?

4 A. Yes, I do.

5 Q. And you've indicated that you believe there  
6 were two areas where the sheets did not comply and that  
7 those areas had to do with residential general service  
8 and with commercial and industrial.

9 Isn't that what you testified?

10 A. That's correct.

11 Q. So is there anything on Sheet 32 that has to  
12 do with large volume transportation and sales service  
13 that would cause you to recommend that sheet -- that  
14 individual particular sheet be rejected?

15 A. That -- if that -- that -- that sheet by  
16 itself plies (sic) -- or complies with my understanding  
17 of the stipulation for that one class.

18 Q. Very good.

19 Yeah, I -- I'm just trying to define exactly  
20 the scope of the disagreement. If the scope of the  
21 disagreement is such that all 24 sheets are flawed and  
22 must be rejected, then that's fine and that's what you  
23 need to tell me.

24 But if, in fact, the scope of the disagreement  
25 is such that there are only two, three or four sheets

1 that are flawed and must be rejected, then that's what

2 I would like you to tell me.

3 Do you understand?

4 A. I --

5 Q. I realize that you think about it as a

6 package.

7 A. Yes.

8 Q. But I'm asking you now to open the package,

9 okay?

10 A. Okay.

11 Q. So Sheet 2 that has to do with residential

12 general service, you would testify that that sheet is

13 incorrect; isn't that true?

14 A. That's correct.

15 Q. And Sheet No. 3, which has to do with

16 commercial and industrial service Class I, you would

17 testify that that sheet should be rejected?

18 A. Yes, I think -- obviously there's -- appears

19 to be some agreement on that. The --

20 Q. Okay. And -- and your testimony would be same

21 for Sheets 3A and 3B; is that correct?

22 A. Yes.

23 Q. Now, what about the rest of the sheets,

24 beginning with Sheet 4? Can you --

25 A. Sheet 4, the rate is tied to --

1 Q. Okay. So, in your opinion, Sheet 4 needs to  
2 be rejected as well?

3 A. Sheet -- sheet -- yeah. That -- that's tied  
4 to the --

5 Q. Okay.

6 A. It's the exact same rate as in Sheet 2.

7 Q. I appreciate that.

8 What about 4A?

9 A. That also is tied to Sheets 3A, 3B --

10 Q. Okay.

11 A. -- and 3C.

12 Q. How about Sheet 5?

13 A. Sheet 5 is involved in the C&I calculations,  
14 and so it will change also.

15 Q. Okay. Very well.

16 Sheet 7?

17 A. The -- this sheet will not change once  
18 the -- with the adjustment -- adjustments proposed by  
19 Staff.

20 Q. All right. So Sheet 7 is okay as is?

21 A. Yes.

22 Q. Okay. How about Sheet 8?

23 A. Sheet -- Sheet 8 also will generate the right  
24 revenue targets that the --

25 Q. So it's okay?

1       A.    -- that the stip says.

2       Q.    Very well.

3             How about Sheet 9?

4       A.    That will also generate the right revenue

5 targets.

6       Q.    Sheet 11?

7       A.    That will also generate the right -- right --

8 correct revenue targets.  Excuse me.

9       Q.    Sheet 14?

10      A.    Yes, that would be correct.

11      Q.    Okay.  Now, my set of sheets here jumps to

12 Sheet 18, which isn't mentioned on the title page; is

13 that correct?  What's your next sheet?

14      A.    Okay.  I -- I was -- already moved on to 18A,

15 so --

16      Q.    Okay.

17      A.    But -- okay.  So we are at 18?

18             JUDGE THOMPSON:  Well, I'm just trying to

19 understand how these sheets work here.  I've got the

20 set of compliance tariffs here and they seem to jump

21 from 11 to 18, is that correct, Mr. Pendergast?

22             Very well.

23             MR. PENDERGAST:  Yes, Your Honor, they do.

24             JUDGE THOMPSON:  Thank you.

25  BY JUDGE THOMPSON:

1 Q. Sheet 18, then, is that acceptable as it is?  
2 A. Yes.  
3 Q. Okay. What about Sheet 18A?  
4 A. No.  
5 Q. That needs to be rejected?  
6 A. That would -- because it has residential and  
7 commercial and industrial.  
8 Q. Very well.  
9 Sheet 18B?  
10 A. That -- that would be correct.  
11 Q. Okay. How about 18C?  
12 A. That would be correct.  
13 Q. 28 B1?  
14 A. That would be correct.  
15 Q. And 28 B2?  
16 A. That would be correct.  
17 Q. 28 B3?  
18 A. That would be correct.  
19 Q. 28 C1?  
20 A. That would be correct.  
21 Q. 29?  
22 A. That would be incorrect. And this -- this  
23 sheet probably is the most telling of all.  
24 Q. And why is that?  
25 A. Because if this sheet is wrong, then you have



1 no sheet for PGA rates for any of the classes.

2 Q. Okay. And in the weather mitigation rate  
3 design there is an interplay, isn't there, between the  
4 rates in between the two blocks and also the PGA; isn't  
5 that correct?

6 A. That's correct.

7 Q. Okay. Very well.

8 How about Sheet 34?

9 A. No changes.

10 Q. How about Sheet R12?

11 A. No changes there.

12 Q. And is there an R43, I think?

13 A. Uh-huh. Off-system sales --

14 Q. How's that --

15 A. -- and recordkeeping. There are no changes  
16 there.

17 Q. Very well. I appreciate your patience as we  
18 went through that exercise.

19 Now, you said that the tariffs as submitted  
20 were non-compliant in two respects, and you mentioned  
21 the residential general service and then you mentioned  
22 commercial and industrial, correct?

23 A. That's correct.

24 Q. So let me ask you with respect to the first  
25 area of disagreement, in what way are the tariffs

1 non-compliant, in your opinion?

2 A. In my opinion, the -- the rates on those  
3 sheets when applied to the billing units generate  
4 revenues in excess of the residential class and share  
5 of \$14 million -- of the \$14 million increase.

6 Q. Okay. Do you know percentagewise what share  
7 of that \$14 million was assigned to residential? And  
8 if you don't know, that's fine.

9 A. The -- the -- it's a -- it's just under  
10 90 percent. Let me do just a quick calculation, if I  
11 may.

12 Q. Sure.

13 A. That would be just over 77 percent.

14 Q. Just over 77 percent.

15 Okay. So your testimony if -- if I understand  
16 it correctly, is that the rates on the sheets as  
17 submitted when applied to the billing units will  
18 generate excess revenues; is that correct?

19 A. That's correct.

20 Q. Okay. And was the term you used "billing  
21 units" or "billing determinants"?

22 A. I -- I don't recall which term I did use. In  
23 this case it would be a -- the billing determinants,  
24 but it would be specifically when applied to the first  
25 block usage per therm -- no, excuse me -- first block

1 therm billing units.

2 Q. Okay. So could you define that phrase  
3 "billing determinant" for me?

4 A. Billing determinant would be the -- all of the  
5 billing numbers that -- that -- that are required  
6 to -- to get to the correct revenue. When I say all  
7 of, that includes customer numbers, sales, first block,  
8 second block, total demand levels, because you have  
9 demand charges.

10 Those type of charges -- each would relate to  
11 the tariffs or the rate design of those classes and  
12 then you would apply the rates that are actually in the  
13 tariffs to each of those to determine the amount of  
14 revenue that would be collected.

15 Q. Okay. Now, earlier one of the attorneys told  
16 us -- gave us a formula. And -- and you were here and  
17 I believe you heard it. Required revenue over billing  
18 determinants equals rates.

19 Did you hear that testimony -- or that --

20 A. That --

21 Q. -- argument?

22 A. Yes.

23 Q. Okay. Would you agree that that formula is  
24 correct?

25 A. Yes.

1 Q. But --

2 A. Realizing that -- that billing determinants is  
3 not just therms or first block therms, but it's  
4 customer numbers and other things too.

5 Q. Well, you mentioned quite a few things?

6 A. That's right.

7 Q. And -- and are those things, in fact,  
8 processed mathematically?

9 A. It -- they're -- they're normalized and  
10 annualized so, yes, I would -- I would definitely call  
11 that a mathematical process.

12 Q. In other words, if -- if I understand  
13 correctly -- and tell me please if I'm wrong -- you  
14 take actual figures from the test year; is that  
15 correct?

16 A. That's correct.

17 Q. For all of those different types of data,  
18 customer numbers, sales, right?

19 A. That -- that's correct.

20 Q. And you adjust them mathematically to make  
21 them more representative of a typical year?

22 A. That's correct.

23 Q. And then you process them further, plug them  
24 into the formula and then derive rates; is that how you  
25 do it?

1       A.    That -- that would be correct and -- and  
2   you -- the -- the interplay in that is -- is  
3   that -- that when you plug those into the formula to  
4   deri-- derive rates, that would be to derive proposed  
5   rates or --

6       Q.    Okay.

7       A.    -- the new rates.

8       Q.    Okay.  Now, what's the relationship of what  
9   we've just been discussing to the previous discussion  
10   that has been had here about the difference between  
11   54 therms and 58.2 therms?

12      A.    The -- the relationship is -- is that  
13   the -- that those billing units -- the -- the level of  
14   those billing units is in dispute.

15           And the dispute centers around the 54 versus  
16   58 per customer ultimately mult-- multiplied out by the  
17   number of customers to get you a total.

18      Q.    Okay.  And -- and those two figures -- again,  
19   if I'm correct, those are two different positions on  
20   the average usage for the month -- for the November  
21   billing cycle within the first block that is below 65?

22      A.    Well, that -- that's certainly become the  
23   issue that brought us here today.  It certainly was, to  
24   my mind, never an issue when any of the discussions  
25   with -- between Staff and the Company took place prior

1 to the stip signing and -- and even a month after that.

2 But --

3 Q. I -- I understand that. And -- and there's  
4 been a lot of attention to the history of the dispute  
5 here, and that's proper. But what I'm trying to  
6 understand is really the mechanics of the dispute.

7 A. Okay.

8 Q. The mechanics of the calculation and of the  
9 figures, rather than when these things turned into a  
10 problem, but rather just how they're put together to  
11 determine a rate.

12 A. Okay.

13 Q. So -- and that's my question to you: How are  
14 these things, then, put together to determine a rate?

15 A. Well, in my mind what should happen is -- is  
16 you should develop a set of billing determinants  
17 that -- that are normalized and annualized that -- that  
18 in -- in essence, provide you with current revenues  
19 before the rate increase that -- that define that  
20 level. Okay.

21 Q. So let me stop you there --

22 A. Yeah.

23 Q. -- to make sure I don't get lost --

24 A. Okay.

25 Q. -- along the way.

1           We take the data from the test year?

2       A.    Yeah.

3       Q.    It's a real year?

4       A.    Uh-huh.

5       Q.    2001, correct?

6       A.    That's correct.

7       Q.    And we -- we know how many units Laclede sold

8   and we know how many customers there are and we know

9   how many therms people use, right?

10      A.    That's correct.

11      Q.    And we know what the heating degree days were

12   for every -- every day of the year for that year,

13   right?

14      A.    That's correct.

15      Q.    Okay.  So we have all of this real data.  But

16   then you spend a lot of time converting this data into

17   an ideal year, right, or a representative year or

18   whatever term you would use, correct?

19      A.    That's correct.

20      Q.    Okay.  And how many man hours does that take?

21      A.    Surprisingly a lot more than you would think.

22      Q.    Oh, I'm confident it takes quite a few.

23      A.    I -- I -- yeah, I mean, it's -- you know,

24   it -- I really have it -- in Staff's case, it involves

25   multiple witnesses.  I have really no good guess,

1 but --

2 Q. A lot of work?

3 A. Yeah.

4 Q. A lot of people, a lot of work; is that

5 correct?

6 A. That's correct.

7 Q. Okay. And at the end of that, do you, then,

8 have this set of billing determinants that you were

9 talking about a moment ago?

10 A. Yes.

11 Q. So -- so Staff has done this work and you have

12 tho-- that set?

13 A. That's correct.

14 Q. Okay. And that was the set that you assumed

15 Laclede was going to use?

16 A. That's correct.

17 Q. And Laclede substituted a different set?

18 A. That's correct.

19 Q. For one month?

20 A. That's -- they -- they -- in essence, they

21 took Staff's analysis for every other month. But for

22 one month they didn't like this one particular

23 calculation just for residential.

24 Q. And is it because Laclede believed that the

25 weather would be more mild? I mean, if -- if you're



1 able to answer the question.

2 A. Yeah, I mean, I think their argument is not  
3 with the weather. I think their argument is how much  
4 therms per customer would be experienced at a given  
5 level of weather.

6 Q. Okay. Now, you know that all the testimony  
7 that's been developed for this case has been filed in  
8 the record?

9 A. That's right.

10 Q. So where in that record would the Commission  
11 find this set of billing determinants of which you  
12 speak?

13 A. The -- the 58.2 value or --

14 Q. That's only one small aspect, though, isn't  
15 it --

16 A. Yes.

17 Q. -- of the billing determinants?

18 A. I'm trying to -- I mean, what you would --

19 Q. This normalized and rationalized and adjusted  
20 and fixed and typical year that you've developed from  
21 the original test year, has that data been filed in  
22 this case?

23 A. I -- I -- I believe that -- yeah, I -- I  
24 believe the correct data has been filed by the Staff.

25 Q. And I'm speaking for the -- the entire test

1 year, not just for November?

2 A. That's correct.

3 Q. Okay. And -- and just so I'll know, where  
4 would I find it? Whose testimony embodies it or is it  
5 attached to?

6 A. That -- that's the part I'm struggling with is  
7 whether there's one piece of testimony that -- that  
8 lays out the billing units in that format.

9 Q. Okay. Very well.

10 A. I -- I -- I -- I don't think there is.  
11 That -- that -- to my knowledge. They -- they would be  
12 in the work papers of witnesses.

13 Q. But work papers typically are not filed, are  
14 they?

15 A. That's -- that's correct. That's --

16 JUDGE THOMPSON: A practice that we're hoping  
17 to change.

18 I think that's all the questions I have.

19 You've been very helpful.

20 Commissioner Forbis, you've rejoined us. Do  
21 you have any questions for Mr. Beck?

22 COMMISSIONER FORBIS: I have a mixed closet of  
23 show and tell and probably does not give --

24 JUDGE THOMPSON: It wouldn't matter where you  
25 start. Doesn't make any difference.

1           COMMISSIONER FORBIS:  It wouldn't matter,  
2   huh?  Well, let me see where I am here.

3   QUESTIONS BY COMMISSIONER FORBIS:

4       Q.   When you were talk -- okay.  Well, I'll give  
5   it a shot for a little while.  Well, what you  
6   said -- okay.  Using your set of billing determinants,  
7   Staff's position is you can get to a \$14 million  
8   increase?

9       A.   That's correct.

10      Q.   Okay.  So we're arguing over method, not over  
11   outcome, except there must be some kind of an outcome  
12   and your -- your approach is that by fudging that  
13   number, you actually change the rate and so you would  
14   get more than \$14 million?

15      A.   That's -- that's -- that's correct.

16      Q.   Okay.  But you'll get -- your position is that  
17   with the -- the -- the approach that was  
18   expected -- the \$14 million would be generated?

19      A.   Yeah.

20      Q.   Okay.  So you take all these -- you -- okay.  
21   You do a regression analysis.  You -- the variables  
22   that go in there are the heating degree days and --

23      A.   And -- and then the actual therms.  We -- in  
24   Staff's case, we actually do heating degree days and  
25   the percent of therms in the first block.

1 Q. Okay.

2 A. That -- that can easily be converted to therms  
3 per customer, but --

4 Q. So -- you have sometimes the therms and  
5 heating degree days, those are the variables in your  
6 regression?

7 A. Yes.

8 Q. And then you spit that out to get --

9 A. To --

10 Q. What's the dependent variable?

11 A. I mean -- I'm sorry. The -- the --

12 Q. I can help you. What are the independent  
13 variables and what's the dependent variable in the --

14 A. Okay.

15 Q. -- regression?

16 A. The -- I mean, the ultimate answer, you know,  
17 you're looking for is the -- the new therms per  
18 customer.

19 Q. Right.

20 A. And so heating degree days is -- is an  
21 independent variable. And then you're gonna have a  
22 constant value as well. And that constant plus heating  
23 degree days times your co-efficient is gonna get you to  
24 your -- get -- get you to your new therms per customer.

25 Q. Okay. Okay. I guess, is this how you always

1 do it?

2 A. That's true.

3 Q. Okay. It's always -- it's always been done  
4 this way.

5 And the concern is that by pulling out  
6 one month and changing that month, you -- you basically  
7 throw out the regression and you should have to re-work  
8 the whole -- the whole regression, then, which  
9 your -- which Staff's position is that Laclede did not  
10 do?

11 A. That -- that --

12 Q. They just changed one month and, like, added  
13 it on?

14 A. Yeah. And then -- then you have to look at  
15 the method that you use to change that one month and --  
16 and figure out why it is that needed a separate method,  
17 in essence, also, but, yes.

18 Q. And do you agree with the reason they pulled  
19 out that month?

20 A. No, because I think that a regression analysis  
21 has high points and low points above the line. They  
22 just happen to disagree with the high point.

23 But the low -- there's points below that line  
24 that seem to be fine.

25 Q. Okay. All right. So if I were to figure this

1 out, then, the concern with changing out the month of  
2 November is that it tinkers with that regression  
3 formula without adjusting the whole formula, so it's  
4 going to change your rate and to generate more money?

5 A. That --

6 Q. Let me put it another way.

7 A. That --

8 Q. I'm sorry. Go ahead.

9 A. That -- that -- that's correct and -- but also  
10 when you, then, look at November by itself and you come  
11 up with a calculation, that's also tinkering with the  
12 billing unit.

13 So -- so there's -- in -- in my view, there's  
14 kind of two things that you end up tinkering with  
15 that -- that -- that leads you to the wrong rate.

16 Q. Okay.

17 A. The -- the -- the direct effect of  
18 change -- of pulling November out and then the indirect  
19 effect of what's -- what's left and how that affects  
20 the other months.

21 Q. Skews your rates upwards and, therefore,  
22 generates --

23 A. More revenue.

24 Q. If, in fact, the 215 million therms was used  
25 that month --

1           A.    Uh-huh.

2           Q.    -- which is a big question in dispute here?

3           A.    Yes.

4           Q.    It may not be.  Okay.  Okay.  You used the

5  2001 test year, but then for this -- you do a weather

6  adjustment based on a 30-year history?

7           A.    That's correct.

8                    COMMISSIONER FORBIS:  Okay.  I -- I'll mull on

9  that for a while.  Thank you.

10                   That's all, Judge.

11                   JUDGE THOMPSON:  Further questions from the

12  Bench?

13  FURTHER QUESTIONS BY JUDGE THOMPSON:

14           Q.    I thought of a couple more, Mr. Beck --

15           A.    Okay.

16           Q.    -- and I apologize.

17                   If you would return to the easel and flip that

18  back to the page where you were explaining the

19  regression analysis to Commissioner Gaw.

20           A.    Now -- now, am I just doing this so that the

21  people who are watching at the internet don't have to

22  look at the same picture all the time?

23           Q.    No, I'm --

24           A.    Oh, okay.

25           Q.    I don't care what --

1           A.    I just thought I'd ask, Judge.

2           Q.    I appreciate your aesthetic concerns.  I've  
3 often thought that the Commission needs a special  
4 committee on the production values.

5                   Now, if I understand this, the regression  
6 analysis is actually the -- the -- the mathematical  
7 exercise of fitting a curve or fitting a line to a set  
8 of data; is that correct?

9           A.    That's correct.

10          Q.    And -- and there's -- and it is the line or  
11 the curve that best describes the data?

12          A.    That's correct.

13          Q.    Okay.  And so the actual curve may not, in  
14 fact, touch any of the data points, but nonetheless, it  
15 is the best descriptor of those data points?

16          A.    That's correct.

17          Q.    And what it does, is it charts a trend or a  
18 change over time, correct?

19          A.    That -- or whatever --

20          Q.    Whatever the units are?

21          A.    Yeah, whatever the units are.

22          Q.    Okay.  The change in Y over X?

23          A.    Yes.

24          Q.    Okay.  Very good.

25                   Now, N we see is above the line, right?



1           A.    That's correct.

2           Q.    Okay.  What I don't understand is N star.

3   N star is our adjusted N?

4           A.    Okay.

5           Q.    Okay.  We've adjusted N.  And wouldn't we

6   adjust N to bring N down to the line?

7           A.    The -- if -- if you knew everything about why

8   it is that -- that N is high or low, and in this case

9   if -- if we assume that everything we know about

10   why -- why customers use -- how much therms they use in

11   the first block had everything do with weather, then

12   you would do that.

13                You'd -- uh, I've got to get it down to the

14   line.  For some reason my data is above, below or

15   whatever.

16           Q.    Uh-huh.

17           A.    In this case Staff's representation is -- is

18   that we don't know everything.  We -- we have

19   the -- well, the difference between here and here

20   (indicating) we would claim is unexplained.

21           Q.    Okay.

22           A.    Doesn't mean that there isn't real reasons why

23   it's above that line.  Just we don't have the answers

24   as to -- as to what those are.

25                So if we don't have the answers to what those

1 are, I don't see how we can take them out of the data.

2 So what we do is we leave that -- that difference

3 in -- difference in the data, not -- not the -- we

4 leave that difference there and we simply adjust for

5 the amount of weather change --

6 Q. Okay.

7 A. -- from actual to normal.

8 Q. Okay. Now, what I did not understand when you

9 went through it the first time, so I -- I would ask you

10 to go through it again, is how was that adjustment

11 calculated?

12 A. The -- the adjust--

13 Q. N plus or minus something gives us N star, so

14 what is it something that we apply to N?

15 A. The -- the something is -- is the -- the

16 change in heating degree days, normal minus actual.

17 That quantity times the co-efficient that -- that

18 change in -- we referred to it as time earlier, but

19 that -- that change in Y over X that we -- we discussed

20 earlier.

21 That -- that's what it simply is the -- so it

22 it's simply going from actual to normal. In this case,

23 you know, the -- the numbers that you've seen in front

24 of you so far show that as 162 heating degree days

25 times that co-efficient.

1 Q. Okay. Now, the normal figure -- am I correct  
2 in understanding that as a -- as a 30-year running  
3 average for November?

4 A. That's correct.

5 Q. Okay. So you would -- you would compute that  
6 figure -- that normal figure separately just from your  
7 running average, the 30 years?

8 A. Yeah.

9 Q. And then you would look at the difference  
10 between it and the actual and add whatever the  
11 difference is then --

12 A. Uh-huh.

13 Q. -- right?

14 Okay. And that's how you compute it. And  
15 that --

16 A. That -- that's how you compute the N star.

17 Q. Okay.

18 A. You know, where otherwise if you want to -- to  
19 predict the value on the line, you really would have to  
20 make -- sort of say two adjustments to N. One would be  
21 to move it down to the line, the second would be to  
22 move it along that line.

23 Q. I see. Okay.

24 A. And we're not making that first adjustment I  
25 just referred to, because we never claimed that -- that

1 we knew everything there was to know about why it was  
2 that customers use therms in the first block on a given  
3 month.

4 JUDGE THOMPSON: Got you. Thank you very  
5 much. I have no further questions. Okay. Recross  
6 based on questions from the Bench. Let's see.

7 Mr. Micheel?

8 MR. MICHEEL: Thank you, Your Honor.

9 RECROSS-EXAMINATION BY MR. MICHEEL:

10 Q. Mr. Beck, you got some questions from, I  
11 believe, both Commissioner Murray and -- and Judge  
12 Thompson about the billing determinants. Do you recall  
13 those questions?

14 A. Yes, I do.

15 Q. Can you use one set of billing determinants to  
16 calculate the current revenues of the Company and  
17 another set to calculate new rates to collect the  
18 revenue increase?

19 A. The -- you should not. I -- I would argue  
20 that you should use the same values -- same billing  
21 determinants for both current revenues and for the  
22 calculation of proposed rates. Otherwise you are  
23 monkeying with the -- the -- the numbers.

24 Q. In this proceeding, if you know, which set of  
25 billing determinants were used for determination of

1 current revenues, the Company's or the Staff's?

2 A. In --

3 Q. Or some other number?

4 A. Okay. In -- in Staff's calculations we've

5 always used our billing determinants.

6 Q. So if you were to change the billing

7 determinants for the current revenue calculation, the

8 class revenue share of the revenue increase would have

9 to change also; isn't that correct?

10 A. That's correct.

11 Q. And that would mean different rates for all

12 the classes of customers; isn't that correct?

13 A. That -- that's correct.

14 Q. Now, you also got numerous questions with

15 regard to the 58.2 number and the 54 number. Do you

16 recall those questions?

17 A. Yes, I do.

18 Q. For calculating the 58.2 number, why is it

19 appropriate to use test year data?

20 A. Well, that -- that's really the whole premise

21 of -- of -- of a rate case calculation is to start with

22 the actual test year. And, you know, in our case

23 that's also the data that -- that -- that we had most

24 time and put the most attention to -- to scrutinize.

25 So it's a -- it provides the best

1 representation of -- of correct data that -- that we  
2 can put forward.

3 Q. Does Laclede's propo-- or Laclede's adjustment  
4 to the November first block winter therms, does that  
5 vitiate use of test year data?

6 A. I -- I'm sorry. Could you go ahead and  
7 restate the question?

8 Q. Sure. Let me -- let me restate that.

9 It's my understanding from your testimony  
10 today that Laclede utilized eleven out of the  
11 twelve months data that the Staff presented; is that  
12 correct?

13 A. That's correct.

14 Q. And for the November first block winter therms  
15 there is a disagreement; is that correct?

16 A. That's correct.

17 Q. And my understanding of your testimony is that  
18 the Staff arrived at the 52.8 based on the regre-- or  
19 58.2, based on the regression analysis based on the  
20 test year data; is that correct?

21 A. That's correct.

22 Q. And that encompassed all points for the test  
23 year data; is that correct?

24 A. That -- that incorporated the nine data points  
25 that have weather usage.

1 Q. And it's my understanding that with this  
2 adjustment, as opposed to using the nine data points,  
3 that Laclede only wants to utilize two of the nine data  
4 points in the test year; is that correct?

5 A. Actually they want to use two of six data  
6 points that are -- that are the previous six years, and  
7 specifically the test year data point would not be  
8 used.

9 Q. So for one month, then, if -- if -- if the  
10 Commission were to accept Laclede's method, you would  
11 be using six years of historical data, as opposed to  
12 test year data points; is that correct?

13 A. In a way I -- I'd almost argue that what  
14 you're really doing is you're using only two of the  
15 past six years in your analysis. You're not even  
16 really using the six years. You're just throwing out  
17 four and picking two that you like.

18 Q. So -- so let me understand that. So what  
19 you're saying is you'd be just using two years that  
20 were completely outside of the test year?

21 A. That's correct.

22 Q. And do you have an opinion about whether  
23 that's appropriate to -- to use data from outside the  
24 test year to do this calculation?

25 A. I think that usage per customer is not

1 something that -- that is necessarily constant from  
2 year to year. Not just the affect of weather, but  
3 there's other factors that influence that.

4 And so using test year values, in my mind, is  
5 the best representation.

6 Q. And indeed that -- the purpose of the test  
7 year when we set rates is to describe what's going to  
8 occur on a going-forward basis?

9 A. That -- that's correct. And that's the -- I  
10 think there's a long history of why test years are  
11 used.

12 MR. MICHEEL: Thank you very much, Mr. Beck.

13 JUDGE THOMPSON: Thank you, Mr. Micheel.

14 Mr. Pendergast?

15 MR. PENDERGAST: Yes, thank you.

16 RECROSS-EXAMINATION BY MR. PENDERGAST:

17 Q. Mr. Beck, can you tell me -- on -- on this  
18 regression analysis that you described, is there a  
19 standard error associated with that?

20 A. Yes, there is.

21 JUDGE THOMPSON: Make sure you use your  
22 microphone, please, Mr. Pendergast.

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

24 JUDGE THOMPSON: That's quite all right.

25 BY MR. PENDERGAST:



1 Q. Can you tell me what that is?

2 A. No, I -- I don't have those papers in front of  
3 me.

4 Q. Could you give me an order magnitude estimate  
5 as to what it is?

6 A. I really wouldn't have a good guess.

7 Q. Well, can you tell me what a standard error  
8 is?

9 A. I mean, it's -- a standard error is -- is  
10 basically trying to reflect the ability of the curve  
11 to -- to predict the data points -- how well the curve  
12 fits with the data points.

13 And a standard error would be an indicator of  
14 that. R squared would also be another indicator.

15 Q. And -- and when you say an indicator, what do  
16 you mean?

17 A. It -- it's a statistically defined calculation  
18 that takes into account the -- the data points, their  
19 values and their ability to -- and -- and the  
20 differences of -- for those values from the curve.

21 Q. Well, in laymen's terms, would it be fair to  
22 say that it's something that represents a percentage or  
23 an amount by which it might be off?

24 A. It -- it would be some representation of -- of  
25 how much you're off. I -- I certainly wouldn't call it

1 a percentage, but -- but, yes, it would be.

2 Q. How much you could be off; is that right?

3 A. It -- it would give you some measurement, yes.

4 Q. Okay. And -- and you don't know how much this  
5 could be off either in terms of a percent or in terms  
6 of customer usage or anything else, do you?

7 A. Not -- not as I sit here today, I don't have  
8 that number memorized, no.

9 Q. Okay. Thank you.

10 You -- you also indicated in response to some  
11 questions about Staff's billing determinants and -- and  
12 their use.

13 Can you tell me in what Staff now says the  
14 billing determinants should be, were those exact  
15 billing determinants ever presented in evidence, to  
16 your knowledge?

17 A. Other than proceedings here, you -- you  
18 talking about before the stip was filed, or is there a  
19 certain point in time?

20 Q. In any kind of testimony.

21 A. In testimony, not to my knowledge.

22 Q. Okay. And would those be the billing  
23 determinants that included everything in the  
24 stipulation agreements that Staff first provided to the  
25 Company on October 15th or 16th?

1           A.    I believe the -- the final values were  
2   supplied on October 15th, to the best of my knowledge.

3           MR. PENDERGAST:   Okay.   I have no further  
4   questions.

5           JUDGE THOMPSON:   Thank you, Mr. Pendergast.

6           Redirect, Mr. Schwarz.

7   REDIRECT EXAMINATION BY MR. SCHWARZ:

8           Q.    Staff filed its test-- its direct testimony in  
9   this case on June 20th; is that correct?

10          A.    Was it the 20th or 21st?

11          Q.    I think it was the 20th.

12          A.    It -- it -- one of those two dates?

13          Q.    All right.   That's -- that's good enough.   And  
14   at that time Staff would have provided its work papers  
15   to the Company?

16          A.    That's correct.

17          Q.    And would those work papers have included the  
18   58.2 therms per cus-- or therms per customer in the  
19   Staff's November 1st block residential billing  
20   determinants?

21          A.    That's correct.

22          Q.    So that the Company was apprised mid --  
23   June 20th or 21st as to the first block therms per  
24   customer.   Did the Company raise that issue during the  
25   prehearing that commenced in the second week of July?

1       A.    No.

2       Q.    Did they raise it to Staff before the signing  
3 of any of the three stipulations in this case?

4       A.    No.

5       Q.    In the -- you have in front of you the  
6 September 11th email that's been the subject of  
7 discussion earlier on?

8       A.    I do.

9       Q.    Do you have the cover page to that -- that  
10 first page?

11      A.    Yes.

12      Q.    And it indicates that attached to this email  
13 are the billing determinants and a summary of the  
14 adjustments that have been added to the determinants  
15 prepared by Anne back in July. Do you see that?

16      A.    Yes, I do.

17      Q.    And do you know who that Anne is referring to?

18      A.    Yes. That would be Staff Witness Anne Ross.

19      Q.    And, to your knowledge, do the billing  
20 determinants that Ms. Ross provided to the Company in  
21 July -- would they have included the 215 million therms  
22 in the first block winter rate calculations -- the  
23 billing determinants to be used in the first block  
24 winter rates?

25      A.    That's correct.

1 Q. If you know the total number of billing --  
2 of -- of therms to be used for billing purposes in the  
3 entire year; that is, you have the grand total of all  
4 the therms in the year, is that the same as having  
5 billing determinants for a particular block for the  
6 winter period?

7 A. No.

8 Q. So that on the -- the third sheet of that  
9 page -- of -- of that email, excuse me, the 1,020,000  
10 therms that -- that would be the grand total for the  
11 year that comes from the July work papers that Ms. Ross  
12 provided the Company?

13 A. That's correct.

14 Q. But that's not the same as the billing  
15 determinants for the first block for the winter rates,  
16 is it?

17 A. No.

18 Q. So that the Company made billing determinant  
19 changes to get from -- from the 215 million that  
20 Ms. Ross submitted to them in July to the 213 million  
21 more or less -- 212 and a half million that they used  
22 in the calculation of their compliance tariffs?

23 A. That's correct.

24 Q. And at what time did the Company tell Staff  
25 that the numbers that they got in July were not the

1 numbers that they were using in the compliance filing?

2 A. The October 15th date was the first time we  
3 were told.

4 Q. Back to your chart. Were there, in fact, some  
5 data points that were below Staff's regression line?

6 A. Yes.

7 Q. And it's my understanding from your testimony  
8 that Staff's adjustments -- adjusted figure for each of  
9 these nine months, however many that were below the  
10 line, those would have remained below the line?

11 A. That's correct.

12 Q. And the Company used each of -- accepted each  
13 of those?

14 A. That's correct.

15 Q. And the only one that they chose to do this  
16 different adjustment to was the single month that was  
17 above the line?

18 A. The month of November.

19 MR. SCHWARZ: I have nothing further.

20 JUDGE THOMPSON: Thank you, Mr. Schwarz.

21 You may step down, Mr. Beck.

22 (Witness excused.)

23 JUDGE THOMPSON: We'll go ahead and take a  
24 recess at this time. And when we return, Mr. Schwarz,  
25 you let me know if you have any additional witnesses.

1           Thank you.

2           (A RECESS WAS TAKEN.)

3           JUDGE THOMPSON: Okay. Let's go back on the

4 record.

5           Mr. Schwarz?

6           MR. SCHWARZ: I don't believe I have any

7 witnesses --

8           JUDGE THOMPSON: Very well.

9           MR. SCHWARZ: -- to call.

10          JUDGE THOMPSON: Public Counsel?

11          MR. MICHEEL: Yes, Your Honor. We call Hong

12 Hu.

13          JUDGE THOMPSON: Ms. Hu, please come forward.

14 Please raise your right hand.

15          (Witness sworn.)

16          JUDGE THOMPSON: Thank you. Please take your

17 seat, spell your name for the reporter if you would.

18          MS. HU: My name is Hong Hu, H-O-N-G, H-U.

19          JUDGE THOMPSON: Thank you.

20          You may inquire.

21 HONG HU testified as follows:

22 DIRECT EXAMINATION BY MR. MICHEEL:

23         Q.    Would you state your name and how you're

24 employed?

25         A.    My name is Hong Hu and I'm employed by the

1 Office of Public Counsel.

2 Q. And were you one of the economists who worked  
3 on the Laclede Gas Company rate case GR-2002-356?

4 A. Yes.

5 Q. And was the rate design area your area of  
6 expertise?

7 A. Yes, it was.

8 Q. And were you responsible also for looking at  
9 the billing determinants and -- and items such as that?

10 A. Yes, I would be.

11 Q. Did you cause to be filed today with this  
12 Commission the affidavit of Hong Hu in this matter?

13 A. Yes, I did.

14 Q. Let me start at the beginning, Ms. Hu. When  
15 did the Office of the Public Counsel first become aware  
16 that there was an issue with respect to the billing  
17 determinants in this proceeding?

18 A. On October the 16 -- or 18th we were  
19 approached by the Staff and notified that there was a  
20 disagreement between the Company and the Staff.

21 Q. And could -- could you explain the nature of  
22 the disagreement? Is the nature of the disagreement  
23 regarding one month?

24 A. Boiled down to -- the bottom of the issue,  
25 that's -- the difference is about billing determinants



1 in one month.

2 Q. And is that the first winter block for  
3 November?

4 A. Yes. Yes.

5 Q. Do you have in front of you the affidavit of  
6 Michael C. Cline that was filed today?

7 A. Yes.

8 Q. There is an attachment to that, an email from  
9 Patricia A. Krieger. Do you have a copy of that?

10 A. Yes.

11 Q. Did the Office of the Public Counsel receive a  
12 copy of this email --

13 A. No.

14 Q. -- prior to October 16th?

15 A. No, we didn't.

16 Q. Looking at that email, have you had a -- an  
17 opportunity to review that email and the attachments  
18 since you received that email?

19 A. I have never received that email actually.  
20 I -- the first time I saw it is from the Staff. Ever  
21 since I've seen it, I have taken -- I have taken a look  
22 of it.

23 Q. Okay. And in reviewing that email, were you  
24 able to determine from the three attached pages of that  
25 email that there was an adjustment made to the therms

1 in November?

2 A. There was a number that showed the first block  
3 win-- the first block winter therms and they're in  
4 page 2. However, if I were not notified that there was  
5 a disagreement, if I would just receive the -- if I --  
6 I just received an email saying that there was a  
7 summary of the adjustment, I would look at the summary  
8 of the adjustment.

9 And that specific adjustment that was in  
10 dispute was not included in the list of the summary of  
11 adjustments.

12 Q. And are you looking at the page entitled  
13 billing determinant summary?

14 A. Yes.

15 Q. Okay. Subsequent to the September 11th email,  
16 did the Office of the Public Counsel, yourself and  
17 Mr. Bush receive an email from Mr. Cline on  
18 September 13th, 2002?

19 A. Yes.

20 Q. And did that email indicate that both the  
21 Staff and the Company were in agreement with respect to  
22 the billing determinants?

23 A. Yes, it did.

24 Q. And is it your testimony today that --  
25 that you recognize now that the Staff and the Company

1 do not agree?

2 A. Yes.

3 Q. Have you reviewed the Staff adjustment with  
4 respect to the billing determinants and the month of  
5 November?

6 A. Yes, I have.

7 Q. Have you reviewed the Company's adjustment  
8 with respect to the billing determinants in the month  
9 of November?

10 A. Yes, I have.

11 Q. Do you have an opinion based on that review as  
12 to which adjustment is more reasonable?

13 A. I believe the Staff's methodology is more  
14 reasonable.

15 Q. And why is that?

16 A. The Staff utilized test year data and they did  
17 regression analysis. And I also agree that they kept  
18 the error term only adjusted for weather, because we  
19 were going to use -- if we were going to use test year  
20 data, we assume customer behavior do not change, which  
21 the customer behavior, other than weather-related  
22 behavior, would be included in the error term.

23 So I -- I do think the most reasonable way to  
24 do it would be to keep -- to keep the error term and  
25 adjust for weather.

1           I don't think -- I do not believe the  
2   Company's methodology is appropriate. There are a few  
3   points that I want to make.

4           The first thing is that they didn't use test  
5   year data. The second thing is they used two points  
6   out of six data points, and they didn't do a regression  
7   or anything. They just used -- arbitrarily picked  
8   two points.

9           And you can pick another two point -- two data  
10   points and get another result. Therefore, I don't  
11   believe that their -- their method is reasonable.

12         Q.   Well, had -- during this proceeding, did you  
13   have occasion to review Mr. Cline's rebuttal testimony  
14   in this matter?

15         A.   Yes, I have.

16         Q.   And were you aware that there were specimen  
17   tariff sheets attached to Mr. Cline's rebuttal  
18   testimony?

19         A.   Yes.

20         Q.   Have you had occasion to review the compliance  
21   tariffs filed by the Company?

22         A.   Yes.

23           MR. MICHEEL: May I approach the witness, Your  
24   Honor?

25           JUDGE THOMPSON: You may.

1 BY MR. MICHEEL:

2 Q. I'm handing you the compliance tariff sheet  
3 and I'm asking you to specifically look at Tariff  
4 Sheet 2. And if you could, look at the compliance --  
5 or the specimen tariff sheets attached to Mr. Cline's  
6 rebuttal testimony.

7 A. Yes.

8 Q. It's Sheet No. 2. Do you have those?

9 A. Yes, I have.

10 Q. Are the -- are the numbers for the rates  
11 different in those two?

12 A. They are different.

13 Q. And is it your understanding that the specimen  
14 tariff sheets were only attached to Mr. Cline's  
15 rebuttal testimony for specimen purposes and that  
16 they -- they were not final?

17 A. Yes.

18 Q. Indeed if -- if the Commission were to believe  
19 that the specimen tariff sheets were the final tariff  
20 sheets, what would be the result with respect to the  
21 rates?

22 A. The Company would not have their increase --  
23 their increasing revenue.

24 Q. Okay.

25 A. We would be allowed to take that, but the

1 Company would not.

2 Q. Did you also have occasion -- can you tell me  
3 why you didn't believe that there would be any sort of  
4 dispute with respect to the billing determinants in  
5 this matter?

6 A. If you were having any disagreement, I would  
7 think -- you know, if somebody has a disagreement,  
8 somebody would have raised it long before we signed the  
9 stip -- the stip -- the stipulation and agreement.

10 And also I have revealed surrebuttal testimony  
11 for -- from my -- from Mack -- Mr. Mike Cline and he  
12 did indicate that the Company is willing to accept the  
13 Staff's methodology in converting their heating degree  
14 days into billing determinants for rate design purpose.

15 My understanding is rate design purposes means  
16 for the purpose of determining class year of revenue  
17 increase, determining the change in rate structure and  
18 determining the final rates.

19 So I do believe that the Company has expressed  
20 their willingness to accept the Staff's methodology.

21 Q. And during the -- the prehearing conferences  
22 and -- and the negotiations or in testimony, were you  
23 aware of any testimony offered by Laclede that  
24 expressed disagreement with the Staff methodology?

25 A. I'm not aware of that.

1           MR. MICHEEL: I have nothing further, Your  
2 Honor.

3           JUDGE THOMPSON: Thank you, Mr. Micheel.  
4           Staff.

5 CROSS-EXAMINATION BY MR. SCHWARZ:

6           Q. Ms. Hu, did the Company approach you at any  
7 time during the prehearing conference in this case to  
8 express dissatisfaction with the billing determinants  
9 that Staff had filed either in its -- and -- in its  
10 work papers to its direct filing or was subsequently in  
11 the rebuttal filings?

12          A. I don't remember we have any discussion  
13 specifically regarding billing determinants.

14          MR. SCHWARZ: Thank you. Nothing further.

15          JUDGE THOMPSON: Thank you.

16          Mr. Pendergast.

17          MR. PENDERGAST: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. PENDERGAST:

19          Q. Good afternoon.

20          A. Good afternoon.

21          Q. Can you tell me -- I -- I think you've  
22 indicated in your affidavit that -- that you noticed  
23 and -- and, in fact, commented in your surrebuttal  
24 testimony that there were -- was a difference in first  
25 block terms between the Company and -- and Laclede; is

1     that correct?

2           A.     Yes, that's correct.

3           Q.     Okay.  And I think you set out 215,599,611 for  
4     Staff and 210,846,057 for the Company?

5           A.     I believe that's correct.

6           Q.     Okay.  Do you recall a specific conversation  
7     where the Staff came in and -- and indicated a concern  
8     and this is prior to October the 15th or October the  
9     16th about the 210,000 that the Company -- or  
10    210 million that the Company was using?

11          A.     I don't recall anything related to this  
12    billing determinant, so if you could --

13          Q.     No, I -- I'm just  --

14          A.     -- be more specific.

15          Q.     I think you've made the point, I think, at  
16    least once or twice that the Company never said  
17    anything about the 215 million.  And I'm just asking  
18    you whether the Staff said anything about the  
19    210 million that the Company had?

20          A.     I'm not aware of that.

21          Q.     Okay.  Thank you.

22                 And you indicated that you first received  
23    something from the Company that purported to go ahead  
24    and say that we had an agreement on billing  
25    determinants on September 13th; is that correct?



1           A.    Yes.

2           Q.    Did you go ahead and look at the information  
3   that the Company had sent in that email?

4           A.    I have briefly looked at it.  Haven't really  
5   studied it or examined every rate or anything.

6           Q.    Did you look at the first page --

7           A.    I looked --

8           Q.    -- or did you --

9           A.    I looked at the first page.

10          Q.    Okay.

11          A.    But I haven't -- I don't know the way -- I  
12   mean, I don't know how an attorney would look at it,  
13   the worksheet, but the way technical people look at the  
14   work -- worksheet, we don't look at the first sale and  
15   then the second sale and the third sale.

16                Basically we would take a look at it and see  
17   if there is a summary of, say, adjustments then we  
18   would look at those adjustments and examining if those  
19   adjustments are what we have agreed to.

20          Q.    Well, did you -- did you look at the -- the  
21   first page that had the Block 1 therms that the  
22   Company --

23          A.    I have, yes.

24          Q.    -- was proposing to use?

25                And did you notice that those Block 1 therms

1 were in between what the Staff had had in its earlier  
2 filings and what the Company had had in its earlier  
3 filings?

4 A. I -- I have made a brief note that it's  
5 some -- it looks different than the other numbers that  
6 I have seen previously.

7 Q. Okay. So you noticed that there was a  
8 difference; is that correct?

9 A. I noticed it's -- it -- yes.

10 Q. Okay. Thank you.

11 And after receiving this September 13th email  
12 from the Company that purported to say we had reached  
13 agreements on billing determinants, is it -- is it your  
14 testimony that you never heard anything from the  
15 contrary from the Staff until October 18th?

16 A. Yes.

17 Q. Okay. So nobody came in and said, you know,  
18 we disagree with what Mr. Cline said in his email until  
19 sometime -- more than a month after he had sent that  
20 email; is that correct?

21 A. I haven't heard from anybody.

22 Q. Okay. You have some discussion, I believe, in  
23 your affidavit about the level of weather mitigation  
24 protection that the Company bargained for.

25 Can you tell me do you recall us having a lot

1 of discussions regarding the level of weather  
2 mitigation protection that the -- the Company wanted to  
3 achieve?

4 A. Yes.

5 Q. And do you recall Mr. Cline comparing the  
6 level -- the percentage of weather mitigation  
7 protection that would be achieved under his rate design  
8 versus under Public Counsel's?

9 A. I recall they are different numbers throwing  
10 around at that time. It's at 80 percent level -- more  
11 than 80 percent. I don't know 80 sometimes -- somebody  
12 said it's 85. You know, we -- we have seen 86.2, so  
13 I -- I don't know one exact number.

14 I -- I don't think the Company has said that  
15 we have to reach this one specific level.

16 Q. Well, I --

17 A. That was not my recollection.

18 Q. Now -- well, do you recall in Mr. Cline's  
19 surrebuttal testimony that he set forth an  
20 85 percent --

21 A. Yes.

22 Q. -- number and he compared that to Public  
23 Counsel's rate design proposals, do you recall that?

24 A. I remember -- I -- I can recall he's doing  
25 some kind of working comparison. I don't recall which

1 number that he's using. But I -- I could take your  
2 word for it. He's -- he might be using the 85 percent.

3 Q. Okay. And did it sound familiar that he said  
4 that under Public Counsel's proposal -- rate design  
5 proposal that they would eliminate only 13 percent of  
6 weather-related losses?

7 A. Yes, I recall that.

8 Q. In -- in your view, was that a fairly specific  
9 quantification by Mr. Cline?

10 A. I cannot say to the specific numbers,  
11 13 percent, but it would be something close to it.

12 Q. Okay. If I could turn -- have you turn to the  
13 last page of your affidavit. And I think this is the  
14 analysis that you've provided to, I think, demonstrate  
15 in your view that the Company receives the same or even  
16 a little greater level of weather mitigation protection  
17 utilizing Staff's therms, compared to the Company's  
18 therms; is that correct?

19 A. Yes.

20 Q. And what you have presented there in the  
21 second set of numbers under Laclede 10/22/02 compliance  
22 filing is the level of weather mitigation protection  
23 that you would calculate is produced for the  
24 residential class under Laclede's compliance filing; is  
25 that correct?

1           A.    Yes.

2           Q.    And then under the next you calculate the  
3   level of weather mitigation protection that would be  
4   produced under Staff's approach; is that correct?

5           A.    Yes.

6           A.    And you indicate that under Laclede's, it  
7   would be 86.4 percent and under Staff's it would be  
8   86.6 percent; is that correct?

9           A.    Yes.

10          Q.    Okay.  Is your analysis based on assumption  
11   that Laclede will actually achieve the level of  
12   heating -- well, the level of therms in the first block  
13   that Staff has proposed?

14          A.    In fact, my conclusion that Laclede will have  
15   their 80-something percent level of weather mitigation  
16   protection is not entirely based on -- Laclede has to  
17   achieve those billing determinants.

18                Because what we are doing is this rate -- rate  
19   design methodology that you collect all of your modern  
20   revenue from customer charge and first block.

21                And we know that first block that's not where  
22   a -- very much related to weather.  So no matter what  
23   kind of billing determinants you're using, you are  
24   going to achieve a very high level of weather  
25   mitigation production.

1       Q.   Well, let me ask you this just to -- to get it  
2   a little bit more specific than very high.  If we were  
3   to go ahead and take your analysis here for the Staff  
4   weather mitigation protection, and instead of using the  
5   215,754,00 that Staff has proposed if we were to go  
6   ahead and substitute the 213,079,000 that you have for  
7   the Company's compliance filing, can you tell me what  
8   impact that would have on the resulting percentage that  
9   you have here for weather mitigation protection?

10       A.   It will not have any impact or it will have  
11   very small impact, because you are going to use the  
12   same billing determinants you current revenue  
13   calculation and then for your proposed revenue  
14   calculation.  And you're going to see the same  
15   conclusion.

16       Q.   Well, what I'm asking you, what if you only  
17   achieve 213 million?

18       A.   So you're saying what if for the next year  
19   even if -- assuming it's a normal year, you're going to  
20   get something that's different than what you got in a  
21   normalized testing area.

22       Q.   Now, what -- what I am saying is assume for me  
23   for a moment that the proper normal is 213,079,000  
24   and -- but -- but assume for me that what we actually  
25   achieved is that 213,079,000, what impact would that

1 have on the weather mitigation protection?

2 A. Assuming a normal year is 215 and you only  
3 reach 213; is that what your question is?

4 Q. Yes.

5 A. Assuming a normal year is 215, but you only  
6 reach -- or you only have 213, then you are going to  
7 have less revenue. But that is related to trop--  
8 perhaps warmer weather. Otherwise why would you have  
9 two different billing determinants?

10 Q. Well, let's assume that the -- that the -- the  
11 normal -- or the achievable is actually 213,079,611.  
12 Okay. And -- and assume that for your purposes of your  
13 analysis and then apply -- apply the rest of the  
14 analysis that you have under the Staff's third approach  
15 here, and tell me what level of weather mitigation  
16 protection that would produce.

17 What would -- what would your 86.6 percentage  
18 become ?

19 A. If you look at my third column -- I mean,  
20 thir-- third block of analysis, there's only one set of  
21 billing determinants I have. So if you change the 215  
22 to 213, you don't have -- you lose the 215.

23 I mean, you have -- these two billing  
24 determinants are tied together. You cannot change one  
25 but not change the other. In other words, I

1 can -- from what I have -- from this analysis I cannot  
2 tell you -- I don't have a way to change one set of  
3 billing -- billing determinants without changing  
4 another set of billing determinants.

5 Q. Well, let me ask you is this: Does the  
6 86.6 percent assume that the -- the Company will  
7 achieve the 215,754,000?

8 A. In a normal year, yes.

9 Q. It -- it -- it is based on that assumption?

10 A. Yes.

11 Q. Okay. And if the Company does not achieve  
12 that, then it will not achieve the 86.6 percent; is  
13 that correct?

14 A. Are you suggesting it's not a normal weather  
15 again?

16 Q. I'm -- I'm just saying if the Company does not  
17 achieve the 215,754,690, it would not get the  
18 86.6 percent protection; is that correct?

19 A. I have to calculate how much the Company would  
20 have. However, I seriously doubt that the Company  
21 would not have -- the level of protection that's close  
22 to it.

23 I do believe this is, sir, a problem of  
24 revenue -- how much revenue the Company would receive.  
25 But I don't believe this is an issue of weather



1 protection. Because you are going to get your weather  
2 protections through this methodology, because you are  
3 getting your revenue from your first block and customer  
4 charge.

5 So no matter what billing determinants it's  
6 determined to be, you are going to get your protections  
7 through this methodology. Now, billing determinants  
8 does affect rates -- final rates, which will eventually  
9 affect your final revenue.

10 So you would have a higher revenue or lower  
11 revenue determined on what kind of rates you get. But  
12 I don't think your weather protection level is going to  
13 be affected very much.

14 That is exactly the point why -- or when the  
15 Company raised this proposal, because the Company is  
16 saying whether the weather is warmer or colder, we are  
17 going to be protected because of this methodology.

18 So now you're saying -- you're trying to tell  
19 me, well, if the com-- if the Company did not have  
20 this -- you know, if there is a warmer year or  
21 something -- that the Company did not have enough  
22 revenue, then you don't have enough protection.

23 That's what exactly your proposal is supposed  
24 to do -- to give you. And we have adopted that  
25 proposal. So you -- you are supposedly -- you have

1 supposedly obtained that protection already through  
2 this methodology.

3 Q. Well, let me ask you this: Under these rates  
4 if we have two-and-a half-million fewer therms that we  
5 realize in Block 1, will we have less revenue?

6 A. You will have less revenue.

7 Q. Okay.

8 A. Now, I'm not comparing to the 14 million. I'm  
9 not saying you are getting some kind of less revenue  
10 than the 14 million revenue that you are authorized.

11 Q. That -- that -- that -- that's fine. But can  
12 you quantify how much less revenue that would be?

13 A. 2.5 million therms at 40 cents --  
14 approximately 40 cents per therm means one million of  
15 revenue to me. And I understand that was why the Staff  
16 is saying you've put 2.5 million to the first block --  
17 you've -- you've reduced your first block therm by  
18 2.5, therefore, you have a higher rate that can give  
19 you 1 million more than the 14 million.

20 Q. Okay. Let me ask you this question: Assume  
21 for me, if you will, that the Company's per-customer  
22 usage during November over the last six years has  
23 been -- the lowest it's been is 48 therms per customer.

24 If you have rates calculated based on a  
25 54 usage per customer, okay, you follow me?

1           A.    Uh-huh.

2           Q.    Will that provide greater protection from  
3 weather-related losses than if you establish rates  
4 based on a 58.2?

5           A.    Again, I -- I still don't believe that it will  
6 affect your weather protection level that much. It may  
7 have like to the -- 1.1 percent or something, but I --  
8 .2 percent, but I don't think it's going to effect that  
9 very much. I haven't seen any analysis that show me  
10 otherwise.

11          Q.    Well, let me just go to this one -- on month.  
12 If it turns out to be 48 and the rates were calculated  
13 based on 54, then the Company would be exposed to  
14 approximately six therms worth of -- of weather-related  
15 losses; is that correct?

16          A.    Again, I -- are we talking about normalized  
17 or --

18                JUDGE THOMPSON: Ms. -- Ms. Hu, excuse me. I  
19 think you need to answer his question, yes, no, or I  
20 don't know, okay? And then perhaps he'll allow you or  
21 perhaps on redirect you can explain why you don't think  
22 his hypothetical is reasonable, okay?

23                THE WITNESS: Okay.

24                JUDGE THOMPSON: Please proceed.

25                Wy don't you read back the question.

1                   (THE COURT REPORTER READ BACK THE REQUESTED  
2   PORTION.)

3                   THE WITNESS: That is correct.

4   BY MR. PENDERGAST:

5       Q.   And conver-- well, in comparison, if rates  
6   were based on 58 therms, would the Company be exposed  
7   to approximately 10 therms worth of weather-related  
8   losses?

9       A.   Compared to?

10      Q.   Compared to 54.

11      A.   So you're saying 58 compared to 54?

12      Q.   Well, I'm saying 58 compared to the lowest  
13   it's been, which is 48. If 48 were to happen again,  
14   that would be 10 therms worth of weather-related  
15   losses; is that correct?

16      A.   That's correct.

17      Q.   Okay. And that's more than the six therms  
18   that are between 54 and 48; is that correct?

19      A.   That's correct. However, we're not talking  
20   about historical. We -- I mean, you are using  
21   historical data, right?

22      Q.   Well, re-- regardless --

23      A.   We are not talking about test year here.

24      Q.   Re-- regardless -- regardless of what data I'm  
25   using, I'm just asking you given the data that I've

1 given you; is that correct?

2 A. Yes.

3 MR. PENDERGAST: I have no further questions.

4 Thank you.

5 JUDGE THOMPSON: Thank you, Mr. Pendergast.

6 We're ready for questions from the Bench.

7 Commissioner Gaw.

8 COMMISSIONER GAW: Thank you.

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Were you here earlier when we were talking  
13 about this chart that's up here in front of us?

14 A. Yes, I was.

15 Q. Did you get a chance to see what was written  
16 and -- and hear the discussion about it?

17 A. Yes.

18 Q. Do you have an opinion about what -- the  
19 testimony that you heard earlier about the chart?

20 A. Yes.

21 Q. What -- what is that?

22 A. I believe that the Staff methodology is the  
23 most reasonable one, compared to the Company's  
24 methodology.

25 Q. Okay. And I know you've got an affidavit

1 that's been filed. Can you -- can you explain to me  
2 now why you believe that is the case?

3 A. What the Staff did is they used the test year  
4 data and then they run their regression over those  
5 points.

6 And then what they did next is they have kept  
7 the error terms. And what is conclu-- what is included  
8 in the error terms would be different customer  
9 behaviors. That is not related to weather.

10 And we -- since we have decided that the test  
11 year data was the -- was the data we were going to use,  
12 so we should contain whatever customer behaviors in  
13 that test year.

14 Just figure out what customer's usage would  
15 change because of the weather. And that's what exactly  
16 the Staff's methodology achieved.

17 Q. All right. And is that a methodology you've  
18 seen used before?

19 A. Regression is a methodology that -- that I  
20 have seen been used in -- a lot of times.

21 Q. It is common place to use it, isn't it?

22 A. Yes.

23 Q. Now, what about the methodology that -- that  
24 is being utilized by Laclede in this case for November?

25 A. I have several comments on that. One is that,

1 you know, they have -- they have thrown out the test  
2 year data. They have used six previous years --  
3 historical data.

4 And second, the most important thing is they  
5 only picked two poi-- data points of those six data  
6 points. And you could pick any other two and get a  
7 different result. So I do not think their result is  
8 reliable at all.

9 In fact, I have done -- or backed up and done  
10 an analysis myself, I picked out two other points and I  
11 got something like 55.8. I mean, the -- the -- the  
12 point is that you cannot just arbitrarily pick up  
13 two points to get whatever you want.

14 Q. All right.

15 A. And one more -- one more comment I want to add  
16 to this is --

17 Q. I'm sorry. Go ahead.

18 A. I don't think this is the time for us to argue  
19 about what is the appropriate November therms. Because  
20 we -- everybody has agreed to it before.

21 And now that the only adjustment that the  
22 Company was going to make and the Staff didn't agree  
23 was that adjustment from the Staff's heating degree  
24 days of 52.57 to -- let me -- to their stipulated  
25 number of 51.8 -- 52.18. I don't remember the exact

1 numbers. Let me -- let me get to that number.

2 So that adjustment does not have anything to  
3 do with November. I mean, what the Company was trying  
4 to do is they use this adjustment as their opportunity  
5 so that they can correct something that they haven't  
6 even raised before. They want to go back in time to  
7 correct some other things.

8 So I'm -- I mean, leave alone whether the  
9 analysis is correct or not. I don't think it is the  
10 appropriate time for the Company to do it. In  
11 addition, I don't believe the Company's methodology is  
12 correct.

13 Q. All right. Now, you said that there -- that  
14 there was -- you believe there was already an agreement  
15 as to the bill determinants; is that correct?

16 A. Yes.

17 Q. All right. And -- and can you tell me -- and  
18 I -- I know you've discussed this some, but can you  
19 tell me why you believe that that agreement existed?

20 A. There were several places that I --

21 Q. And where it is, because I couldn't find it.

22 A. One thing is in the surrebuttal of Mr. Cline  
23 that he has indicated that the Company is willing to  
24 accept the Staff's methodology of converting the  
25 heating degree days into billing determinants for rate



1 design purpose. And rate design purpose sounds to me  
2 like it would include this weather mitigation rate  
3 design.

4 And also another thing that sounds to me as an  
5 indication that the Company has accepted the Staff's is  
6 the Attachment A of affidavit of Mr. Cline.

7 In page 3 of his Attachment A it was -- or  
8 worksheet that Ms. -- Mrs. Krieger sent to the Staff.  
9 And the first line of number it says, billing  
10 determinants (per annuals 71,632). And that sounds to  
11 me that it's -- the Company has already abandoned  
12 whatever numbers they have used before and adopted the  
13 Staff's billing determinants as the starting point.

14 And then they made several adjustments to  
15 conform with the stipulation for them to adjust normal  
16 degree days to 4,718. Therefore, they have already  
17 adop-- adopted the Company's -- or the  
18 Staff's method-- their -- I'm sorry. They have already  
19 adopted the Staff's billing determinants.

20 And then, you know, we all have a greater  
21 problem -- there are other adjustments that need to be  
22 made and they are making that.

23 The problem is that when they are making one  
24 of their adjustments, they have attempted to correct  
25 something before. They have attempted to

1 correct -- correct something that was included in the  
2 annual 71,632 billing determinants.

3 Q. And what is it, then, again, that you believe  
4 they were trying to correct?

5 A. They were trying to correct the Staff's  
6 methodology in treating -- in converting heating degree  
7 days into therms.

8 Q. Uh-huh.

9 A. And it's -- so basically they did not  
10 attempt -- they did not attempt to correct that  
11 methodology for all the other months, other than  
12 November.

13 So they want to change the methodology for one  
14 month, but they want to keep the same methodology for  
15 all the other months.

16 COMMISSIONER GAW: Okay. Thank you.

17 That's all I have, Judge.

18 JUDGE THOMPSON: Thank you, Commissioner.

19 Commissioner Forbis.

20 QUESTIONS BY COMMISSIONER FORBIS:

21 Q. Hi, there. Just curious, are you aware of any  
22 other what you would consider legitimate alternatives  
23 to the way the Staff has calculated these rates or is  
24 this the way you would do it?

25 A. I would not say that Staff's methodology is

1 the only right one, but I would say the Staff's  
2 methodology sounds very reasonable to me. It will --  
3 I -- I will -- I will say that it is the most  
4 reasonable methodology that -- among the methods that's  
5 on the table.

6 Q. Method on -- on the table; was that --

7 A. Right. In -- in other words, compared to the  
8 Staff and the Company's methodology, I believe the  
9 Staff is the most reas-- reasonable one.

10 Q. Are there any others beyond that -- those that  
11 we're talking about right now -- totally different ways  
12 of doing it, for example, or are they all variations on  
13 this theme?

14 A. They are all vari-- different variations. For  
15 example, for the Company's instead of picking up  
16 two points, you could do a regression over to  
17 six points.

18 I mean, then you could argue which one is to  
19 better to use test year data or to use historical data.  
20 And you could still argue which one is better.

21 However, it is totally inappropriate to me  
22 that the Company only uses two points over the six  
23 points.

24 Q. So the -- the -- you're arguing over an --  
25 it's -- but the basic approach is always gonna be the

1 same?

2 A. Yes.

3 COMMISSIONER FORBIS: Okay. Thank you.

4 JUDGE THOMPSON: Thank you, Commissioner.

5 QUESTIONS BY JUDGE THOMPSON:

6 Q. So did I hear you say that it's not -- it's  
7 within the bounds of reason to use historical data, as  
8 opposed the test year data?

9 A. I do believe to use test year data is more  
10 appropriate.

11 Q. Because that's how we do rate cases here in  
12 Missouri --

13 A. Yes.

14 Q. -- right?

15 A. Yes.

16 JUDGE THOMPSON: Okay. I think that's all I  
17 have. And thank you.

18 Redirect based on questions from the Bench.

19 Mr. Schwarz.

20 MR. SCHWARZ: I have no questions.

21 JUDGE THOMPSON: Mr. Pendergast?

22 MR. PENDERGAST: Just one moment.

23 RECROSS-EXAMINATION BY MR. PENDERGAST:

24 Q. Just a quick question, if I could. You've  
25 talked a lot about test year data and that -- and that

1 kind of thing, as opposed to using historical data.

2 And can you tell me when the Staff takes the  
3 test year data and then changes it into something else  
4 for purposes of coming up with normalized billing  
5 determinants, do they just use information that  
6 occurred during the test year?

7 A. They use information from his-- historical  
8 re-- historical data related to weather --

9 Q. Okay.

10 A. -- related to weather.

11 Q. So they used historical data in their analysis  
12 as well; is that correct?

13 A. Yes.

14 MR. PENDERGAST: Okay. Thank you very much.

15 JUDGE THOMPSON: Redirect, Mr. Micheel.

16 MR. MICHEEL: Yes, Your Honor, I have a few.

17 REDIRECT EXAMINATION BY MR. MICHEEL:

18 Q. Mr. Pendergast just asked you if the Staff  
19 used historical data in -- in their analysis. Do you  
20 recall that question?

21 A. Yes.

22 Q. And I believe you said the -- the Staff uses a  
23 30-year historical for weather data; is that correct?

24 A. Yes. I didn't say 30 years, but that was --  
25 that -- that is right.

1 Q. And since you've been here at the Commission,  
2 has the Staff used anything but a 30-year historical  
3 for weather?

4 A. I don't believe so.

5 Q. And are you aware that the Commission on  
6 occasion in rate cases has approved a 30-year  
7 historical use for weather?

8 A. I can't recall, but I -- I believe that the  
9 Staff's methodology has been approved in many cases.

10 Q. Okay.

11 A. I cannot give you a specific case, but I do  
12 believe that there are many cases.

13 Q. Okay. Mr. Pendergast asked you some examples  
14 regarding, you know, if it was a 48 or a 54. Do you  
15 recall those questions?

16 A. Yes.

17 Q. Do you have an opinion whether or not that  
18 affec-- if -- if there's a big change there that  
19 there's going to be some impact on the weather  
20 protection given by this weather mitigation rate  
21 design?

22 A. I do not believe so. The only thing that  
23 seems to lead to the result that Mr. Pendergast wanted  
24 to show I -- I believe is -- is because he was trying  
25 to match apples with oranges. And he -- he cannot do

1     that.

2           Q.    Mr. Pendergast also asked you some questions  
3     about an attachment, the -- to Mr. Cline's affidavit,  
4     the September 13th, 2002 email.  Do you recall those  
5     questions?

6           A.    Yes.

7           Q.    And he asked you some questions about whether  
8     or not the Public Counsel questioned the numbers in  
9     the -- that email.  Do you recall that?

10          A.    Yes.

11          Q.    Are you aware that -- that -- that email  
12     indicates that there was agreement between the Staff  
13     and Company on these numbers when you received it?

14          A.    Yes.

15          Q.    So would the Office of the Public Counsel have  
16     any reason to question that if it was indicated that  
17     there was some sort of an agreement?

18          A.    No.  We don't have any questions -- or we  
19     don't have any -- I mean, we -- we don't have any  
20     reason to question, because it says Staff and Company  
21     has agreed to that number.

22                Even that -- even if that number is a  
23     different number, if the Staff and the Company has  
24     agreed to, I do not think Public Counsel will have any  
25     disagreement over that.

1 Q. Were you aware at that time that you received  
2 the email that there was a disagreement between the  
3 Staff and the Company?

4 A. I was not aware of that.

5 Q. And when did you first become aware of that?

6 A. October the 18th.

7 Q. And once you became aware of that  
8 disagreement, what -- what did you do -- what did the  
9 Office of the Public Counsel do?

10 A. We have been trying to understand a higher  
11 issue. I have looked through numerous -- I have looked  
12 through the work papers that Staff provided to us,  
13 including Company's work paper that Company provided to  
14 the Staff and I have talked to the Staff.

15 I have examined those worksheets myself and I  
16 have read through and re-read through testimonies and  
17 the Commission's order and then the stipulation and  
18 agreements.

19 Q. With respect, you had some questions about the  
20 email from Pat Krieger to Anne Ross and Dan Beck --  
21 the -- the September 11th email. Do you -- do you  
22 recall those questions?

23 A. Yes.

24 Q. Did Public Counsel receive a copy of that  
25 email?



1           A.    No.

2           Q.    After we became aware of the email, was there  
3   any way from the fa-- from -- from the pages attached  
4   on that email that you could determine that the Company  
5   had made an adjustment to the month of November --  
6   specifically to the month of November?

7           A.    No, there's no way for me to know it.

8           MR. PENDERGAST:  Your Honor, I don't mean to  
9   interrupt, but I don't recall asking any questions  
10  about the September 11th -- I -- I think maybe  
11  Mr. Micheel did.

12                  And I don't remember any Commissioner asking  
13  about it either or Mr. Schwarz -- I don't think  
14  Mr. Schwarz asked any questions.

15                  JUDGE THOMPSON:  Well, this is redirect, so, I  
16  mean, it goes to all the cross-examination.

17           MR. PENDERGAST:  I -- I guess what I was  
18  suggesting was I -- I didn't think anybody  
19  cross-examined her about it.

20           MR. MICHEEL:  My recollection was somebody --  
21  Mr. Pendergast asked her a line of questions about  
22  the -- the September 11th email and the October 13th  
23  email and -- and whether or not we questioned them at  
24  that time.

25           MR. PENDERGAST:  I asked -- I asked about the

1 September 13th, but I don't think I said anything about  
2 the September 11th.

3 JUDGE THOMPSON: Well, I'm going to allow the  
4 question. Objection is overruled.

5 MR. MICHEEL: That was my last question.

6 JUDGE THOMPSON: Okay. Did you get an answer?

7 MR. MICHEEL: I believe I did, but I -- I  
8 guess I would ask the court reporter to check.

9 JUDGE THOMPSON: She said, no, there's no way  
10 for me to know, so I -- it looks to me as though the  
11 question was answered.

12 THE REPORTER: There you go. No, there's no  
13 way for me to know it.

14 JUDGE THOMPSON: Okay. And --

15 MR. MICHEEL: With -- with that I -- I -- I'm  
16 finished with my redirect, Your Honor.

17 JUDGE THOMPSON: Thank you.

18 You may step down, Ms. Hu. Thank you.

19 (Witness excused.)

20 JUDGE THOMPSON: Do you have any further  
21 witnesses?

22 MR. MICHEEL: No, Your Honor. We would rest  
23 at this time.

24 JUDGE THOMPSON: Thank you.

25 Mr. Pendergast.

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

1           MR. PENDERGAST: Your Honor, I've got  
2 two witnesses. And one of them is Patricia Krieger,  
3 who I think is in the best position to comment on  
4 what's been up -- put up on the board. And I thought  
5 it might be appropriate to call her first so she could  
6 comment on, and then Mr. Cline.

7           I won't have extensive direct for either, but  
8 if that order is suitable to you.

9           JUDGE THOMPSON: You can call them in whatever  
10 order you want. I assume that everyone is -- is  
11 prepared to just continue until we're done; is that  
12 correct? We're at 4:30 now.

13          MR. SCHWARZ: At some stage I'll need to make  
14 a phone call.

15          JUDGE THOMPSON: Well, why don't we -- why  
16 don't we recess briefly?

17          MR. SCHWARZ: I'm not -- I'm not sure if my  
18 child will be at home yet.

19          JUDGE THOMPSON: Well -- oh, okay. Well, I --  
20 that's why I'm raising this point.

21          MR. SCHWARZ: Yeah.

22          JUDGE THOMPSON: Because I realize that --

23          MR. SCHWARZ: I will need to make a phone  
24 call --

25          JUDGE THOMPSON: -- we have children, we

1     have  --

2                 MR. SCHWARZ:  -- a little after five.

3                 JUDGE THOMPSON:  -- spouses, we have pets and

4     maybe -- maybe we need to adjourn and come back

5     tomorrow or maybe you want to continue.  I don't know.

6     What do the parties want to do?

7                 MR. SCHWARZ:  I can continue on.  I just need

8     to let him know that I'm not gonna be home at -- you

9     know, at that time.

10                JUDGE THOMPSON:  Mr. Micheel?

11                MR. MICHEEL:  I'm all for finishing today

12     and -- and my witnesses have -- I guess there's a

13     presentation tomorrow with Empire or something like

14     that, so I'd prefer to charge right on through if -- if

15     that's all right with you, Your Honor.

16                JUDGE THOMPSON:  Mr. Pendergast?

17                MR. PENDERGAST:  Yes, Your Honor, that would

18     be very good.

19                JUDGE THOMPSON:  Okay.  That's what we'll do

20     then.

21                So why don't you go ahead and start with your

22     first witness.

23                Mr. Schwarz, just signal me when you're ready

24     for a recess, okay?

25                MR. SCHWARZ:  Yes.  Thank you.

1 JUDGE THOMPSON: Certainly.

2 MR. PENDERGAST: At this time, Your Honor, I  
3 would call Patricia Krieger to the stand.

4 JUDGE THOMPSON: Thank you.

5 Could you raise your right hand.

6 (Witness sworn.)

7 JUDGE THOMPSON: Thank you. Please take your  
8 seat and spell your name for the reporter, if you  
9 would.

10 MS. KRIEGER: Patricia Krieger,  
11 P-A-T-R-I-C-I-A, K-R-I-E-G-E-R.

12 JUDGE THOMPSON: You may inquire,  
13 Mr. Pendergast.

14 MR. PENDERGAST: Thank you, Your Honor.

15 PATRICIA KRIEGER testified as follows:

16 DIRECT EXAMINATION BY MR. PENDERGAST:

17 Q. Ms. Krieger, just state your name and address  
18 for the record, please.

19 A. Patricia Krieger, 720 Olive Street, St. Louis,  
20 Missouri 63101

21 Q. And could you briefly describe what position  
22 you hold at Laclede Gas Company?

23 A. I am a manager of accounting at Laclede Gas  
24 Company, and I filed direct testimony in this case  
25 related to the weather normalization adjustment and

1 other revenue issues.

2 Q. And in the capacity of preparing that  
3 testimony, are you generally familiar with the method  
4 used by Staff to determine billing determinants and  
5 methods used by the Company?

6 A. Yes, I am.

7 Q. Okay. Are you aware that there was some  
8 discussion earlier about the approach that Staff used  
9 and the approach that the Company used, as far as  
10 arriving at the terms for Block 1 that -- that were  
11 reflected in the Company's September 11th email to  
12 Staff?

13 A. Yes.

14 Q. And -- I think that's the Staff's one up  
15 there. Does that look like the Staff's one up there?

16 A. The -- the Staff's diagram?

17 Q. Yes. That Mr. Beck did. It's supposed to be  
18 a depiction of the Staff's approach?

19 A. Yes, I believe so.

20 Q. And that's Laclede's -- could we start with  
21 Staff?

22 Thank you.

23 Would you just please comment on, if you will,  
24 the method that Staff used and why that method was of  
25 concern to the Company and why the Company did not

1 believe it resulted in an accurate estimate of first  
2 block therms?

3 A. Staff's methodology for determining first  
4 block therms is a regression method. I -- I'd just  
5 like to clarify they also use a regression method to  
6 determine total -- total therms and total use per  
7 customer, which our methodology and their methodology  
8 produced essentially the same total use per customer.

9 As they apply their -- an additional linear  
10 regression methodology to determine first block therms,  
11 they use a linear -- a linear regression method.

12 The problem I see in that method is that  
13 the -- the first block therms are capped at 65. So  
14 when you lose -- when you use -- use a linear  
15 regression method, the points are capped at that  
16 65 level.

17 And there was some discussion as to why we at  
18 one point went over and the other points went under, we  
19 did not need to adjust all of them.

20 We did not use a linear regression methodology  
21 to determine the -- the blocks -- the block splits.  
22 Our total therms in total essentially matched those of  
23 the Staff.

24 But when I looked at the Block 1 winter therms  
25 using their methodology versus our methodology, there

1 was an in -- an increase in their Block 1 therms. As I  
2 tried to drill down into what that difference was, it  
3 became apparent that it was in the month of November.

4 So I -- my -- I guess the flaw that I see in  
5 this methodology is that because you're capped at 65  
6 and using a linear regression methodology for that  
7 first block, you -- it -- it's really the November  
8 month that's the critical month in that whole  
9 calculation.

10 Q. And -- and -- and can you explain why November  
11 is the critical month in that calculation versus  
12 December or January or February?

13 A. Well, December through -- through March  
14 essentially all the customers use approximately 65 or  
15 close to 65, so there's not the up-site potential in  
16 that first block for additional usage as there is in  
17 November and also in the month April.

18 So, again, our -- we did not -- our -- our  
19 direct filing was based on the test year data. But in  
20 trying to determine why the difference occurred in that  
21 first block winter therms, it was -- it was identified  
22 by my analysis that it was basically in the month of  
23 November.

24 The -- the purpose of doing that was to try to  
25 determine that we had the right Block 1 winter therms



1 in place under this new rate design. And that  
2 that -- that determination was more critical under this  
3 rate design than what it had been in the past under the  
4 existing rate design.

5 Q. And can you tell me why the therms that Staff  
6 had for Block 1 for November was of concern to you?  
7 Why -- why did it appear to be unreasonable?

8 A. Well, as I said, both -- both the Staff and  
9 the Company used the -- used the test year to -- to  
10 normalize their data.

11 We -- we used historical data basically to  
12 test the reasonableness of Staff's method. And that  
13 was why in trying to come up with a parameter to test  
14 the reasonable -- reasonableness of the results  
15 compared to ours, I went back and looked at recent  
16 years' data to determine if -- if their results that  
17 was produced from their regression looked reasonable  
18 with our history.

19 I -- I did an extrapolation basically off of  
20 two data points, which has been a subject of discussion  
21 here, in that the dat-- the points that I chose were  
22 the most recent history and was similar to what the new  
23 normal was.

24 If you look at regression on the six points  
25 or -- or any one of those points, I think you'll find

1     that the normal level of 58 is higher than any -- any  
2     of those type of extrapolations would produce.

3           Q.     And you mentioned -- you mentioned you did an  
4     extrapolation based on two points, but that even if you  
5     had used all six points, the 58.2 would have been  
6     significantly higher than what results you would have  
7     obtained; is that correct?

8           A.     Yes, I believe so.

9           Q.     And did you -- you provide to Staff what the  
10    results would be if you used all six points?

11          A.     Yes, I believe Mr. Cline provided a -- a work  
12    paper that we later did that showed that if you used  
13    all six points in the linear regression that you got  
14    approximately 55 to 56 therms per customer, not the 58  
15    that Staff's method had produced.

16          Q.     And are you aware that the Company has gone  
17    ahead and proposed to -- one of its options to  
18    essentially split the difference between the -- the  
19    Staff's 58 and the Company's 54?

20          A.     Yes, I am.

21          Q.     And do you know what standard of error there  
22    is in Staff's analysis?

23          A.     I don't know the exact number offhand. I know  
24    with any statistical analysis there's some -- some  
25    standard of error.

1 Q. And what does that mean?

2 A. A range of possibilities that the -- that the  
3 predicted amount would be different from that value.

4 MR. PENDERGAST: That's all I have, Your  
5 Honor. Thank you.

6 JUDGE THOMPSON: Thank you, Mr. Pendergast.

7 Mr. Micheel?

8 CROSS-EXAMINATION BY MR. MICHEEL:

9 Q. Good afternoon, Ms. Krieger. Have you seen  
10 Mr. Cline's affidavit that was filed today?

11 A. Yes, I have.

12 Q. And you're aware that there's an email  
13 attached to that from you to Mr. Beck and Ms. Ross on  
14 9/11/02; is that correct?

15 A. Yes.

16 Q. And you didn't provide a copy of that email to  
17 the Office of the Public Counsel, did you?

18 A. No, I did not.

19 Q. Do you have a copy of Mr. Cline's affidavit  
20 with you?

21 A. No, I don't.

22 MR. MICHEEL: May I approach the witness?

23 JUDGE THOMPSON: You may.

24 BY MR. MICHEEL:

25 Q. I've handed you I think what is the third page

1 of that email, and at the top it says GR-2002-356  
2 billing determinants summary. Do you see that?

3 A. Yes.

4 Q. And is that the page of this email where you  
5 list the adjustments that the Company made to the  
6 data -- to -- to Anne Ross's initial data?

7 A. Yes, it is.

8 Q. Could you point out to me specifically where  
9 the November adjustment is on that billing determinant  
10 summary page?

11 A. This is a -- a billing determinant summary.  
12 It was a summary of the overall levels of  
13 therms -- demand therms and bills.

14 The -- the other page that was submitted with  
15 it was the further detailed of -- by blocks and by  
16 seasonal volumes as to what we thought final billing  
17 determinants should be.

18 What I attempted to do here was to just simply  
19 show a starting point in the items that I believed to  
20 be and the -- and the resulting stipulations that  
21 needed to be adjusted before we could complete billing  
22 determinants.

23 Q. And --

24 A. These were the basic topics that we had to  
25 adjust, which were whether load changes, demand therms

1 and the further refinement of the block split was  
2 basically embedded in the weather adjustment that shows  
3 up here.

4 Q. And is it correct that the November change is  
5 not shown on that third page; is that correct?

6 A. No, it's not.

7 Q. And you -- you spoke about the first page, and  
8 that's the 212 million therms that -- that we're  
9 talking about; is that correct?

10 A. Yes.

11 Q. Is there any way from that first page that you  
12 can tell from that first page of that email that there  
13 was a specific change made in the month of November?

14 A. On the summary page?

15 Q. Yes.

16 A. No, you cannot -- you -- you would not know  
17 that from the summary page. You would have to look at  
18 the other page to -- to realize that the volumes are  
19 different.

20 Q. So there -- there were three pages attached to  
21 that email, is that correct or were there two?

22 A. There was a cover -- cover sheet and  
23 two pages.

24 Q. And on the two pages of data, there was no way  
25 you could tell that there was a specific just --

1 adjustment made to the month of November; isn't that  
2 correct?

3 A. That's correct. But there were not -- there  
4 was not detail on a lot of the adjustments to that  
5 level of detail.

6 Q. And so anyone reviewing that email would have  
7 no reason to believe that there were any adjustments  
8 made to the month of November; isn't that correct?

9 A. Not specifically to the month of November.  
10 But in analyzing the starting point and the -- and the  
11 finishing point, there were many things that needed to  
12 be analyzed at the detail level to determine what --  
13 what was changing.

14 Q. And you didn't feel it was important to notify  
15 the Staff about that change at that time?

16 A. I sent this email to the Staff, I -- I guess,  
17 with the expectation of having further discussions on  
18 the -- on the billing determinants and the details  
19 underlying the adjustments that we were making and to  
20 concur with us if it was not the adjustments that  
21 they -- they would have also been making relating to  
22 these items that remained outstanding.

23 And -- and, I guess, it was -- it was the  
24 following day or two when I heard through Mr. Cline  
25 that there wasn't really any sub-- any disagreements on

1 the level we were at, but we just never got into that  
2 conversation.

3 Q. So Laclede never provided information to the  
4 Staff at the level that would show the November change  
5 that the Company made; is that correct?

6 A. No, we did not. Because at that point we  
7 thought we -- that they were in agreement with the  
8 level that we had. This level that we -- that was on  
9 this sheet is fairly consistent with what the Company's  
10 filed position had been in its direct filing.

11 Q. And the Company's initial filed position, it's  
12 my understanding, was approximately 210 million therms;  
13 is that correct?

14 A. That would be for rate design purposes, I  
15 believe. And Mike Cline would have to answer that.

16 Q. Okay. And are you -- have -- have you had an  
17 opportunity to review Hong Hu's affidav-- affidavit in  
18 this matter?

19 A. Not in detail.

20 Q. Are -- have you had a chance to look at her  
21 Attachment A to her affidavit? Do you have a copy  
22 of --

23 A. I don't.

24 Q. -- Ms. Hu's affidavit there?

25 A. No, I don't.

1           MR. MICHEEL: May approach the witness, Your  
2 Honor?

3           JUDGE THOMPSON: You may.

4 BY MR. MICHEEL:

5       Q. I'm drawing your attention to Attachment A to  
6 Ms. Hu's affidavit. It's -- it's two pages. If you  
7 would read into the record what -- it's an email from  
8 Mike Cline to Hong Hu?

9       A. Attached is a calculation you requested  
10 regarding a percentage of weather -- of residential  
11 weather variation that is fixed by a rate design  
12 proposal.

13      Q. And on the -- on the subject line does it  
14 indicate Laclede weather mitigation?

15      A. Yes, it does.

16      Q. And do you understand that to be the rate  
17 design proposal that Mr. Cline proposed in his rebuttal  
18 testimony in this proceeding?

19      A. I -- I've not had a lot of involvement in the  
20 rate design proceeding, but I think that's my  
21 understanding, yes.

22      Q. Okay. And on the second page of that, there's  
23 a -- a spreadsheet of numbers on Attachment A, page 2  
24 of 2, and do you see the 2-- 209 million therms there  
25 on to the first column, heating-A/C?



1 A. Yes.

2 Q. And is that the number of therms that the  
3 Company was utilizing at least for the rate design  
4 weather mitigation proposal in Mr. Cline's rebuttal  
5 testimony?

6 A. I'm not sure what the genesis of this number  
7 is. Mike Cline would have to address that. I'm not  
8 sure that that is the -- the -- that it is the level in  
9 our direct filing.

10 MR. MICHEEL: That's all I have, Your Honor.

11 JUDGE THOMPSON: Thank you, Mr. Micheel.

12 Mr. Schwarz?

13 CROSS-EXAMINATION BY MR. SCHWARZ:

14 Q. Ms. Krieger, its's -- it's my understanding  
15 that you had overall responsibility for the revenue  
16 requirement and of the Company's case; is that correct?

17 A. For the revenue adjustments within the case,  
18 yes.

19 Q. For the -- for the revenues.

20 And what Staff witnesses did you use to check  
21 Staff's position on revenues?

22 A. All of the witnesses that filed weather  
23 adjustment -- or revenue adjustments, if I understand  
24 your -- your question correctly.

25 Q. Did you -- did you check Mr. Cassidy's

1 testimony -- John Cassidy?

2 A. Yes, I looked at his testimony.

3 Q. What about Jim Gray?

4 A. I looked at Jim Gray's testimony.

5 Q. Henry Warren?

6 A. Henry Warren's, yes.

7 Q. Dennis Patterson?

8 A. Yes.

9 Q. Is it correct that the 58.2 therms per

10 customer in -- for the month of November was included

11 in the work papers that accompanied Staff's direct

12 filing in this case?

13 A. Yes, it was.

14 Q. And is it true that you also received a copy

15 of Mr. Cassidy's work papers regarding billing

16 determinants for the annualization of revenues during

17 the prehearing conference?

18 A. Yes.

19 Q. And is it true that Mr. Cassidy's work papers

20 reflected the 215 million --

21 A. Yes, it did.

22 Q. -- therms?

23 And did his work papers reflect Staff's

24 position on the November billing determinants?

25 A. Yes.

1 Q. Were you an active participant in the  
2 prehearing conference in this case?

3 A. The prehearing conference regarding what --

4 Q. Weather --

5 A. -- weather normalization and revenue  
6 requirements, yes.

7 Q. Knowing what Staff's position was as  
8 specifically for the November billing determinants, did  
9 you raise any issue with the Staff at the prehearing  
10 conference?

11 A. No. And the reason for that is under the  
12 existing rate design that was in place and under the  
13 proposed weather mitigation clause that Mr. Cline had  
14 proposed, there was really not a material issue in that  
15 regard.

16 Because under the old rate design, the  
17 existing revenues had really no material effect. It  
18 was not until the new rate design was approved or  
19 accepted that the Block 1 issue became a -- a much more  
20 sensitive and critical issue to be -- to be -- to be  
21 looked at.

22 Q. And am I correct that that new rate design was  
23 proposed in Mr. Cline's testimony filed on October the  
24 2nd in this case?

25 MR. PENDERGAST: Excuse me.

1 BY MR. SCHWARZ:

2 Q. Oh, August. I'm sorry. August the 2nd in --  
3 in this case.

4 A. I -- I can't confirm the date, but --

5 Q. In Mr. Cline's rebuttal testimony, can you  
6 confirm that?

7 A. The rate design --

8 Q. Yes.

9 A. -- weather --

10 Q. The weather -- the weather mitigation rate  
11 design that was proposed in Mr. Cline's rebuttal  
12 testimony.

13 A. Yes, I believe that's correct.

14 Q. And I -- I believe that you've indicated that  
15 you're aware that in his surrebuttal testimony,  
16 Mr. Cline suggested that Laclede was willing to use the  
17 Staff's conversion of heating degree days into billing  
18 determinants; is that correct?

19 A. I would need to -- to re-read that -- that  
20 testimony. I believe it was with regard to the weather  
21 mitigation clause, though, and not the weather  
22 mitigation rate design.

23 MR. SCHWARZ: I'm sorry. May I approach?  
24 Having approached the witness, I will now seek  
25 permission. I'm sorry.

1 BY MR. SCHWARZ:

2 Q. Would you take a look at -- well, I have  
3 handed you is Mr. Cline's surrebuttal testimony.

4 MR. PENDERGAST: Excuse me.

5 MR. SCHWARZ: I'm on page 18, line 14.

6 MR. PENDERGAST: Since he also refers back to  
7 witness Raab, could she have the relevant portion of  
8 his testimony?

9 MR. SCHWARZ: Absolutely.

10 MR. PENDERGAST: Could I approach the witness?  
11 I'm sorry.

12 JUDGE THOMPSON: You may.

13 THE WITNESS: If I read this correctly, I  
14 believe that these references are with regard to the  
15 weather mitigation clause that was being proposed. And  
16 under that proposal, I don't believe that -- for  
17 revenue requirement purposes or purposes or weather  
18 mitigation clauses would have become an issue.

19 It was with the later acceptance of the  
20 weather mitigation rate design that the materiality of  
21 the Block 1 winter therms became a much more critical  
22 issue.

23 And it was my feeling that we needed -- needed  
24 upon completing billing determinants to -- to make sure  
25 that that was gonna produce the revenues that we've all

1     agreed to in this case.

2     BY MR. SCHWARZ:

3           Q.     Now, this is Mr. Cline's surrebuttal  
4     testimony, is it not?

5           A.     Yes.

6           Q.     And I believe you've already acknowledged that  
7     in his rebuttal testimony Mr. Cline filed weather  
8     mitigation rate design testimony; is that correct?

9           A.     I believe that's the case. I'd need to  
10    confirm that. I --

11          Q.     All right.

12          A.     I'm not --

13          Q.     And --

14          A.     -- very familiar with the rate design portion  
15    of the case.

16          Q.     And I'm going to read beginning on line 16 and  
17    ask you to consider this. On what -- on -- on what  
18    amount of heating degree days should be used for rate  
19    design purposes in this case -- are -- are you with me  
20    there?

21          A.     Yes.

22          Q.     Now, Mr. Cline has -- is specifically  
23    referring to rate design in his -- in this surrebuttal  
24    testimony, and he has already filed rate design  
25    testimony in his rebuttal testimony, agreed?

1       A.    I was trying to make sure I understand the  
2   context of this paragraph that -- that you're referring  
3   to and the timing of the -- of the scenario that this  
4   played out.

5           MR. PENDERGAST:  Your Honor, I -- I would  
6   simply note that Mr. Cline is here and he is the one  
7   that submitted this testimony and he will be taking the  
8   stand shortly.

9           Wouldn't these questions be better directed at  
10  him, since it was his testimony?

11          JUDGE THOMPSON:  Well, I think it is --

12          MR. SCHWARZ:  If I might -- I might answer, I  
13  think not.  Ms. Krieger is the Laclede witness who is  
14  proposing the billing determinants, which are a  
15  separate item and separate issue from the rate design,  
16  although the rate design uses the billing determinants  
17  subsequently.

18          So that I think that it's -- it's certainly  
19  reasonable to examine witnesses on both aspects of the  
20  issue.

21          JUDGE THOMPSON:  I'm gonna overrule the  
22  objection.  The witness may answer, if she is able.

23          THE WITNESS:  Can you repeat the question,  
24  please?

25          MR. SCHWARZ:  I couldn't repeat it.

1 JUDGE THOMPSON: Why don't we -- pardon me.  
2 Why don't we have the reporter read the question back.  
3 (THE COURT REPORTER READ BACK THE REQUESTED  
4 PORTION.)  
5 THE WITNESS: Yes, I believe so.  
6 BY MR. SCHWARZ:  
7 Q. Going back to Commissioner Gaw's diagrams,  
8 this is -- this is the one depicting Staff's approach.  
9 Is this con-- consistent with your understanding  
10 of -- of what Staff did?  
11 A. Yes.  
12 Q. I don't know.  
13 And having sat through Mr. Beck's explanation  
14 of this chart, is it consistent with what Laclede did  
15 for the first block November therms?  
16 A. Laclede did not use a regression methodology  
17 or -- or a graph to determine a reasonable level --  
18 level for the month of November.  
19 Q. Is it a -- is this a reasonable graphical  
20 representation of what Laclede did?  
21 A. I believe the -- the point there was that we  
22 used two points to -- to -- to base the -- the  
23 conclusion that we came to. And, as I said before, I  
24 think that wasn't a -- what I actually did was use a  
25 most recent point -- one of the most recent points in



1 the current history to judge what was reasonable under  
2 comparable weather conditions to what was determined to  
3 be normal.

4 Q. So you used the -- of the six, you used the  
5 two most recent?

6 A. I had a rationale for choosing the points that  
7 I used, being that that was a recent data point and one  
8 that was simulated under the weather conditions that we  
9 agreed to would be normal.

10 Q. And is this how the Company determined its  
11 billing determinants in its direct filing in this case?

12 A. No, it's not. We used test year data only in  
13 our direct filing.

14 Q. So you made this -- and this change is  
15 reflected in your -- in the data that was sent with  
16 your email on September the 11th?

17 A. Yes, it was embedded in those -- those final  
18 calculations.

19 Q. But you didn't think it was important to  
20 notify Staff that you were using a -- a method only for  
21 the first -- for the November billing determinants and  
22 that -- that you were using a method that was  
23 different, not only from what Staff did, but from what  
24 the Company had did originally?

25 A. I was using a methodology to test the

1 reasonable -- reasonableness of what Staff's  
2 methodology had produced, in light of the new rate  
3 design that was -- that was being accepted.

4 Q. You used this methodology to determine -- to  
5 determine the number of billing units that the Company  
6 was using in its -- in its -- the calculations that it  
7 sent to Staff, but you didn't tell them that you were  
8 changing methodology, not only from what Ms. Ross had  
9 sent you in July, but from what the Company had filed  
10 originally; is that correct?

11 A. With the expectation that we would have  
12 further discussion on billing determinants as I sent  
13 that email off. I -- I'm --

14 Q. You -- you didn't think it was important even  
15 to -- to note it in passing?

16 A. The final weather adjustments had not been  
17 tied down at that point. I assumed there was going to  
18 be further discussion on the weather issue and the  
19 final weather adjustment.

20 Q. But so you didn't consider that your  
21 September 11th, email to the Staff was -- was the  
22 beginning of -- of that discussion?

23 A. Yes, I did assume that that was. That was --  
24 that's why my cover letter said please review and call  
25 to discuss.

1 Q. But -- but you -- but you didn't think it was  
2 important to -- to call to the Staff's attention a  
3 specif-- the only single specific change from the  
4 Staff's methodology that you had made?

5 A. The expectation was there would be discussion  
6 on the -- based on the analysis that had come off of  
7 the numbers that I had sent. Staff was re-working the  
8 weather numbers at the same time which we never --

9 Q. Is that yes or no?

10 A. -- and this was my --

11 JUDGE THOMPSON: Is that a yes or no answer,  
12 ma'am? I think that was a yes or no question.

13 THE WITNESS: Repeat the question, please.

14 (THE JUDGE READ BACK THE REQUESTED PORTION.)

15 THE WITNESS: Not at that point in time. I  
16 had not provided the underlying detail of -- of several  
17 of the adjustments that were being made at that point.

18 JUDGE THOMPSON: Thank you, ma'am.

19 BY MR. SCHWARZ:

20 Q. You were here for Ms. -- Ms. Hu's testimony  
21 earlier?

22 A. Yes.

23 Q. Do you recall in response to a -- a question  
24 from Mr. Pendergast that Ms. Hu indicated that  
25 using -- it was important to use the same billing

1 determinants in calculating revenues as it -- as it is  
2 in using -- as -- excuse me -- it's important to use  
3 the same billing determinants in calculating revenues  
4 as it is in designing rates.

5 Do you recall that answer?

6 A. Yes, I do.

7 Q. Do you recall Mr. Beck's answer to a similar  
8 question that was essentially the same?

9 A. Yes.

10 Q. Do you concur that it's important to use the  
11 same billing determinants in -- in calculating revenues  
12 as it is in doing rate design?

13 A. Yes. I concur that the present revenues and  
14 the -- and the -- the -- the future revenues should be  
15 on the same basis, but I'd like to point out that under  
16 the existing rate design, the current revenues are not  
17 impacted at all -- or very -- very immaterially by a  
18 shift of two million therms.

19 It's only under the new rate design that that  
20 becomes a material issue, which is the -- you know, the  
21 point I'd like to be clear on here is that at the time  
22 of revenue requirement and -- and under the weather  
23 mitigation clause proposal this was not a material  
24 issue that needed to be made an issue, because the --  
25 the present revenues were essentially the same.

1           Whether you move two million therms from  
2 Block 1 to Block 2 or -- or you didn't. But under the  
3 new rate design, there's a -- there is a much larger  
4 differential between the Block 1 where there's a large  
5 margin or Block 2 where there's zero margin.

6           And that's where the por-- the important --  
7 the importance has been placed on re-evaluating the --  
8 the -- the winter Block 1 therms are appropriate, and  
9 if they will produce the level of revenues that -- that  
10 has been agreed to.

11           And as I tried to put that the billing  
12 determinants together with the last items that were  
13 left outstanding in the case, I tried to compare our  
14 billing determinants as filed in our direct case to  
15 those of the Staff's.

16           And the biggest difference was not in the  
17 total use per customer, the total therms or -- or  
18 anything of the other things we had agreed to for  
19 revenue requirements, but in looking at the block split  
20 there was a difference.

21           And it was only upon drilling down further  
22 that I realized the difference is primarily in the  
23 month of November. And that's -- and that's when I  
24 thought it was important to further analyze this to  
25 make sure that we achieved the revenues that were

1 supposed to be achieved here.

2 Q. Now, the new revenue design was proposed in  
3 Mr. Cline's, which subject to check, was filed on  
4 August the 2nd. And Mr. Cline repeated on August the  
5 23rd in his surrebuttal that Staff's billing  
6 determinants could be used in the rate design.

7 When did you become aware that -- that the  
8 billing determinants issue was important under what the  
9 Company had already proposed?

10 A. In coming back and tying down the billing  
11 determinants and in comparing your determinants against  
12 our determinants.

13 Q. And that was done after Mr. Cline's rebuttal,  
14 after Mr. Cline's surrebuttal and after the parties  
15 signed the stipulation in this case?

16 MR. PENDERGAST: Your Honor, I'd just like to  
17 interject here, because I think Mr. Cline's testimony  
18 is being mischaracterized.

19 He talked about heating degree days should be  
20 used for rate design purposes. And those heating  
21 degree days were reflected in the stipulation agreement  
22 and they were overall heating degree days.

23 And, secondly, he referred this back to  
24 Mr. Raab and says that the Company is willing to use  
25 the best method for turning those degree days and the

1 billing determinants as Laclede Witness Raab indicated  
2 in his rebuttal testimony.

3 And as we pointed out in Mr. Raab's rebuttal  
4 testimony, he talks for purposes of the WMC.

5 And then, secondly, the next sentence is as  
6 such, this argument should not be used as a reason for  
7 not moving forward with the WMC.

8 So, you know, I -- I just don't want his  
9 testimony to be mischaracterized in his questions to  
10 the witness. I think this misstates facts in evidence.

11 JUDGE THOMPSON: Mr. Schwarz?

12 MR. SCHWARZ: Well, it is -- it is clear from  
13 the record that Mr. Cline proposed rate design  
14 testimony in his rebuttal testimony that was filed on  
15 August the 2nd.

16 And while he does mention Witness Raab's  
17 rebuttal testimony, which made the same proposition for  
18 a different method of dealing with weather mitigation,  
19 I don't think there's much doubt that the -- the  
20 statement that -- for -- for rate design purposes in  
21 this case, the Company is willing to use Staff's method  
22 for turning those degree days into billing  
23 determinants.

24 And I think that if there is a -- a problem,  
25 that's a fact issue for the Commission to determine.

1 But I think that -- that this witness has said that  
2 the -- the -- the Company wasn't aware of the  
3 distinction of using billing determinants under the old  
4 rate design proposals, as opposed to the new ones.

5 And the point I'm trying to make is that the  
6 Company proposed new rate design in early August and --  
7 and was certainly on notice at that time, I think,  
8 that -- that possibility was in the air.

9 This is the witness that the Company has put  
10 forward as -- as being the -- the analyst for billing  
11 determinants. When was this witness aware of -- of the  
12 need? I think it's a perfectly legitimate question.

13 JUDGE THOMPSON: Ma'am, assuming that  
14 Mr. Cline's testimony is as characterized by  
15 Mr. Schwarz, are you able to answer the question?

16 THE WITNESS: And -- and, I'm sorry, the  
17 question being?

18 JUDGE THOMPSON: Let me find it for you.

19 MR. SCHWARZ: I'll restate it, if I might.

20 JUDGE THOMPSON: You may.

21 BY MR. SCHWARZ:

22 Q. When did the Company become aware of the  
23 possible impact of the -- the billing determinants on  
24 the rate design?

25 A. I guess at the point where the rate design was



1 accepted and the reve-- the revenues calculations were  
2 looked at as to the difference between your billing  
3 determinants and our billing determinants.

4 Now, I guess the disagreement here as to what  
5 billing determinants --

6 Q. If -- if I might, was -- was that after the  
7 stipulation was signed?

8 MR. PENDERGAST: Could I ask which of the  
9 three stipulations Mr. Schwarz is referring to?

10 MR. SCHWARZ: It would be the first amended --  
11 first amended stipulation, which was signed on August  
12 the 29th.

13 THE WITNESS: Well, I guess there was  
14 some -- there was rate design or -- or weather  
15 mitigation proposals using different billing  
16 determinants, which was this 210 or 13 million level.

17 Billing determinants that were coming out of  
18 revenue requirement at that point did not match the  
19 ones that were being considered in the rate design  
20 proposals that were out there.

21 So I'm not sure of the exact timing of how the  
22 revenue requirement case and the rate design case  
23 were -- were fitting together. It was not until after  
24 the -- the amended stip and the rate design was  
25 proposed that we attempted to put the pieces back

1 together into billing determinants.

2 And -- and to see if what -- what was coming  
3 out of the adjustments was -- was going to accomplish  
4 what it was supposed to

5 BY MR. SCHWARZ:

6 Q. So the Company's filed rebuttal and  
7 surrebuttal testimony did not take into account the  
8 impact of the billing determinants that were used to  
9 calculate and settle revenues?

10 A. I'm not sure what Mr. Cline used in -- in  
11 those -- in his filing.

12 Q. Well, isn't it your responsibility to -- to --  
13 in this case to calculate the billing determinants for  
14 revenue purposes for the Company?

15 A. And I had our set of billing determinants  
16 and -- and your set basically. I don't know that there  
17 was ever an agreement as to whose set was being used.

18 And I'm not sure what the interplay was  
19 between the revenue requirement and the -- the rate  
20 design portions of the case. But there were -- our  
21 filed position that resulted in lower level Block 1  
22 winter therms and your filed position that resulted in  
23 the -- in the higher level of block therms.

24 Q. Was -- wasn't it mentioned on more than one  
25 occasion during the prehearing that it was important to

1 match the billing determinants for revenue  
2 actualization with rate design?

3 A. I was not a part of the rate design  
4 discussions.

5 JUDGE THOMPSON: Mr. Schwarz, if I might  
6 interject, we're -- we're overdue for a break. Do you  
7 expect too much longer?

8 MR. SCHWARZ: Maybe 10 minutes or so.

9 JUDGE THOMPSON: Well, then why don't we go  
10 ahead and take a break and come back, and you may  
11 continue inquiring at that time.

12 (A RECESS WAS TAKEN.)

13 JUDGE THOMPSON: We'll go ahead and go back on  
14 the record now. We're still in the midst of  
15 Mr. Schwarz' interrogation.

16 You may continue to inquire, sir.

17 BY MR. SCHWARZ:

18 Q. Wasn't it discussed during -- strike that.  
19 It's been awhile.

20 Wasn't the importance of matching billing  
21 determinants for revenue annualizations and rate design  
22 mentioned in the revenue discussions at the prehearing  
23 conference?

24 A. I don't believe we -- we got as far as billing  
25 determinants in the prehearing conference, because we

1 still had outstanding weather issues as far -- even the  
2 weather normal had not been resolved at that point.

3 We -- we spoke of billing determinants in  
4 terms of customer numbers, which I think we'd agreed to  
5 customer numbers. And you'll -- and the other -- other  
6 revenue adjustments within the whole thing, but I don't  
7 think we had resolved total degree days, normal degree  
8 days.

9 As -- as I left the prehearing conference, I  
10 don't know that we had completed anything on billing  
11 determinants at that point.

12 Q. Did Laclede Gas Company have an opportunity in  
13 its rebuttal testimony or surrebuttal testimony to  
14 comment on Staff's billing determinant numbers?

15 A. I don't know that billing determinant numbers  
16 are usually a topic of -- of surrebuttal or rebuttal.  
17 I'm not the familiar with that aspect.

18 Q. But you had the opportunity to do so?

19 A. Pending resolution of the -- of all the -- all  
20 those matters, yes.

21 Q. Did the Company do so?

22 A. Not to my knowledge.

23 Q. All right. Do you have a copy of the email  
24 that you sent to Dan Beck on September the 11th?

25 A. Yes.

1 Q. Do you have it there?

2 A. Yes, I do.

3 Q. On the -- the third page is a billing

4 determinant summary. Do you have that?

5 A. Yes.

6 Q. Were any of the adjustments on the summary

7 page worth a million dollars?

8 A. Any one adjustment, no.

9 Q. Were any of them worth 900,000?

10 A. Not -- no, not on -- not listed in the

11 summary.

12 Q. Half a million?

13 A. The degree data adjustment, I believe, was

14 worth a half a million, roughly.

15 Q. Okay. But an adjustment that you made that

16 was worth 900,000, you didn't deem --

17 A. These adjustments --

18 Q. -- worthy of mentioning?

19 A. These adjustments were adjustments made to

20 revenue requirement -- they were revenue requirement

21 settlement adjustments. The dollars were -- were tied

22 to these volumes as a -- as a result of the revenue

23 requirement settlement.

24 And, as I -- as I said, the dollars in this

25 block shifting were not a material -- a material amount

1 under the current rate design under the revenue rate  
2 requirement settlement.

3 Q. Well, the cover -- the cover sheet says,  
4 attached are billing determinants. And the summary of  
5 the adjustments that have been added to the  
6 determinants prepared by Anne back in July.

7 Now, I think we've established that Anne's  
8 determinants back in July included the 15 million?

9 A. They did.

10 Q. Okay.

11 A. And --

12 Q. So that --

13 A. And that -- that was for revenue requirement  
14 purposes. And back in July, the -- this new rate  
15 design had not been accepted, so what she had in July  
16 and what we -- what I built off of for revenue  
17 requirement purposes produce the current -- produced  
18 the revenues under the current rate design.

19 Q. But by --

20 A. And I just want to stress this was not really  
21 an issue until the acceptance of the new rate design --  
22 that it didn't affect revenue requirement, it didn't  
23 affect the present revenue.

24 Q. That hadn't -- that the -- the new rate design  
25 hadn't been agreed on by September the 11th?

1       A.    Yeah, it was -- on September 11 it had.

2       Q.    Well, that's the date of -- of the --

3       A.    And what I was trying to present in my summary  
4    were the adjustments tied to the revenue requirement  
5    settlements that had -- that had transpired since July.

6               And I sent this with the expectation that  
7    Staff would look at this and we would have a discussion  
8    on whether or not they had picked up all the  
9    appropriate we done -- agreed to since July 16th.

10      Q.    Wouldn't the two-and-a-half million therm  
11    adjustment that you made have affected the -- the  
12    revenues even under the old rate design?

13      A.    By a very immaterial amount.  Probably less  
14    than \$50,000.

15      Q.    But --

16      A.    We did not have the final weather adjustments  
17    from the Staff at this point either.  So my -- my  
18    weather adjustments, even for the degree day  
19    difference, was my estimation of what it was going to  
20    be and not Staff's calculation at that point.

21      Q.    Assume for a moment that we were going to  
22    litigate rate design.  When and where was Laclede going  
23    to raise these billing determinant issues?

24      A.    I'd have to confer to the rate design  
25    witnesses.

1 Q. When did you bec-- when did you become aware  
2 that the November billing determinants was a problem?

3 A. I focused on November when I -- when I created  
4 the billing determinants that I thought came out of the  
5 revenue requirement settlement and began to price them  
6 out under the old revenues and the new scenario.

7 And as I said before, the Block 1 therms were  
8 significantly different under the new rate design  
9 submitted between our filed position and the Staff's.

10 Q. And when was that?

11 A. As we tried to put bill determinants together  
12 prior to the September -- like just prior to  
13 September 11th after the amended stipulations were  
14 filed.

15 Q. So -- so that was the first time that you were  
16 aware of it was right when you were preparing the  
17 figures for the November -- September 11th email?

18 A. Yes. And again, trying to determine what the  
19 difference was between our -- our numbers, yes. And  
20 that's when I focused on November being the -- the  
21 difference in our calculations.

22 MR. SCHWARZ: I think I have completed my  
23 cross.

24 JUDGE THOMPSON: Thank you, Mr. Schwarz.

25 Time for questions from the Bench.



1 Commissioner Gaw?

2 COMMISSIONER GAW: Judge, let me ask you a  
3 quick question: Is -- I -- I'm trying to recall  
4 when -- when we were in here on the stipulation  
5 hearing. What was this date?

6 JUDGE THOMPSON: I believe it was  
7 September 16th.

8 COMMISSIONER GAW: September the 16th. And I  
9 have seen nothing else, so I'll assume that's the case.

10 JUDGE THOMPSON: Subject to check.

11 COMMISSIONER GAW: Subject to check.

12 MR. MICHEEL: Thought we weren't doing that  
13 any more.

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. All right. See if I understand this. First  
16 of all, your -- your determination that there was a  
17 problem with the November -- the month of No-- November  
18 occurred because the first time you really focused on  
19 that being an issue was after there was a new rate  
20 design adopted by the sti-- by the parties as in the --  
21 the stipulation?

22 A. Yes. Under the old rate design there was not  
23 a material difference in revenue requirement dollars  
24 between the Staff's position and our position.

25 Q. And -- and your -- the -- the methodology used

1 to calculate the -- I guess, is that the therms per  
2 customer that we're talking about -- the calculation?

3 A. Yes.

4 Q. For No-- for November?

5 A. Average Block 1 use per customer, yes.

6 Q. Yeah. And what methodology was used under the  
7 old design?

8 A. Under the old -- old design and -- and  
9 traditionally in past cases Staff has used this method.  
10 We have used a different method in our calculation of  
11 those -- of those amounts.

12 Our -- both of our methods produced the same  
13 general total therms and total use per customer. They  
14 had different methodologies in -- in assigning a  
15 weather adjustment to specific blocks.

16 Q. What -- what methodology did -- did Laclede  
17 use for the old rate design?

18 A. We looked at the actual use per customer  
19 within each month of the test year and we assigned the  
20 weather therms coming out of the weather normalization  
21 adjustment to which was based on how the actual user  
22 per customer had fallen above or below 65 by each rate  
23 and revenue class we had had.

24 Q. And how does that vary from the methodology  
25 you utilized for the new rate design?

1           A.    We -- we had -- we did not change our  
2 methodology in our direct filing. And, like I said, it  
3 did not have a material impact on the revenue  
4 requirement portion of the case.

5               Staff used their -- their previous methodology  
6 and that -- that amount was -- that difference in our  
7 methodologies became much more material under the new  
8 rate design.

9               As I looked at total Block 1 therms for the  
10 winter season, which is where most of the dollars  
11 would -- would now be generated, I tried to -- you  
12 know, we basically had a -- a two- or three-million  
13 therm difference in our -- on our filed positions.

14              And I tried to determine of the two methods  
15 where the difference was and I tried the look at the  
16 months speci-- individually, determine that it was in  
17 November. And I also tried to, then, use history to  
18 determine whose method produced the best result  
19 with -- with what we had seen historically.

20              The flaw that I -- that I see in Staff's  
21 method is that in -- in this portion of their  
22 regression, the -- the 65 cap is a cap and the -- the  
23 application of Block 1 use per customer to the total  
24 use per customer determining this portion of  
25 their -- of their adjustment is -- has -- has some

1 level of -- of inconsistency and -- and because it is  
2 capped.

3           It doesn't allow the regression line to -- you  
4 know, the fluctuations to go above or below the line in  
5 both cases, because it's capped at 65.

6       Q.    I understand what -- what your statement is.  
7 And you're -- you're in an area that I'm not very  
8 familiar with.

9           But 65 is the figure that you cannot go  
10 beyond, isn't it, under this -- under this scenario  
11 with -- with the blocks at 65 is as artificial cap  
12 that's been established by the stipulation, has it not?

13       A.    Yes, it is. It's a -- a --

14       Q.    How could you go about what you've said in the  
15 stipulation that you will not go above since that's the  
16 end of the block?

17       A.    No, I -- I un-- I understand. But my point is  
18 where they say that the November number went above the  
19 line and we did not take the points below the line.

20           The reason that those points fell below that  
21 line was it was capped. So there was no room to take  
22 those points up, based on -- on what we've seen  
23 historically.

24           But the November number that fell above the  
25 line did not look right with -- with our historical

1 usages. That's why we thought that was the point that  
2 did not fit with what -- with what a realistic  
3 assessment would be of what volumes were going to  
4 settle in that first block under normal weather  
5 conditions.

6 Q. Okay. I mean, not sure I'm following your  
7 point. But maybe someone else can help bring that out.

8 I -- I -- I don't see how that -- how that  
9 impacts the line being at 65. Is that because  
10 is-- because historically it wasn't set there that  
11 somehow impacts the -- the -- the way the -- from the  
12 historical standpoint that somehow is relevant in  
13 this -- this isn't an historical --

14 A. This --

15 Q. -- application system. This is based upon  
16 test year. I'm not sure I understand why you believe  
17 that that's an important factor in -- in throwing  
18 November off.

19 A. I guess I -- I believe what I heard Staff to  
20 say that if November was too high, that another month  
21 must have been too low. Because it all comes off the  
22 same line.

23 And we did not add back anything to what might  
24 be perceived as a month that was too low. And -- and I  
25 guess the -- the way I analyzed it was to say these

1 other months are almost at 65 anyway, and there was no  
2 place -- you know, if I -- if I'm gonna reduce  
3 November, there's no place to add it back to in these  
4 other months because they're almost -- they're almost  
5 already at their cap.

6 So that's why I -- I tried to look at each  
7 individually to see if there was another month that was  
8 off and I didn't find that to be the case. Because it  
9 is capped, there's nowhere to add it back.

10 So if November's -- November's truly too high  
11 and should be reduced, there's no where to add it back  
12 because of the cap. That's what I'm saying.

13 Q. Are you saying that this -- this methodology  
14 doesn't work with an -- with the -- under a block  
15 system, because you've got an artificial cap that you  
16 don't get an average somehow?

17 A. I don't -- I don't believe their method  
18 is -- is -- is a hundred percent accurate, because we  
19 do use a --

20 Q. Well, there isn't any method that is a hundred  
21 percent, is there?

22 A. Well, not a hundred percent. But, I mean, I  
23 do believe there's a flaw in the method with regard to  
24 Block 1.

25 Now, they use the -- the same method in regard

1 to total use per customer and that approximates  
2 our -- our methodology.

3 But with regard to just using this for  
4 Block 1, they're comparing the Block 1 use per customer  
5 to the total use per customer. And I -- and I just  
6 think that the cap is in some way distorting the result  
7 and -- and as I tried to pin down where it was, it  
8 seems to be in November.

9 Q. Is that your theory? Is that why it's off, or  
10 do you know that that's the case?

11 A. I would say it's my theory of why it's off,  
12 because I -- I -- I basically wanted a history just to  
13 check the reasonableness of the methodology.

14 Q. And -- and -- and his-- historically you --  
15 the -- the figures that you used produced a -- a result  
16 that's lower than this result from the Staff's  
17 methodology, is that correct, under the data that you  
18 employ?

19 A. Historically this method would produce a  
20 higher Block 1 usage in the winter than what I would  
21 think is reasonable based on hour history and --

22 Q. In other words, you doubt --

23 A. -- and our methodol-- and our methodology  
24 based on our tests.

25 Q. Yeah. But -- but that -- and so you believe

1 that that explains the reason that you're finding that  
2 discrepancy, but that's your theory?

3 A. That's my theory, yes.

4 Q. Okay. And I'm following you now.

5 Now, if -- let me -- let me back up. I got  
6 sidetracked on that issue.

7 You -- you were aware of Staff's methodology  
8 in calculating -- how they calculated the therms per  
9 customer prior to the stipulation -- the stipulation as  
10 being signed?

11 A. Yes --

12 Q. Would that be correct?

13 A. I was familiar with the methodology, yes.

14 Q. Do you know whether Staff was familiar with  
15 your methodologies for calculating that same  
16 amount -- that same figure?

17 A. I would believe they should -- should be  
18 familiar with how we have done it, yes.

19 Q. Yeah.

20 A. We've -- we've both basically used the same  
21 methodologies in the past.

22 Q. Well, I'm confused. I thought I understood  
23 you to say a while ago you --

24 A. We used --

25 Q. -- you were using a different methodology than



1 Staff?

2 A. We are -- we have both consistently used  
3 different methodologies in the past, yes, sir.

4 Q. Okay. But in the past --

5 A. Uh-huh.

6 Q. -- the results have been about the same under  
7 the old rate design?

8 A. The results have always been slightly  
9 different, but the materiality of that difference was  
10 not a material matter under the old rate design,  
11 because the difference between the Block 1 and Block 2  
12 margin was very -- was very little.

13 It's only under this new rate design that --  
14 that our difference in methodologies becomes much more  
15 material than what it has been in past cases.

16 Q. And -- and at what point in time did you  
17 become aware of that?

18 A. Well, as we -- as we moved into looking at  
19 this rate design harder and generating the -- the  
20 revenues that would come out of it, that's when we  
21 realized that our difference was becoming a lot  
22 greater.

23 I did not know what -- exactly what the new  
24 rates were gonna be coming out of this new -- new rate  
25 design. But in putting the final billing determinants

1 together and pricing those things out, it was -- it  
2 was -- it was obvious that our difference had grown  
3 by -- by a substantial amount over what our -- what --  
4 or what the difference had been in the revenue  
5 requirement portion of the case.

6 Q. Okay.

7 A. And what would have been there had we used the  
8 weather mitigation clause over the weather mitigation  
9 rate design solution.

10 Q. And -- and was that awareness prior to the  
11 parties being in here on the stipulation hearing,  
12 which, I believe, was September the 16th of this year?

13 A. Yes. Because I -- I had attempted to correct  
14 for that in this September 11th email, so it was prior  
15 to the 16th of September.

16 Q. So you were aware that it produced a  
17 difference and you communicated that to the other  
18 people who you work with at Laclede?

19 A. That that was -- that that was the underlying  
20 reason for the adjustment I had put in this email, yes.

21 Q. And that -- and you -- and so they were aware  
22 that there was a -- there was a difference in -- in the  
23 amount resulting from your methodology as to -- as  
24 opposed to the methodology that had always been used by  
25 Staff in calculating the same thing?

1       A.    Yes.

2       Q.    I don't remember anybody bringing this issue  
3 to the Commission --

4       A.    Well, I --

5       Q.    -- on September the 16th.  I -- and I -- I'm  
6 not really directing that at you, ma'am.

7               But I don't recall that issue being raised on  
8 September the 16th.

9       A.    Well, I think that it was the -- I guess -- I  
10 guess, the Company's belief that -- that the billing  
11 determinants that I had sent were -- were okay with the  
12 Staff and that there was no longer an issue under that  
13 basis.

14       Q.    But you -- you've already testified that at  
15 that point in time it was already -- the parties had  
16 already entered into the stipulations that this issue  
17 impacts, am I correct, by that point in time prior to  
18 September the 16th?

19       A.    I guess it was unclear to me as exactly what  
20 billing determinants we were agreeing or using under  
21 the new rate design and --

22       Q.    Because you knew -- you knew the Staff had  
23 always used a different methodology than what you had  
24 employed in the past -- at least that's what I'm  
25 understanding you to say.

1           A.    We have, but in -- in other cases we have --

2           Q.    And then you took it upon yourself, which I  
3   don't -- I'm not suggesting criticism -- you took it  
4   upon yourself to then check the two methodologies to  
5   see which one you thought should be utilized based upon  
6   calculations that you came up with on historical --  
7   historical data and concluded that this information  
8   should be given -- that -- that your methodology was  
9   correct; isn't that correct?  Am I following -- am I  
10  following that so far?

11          A.    Yes, I believe we needed to make a future  
12  adjustment to reflect the -- the -- to -- to be able to  
13  materialize the -- the revenues that were being agreed  
14  to.

15          Q.    Okay.  And -- and -- and after you went  
16  through all of that, you gave -- that information,  
17  then, was -- was translated in some form on an email or  
18  something to -- to Staff of -- of -- of the Public  
19  Service Commission; is that right?

20          A.    Yes.  That was embedded in what I emailed the  
21  Staff.

22          Q.    It was embedded.  And it was a result -- the  
23  result -- the bottom line was that it showed that that  
24  adjustment that -- that you made or -- or putting the  
25  numbers down based on your methodology, not Staff's on

1 calculating the billing determinants?

2 A. That's true. But it was -- it was not clear  
3 to me if we were using our filed billing determinants,  
4 their filed billing determinants or something different  
5 that it was being used in the rate design process.

6 And my expectation was that when I sent this,  
7 we would have further discussion on it. It was --

8 Q. But there was never any more discussion on it  
9 until --

10 A. Well, because of our belief --

11 Q. -- after the stipulation hearing?

12 A. Because of our belief that the Staff was okay  
13 with the level that we had sent them.

14 Q. You didn't -- you didn't specifically say,  
15 we've got two methodologies here. We're getting  
16 two different results, and it's costing -- there's a  
17 million-dollar difference. We need to work this out.  
18 Do you -- you didn't do that, did you

19 A. No, I didn't -- I did not do that.

20 Q. And you don't know of anybody at Laclede that  
21 did it either, do you?

22 A. Not to my knowledge.

23 Q. So we had this -- the difference and -- you  
24 know, my biggest problem right now is that we didn't  
25 know about it up here. I -- I mean, we approved the

1 stipulation and I heard everybody come up here that day  
2 and tell me how they -- everybody was in agreement.  
3 Everybody's in agreement on everything. We spent  
4 significant amounts of time.

5 Were you here that day?

6 A. No, I was not.

7 Q. Well, I'm sorry.

8 Anyway, I think I -- I think I understand  
9 where we are now. And thank you very much, ma'am.

10 JUDGE THOMPSON: Thank you, Commissioner.

11 Commissioner Forbis?

12 COMMISSIONER FORBIS: Thank you.

13 QUESTIONS BY COMMISSIONER FORBIS:

14 Q. Hello there.

15 A. Hello.

16 Q. I just have a couple questions, too. And I'm  
17 showing -- I'm trying to figure out this business with  
18 the cap and how you think that's a flaw in this Staff's  
19 regression model.

20 Okay. So if I understand it correctly,  
21 because it doesn't allow the re-- the cap does not  
22 allow the array of data points to go over 65, and,  
23 therefore, theory would be it's artificial it flattens  
24 out the curve; is that right?

25 A. Yes.

1 Q. Am I understanding it correctly?

2 A. Yes.

3 Q. Okay. So if -- say you ran a regression model

4 and you didn't have the cap in it so that the model

5 itself would reflect true historic use, but then the

6 cap -- the cap is there to say from -- from an array

7 perspective, right, that you can't get more than

8 65 therms in a month or you -- you'd bump into another

9 category, right --

10 A. Yes.

11 Q. -- for -- for billing?

12 So what -- what would be the effect of

13 removing the cap in the regression model that's being

14 run by Staff and -- and allowing the -- the -- all the

15 data points to be there?

16 A. And that -- in the -- in the regression that

17 they run for overall total use per customer that --

18 that is the case. There's no cap and --

19 Q. Right.

20 A. -- and that produces --

21 Q. Okay.

22 A. -- a level of total usage that is comparable

23 to what our method produces.

24 Q. So the first regression area, the cap's not

25 factored in. So the regression -- the second

1 regression that they -- that Staff uses to figure out  
2 the Block 1 therms since there is actual -- a cap  
3 actually there, then the cap should be in the model.

4 But then you're saying that that throws the  
5 model off. Am I getting it all straight?

6 A. Yeah, there's -- there's a regression that's  
7 run to do the total use per customer. And then my  
8 understanding of their method is that there's another  
9 regression run that -- that basically plots the Block 1  
10 use per customer against the total use per customer.

11 Q. Okay.

12 A. So I think as you --- as you plot that against  
13 the total use for customer, the total use for customer  
14 can be increasing, depending on how cold it gets. But  
15 the Block 1 side is capped.

16 So as you -- as you plot that percentage,  
17 one side can be going up to any -- any level basically,  
18 but the other side is capped. And I just -- I'm  
19 not -- I probably don't have the right statistical  
20 terminology, but I don't -- I just don't think it  
21 produces the -- an accurate reflection of what's -- is  
22 really going on with that first block.

23 Q. Well, that -- that's where I'm struggling,  
24 too. I -- I can't seem to get these two reconciled  
25 from not being a mathematician. This -- this notion of



1 the cap makes some sense to me, but I don't know how  
2 you would do it.

3 Let me ask you: So you -- for the second --  
4 the second calculation about the -- determining how  
5 many therms are in Block 1, so you don't do a  
6 regression at Laclede?

7 A. No, we don't.

8 Q. And you might have gone through this before,  
9 but could you tell me what -- so what method do you use  
10 to figure out that Block 1 therm?

11 A. We calculate the -- the total therms that  
12 are -- that make up the weather adjustment. And then  
13 we assign those weather therms to the first or second  
14 block, depending on what the actual use per customer  
15 was during the month for each rate and revenue class as  
16 opposed to the -- the Staff, I think that is looking at  
17 the -- we're -- we're basically working incrementally  
18 off of those therms, whereas I think the Staff is  
19 taking the sort of normalized therms and attempting to  
20 apportion them back into Block 1 and Block 2 on -- on  
21 another regression method.

22 Q. Can I read the transcript, make sure I  
23 understand. Tell me again what you would do.

24 A. We determine the weather therms and then we  
25 assign those therms just incremental change in total

1 usage, based on how the actual usage has fallen in  
2 those months.

3 Q. Okay. And you think that more accurately  
4 reflects, then, what's going on because of the cap and  
5 so forth, rather than doing a regression model?

6 A. I think that approaches -- is -- is just as  
7 good, yes.

8 Q. Just as good?

9 A. Because I think that --

10 Q. Okay.

11 A. There's -- there's various methods, I guess,  
12 that you can do and so maybe there's a -- a third one  
13 yet that's better than both. I don't know -- I don't  
14 know what it would be offhand.

15 But there's -- you know, the -- the result is  
16 different, depending on which one you use. And -- and  
17 I think the -- the cap and -- the fact that there is a  
18 cap in there and applying a percentage of total use per  
19 customer, then when there is no cap, I think is, you  
20 know, my -- my view of how this is working is what's  
21 causing their Block 1 therms to come out too high,  
22 generally, over our methodology.

23 Q. And the -- the -- the non-regression model is  
24 the one you've always used for that second set of  
25 calculations, right? And it's just this time you had a

1 big divergence of outcome?

2 A. We've used the same method that we've used  
3 historically, and I think Staff has used the same  
4 method that they have used historically.

5 We've had a difference in those results  
6 historically.

7 Q. Uh-huh.

8 A. It's just that under the old rate design that  
9 difference did not produce a -- a material dollar  
10 difference because of the rates that were -- that --  
11 that applied to both blocks.

12 Q. Okay. Now, maybe I might be missing this,  
13 too. So if I understand it, what -- what you've done  
14 is take this -- this Staff's outcome for the other  
15 eight months and then just change November, right?

16 A. That's, in effect, how it -- how it ended up.  
17 That wasn't in-- my intention as I started. I was  
18 trying to determine overall why their -- while the --  
19 why the winter Block 1 therms for all the six months  
20 were different from our method.

21 And as I tried to look at it month by month,  
22 since most of the other winter months are -- are  
23 generally the same between methods, because the  
24 four winter months are always close to 65.

25 The place for the difference to be was in the

1 month of November. And -- and again, we both did it  
2 off of test year, which was limited to twelve months.

3 Q. Uh-huh.

4 A. I only went to this kind of alternative method  
5 to check the reasonableness of -- of theirs versus  
6 ours. And as I tried to look at history, I thought  
7 the -- the re-- methods -- at least our method produced  
8 a result that was closer to what we see historically on  
9 actual basis and what that method had produced.

10 Q. And I -- I could -- I could track with you  
11 there. Where I'm getting confused, it seems like what  
12 we're doing right now is mixing two models together.

13 And I -- I -- that -- that -- so wouldn't it  
14 make -- okay. Question: Would it -- would it be  
15 better to just totally substitute your model and say,  
16 here's what we came up, rather than taking the Staff  
17 model and then changing one month in it? I mean,  
18 that's --

19 A. If we -- if we did that, we would essentially  
20 be at the same place --

21 Q. Okay.

22 A. -- because --

23 Q. But I guess I'm thinking -- but from -- from a  
24 purity standpoint, that would make more sense if you  
25 just -- instead of trying to put two of the models

1 together?

2 A. Right. If -- if we were to argue methods  
3 and -- and select ours over Staff's, I think we would  
4 essentially be back at, you know, approximately  
5 213 million therms, which is what our direct filing was  
6 based on, I believe.

7 Q. Okay.

8 A. What I tried to do, though, was -- you know,  
9 since we -- we really had no argument with Staff over  
10 the customer levels and the -- and the total use per  
11 customer and the -- the degree days that we had agreed  
12 to, I tried to stick with -- you know, stay with  
13 everything else that -- that we had agreed to and just  
14 try to bring out this one item as being something that  
15 we probably needed to look further at, in light of the  
16 new rate design.

17 Q. I'll have to think more about how this -- the  
18 model -- the cap -- I understand where you're going. I  
19 just have to process it out a little more on the cap.

20 So -- so you're -- your concern is that it was  
21 from the first -- or the second regression was done  
22 because of the cap, then nothing was added in to plot  
23 the line that went over 65 when, in fact, actual usage  
24 could and so that artificially keeps it low, is  
25 that -- am I understanding?

1       A.    Yes.  That's the result of what I think their  
2   method does and why it's producing a result that's  
3   different than what our -- what our method does or what  
4   we simply see historically.

5       Q.    I have to -- I have to ask this.  Have there  
6   been prior rate designs where there's caps like this  
7   before like this or is this something -- do you know?

8       A.    There -- there's block -- I mean, there's --  
9   there's always blocking.

10      Q.    This has -- this has always been done before  
11   and it hasn't affected the regression model outcome  
12   until now?

13      A.    The difference is -- I mean, the difference in  
14   methodologies has been there.  It's just when you apply  
15   the dollars to those differences, they were not  
16   material differences under the old rate design.

17      Q.    Okay.

18      A.    Because we were generating revenues from both  
19   Block 1 and Block 2 under the old rate design --

20      Q.    Okay.

21      A.    -- with just a small differential between the  
22   two.  It's -- it's now where you go to getting all of  
23   your revenues recovered in -- in the first block and  
24   none in the second block, but our difference has become  
25   augmented by that.

1 Q. Substantial in that's what you think caused  
2 your cap, then, to be the problem?

3 A. Right.

4 Q. Okay. Had you ever had the debate with Staff  
5 over which model is preferable, yours or the regression  
6 or it just never came up?

7 A. Probably in -- in prior cases we've -- we've  
8 had debates over various pieces of our weather  
9 normalization methodologies.

10 But this -- this one piece in the past has not  
11 presented a -- a material difference in our overall  
12 results in those -- in those normalizations.

13 COMMISSIONER FORBIS: Okay. Thank you.

14 JUDGE THOMPSON: Thank you, Commissioner.

15 I don't have any questions for this witness.  
16 Recross based on questions from the Bench.

17 Mr. Micheel?

18 MR. MICHEEL: Yes, Your Honor.

19 RECROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Commissioner Gaw asked you some questions  
21 in -- with respect to the old rate design and the  
22 method that Laclede Gas Company uses. Do you recall  
23 those questions?

24 A. Yes.

25 Q. And I believe in response to one of the

1 questions, you indicated that there was a flaw, in your  
2 mind, for the November calculation of the Staff's  
3 billing determinants; is that correct?

4 A. The flaws in -- I believe in their Block 1  
5 methodology that created the total Block 1 therms and  
6 that's the -- the piece that I believe our difference  
7 is there.

8 Q. And that flaw exists because we -- in -- in  
9 this case we agreed to adopt the weather mitigation  
10 rate design set out in Mr. Cline's rebuttal testimony;  
11 is that correct?

12 A. I'm sorry. Repeat that. The flaw exists for  
13 that reason?

14 Q. Yes. Because we've adopted this weather  
15 mitigation rate design. And I believe your testimony  
16 has been here today it's not been a big deal in  
17 previous cases, because we weren't trying to recover  
18 the line share of what the Company calls -- and I put  
19 this in quotes -- "fixed costs from the first block";  
20 is that correct?

21 A. The flaw in their -- in methodology is  
22 not -- not anything to do with this case, no. It's  
23 the -- it's the -- the materiality that difference  
24 carries under the new rate design.

25 Q. And so it -- it's only material under the new



1 rate design; isn't that correct?

2 A. Yes.

3 Q. And at the time Laclede filed its rebuttal  
4 testimony, shouldn't Laclede have been aware of the  
5 fact that it was important to ensure what was in the  
6 first block for that very reason -- that it would  
7 become important if the Commission decided to adopt  
8 their rate design?

9 A. Ob-- obviously this first block is -- is going  
10 to be -- needs to be looked at more clearly. It's a  
11 new rate design; it was new to everybody. Yeah, it  
12 should have been focused on more heavily than it was.

13 Q. And -- and that new rate design was proposed  
14 by Laclede Gas Company; isn't that correct?

15 A. I would defer to Mr. Cline. I believe that  
16 was his proposal.

17 Q. And at the time Laclede filed its rebuttal  
18 testimony with the new proposed rate design, the  
19 Company was aware, was it not, from Staff's work papers  
20 and past history of Staff's method of doing billing  
21 determinants and determining billing determinants;  
22 isn't that correct?

23 A. Yes. Although as -- as we've done in past  
24 cases, there has -- there has been adjustments to  
25 billing determinants when -- when there was -- when

1 final degree days were put in or -- or whatever.

2 When -- when those final things were made -- were  
3 determined and both sides looked at the resulting  
4 billing determinants.

5 I means, it's been our approach, but it's also  
6 both sides look at what comes out of it and agrees to  
7 it in the end.

8 Q. I believe in response to Commissioner Gaw you  
9 also indicated that it wasn't on or close to  
10 September 11th that you were able to make the  
11 determination that was -- that November was the  
12 important date because of the new rate design; is that  
13 correct?

14 A. I had not tried to focus on where the  
15 difference was between our method and Staff's method  
16 until later in the process and when the new rate design  
17 was accepted.

18 Q. And -- and when did you convey your specific  
19 concern about the November rate design to the  
20 parties -- or the November billing determinants -- the  
21 first block winter billing determinants. When did you  
22 specifically convey that issue to the parties?

23 A. I guess I -- I didn't directly convey anything  
24 to the parties. That was done -- done through  
25 Mr. Cline.

1           But Staff on, I think, October the 16th sent  
2   their adjusted weather billing determinants. And I had  
3   at this point tried to see what made sense from our  
4   end, and that was when we conveyed that we had a  
5   difference there.

6           Q.   So on November 11th you knew there was a  
7   problem with the November -- or on September 11th you  
8   knew there was a problem with the November billing  
9   determinants and the first winter block rate, but you  
10   didn't specifically con-- convey that to the Office of  
11   the Public Counsel because your September 11th email  
12   wasn't even sent to the Office of the Public Counsel;  
13   isn't that correct?

14          A.   I was asked to send an email to -- to Anne  
15   Ross and Dan Beck to start reviewing billing  
16   determinants so that we could -- both sides, I suppose,  
17   could put together what was needed for September 16th.

18                The reason that we never got into a further  
19   discussion was our belief that Staff was okay with  
20   where we were, in which case there was really not a  
21   material issue here anymore as long as Staff was okay  
22   with what we had, you know, put out.

23          Q.   And -- and I believe you've testified earlier  
24   that there was no specific mention of this November  
25   adjustment in your September 11th email; isn't that

1 correct?

2 A. Not specifically. Just in -- in the resulting  
3 billing determinants that were out there for review.

4 Q. I think the term that you've been using  
5 throughout is it was embedded in the spreadsheet; isn't  
6 that correct?

7 A. In the adjustment sheet it was, and it was in  
8 the final billing determinants that were out for  
9 review, yes.

10 Q. What do you mean when you say it was embedded?

11 A. Well, I'd say -- I -- I -- it was -- I'd say  
12 that it was included in the -- the adjustments that I  
13 put together that resulted in the final numbers that I  
14 sent to the Staff to be reviewed just as -- had Staff  
15 sent me something, I guess I would have looked at all  
16 of these numbers and tried to make sure that I knew  
17 what was being adjusted.

18 We have hu-- historically compared billing  
19 determinants to make -- to make sure that we were in  
20 agreement and -- and that both sides had picked up all  
21 of the adjustments that needed to be made.

22 Q. I -- I believe in response to Commissioner Gaw  
23 you said that you can only adjust therms down and not  
24 up; is that correct?

25 A. I don't -- I don't believe I said we can only

1    adjust therms down and not up.  I said that I didn't  
2    believe that any of the other months needed to be  
3    adjusted upward because of the cap.

4            I believe that November needed to be adjusted  
5    downward because of the overall winter result, but  
6    there was no other month that needed to be adjusted  
7    upward, in my opinion.

8            I mean, had there been another month that  
9    looked like it was too low, it would have made sense to  
10   adjust another month.  The idea was to look at the  
11   total therms for Block 1 and make sure that they were  
12   representative of what would materialize under normal  
13   weather conditions and produce the revenue requirement  
14   that had been agreed to.

15        Q.    Both Commissioner Gaw and Forbis asked you  
16   numerous questions about -- about the -- the -- the  
17   alleged 65 therm cap.  Do you recall those questions?

18        A.    Yes.

19        Q.    Are you saying that Laclede Gas would support  
20   bif-- different billing determinants if it's rate  
21   design was different?

22        A.    Under the old rate design, whether we used  
23   Staff's or used ours, there was no material difference  
24   in the rates that were produced or the revenue  
25   requirement that was produced.

1       Q.    And when -- when Laclede filed this new rate  
2   design proposal in Mr. Cline's rebuttal testimony, is  
3   it your testimony that your company was not aware that  
4   there would be a different outcome, based on the -- the  
5   historical billing determinants?

6       A.    I'm not sure at what point in the process the  
7   dollar value that was attributable of that difference  
8   was -- was realized by all the -- all the parties in  
9   our Company and what we were doing with this.

10      Q.    Well, with respect to your Company, your  
11   Company didn't realize the difference until on or about  
12   September 11th; isn't that correct?

13      A.    Right. As we put these together, yes.

14      Q.    Okay. In -- on response to Commissioner  
15   Forbis, he asked you about the -- the mixing and  
16   matching of Laclede's method with -- with the Staff  
17   method. Do you remem-- do you recall that question?

18      A.    Yes.

19      Q.    Have you attempted to run your November  
20   analysis for the other eleven months?

21      A.    The analysis where -- where we looked at  
22   history?

23      Q.    Yes.

24      A.    I ran it for the six winter months. And I  
25   believe we sent a copy to Staff of what the results

1 were for those other months.

2 Q. Did you provide a copy of that to the Office  
3 of the Public Counsel?

4 A. I personally did -- didn't. I personally  
5 provided it to -- to Mike Cline, who provided it to the  
6 Staff, I believe.

7 MR. MICHEEL: That's all I have, Your Honor.

8 JUDGE THOMPSON: Thank you, Mr. Micheel.

9 Mr. Schwarz?

10 RECROSS-EXAMINATION BY MR. SCHWARZ:

11 Q. Commissioner Gaw when -- I believe when he was  
12 asking you about the spreadsheet asked you if the Staff  
13 was familiar with the method you used. Do you recall  
14 that?

15 A. Yes.

16 Q. And I believe you said that Staff was. Now,  
17 would Staff have been familiar with this methodology?

18 A. No. That method was not a filed methodology  
19 by -- by our -- in our direct filing.

20 Q. And it hadn't been used previously by the  
21 Company in any other rate cases?

22 A. No. As I said, I used it strictly as  
23 reasonable -- reasonableness check on -- on the results  
24 of both filed methods.

25 Q. So that to the extent that you were saying

1   that Staff was familiar with the -- the method that you  
2   had used, that's the method that you had used in your  
3   direct --

4       A.    In my --

5       Q.    -- filing (indicating)?

6       A.    Yes

7       Q.    But -- but not the methodology that Laclede  
8   employed in making this November adjustment?

9       A.    Yes. I was referring to the methodology in  
10   our direct filing.

11           JUDGE THOMPSON: For the sake of the record,  
12   Mr. Schwarz was referring during these questions to the  
13   chart that was drawn by Mr. Beck to illustrate the  
14   method that he believes Laclede had used to produce its  
15   N star value.

16           Please proceed.

17   BY MR. SCHWARZ:

18       Q.    Can you tell me when the work papers for the  
19   analysis of the other winter months using this  
20   methodology were provided to Staff?

21       A.    After October 16th and we were discussing  
22   the -- the rationale that we had for making the  
23   adjustment.

24       Q.    Okay. So it -- it wasn't provided  
25   contemporaneously with the September 11th and



1 September 13th notices that were provided?

2 A. No.

3 Q. To your knowledge, has there ever been a  
4 proposed change in the billing determinants after the  
5 stipulations are -- have been filed and after the  
6 parties have presented the stipulation to the  
7 Commission?

8 A. Not to my knowledge, but I believe that --  
9 that the billing determinants were usually more tied  
10 down or we did not have this kind of a rate design  
11 change in -- in past cases.

12 Q. Just for -- for clarity of the record now, the  
13 on-the-record presentation was proposed to the -- was  
14 made to the Commission on the 16th of September, and my  
15 calendar shows that to be a Monday; is that consistent  
16 with your -- and what I'm driving at is that the  
17 September 13th email would have been sent the Friday  
18 before a Monday on-the-record presentation; is that  
19 correct?

20 A. I don't know the exact days, but that sounds  
21 correct, yes.

22 MR. SCHWARZ: Nothing further.

23 JUDGE THOMPSON: Thank you, Mr. Schwarz.

24 Mr. Pendergast, redirect?

25 MR. PENDERGAST: Thank you. I'll try and be

1     brief, Your Honor.

2     REDIRECT EXAMINATION BY MR. PENDERGAST:

3           Q.     You were asked a number of questions about the  
4     methodology that you used as a check on the  
5     reasonableness for Staff's approach. Do you recall  
6     those questions?

7           A.     Yes.

8           Q.     And you indicated that, I believe, you were  
9     looking at the approach the Company had taken and its  
10    rate design and its billing determinants, establishing  
11    those and the approach that Staff had taken; is that  
12    correct?

13          A.     Yes.

14          Q.     And do you know did the -- the Staff ever, to  
15    your knowledge, come up and express a problem with the  
16    billing -- the billing determinants that were  
17    underlying the Company's rate design?

18          A.     Not to my knowledge, no.

19          Q.     They were significantly lower than Staff's  
20    billing determinants, were they not?

21          A.     The rate design billing determinants?

22          Q.     Yes.

23                 JUDGE THOMPSON: If I -- if I could interject  
24    just for a moment. I'd urge you, Mr. Pendergast, and  
25    also the witness to please use the microphone.

1 MR. PENDERGAST: I -- I apologize.

2 JUDGE THOMPSON: Thank you very much.

3 BY MR. PENDERGAST:

4 Q. Yes and to rephrase the question, the billing  
5 determinants as utilized by the Company was  
6 significantly lower than the Staffs, or at least the  
7 therm volumes in Block 1 for the residential winter  
8 rate; is that correct?

9 A. Yes. I believe what Mr. Cline was using in  
10 rate design were -- were different than the billing  
11 determinants than what we had at this point.

12 Q. And did the Staff ever express to you that at  
13 the time they agreed to that rate design, that those  
14 billing determinants were going to have to change and  
15 they were going to have to be Staff's billing  
16 determinants?

17 A. No.

18 Q. You were asked a number of questions about  
19 your September 11th email to the Staff, and whether or  
20 not your adjustment was embedded in various therms that  
21 you used.

22 Can you tell me, did -- did you present for  
23 each and every rate block the actual therms that the  
24 Company believed ought to go into each and every one of  
25 those rate blocks?

1           A.    Yes, I did.

2           Q.    And that included the therms for the winter  
3   period for the residential general service class; is  
4   that correct?

5           A.    Yes, it did.

6           Q.    And did you in -- in doing that refer the  
7   Staff back to the analysis that you had gotten from  
8   Ms. Ross about two months before?

9           A.    Yes.

10          Q.    That was in the same format?

11          A.    Yes.

12          Q.    Was it your expectation that Staff would spend  
13   a few minutes and sit down and take the one page that  
14   you had sent to them and the other page that they had  
15   given to you two months before, compare what the therms  
16   were in each billing block, and if they had concern  
17   about them, they would go ahead and call you to discuss  
18   it?

19               MR. SCHWARZ:  I'm going to object.  It calls  
20   for speculation on what Staff's reaction would be to  
21   receiving pages and pages containing thousands of  
22   numbers.

23               MR. PENDERGAST:  I -- Your Honor, first of  
24   all --

25               JUDGE THOMPSON:  The objection is overruled.

1 The witness may answer, if she can.

2 Please proceed.

3 THE WITNESS: My -- my personal expectation  
4 when I sent this email was that we were renewing the  
5 dialogue, I guess, on what final billing determinants  
6 should be.

7 And I -- I -- my expectation was that when  
8 Staff received this, we would -- they would -- they  
9 would have their view of what they would be. And --  
10 and if they had redone their weather calculation on the  
11 degree day adjustment and so forth, then we would -- we  
12 would have that discussion as to why there were  
13 differences or what the appropriate level would be.

14 That -- that didn't happen. And -- and I  
15 had -- I had no response from Staff, other than I guess  
16 on Mr. Cline's impression that the Staff was okay with  
17 what I had sent.

18 BY MR. PENDERGAST:

19 Q. And that was what Mr. Cline had communicated  
20 to you?

21 A. Yes.

22 Q. Did Staff ask for any additional information  
23 after September 11th regarding the billing determinants  
24 and therms that you had provided on September 11th?

25 A. Yes, I believe Ms. Ross asked for some further

1 detail on the -- on the large user changes that I had  
2 included, and I sent her that information.

3 Q. And when -- when did that happen?

4 A. Probably the following day. I would have to  
5 check, but I think it was the following --  
6 September 12th probably.

7 Q. But Staff never requested anything else  
8 regarding any of the other block therm amounts that  
9 were included in your analysis for any of the other  
10 rate schedules?

11 A. No, they did not.

12 Q. Can you tell me -- we -- we've had -- had some  
13 discussion about the 58.2 and the caps. Does the 58.2  
14 utilized by Staff in -- for the November cycle billing  
15 month in any way reflect or has it been based on any  
16 usage over 65 therms?

17 A. I'm sorry. I don't understand the question.

18 Q. Does the 58.2 therms reflect an av-- it's --  
19 it's an average; is that correct?

20 A. It's an average of the first block therms,  
21 yes.

22 Q. Okay. And that would be therms up to 65?

23 A. Yes.

24 Q. Okay. And you were asked questions about  
25 having presented an analysis of the entire six months.

1 Do you recall that?

2 A. Yes.

3 Q. And can you just briefly indicate what that  
4 analysis showed?

5 A. That analysis showed that by the six winter  
6 months the Staff average first block use per customer  
7 was consistent with historical experience for five of  
8 the six months.

9 That November was the one month that appeared  
10 did not fit with the historical results that we had  
11 seen in recent years.

12 Q. So in -- in looking at those six months and  
13 concluding that the November month seemed to be over  
14 and higher than the historical experience, you didn't  
15 see anything in the other five months that would have  
16 suggested to you that they were somehow under  
17 historical experience by any significant amount, did  
18 you?

19 A. No, I did not.

20 Q. With the exception of November, they all  
21 seemed to be pretty much in line with the historical  
22 experience?

23 A. In my opinion, yes.

24 Q. And just a -- to ask you, the 58.2 therms that  
25 you did have a concern about, can you tell me when the

1 last time the Company actually experienced therms --  
2 average therms like that during the November cycle  
3 billing month?

4 A. I believe it was 1997 under weather conditions  
5 that contained significantly colder weather. I believe  
6 in 1997 the average Block 1 use per customer was 58 to  
7 59, in that range, but it was with 600 degree days --

8 Q. Okay.

9 A. -- as opposed to the normal level that had  
10 been agreed to of roughly 482.

11 Q. So to produce what Staff says based on normal  
12 weather ought to be 58.2 in this case, it took  
13 600 degree days to do that four years ago?

14 A. Yes.

15 Q. Compared to the 482 degree days that is  
16 applicable to November on a normal basis in this case?

17 A. Yes.

18 Q. Can you roughly tell me what the percentage  
19 difference is between the 600 and the 482?

20 A. I haven't done the math, but I believe 20 -- I  
21 heard 18 to 24 percent, something -- 16, 24 percent,  
22 something in that range.

23 Q. So to get to the 58.2 that Staff says is a  
24 reasonable normal level of expected usage in November,  
25 it would -- the last time we did it, it was actually



1 somewhere in the neighborhood of 20 percent colder than  
2 the normal that's being used in this case; is that  
3 correct?

4 A. That's correct.

5 MR. PENDERGAST: Thank you. I have no further  
6 questions.

7 JUDGE THOMPSON: Thank you, Mr. Pendergast.  
8 You may step down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 JUDGE THOMPSON: Do you have another witness,  
12 Mr. Pendergast?

13 MR. PENDERGAST: Yes, I do, Your Honor.  
14 Michael Cline. I call him to the stand.

15 JUDGE THOMPSON: Mr. Cline?

16 Thank you for your testimony, ma'am.

17 Please raise your right hand.

18 (Witness sworn.)

19 JUDGE THOMPSON: Thank you, sir. Please take  
20 your seat and spell your name for the reporter, if you  
21 would.

22 MR. CLINE: Michael Cline, C-L-I-N-E.

23 JUDGE THOMPSON: Thank you.

24 You may inquire, Mr. Pendergast.

25 MR. PENDERGAST: Thank you.

1 MICHAEL CLINE testified as follows:

2 DIRECT EXAMINATION BY MR. PENDERGAST:

3 Q. Mr. Cline, would you just please state your  
4 name and business address for the record.

5 A. Michael Cline, Laclede Gas Company, 720 Olive  
6 Street, St. Louis, Missouri 63101.

7 Q. And can you tell me in what position you're  
8 employed by Laclede Gas Company?

9 A. Director of tariff and rate administration.

10 Q. And in that capacity, did you have an  
11 opportunity to file an affidavit in this case, as well  
12 as testimony pertaining both to rate design issues as,  
13 well as issues that at least indirectly relate to  
14 billing determinants?

15 A. Yes, I have.

16 Q. Did you have an opportunity to review the  
17 affidavit of Ms. Hu that was presented in this case?

18 A. Just briefly, based on the time we had it  
19 today.

20 Q. And I'd like to direct your attention, if you  
21 have it -- do you have her affidavit?

22 A. Yes, I do.

23 Q. To the last page where she purports to  
24 indicate that under Staff's approach we would get  
25 86.6 percent weather protection versus 86.4 percent

1 under the Company's compliance filing. Do you agree  
2 with that analysis?

3 A. No, I do not. The key point that's missing  
4 here is that Ms. -- Mrs. Hu's analysis assumes that for  
5 the Company to -- even under the Staff's rates to  
6 achieve the 86 percent, 87 percent weather protection  
7 for the Company to -- to get there, it has to achieve  
8 first block therms consistent with the design of the  
9 rates.

10 First block therms at 215,754,690. The -- the  
11 problem we have had with the -- this whole issue with  
12 respect to Block 1 therms is that we don't believe that  
13 those Block 1 therms are -- are, in fact, achievable  
14 under normal weather.

15 And that if, in fact, the Block 1 therms were  
16 213,079,611, I believe that's -- I think Ms. -- Ms. Hu  
17 confirmed this in her -- or on the stand that that  
18 would result in a million dollar -- roughly a  
19 million-dollar reduction in -- in the Company's  
20 revenues -- shortfall of recovery of its costs.

21 And I believe that would probably reduce the  
22 Company's weather protection from 87 percent down to  
23 close to 80 percent.

24 Q. Okay. And -- and you have prepared a work  
25 paper that shows how you arrived at that conclusion?

1       A.    I prepared a work paper that is similar to  
2   Ms. Hu's, but some of the -- some of the numbers are  
3   different.

4           MR. PENDERGAST:  And -- could I approach the  
5   Bench and hand this out?

6           JUDGE THOMPSON:  You may.

7           MR. MICHEEL:  Thanks for sharing this.

8           JUDGE THOMPSON:  Thank you, sir.

9           Now, has this been filed or not?

10          MR. PENDERGAST:  No, it's not.

11          JUDGE THOMPSON:  It has not.  Okay.  So we'll  
12   have to go ahead and mark it.

13          Does anyone recall where we were up to in the  
14   exhibits in this case?  You're laughing, Mr. Schwarz.  
15   I guess that's an unreasonable request at this point.

16          MR. MICHEEL:  No, I -- I have it, Your Honor.

17          JUDGE THOMPSON:  We hadn't topped 100, had we?

18          MR. MICHEEL:  The last exhibit admitted into  
19   evidence is -- was Exhibit No. 75, Your Honor, the  
20   testimony of Mark Burdette.

21          JUDGE THOMPSON:  Very well.  We'll go ahead  
22   and mark this as Exhibit 76.

23           (EXHIBIT NO. 76 WAS MARKED FOR IDENTIFICATION  
24   BY THE COURT REPORTER.)

25          MR. PENDERGAST:  Thank you, Your Honor.

1 BY MR. PENDERGAST:

2 Q. And, Mr. Cline, I'd like to refer you to what  
3 has been marked as Exhibit No. 76, and is that the  
4 worksheet that you discussed?

5 A. Yes, it is.

6 Q. And does that represent your analysis of what  
7 degree of reduction there would be in the weather  
8 protection afforded the Company compared to the rate  
9 design proposal it had if you were to use Staff's  
10 Block 1 therms, rather than the companies?

11 A. Yes, it -- it -- it does. And I should point  
12 out that even though this -- the starting point here  
13 and some of the underlying volumes are -- are  
14 different.

15 The key -- the key point is that there's  
16 roughly \$900,000 detriment to the Company under  
17 rates -- before the \$14 million rate increase of having  
18 the -- of -- of using the -- the Block 1 therms  
19 proposed by the Staff.

20 Q. Mr. Cline, in your opinion, are the compliance  
21 rates and tariffs that Laclede filed on the residential  
22 class consistent with and designed to produce an  
23 overall revenue requirement level of 14 million with  
24 all other rate schedules included?

25 A. Yes, they are. That was our intent. And we

1 believe it was the -- only through the use of the  
2 213 million therms for the residential Block 1 rates so  
3 we could get there -- we could assure ourselves under  
4 normal weather that that would -- we would have the  
5 \$14 million rate increase that the Commission approved  
6 in its proceeding.

7 Q. Thank you.

8 And, finally, the 88 percent that you  
9 calculated, was that underlying the -- the residential  
10 part -- underlying the 85-percent quantification that  
11 you gave in your surrebuttal testimony?

12 A. Yes, it was.

13 Q. There was also some discussion earlier about  
14 whether the Company had agreed to use Staff's billing  
15 determinants. Are you familiar with that?

16 A. Familiar with that discussion, yes, I am.

17 Q. And what is your recollection of Mr. Raab's  
18 testimony on that point?

19 A. Well, as -- I think, as we tried to point out,  
20 Mr. Raab's testimony as -- as well as mine in  
21 surrebuttal was that -- addressing an entirely  
22 different approach to the -- to the weather problem  
23 here.

24 We were addressing the Company's proposed  
25 weather mitigation clause, which did not involve this

1 significant increase in the Block 1 wintertime charge.

2 And, therefore, I -- I think it's --  
3 it's -- it's inappropriate to suggest that -- that  
4 statements made in my surrebuttal with respect to  
5 the -- the design of -- of rates and the use of billing  
6 determinants in response to something that Mr. Russo  
7 had said in his rebuttal testi-- which had to do with  
8 weather mitigation, I think just think -- just think  
9 it's -- it's -- it's -- it's inappropriate here.

10 Q. And let me ask you this: Before  
11 today -- before today, had anybody ever in any of the  
12 discussions prior with Staff suggested that the Company  
13 was precluded from using something other than the  
14 Staff's billing determinants because of anything that  
15 appeared in either your rebuttal or surrebuttal  
16 testimony?

17 A. No. Today's the first day I've heard of it.

18 MR. PENDERGAST: Okay. Thank you.

19 Given the lateness of the hour, I'll conclude  
20 my direct and tender Mr. Cline for cross-examination.

21 JUDGE THOMPSON: Thank you, Mr. Pendergast.

22 Mr. Micheel?

23 CROSS-EXAMINATION BY MR. MICHEEL:

24 Q. Mr. Cline, do you have Exhibit 76 in front of  
25 you?

1           A.    Yes, I do.

2           Q.    Do you also have Attachment C to Ms. Hu's  
3 affidavit up there with you, sir?

4           A.    Yes, I do.

5           Q.    Could you go through and indicate to me where  
6 your numbers are different on Exhibit 76 from  
7 Attachment C and why they are different?

8           A.    I'll attempt to. From -- from, like I said,  
9 the short time I had to review what your office put  
10 together, it appears that the numbers that Ms. Hu is  
11 using for the effective 20 percent warmer weather is  
12 different than what I have on Exhibit 76.

13                   Once again, I will point out that it -- it --  
14 that really the -- the starting point here, whether  
15 it's 88 percent, whether it's 87 percent is not  
16 the -- it's not the significant -- is -- it's not a  
17 significant issue.

18                   What is significant is the fact that the use  
19 of this -- of -- of the Staff's Block 1 therms will, in  
20 fact, produce --

21           Q.    Excuse me.

22           A.    -- a \$900,000 -- \$1 million reduction to the  
23 Company's revenues.

24                   MR. MICHEEL: Your Honor, I asked him to go  
25 through these sheets and indicate where his numbers



1 were different than Ms. Hu's. I didn't want a  
2 dissertation about what the end result was.

3 This is the first opportunity I've had to see  
4 Exhibit 76, Your Honor. And I'm trying to understand  
5 what the differences are between Exhibit 76 and  
6 Attachment C.

7 And I just want him to tell me which numbers  
8 are different and why. And that's the only question I  
9 asked him.

10 JUDGE THOMPSON: Well, why don't we try again.

11 MR. MICHEEL: All right.

12 JUDGE THOMPSON: Mr. Cline, could you compare  
13 the numbers and -- and if, in fact, they're different,  
14 could you point that out?

15 THE WITNESS: Yes. From what I can tell in  
16 the short time I've had to review, the OPC's analysis  
17 here would app-- the difference appears to be  
18 attributable to a -- a -- a different use of the effect  
19 of 20 percent warmer weather.

20 My numbers on Exhibit 76 would indicate that  
21 20 percent warmer weather for residential customers  
22 would be somewhere in the range of 78 million therms,  
23 3.7 million of those therms being in the first rate  
24 block to balance the second rate block; whereas the  
25 numbers in Ms. Hu's -- Ms. Hu's analysis are -- are

1 different than that.

2 I -- I -- I will admit that those numbers,  
3 from what I -- I do recall providing Ms. Hu some  
4 numbers earlier in this proceeding with respect to what  
5 I believed the Company's weather protection was.

6 And -- and -- and it's -- it's possible I  
7 provided her these sp-- these exact numbers. And as to  
8 what the difference is or why the -- why those numbers  
9 are different, I unfortunately don't have the  
10 two spreadsheets with me that -- in which I created  
11 those numbers.

12 But I -- I will stand behind the numbers I  
13 have on Exhibit 76.

14 BY MR. MICHEEL:

15 Q. Well, let me ask you this: Would you look at  
16 page 2 of 2 of Attachment A to Ms. Hu's affidavit?  
17 Well, why don't you look at page 1 first?

18 A. Take a look at page 1 first?

19 Q. Of Attachment A of Ms. Hu's affidavit. Let me  
20 know when you're there.

21 A. Page 1 of --

22 Q. Attachment A of Ms. Hu's affidavit, page 1 of  
23 2.

24 A. I'm there.

25 Q. And that's an email from a Michael T. Cline to

1 Hong Hu; is that correct?

2 A. Right. That's -- that's the email, I believe,  
3 I just referred to. And this was -- this was provided  
4 to -- to Ms. Hu in response to a -- an informal request  
5 she had made to me to provide her with some idea as to  
6 where the Company was getting its calculation of the  
7 weather protection that it pr-- was -- proposed in this  
8 case.

9 Q. And that's the weather protection that you  
10 were proposing in your rebuttal testimony, isn't that  
11 correct, Mr. Cline?

12 A. This was in response to the -- our -- the --  
13 the proposal in our -- in our rebuttal testimony,  
14 that's correct.

15 Q. And that's the proposal that is -- is  
16 referenced in the stipulation and agreement, isn't that  
17 correct, Mr. Cline?

18 A. I believe that is.

19 Q. Okay. Now, on page 2 of 2 of Attachment A,  
20 are those the numbers -- is that the spreadsheet that  
21 you provided Ms. Hu in response to her question about  
22 how your -- how Laclede's rate design proposal set out  
23 and your rebuttal testimony operated?

24 A. I'm assuming it is. But, like I -- like I  
25 said before, I don't -- I don't have, you know,

1 my -- my -- my spreadsheets in front of me right now.

2 This looks very much like what I set up and

3 I -- I'm -- I -- I'm virtually certain these are my

4 numbers, but, you know, it -- it -- it's --

5 it's -- I -- I can't say I recognize those numbers.

6 Q. Well, you -- do you believe that Ms. Hu

7 attached something that she didn't receive from you?

8 A. I never said that.

9 Q. Okay. Let's -- keep your finger there on

10 page 2 of 2 of Attachment A and let's go back to

11 Attachment C.

12 For example, on the first level there that

13 says Laclede work paper 9802 to OPC, do you see that

14 first column there -- the 209 million therms?

15 A. Yes, I see it.

16 Q. Does that match with the first column on

17 Attachment A, page 2?

18 A. Yes, it does.

19 Q. And under the column, affect of 20 percent

20 warmer weather on page 2 of 2 of Attachment A, do you

21 see that negative, I believe it's 4,952,925?

22 A. I see that.

23 Q. On Ms. Hu's Attachment C under affect of

24 negative 20 percent warmer weather, do you see that

25 4,952,925 number?

1           A.    Yes, I do.

2           Q.    Is that same -- I mean, I guess what I'm  
3 asking is -- is that top line a reproduction  
4 essentially of the work paper that you provided to  
5 Ms. Hu on 9/8/02?

6           A.    It -- it appears to be -- it appears to be a  
7 reproduction of the work paper that's -- that's on  
8 A, page 2 of 2. And like -- and, like I said, I --  
9 I'm -- I'm virtually certain that's the work -- work  
10 that I provided in this area.

11                   I have no reason to believe she would attach  
12 anything other than what I sent her. I just -- all I'm  
13 trying to tell you is that I can't explain today why  
14 those numbers are different or what -- and from what  
15 spreadsheet they came from.

16                   And -- and if I had my computer in front of me  
17 today, maybe I could -- maybe I could give you a better  
18 answer than that.

19           Q.    So, once again, it appears -- I just want to  
20 tie this up. It appears that we're using different  
21 billing determinant numbers here; isn't that correct?

22           A.    We are using -- I -- I would -- I would take  
23 issue with that statement. I -- the -- the --  
24 the -- I -- I would agree insofar as this 209 million  
25 therms for the 065 block and the 269 million therms

1 over 65. Those volumes came from the Company's  
2 original filing in this -- in this case.

3 Now, based on our -- based on our proposed  
4 billing determinants -- normalized billing  
5 determinants -- normal length billing determinants for  
6 the twelve months ended in November of 2001.

7 Obviously as you know, Mr. Micheel, the case  
8 was not settled on that basis. There were -- not  
9 everything the Company proposed was accepted and --  
10 and -- and -- and -- and included in the settlement.

11 And that's why today when the Company is -- is  
12 deriving its Block 1 rate for the residential  
13 customers, it's using entirely different billing. It's  
14 more in the range of the 212 million, 213 million  
15 range. Those are -- those are explainable  
16 differences.

17 And if -- and -- and they really have nothing  
18 to do at all with the -- any kind of inconsistency you  
19 may see between Exhibit 76 and the analysis Ms. Hu had  
20 performed.

21 Q. Let me ask you this, Mr. Cline: At the time  
22 you filed your proposal -- your weather rate design  
23 mitigation proposal in your rebuttal testimony, you  
24 were aware, were you not, that that rate design was  
25 something different than the rate design the Company

1 had proposed in the past?

2 A. Can you repeat that question, please?

3 Q. Sure.

4 When you filed your rebuttal testimony, I  
5 believe it's Exhibit 4 in this case and on August 3rd  
6 of this year, were you aware that the rate design --  
7 the weather mitigation rate design proposal -- that the  
8 blocking proposal that -- that's at issue here was  
9 something new and different than Laclede had proposed  
10 in the past?

11 A. I would agree that it was something different.  
12 We had -- we had -- we had proposed a -- a design  
13 similar to that several years ago. But nothing exactly  
14 like what was in my rebuttal testimony.

15 Q. And you've been at this -- if I understand it,  
16 you've been at Laclede for -- for 30 years -- over  
17 30 years; isn't that correct?

18 A. That's incorrect. I've been at Laclede for --  
19 for over 27 years.

20 Q. Okay. For -- for almost 30 years, is that  
21 correct, 27?

22 A. For -- for over 27 years.

23 Q. Okay. At the time you filed your rebuttal  
24 testimony, were you aware that it was important to get  
25 those first block therms in order?

1       A.    At the time I filed rebuttal testimony, I was  
2   obviously aware that -- that the Company -- Company's  
3   proposal here was to recover all of its wintertime  
4   costs allocated to the -- to the commodity -- allocated  
5   to the commodity piece through the Block 1 rate.

6           Obviously it -- that would -- that would mean  
7   that assured Block 1 therms are important to making  
8   sure that the Company was going to, in fact, recover  
9   its -- its costs.

10       Q.   And at the time you filed that rebuttal  
11   testimony, you were aware of Staff's Block 1 therms;  
12   isn't that correct?

13       A.   No, that is not correct.

14       Q.   Was anyone at Laclede aware of those?

15       A.   I'm sure they were. I'm -- I'm -- I -- I'm  
16   certain that I -- I would -- I would have to believe  
17   that Pat Krieger had had some under-- understanding as  
18   to what those Block 1 therms were of the Staff, but --  
19   but I can't say that I had knowledge of what those  
20   therms were.

21       Q.   Well, let -- let me ask you -- I want to go to  
22   the regression analysis -- the first sheet of that  
23   regression analysis, and I want to focus on the  
24   N number there.

25           Can there be other reasons, other than weather



1 that explain that -- that -- I use the term  
2 "outlier" -- can there be other reasons, other than  
3 weather that can explain that outlier?

4 A. Certainly not an expert in statistics, nor am  
5 I an expert in the Company's customer usage  
6 characteristics. But I -- I -- I'm sure that obviously  
7 there are other things, other than weather that can  
8 affect consumption.

9 Q. And -- and that's why we get the -- the  
10 error -- or the -- what they call the error from -- in  
11 a regression analysis, because we're just trying to  
12 control for, in this case, one item, that's the  
13 weather; is that correct?

14 A. Once again, I can't -- I can't -- you're --  
15 you're talking to the wrong guy, as far as being able  
16 to -- to confirm your understanding as to what  
17 that's -- was supposed to show.

18 I'm sure Mr. Beck -- you know, he -- he was  
19 the guy that could best address that. And what you say  
20 -- it sounds like it made sense to me, but I -- I would  
21 just hate to have anybody rely on me as an authority  
22 for what you just --

23 Q. Well, let me ask you this: Were you here when  
24 Mr. Beck testified today?

25 A. Yes, I was.

1 Q. Did you hear Mr. Beck answer in response to  
2 one of my questions that there are other reasons  
3 besides weather that this could be an outlier?

4 A. I -- I can't say I can recall it specifically.  
5 It -- I wouldn't -- I wouldn't -- I wouldn't dispute  
6 that it -- that that occurred.

7 MR. MICHEEL: That's the content of my  
8 questions, Your Honor.

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

11 MR. SCHWARZ: May I approach the witness?

12 JUDGE THOMPSON: Yes, you may.

13 CROSS-EXAMINATION BY MR. SCHWARZ:

14 Q. Show you a -- a copy of your surrebuttal  
15 testimony.

16 A. Okay.

17 Q. And I'm turning to page 2. And I'd ask you to  
18 read the question and answer beginning on line 13.

19 A. Have you included a comparison of all  
20 three proposals in the chart?

21 I did not include the Company's proposed  
22 weather mitigation clause or WMC in this comparison  
23 since based on the response of the Staff and Public  
24 Counsel to such proposal, the Company has indicated  
25 that it is prepared to recommend the Company's rate

1 design proposal as the preferred altern-- alternative.

2 A comparison of the two rate design proposals  
3 shows the following.

4 Q. Thank you.

5 So that on page 2 of your surrebuttal  
6 testimony you indicate that the Company is no longer  
7 seriously proposing the weather mitigation clause; is  
8 that correct?

9 A. Well, I'll get out the testimony. Can you  
10 repeat your question again, please, Mr. Schwarz?

11 Q. Does that passage on page 2 indicate that the  
12 Company, at the time you filed your surrebuttal, was no  
13 longer pushing the weather mitigation clause relief?

14 A. That is correct. Based on the response we had  
15 had up to that point in time, it appeared that  
16 the -- the way that the Company was going to be able to  
17 address its weather mitigation problem was through the  
18 rate design, as opposed to what had previously been its  
19 primary -- primary proposal and that was the weather  
20 mitigation clause.

21 Q. Okay. And let me ask you, did the Company's  
22 opinion change between page 2 of your surrebuttal  
23 testimony and page 18 of your surrebuttal testimony  
24 where you suggest that the parties have agreed on what  
25 amount of heating degree days should be used for rate

1 design purposes in this case and as Laclede Witness  
2 Raab indicated in his rebuttal testimony, the Company  
3 is willing to use Staff's method for turning those  
4 degree days into billing determinants?

5 A. No. In no way did our position change between  
6 pages 2 and 18 or between any pages in this  
7 testimony -- or between any -- you know, in this  
8 testimony -- this -- these statements are entirely  
9 consistent, as I tried to explain before.

10 At this point and -- and I'm sure you're aware  
11 of this, Mr. Schwarz, we were rebutting and we had an  
12 obligation to rebut the testimony of Mr. Russo, who was  
13 responding to the Company's weather mitigation clause.

14 And -- and we were -- my comments here were  
15 directed to -- were -- were -- should be taken in the  
16 context of the weather mitigation clause and nothing  
17 else.

18 Q. But doesn't your rebuttal testimony contain  
19 rate design dealing with weather mitigation, and don't  
20 you earlier say that the proposal discussed by Mr. Raab  
21 was no longer being pursued by the Company?

22 MR. PENDERGAST: I'm going to object to that,  
23 because, once again, I think it mischaracterizes the  
24 testimony. I think the testimony said that it was not  
25 our preferred alternative. That's a -- a far distance

1 from saying we were no longer pursuing it at all.

2 JUDGE THOMPSON: I'm gonna overrule the  
3 objection. The witness can answer, if he's able.

4 THE WITNESS: I would like to have the  
5 question stated again, please.

6 MR. SCHWARZ: Would you read it back, please?

7 (THE COURT REPORTER READ BACK THE REQUESTED  
8 PORTION.)

9 THE WITNESS: Certainly.

10 JUDGE THOMPSON: That sounds like  
11 two questions.

12 THE WITNESS: Certain --

13 JUDGE THOMPSON: Let's answer the first one.

14 THE WITNESS: Well, I'm gonna try.

15 Certainly my testimony refers to or deals with  
16 weather mitigation rate design. However, I -- I --  
17 I -- I -- I -- I have to emphasize that on page 18 we  
18 weren't dealing with -- there was a -- there's a big  
19 difference between weather mitigation or rate design  
20 and the corresponding Block 1 and Block 2 rates.

21 And -- I'm -- I'm sorry -- there's a big  
22 difference between the weather mitigation clause and  
23 the corresponding Block 1 and Block 2 rates and  
24 weather -- and -- and weather mitigation rate design.  
25 And those -- and the Block 1 and Block 2 rates you have

1     there.

2                 On page 18 I was addressing, once again,  
3     Mr. Russo's testimony with respect to the weather  
4     mitigation clause, which I -- I believe we still had an  
5     obligation to -- to rebut at this point, even though  
6     we had -- even though we -- we were -- we were  
7     believing that the -- that the preferred alternative  
8     here based on the -- based on the Staff's reaction to  
9     other proposals we made was -- was the rate design  
10    approach.

11                JUDGE THOMPSON:  Mr. Schwarz, I think we're  
12    about ready for another break at this time.  And we  
13    will return and permit you to continue your examination  
14    at that time.

15                Do you expect to have much more --

16                MR. SCHWARZ:  No.

17                JUDGE THOMPSON:  -- on the issue of who knew  
18    what when?

19                MR. SCHWARZ:  No.

20                JUDGE THOMPSON:  Okay.  Thank you.  Thank you.

21                (A RECESS WAS TAKEN.)

22                JUDGE THOMPSON:  Go back on the record.

23                Okay.  Mr. Schwarz, you were inquiring.

24    BY MR. SCHWARZ:

25                Q.  Yeah.  You have your surrebuttal testimony

1     there, page 18, if you would.

2           A.     Yes, I do.

3           Q.     Line 20 through 22 you say, moreover should  
4     the Commission chose -- choose to adopt the weather  
5     mitigation rate design that the Company has  
6     recommended, this should not be an issue at all; is  
7     that in reference to the heating degree days and  
8     billing determinants?

9           A.     Yes, I believe in -- in that context it is.  
10    And certainly that was, you know, our expectation  
11    at -- at that time that -- that with the move  
12    to -- with the -- with the move to the recovery of our  
13    commodity-related costs to the first rate block, we did  
14    not believe that there'd be -- that -- that billing  
15    determinants as they -- as they related to weather  
16    should have any -- should -- should cause any  
17    controversy.

18                 And -- and, you know, it was certainly also  
19    our expectation that -- that -- that Block 1 therms  
20    would be something that we could -- that -- that  
21    would -- that would be agreed upon and -- and  
22    very -- and very predictable.

23           Q.     Well, isn't it true that it shouldn't be an  
24    issue, because on line 18 you note that Company is  
25    willing to use Staff's method for turning those degree

1 days into billing determinants; isn't that why it's not  
2 gonna be an issue?

3 A. Let me read this here. Once again,  
4 Mr. Schwarz, you -- are you referring to -- are you  
5 back on line 17, 18, 19?

6 Q. Yes.

7 A. I'm --

8 Q. I'm --

9 A. I mean, without having Mr. Raab's testimony in  
10 front of me right now, I'm still -- still believe  
11 this -- this is going back to the weather mitigation  
12 clause.

13 Q. No. Doesn't that last -- if the Commission  
14 adopts the weather mitigation rate design that the  
15 Company has recommended, this, meaning the billing  
16 determinants, should -- which is what's being discussed  
17 in this Q and A, should not be an issue at all.

18 Now, the reasons that it's not going to be an  
19 issue at all is because of your statement on line 18  
20 that the companies -- is willing to use Staff's method  
21 for turning those degree -- the agreed-upon degree days  
22 into billing determinants; isn't that why the issue  
23 goes away?

24 A. And I think -- I -- I believe that's true, and  
25 I believe -- I think that's because we -- we had no



1     dispute with -- did not believe we had any dispute with  
2     the Staff with respect to the overall volumes that  
3     would be related to a Staff degree day adjustment.

4             However, it -- it -- it -- it's -- it's  
5     certainly important as we've discussed here several  
6     times today that with this new rate design that the  
7     Block 1 and Block 2 therms have to be -- have to be  
8     established at -- at appropriate levels for this new  
9     rate design.

10        Q.     Is that a yes?

11        A.     I think it started with a yes.

12             MR. SCHWARZ:   I have nothing further.

13             JUDGE THOMPSON:  Thank you, Mr. Schwarz.

14             Commissioner Forbis?

15             COMMISSIONER FORBIS:  I have no questions.

16             JUDGE THOMPSON:  I have no questions for this  
17     witness:  Therefore, there will be no need for recross  
18     based on questions from the Bench.

19             We'll go directly to redirect.

20     Mr. Pendergast?

21             MR. PENDERGAST:  Thank you.

22     REDIRECT EXAMINATION BY MR. PENDERGAST:

23        Q.     Not to belabor a point to -- to death, but I  
24     probably will.  But very briefly looking at your  
25     testimony again, Mr. Schwarz asked you to look at, when

1 you indicate the Company is willing to use Staff's  
2 method for turning those degree days into billing  
3 determinants, immediately before that sentence, do you  
4 refer to Mr. Raab's rebuttal testimony?

5 A. Yes, I do.

6 Q. And do you recall whether in his rebuttal  
7 testimony Mr. Raab specifically indicated for purposes  
8 of the weather mitigation clause?

9 A. That's what I was trying to refer to a little  
10 while ago. I -- I believe that -- for the most part  
11 this was based on Mr. Raab's testimony pertaining to  
12 this weather mitigation clause.

13 Q. And immediately after you say that, do you  
14 also say, as such this argument should not be used as a  
15 reason for not moving forward with the weather  
16 mitigation clause?

17 A. That's correct.

18 Q. Okay. When -- when you said that, were you  
19 tying the weather mitigation clause into what you had  
20 said regarding billing determinants?

21 A. There I would -- there we were still  
22 discussing billing determinants -- billing determinants  
23 in reference to the weather mitigation clause.

24 MR. PENDERGAST: Thank you. I have no further  
25 questions.

1 JUDGE THOMPSON: Thank you, Mr. Pendergast.  
2 Do you want to move for the admission of Exhibit 76?  
3 MR. PENDERGAST: I would, Your Honor. I move  
4 for the admission of Exhibit 76.  
5 JUDGE THOMPSON: Do I hear any objections?  
6 MR. SCHWARZ: No objections. I would,  
7 however, like the answers that Mr. Beck provided to the  
8 Commission -- the -- the four answers that were  
9 provided last week.  
10 JUDGE THOMPSON: They're already filed.  
11 MR. SCHWARZ: They're already filed. I want  
12 to make sure they're a part of the record. I'd ask  
13 they be admitted into the record and as -- as well as  
14 is --  
15 JUDGE THOMPSON: As an exhibit?  
16 MR. SCHWARZ: Yeah. I mean, I don't know how  
17 else they come into the record.  
18 JUDGE THOMPSON: Well, they were filed as a  
19 pleading.  
20 MR. SCHWARZ: Well, but pleadings aren't a  
21 part of the record.  
22 JUDGE THOMPSON: Well, we can get it in any  
23 way you want.  
24 MR. SCHWARZ: And -- and his affidavits as  
25 well. I don't have copies to provide to you right now.

1 I'd like permission to provide them as -- as late-filed  
2 exhibits.

3 JUDGE THOMPSON: Okay. Well, let's deal with  
4 76 first, okay? Do I hear any objections to the  
5 receipt of Exhibit 76?

6 (No response.)

7 JUDGE THOMPSON: Hearing no objections,  
8 Exhibit 76 is received and made a part of the record of  
9 this proceeding.

10 (EXHIBIT NO. 76 WAS RECEIVED INTO EVIDENCE.)

11 JUDGE THOMPSON: Before we deal with your  
12 request, I'm going to mark that page (indicating) as  
13 Exhibit 77, and the following page as Exhibit 78, okay?

14 And I think those are going to be necessary  
15 for those Commissioners who were not here through the  
16 entire hearing today to be able to understand the  
17 transcript, frankly.

18 So do I hear any objections to the receipt of  
19 Exhibit 77?

20 (No response.)

21 JUDGE THOMPSON: Hearing none, Exhibit 77 is  
22 received and made a part of the record in this  
23 proceeding.

24 (EXHIBIT NO. 77 WAS RECEIVED INTO EVIDENCE.)

25 JUDGE THOMPSON: How about Exhibit 78, any

1 objection?

2 (No response.)

3 JUDGE THOMPSON: No objections. Exhibit 78  
4 likewise is received.

5 (EXHIBIT NO. 78 WAS RECEIVED INTO EVIDENCE.)

6 JUDGE THOMPSON: Now, let's turn to your  
7 request, Mr. Schwarz. We have had quite a few things  
8 filed here since the tariffs were filed on  
9 October 22nd.

10 We had Staff's motion, which was filed -- I  
11 can't even recall what day exactly it was filed. Let's  
12 see. Maybe I can -- maybe I can get EFIS to cough up a  
13 docket sheet here. We'll take a foray in the world of  
14 electronic recordkeeping.

15 It's nice that I can now accomplish with  
16 15 clicks -- last year I could have done it with 2.  
17 But that's progress of a sort. Okay. Well, let me go  
18 back one more. Here we go.

19 All right. The order proving stipulation and  
20 agreement was issued by this Commission on October 3rd.  
21 On October 18 Laclede filed compliance tariffs and  
22 associated motions which they withdrew on the 22nd when  
23 they filed replacement compliance tariffs and  
24 associated motions.

25 Staff responded with a Motion to Suspend, to

1 Deny and to Deny on October 24th. Now, we don't need  
2 to make that an Exhibit, I assume.

3 MR. SCHWARZ: No, I have -- I -- I can  
4 identify the two things I would like to make an  
5 exhibit.

6 JUDGE THOMPSON: Okay.

7 MR. SCHWARZ: One is the verified statement of  
8 the Staff.

9 JUDGE THOMPSON: And that was filed on the  
10 29th, was it not?

11 MR. SCHWARZ: Well, there's -- there's one  
12 that was filed on the October 29th. I would  
13 like -- and Mr. Beck is the one who files the  
14 verification on that.

15 I would like that verified statement admitted  
16 into the record.

17 JUDGE THOMPSON: Okay. Mr. Beck's verified  
18 statement of October 29.

19 MR. SCHWARZ: It was appended as  
20 Attachment A --

21 JUDGE THOMPSON: Okay.

22 MR. SCHWARZ: -- to the Staff's Reply to  
23 Laclede's Response to the Staff and Request for  
24 Hearing.

25 JUDGE THOMPSON: Okay. And -- and were there

1 some other attachments? I guess what I want to know is  
2 just what --

3 MR. SCHWARZ: There are attach-- Attachments 1  
4 and 2 --

5 JUDGE THOMPSON: Okay. And this exhibit  
6 consists of what?

7 MR. SCHWARZ: -- to that Attachment A.  
8 This is --

9 JUDGE THOMPSON: Just Attachment 1 or do you  
10 want to throw 2 in there as well?

11 MR. SCHWARZ: It is -- it is a five-page  
12 statement, a -- it's got a jurat -- a page that's a  
13 jurat --

14 JUDGE THOMPSON: Okay.

15 MR. SCHWARZ: -- Attachment 1 and then  
16 Attachment 2.

17 JUDGE THOMPSON: And it has been --

18 MR. SCHWARZ: It's in two -- two pages.

19 JUDGE THOMPSON: Okay. How much of that do  
20 you want to make of Exhibit 79?

21 MR. SCHWARZ: I want to make the entirety.

22 JUDGE THOMPSON: Okay. Attachment A, 1, 2-1  
23 and 2-2, correct?

24 MR. SCHWARZ: Correct.

25 JUDGE THOMPSON: Okay. Very well.

1           Do I hear any objections to the receipt of  
2 Exhibit 79?  
3           (No response.)  
4           JUDGE THOMPSON: Hearing no objections,  
5 Exhibit 79 is received and made a part of the record of  
6 this proceeding.  
7           (EXHIBIT NO. 79 WAS RECEIVED INTO EVIDENCE.)  
8           JUDGE THOMPSON: What else, Mr. Schwarz?  
9           MR. SCHWARZ: The verified statement of the  
10 Staff dated November 1st --  
11           JUDGE THOMPSON: Okay.  
12           MR. SCHWARZ: -- consisting of three pages --  
13 three numbered pages, Attachment A-1, the page that's  
14 the jurat of Daniel Beck and then --  
15           JUDGE THOMPSON: This is in response to the  
16 Commission --  
17           MR. SCHWARZ: Yes.  
18           JUDGE THOMPSON: -- questions --  
19           MR. SCHWARZ: Yes.  
20           JUDGE THOMPSON: -- plus the sample tariff  
21 sheets?  
22           MR. SCHWARZ: Yep.  
23           JUDGE THOMPSON: Very well.  
24 Any objections to the receipt of Exhibit 80?  
25           (No response.)



1 JUDGE THOMPSON: Hearing no objections,  
2 Exhibit 80 is received.

3 (EXHIBIT NO. 80 WAS RECEIVED INTO EVIDENCE.)

4 JUDGE THOMPSON: Now, then, the affidavit of  
5 Hong Hu?

6 MR. MICHEEL: I -- I will ask that it be  
7 marked as Exhibit 81, Your Honor. I've already  
8 provided a copy of Ms. Hu's affidavit that was filed  
9 today to the reporter and I've also delivered copies to  
10 Commissioner and -- and Your Honor and all the parties  
11 that participated in the proceeding today.

12 JUDGE THOMPSON: Do I hear any objections to  
13 receipt of Exhibit 81, the affidavit of Hong Hu?

14 (No response.)

15 JUDGE THOMPSON: Hearing no objections,  
16 Exhibit 81 is received.

17 (EXHIBIT NO. 81 WAS RECEIVED INTO EVIDENCE.)

18 JUDGE THOMPSON: Exhibit 82, then, how about  
19 the affidavit of Michael Cline?

20 MR. PENDERGAST: Yes, Your Honor, I'd like to  
21 offer that as Exhibit 82.

22 JUDGE THOMPSON: Okay. Do I hear any  
23 objections to the receipt of the affidavit of Micheel  
24 Cline?

25 (No response.)

1 JUDGE THOMPSON: Hearing no objections,  
2 Exhibit 82 is received and made a part of the record of  
3 this proceeding.

4 (EXHIBIT NO. 82 WAS RECEIVED INTO EVIDENCE.)

5 JUDGE THOMPSON: Is there anything I have  
6 overlooked or missed that you would like to make an  
7 exhibit?

8 (No response.)

9 JUDGE THOMPSON: I mean, it's my interest to  
10 have everything in the record. I don't want to leave  
11 anything out of the record, but, you know, this is our  
12 opportunity.

13 Okay. Thank you very much. We will adjourn.

14 COMMISSIONER FORBIS: I have a question.

15 JUDGE THOMPSON: We will not adjourn.

16 Commissioner Forbis has a question to address to the  
17 Staff -- to the Staff.

18 COMMISSIONER FORBIS: Given the hour and risk  
19 of bodily harm, I just wanted to ask -- I'd like a  
20 quick response to the concern about the Staff's  
21 regression formula and it's flawed because of the cap.

22 I don't think that's been addressed anywhere  
23 else. I think the first I heard it was today, tonight,  
24 whatever it -- it is.

25 Could I get a quick feedback from Staff about

1     that?

2                 JUDGE THOMPSON:  You may step down, Mr. Cline.

3                 MR. CLINE:  Okay.

4                 JUDGE THOMPSON:  Thank you very much for your  
5     testimony.

6                 (Witness excused.)

7                 JUDGE THOMPSON:  Mr. Beck, I'll remind you  
8     you're still under oath.

9                 MR. BECK:  Yes, sir.

10                JUDGE THOMPSON:  We'll put you on as a  
11     rebuttal witness.

12     DANIEL BECK testified as follows:

13     QUESTIONS BY JUDGE THOMPSON:

14         Q.     Did you hear the question the Commissioner  
15     had?

16         A.     Yes, I did.

17         Q.     Okay.  Could you respond?

18         A.     I -- I find it kind of ironic really that  
19     the -- that we simply come up with a curve that may  
20     have -- may I -- I approach the --

21         Q.     Approach -- we -- we don't have to -- we don't  
22     have ask to approach the inanimate object.

23                 That covers some weaknesses as well.

24         A.     I -- I find it ironic that -- that, you know,  
25     what we have is a shape that actually -- I want to get

1 this term right. It's increasing at a decreasing rate.

2 It -- it approaches -- it approaches this --  
3 this 65 term never getting there. Because that's --  
4 that's the reality of how these billing units work.

5 And I find it really interesting that because  
6 of the reality of how the billing units work and a  
7 model that -- that then simulates that -- that that is  
8 somehow a criticism of -- of what Staff's calculation  
9 did.

10 You know, again, quite simply you have to have  
11 points above and below the curve. They have -- and  
12 that's -- and that sum of those -- the -- the sum of  
13 those squared have to get -- get to -- to zero to make  
14 your curve fit the shape. So it -- it makes no sense  
15 to me at all why modeling the real life world then  
16 results in a problem.

17 QUESTIONS BY COMMISSIONER FORBIS:

18 Q. For the model?

19 A. For the model. I mean, to me it's -- it's --  
20 it's pointing out that the model is simply trying to  
21 duplicate the real life that -- which is -- which is  
22 what modeling is all about.

23 COMMISSIONER FORBIS: Okay. That -- thank  
24 you. I have no further questions. I just wanted to  
25 get the Staff's response. Now, does that mean that --

1 JUDGE THOMPSON: That means everybody gets to  
2 cross-examine.

3 COMMISSIONER FORBIS: Because -- I know --  
4 that's why they're gonna hate me, but --

5 JUDGE THOMPSON: Let's see. You're a Staff  
6 guy, so we would want to hear first from Mr. Micheel.

7 MR. MICHEEL: I have no questions for Mr. Beck  
8 on this issue.

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

11 MR. PENDERGAST: One moment.

12 JUDGE THOMPSON: Certainly. And if you  
13 request, Mr. Pendergast, I'll allow you to put a  
14 witness on.

15 MR. PENDERGAST: I think it would probably be  
16 simpler if I could do that very briefly and put  
17 Mr. Buck on.

18 JUDGE THOMPSON: Very well. Then you have no  
19 questions for Mr. Beck?

20 MR. PENDERGAST: No.

21 JUDGE THOMPSON: Okay. Just a moment.

22 Mr. Schwarz, do you have any redirect?

23 REDIRECT EXAMINATION BY MR. SCHWARZ:

24 Q. Would it be possible to have any observations  
25 in the first block that are greater than 65 therms?

1       A.    That -- that would be illogical, so it would  
2   be impossible.

3       Q.    I beg your pardon?

4       A.    It -- it would be illogical to have more than  
5   65 therms in the first block.

6       Q.    Is it -- is it possible by definition for  
7   there to be more than 65?

8       A.    No, it is not.

9       Q.    Thank you.

10      A.    No, it is not.

11           JUDGE THOMPSON:  Because they would be in the  
12   second block?

13           THE WITNESS:  That's right.

14           MR. SCHWARZ:  Correct.  Thank you.

15           JUDGE THOMPSON:  I'm starting to catch on.

16           Thank you, Mr. Beck.

17           (Witness excused.)

18           JUDGE THOMPSON:  Step forward, sir.  Raise  
19   your right hand, please.

20           (Witness sworn.)

21           JUDGE THOMPSON:  Please take your seat and  
22   spell your name for the reporter.

23           MR. BUCK:  My name is Glenn Buck.  Last name,  
24   B-U-C-K.  The first name is G-L-E-N-N.  And I work for  
25   Laclede Gas Company.

1 JUDGE THOMPSON: Thank you, Mr. Buck.

2 Mr. Pendergast, you may inquire.

3 GLENN BUCK testified as follows:

4 DIRECT EXAMINATION BY MR. PENDERGAST:

5 Q. Have you been sitting here all day, Mr. Buck?

6 A. Unfortunately, yes.

7 Q. And -- and you're familiar with the discussion  
8 that's been had regarding Staff's methodology and the  
9 65 therm cap?

10 A. Yes, I am.

11 Q. And whether that causes problems?

12 A. Yes.

13 Q. And did you just hear Mr. Beck's testimony  
14 that in his view it does not?

15 A. Yes, I did.

16 Q. Could you briefly explain why you think it  
17 does?

18 A. Well, the first thing I'd like to do I -- if I  
19 could, is make a clarification, especially since that  
20 was put into the record.

21 The Staff actually does a plot of -- on the  
22 X axis actually has total therms, and the Y axis is  
23 actually the first block therms.

24 And it's -- the Y axis is used as a percentage  
25 of the X axis. I just wanted to point that out for

1 clarification purposes. Heating degree days are not  
2 used for -- for what the Staff does with that.

3 In regards to whether it's logical or  
4 illogical, if I might step to the board, I'll explain  
5 why.

6 JUDGE THOMPSON: Go ahead.

7 THE WITNESS: Okay.

8 JUDGE THOMPSON: You don't have to ask to  
9 approach the inanimate object.

10 THE WITNESS: It actually has to do with these  
11 points here (indicating). If you have -- and, once  
12 again, I would prefer we -- and clarify this as saying  
13 this is total therms (indicating).

14 If you sit there and have lower total therms  
15 on this end --

16 JUDGE THOMPSON: Before you draw on that --

17 THE WITNESS: I wasn't gonna draw on that. I  
18 was just going to point.

19 MR. SCHWARZ: Why don't you put the cap on it.

20 JUDGE THOMPSON: If you feel the need to draw  
21 on it, please do it with this red one so that we can  
22 distinguish what you put on there and what was put on  
23 there by Mr. Beck.

24 THE WITNESS: Okay. Going back to what I was  
25 saying is that -- and Mr. -- Mr. Beck is right. The --



1 the curve that they do use as it approaches 65 starts  
2 to level out.

3 But if, for example, this point (indicating)  
4 is far enough off of that line, you've got a -- a  
5 variation there. And then I -- it's kind of hard to  
6 sit there and say it because we don't have a scale  
7 here, but let's say that's four therms.

8 And if in one of these other months the use  
9 per customer is -- assuming this was at 85 and assuming  
10 this was at 230 and your data point was down here  
11 (indicating), your correction on that is also going to  
12 be four therms, but the variation right there is only  
13 about a therm.

14 So if you're gonna sit there and try and  
15 correct for the natural error here, you would be trying  
16 to correct up four therms and you can't do it, because  
17 you hit that natural limit.

18 And that's the only clarifying point I really  
19 wanted to make.

20 COMMISSIONER FORBIS: Okay.

21 JUDGE THOMPSON: Thank you.

22 COMMISSIONER FORBIS: I think I unders-- I  
23 think I understand that. Thank you.

24 JUDGE THOMPSON: Does that conclude --

25 MR. PENDERGAST: That's all, Your Honor.

1 JUDGE THOMPSON: -- your direct examination?  
2 MR. PENDERGAST: Yes.  
3 JUDGE THOMPSON: Okay. Mr. Micheel?  
4 MR. MICHEEL: I have no questions for Mr. Buck  
5 today.  
6 JUDGE THOMPSON: Thank you, Mr. Micheel.  
7 Mr. Schwarz?  
8 CROSS-EXAMINATION BY MR. SCHWARZ:  
9 Q. Mr. Buck, does that situation that you have  
10 described occur in the nine data points that Staff used  
11 in this case?  
12 A. Frankly, I don't know. I was just trying to  
13 clarify why that could potentially be a problem.  
14 MR. SCHWARZ: Thank you.  
15 JUDGE THOMPSON: Commissioner Forbis?  
16 COMMISSIONER FORBIS: No.  
17 JUDGE THOMPSON: I have no questions for this  
18 witness. There will be no need for any recross  
19 consequently.  
20 Mr. Pendergast, redirect?  
21 MR. PENDERGAST: No redirect, Your Honor.  
22 JUDGE THOMPSON: Thank you. You may step  
23 down, Mr. Buck. Thank you for your contribution.  
24 THE WITNESS: Thank you.  
25 (Witness excused.)

1 JUDGE THOMPSON: Does anyone else feel the  
2 need to testify?

3 (No response.)

4 JUDGE THOMPSON: I'd like to thank everyone  
5 for they're -- doing an excellent job on a completely  
6 unexpected evidentiary hearing. Unless you have  
7 something else --

8 MR. SCHWARZ: No. I would suggest that you  
9 get the exhibit numbers written on that -- those things  
10 before --

11 JUDGE THOMPSON: You think the cleaning lady  
12 is gonna come in and put something on it?

13 MR. SCHWARZ: I don't know. I -- I -- but  
14 I -- I do know --

15 JUDGE THOMPSON: I'm gonna take it upstairs.

16 MR. SCHWARZ: I do know that there are a  
17 number of sheets.

18 MR. MICHEEL: I have a question. Are -- are  
19 you going to issue an order, Your Honor, scheduling  
20 the -- I think you said oral argument of this or  
21 closing argument, or are you going to schedule?

22 JUDGE THOMPSON: We're still on the record,  
23 right?

24 MR. MICHEEL: She's typing.

25 JUDGE THOMPSON: On behalf of the Commission,

1 I hereby order you to be here Wednesday morning at  
2 11 a.m. prepared to give me your closing argument in  
3 this case. Plan on twenty minutes per party.

4 Thank you.

5 MR. SCHWARZ: Maximum?

6 JUDGE THOMPSON: Maximum. Yeah, you don't  
7 have to take twenty minutes.

8 MR. PENDERGAST: But you know we will.

9 (EXHIBIT NOS. 77, 78 AND 81 WERE MARKED FOR  
10 IDENTIFICATION BY THE COURT REPORTER.)

11 WHEREUPON, the hearing of this case was  
12 continued to 11 a.m., Wednesday, November 6, 2002.

13

14

15

16

17

18

19

20

21

22

23

24

25

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

ON-THE-RECORD PRESENTATION

|  |     |
|--|-----|
| Presentation by Mr. Schwarz              | 154 |
| Questions by Commissioner Murray         | 163 |
| Questions by Commissioner Gaw            | 164 |
| Questions by Judge Thompson              | 171 |
| Further Questions by Commissioner Murray | 175 |
| Questions by Commissioner Forbis         | 183 |
| Presentation by Mr. Micheel              | 187 |
| Questions by Commissioner Murray         | 196 |
| Questions by Judge Thompson              | 198 |
| Further Questions by Commissioner Murray | 202 |
| Presentation by Mr. Pendergast           | 205 |
| Questions by Commissioner Murray         | 225 |
| Questions by Commissioner Forbis         | 240 |
| Questions by Judge Thompson              | 244 |

I N D E X

EVIDENTIARY HEARING

STAFF'S EVIDENCE:

DANIEL BECK:

|                                       |     |
|---------------------------------------|-----|
| Direct Examination by Mr. Schwarz     | 249 |
| Cross-Examination by Mr. Micheel      | 259 |
| Cross-Examination by Mr. Pendergast   | 263 |
| Questions by Commissioner Murray      | 273 |
| Questions by Commissioner Gaw         | 300 |
| Questions by Judge Thompson           | 322 |
| Questions by Commissioner Forbis      | 341 |
| Further Questions by Judge Thompson   | 345 |
| Recross-Examination by Mr. Micheel    | 350 |
| Recross-Examination by Mr. Pendergast | 354 |
| Redirect Examination by Mr. Schwarz   | 357 |

1 I N D E X (CONTINUED)

2 EVIDENTIARY HEARING

3 PUBLIC COUNSEL'S EVIDENCE:

4 HONG HU:

|   |     |
|---|-----|
| 5 Direct Examination by Mr. Micheel     | 361 |
| Cross-Examination by Mr. Schwarz        | 369 |
| 6 Cross-Examination by Mr. Pendergast   | 369 |
| Questions by Commissioner Gaw           | 383 |
| 7 Questions by Commissioner Forbis      | 388 |
| Questions by Judge Thompson             | 390 |
| 8 Recross-Examination by Mr. Pendergast | 390 |
| Redirect Examination by Mr. Micheel     | 391 |

9

10 LACLEDE GAS COMPANY'S EVIDENCE:

11 PATRICIA KRIEGER:

|   |     |
|---|-----|
| Direct Examination by Mr. Pendergast      | 399 |
| 12 Cross-Examination by Mr. Micheel       | 405 |
| Cross-Examination by Mr. Schwarz          | 411 |
| 13 Questions by Commissioner Gaw          | 435 |
| Questions by Commissioner Forbis          | 448 |
| 14 Recross-Examination by Mr. Micheel     | 457 |
| Recross-Examination by Mr. Schwarz        | 465 |
| 15 Redirect Examination by Mr. Pendergast | 468 |

16 MICHAEL CLINE:

|   |     |
|---|-----|
| Direct Examination by Mr. Pendergast      | 476 |
| 17 Cross-Examination by Mr. Micheel       | 481 |
| Cross-Examination by Mr. Schwarz          | 492 |
| 18 Redirect Examination by Mr. Pendergast | 499 |

19 GLENN BUCK:

|                                      |     |
|--------------------------------------|-----|
| Direct Examination by Mr. Pendergast | 513 |
| 20 Cross-Examination by Mr. Schwarz  | 516 |

21 REBUTTAL WITNESSES:

22 DANIEL BECK:

|  |     |
|--|-----|
| 23 Questions by Judge Thompson         | 509 |
| Questions by Commissioner Forbis       | 510 |
| 24 Redirect Examination by Mr. Schwarz | 511 |

25

|    |                            |           |          |
|----|----------------------------|-----------|----------|
| 1  | E X H I B I T S            | I N D E X |          |
| 2  |                            | MARKED    | RECEIVED |
| 3  | Exhibit No. 76             | 478       | 502      |
| 4  | Worksheet prepared by      |           |          |
| 5  | Michael Cline              |           |          |
| 6  | Exhibit No. 77             | 518       | 502      |
| 7  | Handrawing by Daniel Beck  |           |          |
| 8  | Exhibit No. 78             | 518       | 503      |
| 9  | Handrawing by Daniel Beck  |           |          |
| 10 | Exhibit No. 79             | *         | 506      |
| 11 | Verified statement of      |           |          |
| 12 | Daniel Beck                |           |          |
| 13 | Exhibit No. 80             | *         | 507      |
| 14 | Verified statement of      |           |          |
| 15 | Staff                      |           |          |
| 16 | Exhibit No. 81             | 518       | 507      |
| 17 | Affidavit of Hong Hu       |           |          |
| 18 | Exhibit No. 82             | *         | 508      |
| 19 | Affidavit of Michael Cline |           |          |
| 20 |                            |           |          |
| 21 | * Late-Filed Exhibit       |           |          |
| 22 |                            |           |          |
| 23 |                            |           |          |
| 24 |                            |           |          |
| 25 |                            |           |          |