

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

June 29, 2015

Jefferson City, Missouri

Volume 16

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In The Matter Of Kansas City                    )  
Power & Light Company's Request            ) File No. ER-2014-0370  
for Authority To Implement a                 )  
General Rate Increase for                    )  
Electric Service                                 )

MICHAEL BUSHMANN, Presiding  
SENIOR REGULATORY LAW JUDGE

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STEPHEN M. STOLL,  
WILLIAM P. KENNEY,  
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COMMISSIONERS

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PROCEEDINGS

JUDGE BUSHMANN: Let's go on the record.  
Good morning. Today's Monday, June 29th. Welcome to week two of the Kansas City Power & Light rate case. There were a few preliminary matters I wanted to address before we get started with today's agenda. And just as a note, I passed around some maps to the counsel tables because this week there will be a lot of road closings and parking issues because of the 4th of July celebration downtown. So for those of you out of town, you may want to pay attention to get in and out of the city parking garage. Because I think by Wednesday, you're going to have to use an alley to get there. So if you need help on finding that, grab one of those maps.

Last week, there was a joint motion by OPC and MEGG to declassify testimony. That motion will be taken up by the Commissioners at their agenda meeting on Wednesday.

There was also a motion, KCP&L filed a motion to strike portions of the surrebuttal testimony of OPC witness William Addo. That motion is denied.

There was also a file, a non-unanimous stipulation and agreement to -- regarding pensions and other post-employment benefits. Am I correct, then, that that would -- if there's no objections, that that would resolve Issue 10 regarding Wolf Creek OPEBs or was that the correct

1 issue that I'm looking at?

2 MR. HACK: That is correct, Your Honor.

3 JUDGE BUSHMANN: Were there any other issues  
4 that that stipulation would encompass?

5 MR. HACK: I do not believe so.

6 JUDGE BUSHMANN: Also Kansas City Power &  
7 Light filed a Response to Commissioner Request For  
8 Information that had some attachments that the Commissioners  
9 had requested certain information be included.

10 MR. HACK: Judge, can I correct what I just  
11 said about the OPEB pension statement?

12 JUDGE BUSHMANN: Go right ahead.

13 MR. HACK: It does not resolve that issue. It  
14 presents two alternative resolutions of the Wolf Creek OPEB  
15 issue. I will tell you, though, if I may right now, we have  
16 been circulating a settlement term sheet and a formal  
17 settlement document on other issues, and so far, nobody has  
18 -- has expressed opposition to that. If that goes forward,  
19 that would resolve the Wolf Creek OPEB's Issue Number 10.

20 JUDGE BUSHMANN: Okay. Thank you for the  
21 clarification. On the information that the Commissioners  
22 requested that was then filed in EFIS by KCP&L, did anybody  
23 have any objections to that information going into the  
24 record?

25 MR. WOODSMALL: Your Honor, I haven't had an

1 opportunity to look at it yet. It was just filed on Friday.  
2 I'm going to endeavor to get to that shortly. The problem  
3 with the information thus far is that it hasn't been verified  
4 by anybody. We haven't had a chance to look at it. There's  
5 been no one for cross-examination. So if I do find it  
6 problematic, I may ask to be allowed to cross-examine  
7 someone, but I can provide you something this week.

8 JUDGE BUSHMANN: I will hold off on that. We  
9 won't mark it or offer it for awhile and then maybe tomorrow,  
10 we can take that back up again if you have an opportunity to  
11 look at it.

12 MR. WOODSMALL: Okay.

13 JUDGE BUSHMANN: And my final issue that came  
14 up was Staff filed a Motion to Correct Testimony that relates  
15 to the testimony of Sarah Kliethermes. My understanding is  
16 that Staff and Company would prefer to take up that motion  
17 and issue at the very end after the low-income weatherization  
18 issue; is that correct?

19 MS. MAYFIELD: Your Honor, just a quick  
20 correction, it's Robin Kliethermes. And yes, that is our  
21 understanding.

22 JUDGE BUSHMANN: My apologies. Robin  
23 Kliethermes. So what we'll do, then, is I'm going to hold  
24 off ruling on that motion and for -- parties can have an  
25 opportunity to read through that and see if you have any

1 additional cross-examination that you may want to do for  
2 Ms. Robin Kliethermes, which will be brought up at the very  
3 end after the last issue.

4 I believe that concludes all the preliminary  
5 matters that I had. Do the parties have anything they want  
6 to bring up at this time?

7 MR. HACK: Judge, just real quick. Back on  
8 the term sheet that was circulated among the parties last  
9 week, that does not change, really, the first several issues  
10 that are scheduled for hearing. It doesn't effect anything  
11 until we would get to veg management tomorrow. So we would  
12 propose to just move forward.

13 JUDGE BUSHMANN: That was my plan, too. And  
14 with that, the next issue that was scheduled for today was  
15 general policy matters regarding FACs and trackers. And as  
16 was discussed at the hearing last week, there will be an  
17 opportunity now for parties to make mini openings if they  
18 wish to do so on that issue. And the first up would be  
19 Kansas City Power & Light.

20 MR. FISCHER: May it please the Commission,  
21 good morning. As I mentioned in our opening statement on the  
22 first day of the hearings, KCP&L was seeking to establish  
23 certain regulatory mechanisms, including a fuel adjustment  
24 clause which recovers fuel, purchase power, and transmission  
25 costs and trackers, including the property tax tracker and a



1 critical infrastructure protection, or what I called CIPs,  
2 cyber security tracker. As Mr. Hack has just informed the  
3 bench, we think we've reached an agreement principle on the  
4 other tracker issue, which was the vegetation management  
5 tracker. And under that, we would be withdrawing that and  
6 taking that off the table.

7           The FAC and the trackers for property taxes  
8 and CIP cyber security costs, if implemented, will help  
9 provide the Company a reasonable opportunity to earn the  
10 Commission authorized rate of return after this case.  
11 Without these mechanisms, it's likely the Company will not  
12 have a realistic opportunity to earn its authorized rate of  
13 return. In fact, unless additional regulatory steps are  
14 taken, the total impact of the Order, which is what a court  
15 would look at, could be a confiscation of the property of  
16 shareholders, if there's not a realistic opportunity for  
17 KCP&L to earn comparable rate of return as earned by  
18 similarly situated companies.

19           Now, I used this slide in our general opening,  
20 but I wanted do show it to you again. The gap here between  
21 the authorized rate of return and the earned rate of return,  
22 between 2007 and 2013, in the aggregate accounted for \$220  
23 million of shortfall in earnings to the shareholders. And  
24 clearly since the Company filed five rate cases during that  
25 period, it's clear that just filing more rate cases isn't

1 going to change the gap.

2                   And as I explained in the first day of our  
3 hearings, the evidence shows that KCP&L Missouri has not  
4 earned its last authorized ROE of 9.7 percent since the new  
5 rates became effective in early 2013 because actual  
6 experience with certain cost items were materially higher  
7 than the historically based numbers that were included in the  
8 test year in the previous case.

9                   In 2014, KCP&L Missouri only earned 5.69  
10 percent and in the previous year, 2013, KCP&L earned 6.5  
11 percent ROE. Now, a significant factor contributing to the  
12 earnings shortfall for KCP&L Missouri is that the company is  
13 not experiencing growth in its load in Missouri due to the  
14 stagnation in the population and the Missouri service  
15 territory, conservation measures and other factors.

16                   Historically, KCP&L like other regional  
17 utilities, have experienced load growth in the range of  
18 2 to 3 percent per year. With a historically based  
19 regulatory model, this increased KWH usage on the Company's  
20 system provided revenues that exceeded the revenues that the  
21 rates were based on. Utilities like KCP&L were able to  
22 utilize that increased revenue to offset the other cost of  
23 service that were increasing.

24                   But in today's environment, the math just  
25 doesn't add up. It doesn't work anymore if we utilize

1 nothing but historical cost in the test year without other  
2 regulatory mechanisms like the FAC or the trackers that we're  
3 asking for.

4 We know that we're going to see increases in  
5 fuel, purchase power, transmission cost, property taxes and  
6 cyber security costs in the year following the effective date  
7 of the new rates. And no one's disputing that. But we also  
8 expect there will be flat or declining load on KCP&L  
9 Missouri's system.

10 As a consequence, the evidence shows that the  
11 actual cost for fuel, purchase power, transmission, property  
12 taxes, and cyber security costs during the first year the new  
13 rates are in effect are expected to exceed the historically  
14 based test year levels for those items by approximately \$16.3  
15 million. That's what we're talking about, about increased  
16 costs.

17 Now, this shortfall would produce an earnings  
18 shortfall of approximately 130 basis points compared to the  
19 Commission's authorized rate of return. So we're expecting  
20 without the trackers, costs are going to go up \$6.3 million  
21 that aren't going to be recovered, it's going to be flat  
22 revenue, so it's going to be a shortfall of 130 basis points.

23 Now, under these circumstances, absent  
24 extraordinary weather, KCP&L is not going to earn its  
25 authorized rate of return unless the Commission approves

1 regulatory mechanisms being requested by the Company in this  
2 case.

3 This is the policy decision for the  
4 Commission. Is the Commission going to adopt mechanisms that  
5 give the Company a realistic opportunity to earn the return  
6 determined by the Commission to be reasonable or is the  
7 Commission going to stick with the old regulatory model that  
8 produced earnings shortfalls of \$220 million over the last  
9 seven years.

10 We believe the evidence requires the  
11 Commission to choose the policy pathway that other  
12 Commissions have chosen and implement an FAC and the modest  
13 tracking mechanisms that KCP&L is requesting in this case.

14 Now, in this case, some of the parties  
15 disagree about the effect of the language of the regulatory  
16 plan stipulation and agreement. And we talked about that  
17 issue a little bit in our opening in the first day. But as I  
18 understand the position of Staff and Public Counsel and some  
19 of the other parties, they're arguing that KCP&L is not  
20 eligible to file a tariff sheet that includes a fuel  
21 adjustment clause, even if the tariff sheet will not become  
22 effective until June 1st, 2015 or later. The Company  
23 disagrees with that interpretation.

24 This is the language in the regulatory plan  
25 that's at issue. KCP&L agrees that, prior to June 1, 2015,

1 it will not seek to utilize any mechanism authorized in  
2 current legislation known as SB179, which would include a  
3 fuel clause. The Missouri Supreme Court has held in State,  
4 ex rel. Riverside Pipeline versus the Public Service  
5 Commission, that a stipulation like any other settlement  
6 agreement must be construed using ordinary terms of contract  
7 construction.

8 In this case, the Commission should interpret  
9 the phrase "seek to utilize" in its ordinary meaning of the  
10 phrase in the context of public utility regulation. Now,  
11 according to the Merriam Webster online dictionary, the word  
12 "seek" means to try to get or achieve something, and the word  
13 "utilize" means to use something for a particular purpose.  
14 Using those ordinary meanings in the stipulation, it would  
15 now read KCP&L agrees that, prior to June 1, 2015, it will  
16 not try to use for a particular purpose any mechanism  
17 authorized in current legislation known as SB1799.

18 In Missouri, of course, Judge, public  
19 utilities file tariff sheets with a specific effective date  
20 that determines when rates and programs can go into effect.  
21 The Commission suspends those tariff sheets for up to ten  
22 months to allow for additional review of the proposed rates  
23 and proposed programs.

24 The new rates and programs contain the tariff  
25 sheets -- that are on those tariff sheets may not be used,

1 may not be utilized, until the Commission has finally  
2 approved the revised tariff sheets with a specific effective  
3 date. The effective date determines when the approved tariff  
4 sheets can go into effect and can be used, and it's the first  
5 day that new rates and programs contained on those tariff  
6 sheets may be utilized by the Company.

7 KCP&L is not seeking to utilize the fuel  
8 adjustment rider until the end of September, 2015, the  
9 expected effective date of the tariffs in this case. Now, if  
10 the parties to the regulatory plan stipulation had intended  
11 that KCP&L could not file tariffs proposing an FAC prior to  
12 June 1st, 2015, they wouldn't have said "seek to utilize."  
13 They would have said they could not be filed until June 1st,  
14 2015. And of course we didn't use that term.

15 Now, let's look at a couple other provisions  
16 of the regulatory plan, though, that might help resolve this  
17 issue. On page 57 of the stipulation and agreement in the  
18 regulatory plan case, they define the terms of the agreement.  
19 The terms of this agreement once approved by the Commission  
20 will be deemed to have become effective as of the date of the  
21 Order of the Commission approving this agreement becomes  
22 final, and will expire June 1, 2010, except where otherwise  
23 specified in this agreement.

24 So the main regulatory plan stipulation  
25 expired June 1st, 2010, unless there was an exception in the

1 agreement. And there were two. The first exception that I  
2 want to mention is the one that relates to regulatory  
3 amortizations. On page 27 of the regulatory plan  
4 stipulation, KCP&L agreed to reflect the regulatory  
5 amortizations for a ten-year period, even though the term of  
6 the other provisions of the agreement expired on June 1,  
7 2010.

8                   And then the second exception: In 2005, KCP&L  
9 also agreed that it would not seek to utilize a fuel  
10 adjustment mechanism prior to June 1, 2015, or approximately  
11 ten years.

12                   If the Company could not even file a tariff  
13 with a single-issue mechanism until June 1st, 2015, as  
14 suggested by some of the parties in this case, the Company  
15 could not be able to utilize a fuel adjustment clause for an  
16 additional eleven months, assuming the Commission suspended  
17 the tariffs as it usually does. This interpretation would  
18 not be consistent with an agreement not to utilize a  
19 single-issue mechanism for a ten-year period. KCP&L didn't  
20 sign up for an eleven-year deal to forego a fuel clause or  
21 any other single-issue mechanism. We signed up for a  
22 ten-year deal.

23                   Now, speaking of other single-issue  
24 mechanisms, the parties to the stipulation in KCP&L's MEEIA  
25 case, Case E0-2014-0095, requested that the Commission

1 approve a single-issue mechanism, the demand-side investment  
2 mechanism, which is also referred to as DSIM, for KCP&L that  
3 went into effect in August of 2014. Obviously prior to the  
4 June 1st, 2015 date.

5 The Commission specifically addressed this  
6 language in the regulatory plan stipulation related to  
7 single-issued mechanisms in the Order that approved the  
8 stipulation in the MEEIA case. As previously indicated, the  
9 stipulation and agreement provides that KCP&L's DSIM is to go  
10 into effect in August 2014. That provision is inconsistent  
11 with a stipulation and agreement that the Commission approved  
12 in 2005. That stipulation and agreement, which was approved  
13 in File Number EO-2005-0329, would prevent KCP&L from seeking  
14 to use any single-issue rate mechanism, which would include  
15 the proposed DSIM until June 1, 2015.

16 And the Order went on to say -- well, at that  
17 point, the Commission interpreted that provision as  
18 preventing KCP&L from seeking to use a single-issue rate  
19 mechanism until June 1st, 2015. The Order went on to say  
20 here that because the Commission has a duty to respond to  
21 change in circumstances to effectively regulate utilities  
22 within its statutory charge, and based on the record in this  
23 case, the Commission specifically finds and concludes that  
24 allowing KCP&L to implement the proposed DSIM before June 1,  
25 2015 is appropriate. Here the Commission is using



1 interchangeably the term "use" and "implement" the proposed  
2 single-issue mechanism prior to June 1st, 2015.

3 In summary, the Commission should interpret  
4 the language of the regulatory plan stipulation using its  
5 ordinary terms -- the meaning of the terms of the agreement  
6 and find that the Company is not seeking to utilize a fuel  
7 adjustment clause until the tariffs are approved in this case  
8 at the end of September 2015.

9 As a result, KCP&L is eligible to have a fuel  
10 clause in this proceeding since the Company is not seeking to  
11 utilize or use a fuel clause prior to June 1st, 2015,  
12 consistent with the regulatory plan stipulation itself.

13 And I'm just turning briefly to the other  
14 trackers. The Commission has broad regulatory discretion to  
15 grant or -- for the implementation of trackers when the  
16 Commission believes that the granting of trackers are  
17 reasonable and in the public interest.

18 The Commission has previously granted trackers  
19 to protect customers and the shareholders of public utilities  
20 from the uncertainties of expenditures that are required to  
21 provide safe and adequate service but may not be predictable  
22 based upon only on historical data. The Commission has  
23 historically approved trackers to address pensions and other  
24 employment benefits, new power plant, and O & M expenses,  
25 demand-side management programs, vegetation management and

1 infrastructure costs.

2                   Generally in approving trackers, the  
3 Commission has considered factors such as the following:  
4 Whether the costs are unexpected, volatile or fluctuating,  
5 whether costs are uncertain, or whether the costs are imposed  
6 by a third party over which the utility has little or no  
7 control.

8                   Now, the gist of these factors considered by  
9 the Commission in approving trackers is that historical cost  
10 information does not provide a reasonable proxy for expected  
11 costs on the subject items during the period when the rates  
12 are going to be effective. We've addressed in the testimony  
13 the specific costs related to fuel, purchase power,  
14 transmission costs, property taxes, and cyber security costs  
15 and will summarize some of that evidence in our mini openings  
16 on those issues later today and tomorrow.

17                   But Judge, and Mr. Chairman, I see you're on  
18 the screen, too. As you consider -- as you consider the  
19 policy question that's before you, I hope you'll ask yourself  
20 the following question: Will the math work in today's  
21 environment or will the Commission's Order be perpetuating a  
22 system that results in disallowance by process whereby KCP&L  
23 does not have a realistic opportunity to earn its authorized  
24 rate of return because the load is flat or declining but the  
25 Commission is not recognizing or capturing cost increases

1 that will incur the first year the rates are in effect.

2 Thank you very much for your attention and we  
3 look forward to your questions.

4 JUDGE BUSHMANN: Thank you, Mr. Fischer. Next  
5 opening by Staff.

6 MS. MERS: Good morning, may it please the  
7 commission. I'm Nicole Mers and I'm one of Staff counsel  
8 you'll be hearing from today and one of the issues to be  
9 presented today is regulatory lag. Those two words have  
10 caused a great deal of reading for the Commission. We've had  
11 eleven witnesses, four alone belonging to KCP&L.

12 Considering that four trackers and a fuel  
13 adjustment clause depend on them convincing the Commission  
14 that the tried and true Missouri method is mangled beyond  
15 repair, perhaps we can forgive them. What we can't let slide  
16 is the maligning of the system that has worked for a  
17 hundred-plus years to balance the interest of ratepayers and  
18 utilities, a system of considering all relevant factors  
19 endorsed by our state Supreme Court by presenting a one-sided  
20 distorted view of how regulatory lag works in Missouri's  
21 rate-making.

22 Our system is not broken. However, approving  
23 KCP&L's numerous single-issue rate-making mechanisms would  
24 break that system. These requests to transform our  
25 longstanding balance, give-and-take model that at times

1 benefits shareholders and at times benefits ratepayers into a  
2 system that would tip the scales strongly in shareholders'  
3 favor by ensuring recovery of what it perceives to be  
4 increasing cost items through trackers and removing any  
5 concurrent cost reductions in other areas from consideration,  
6 which places them on the scales profits for shareholders.

7 This attempt at distorting regulatory lag  
8 violates Missouri rate-making principles considering all  
9 relevant factors. Instead of focusing on a single perceived  
10 to be increasing cost, if KCP&L would have via the trackers  
11 and the fuel adjustment clause proposed in this case,  
12 considering all relevant factors allows us to consider cost  
13 decreases and other expenses that would offset these  
14 increases.

15 And these cost decreases can be considerable.  
16 They in fact, are the positive side of regulatory lag, the  
17 side of the scale that benefits shareholders. For instance,  
18 currently, KCP&L has payroll costs for 140 to 160 more  
19 employees than it currently has in rates. KCP&L, through  
20 regulatory lag, has likely benefited since the date of this  
21 reduction -- since the date of the reduction of the tort  
22 force.

23 Another prominent example of beneficial  
24 regulatory lag to KCP&L is the 20 years that they went  
25 without filing a rate case. Due to declining costs, strong

1 off-system sales, and customer growth, they earned at or  
2 above the average national authorized ROE during this  
3 extended period, and that's the chart you can see right  
4 there. And our Staff counsel can pass out a copy. It is in  
5 Charles Hydeman's rebuttal, but in case anybody doesn't have  
6 it, he is going to pass around a copy so you guys can all  
7 look at it.

8           The amount set in rates differ from the costs  
9 and actual payments, so for 20 years KCP&L benefited from  
10 beneficial regulatory lag. Not once during this time frame  
11 did they propose regulatory mechanisms for tracking  
12 decreasing costs to protect or benefit ratepayers. KCP&L  
13 only wants these mechanisms when they would operate to the  
14 benefit of the shareholders and to the detriment of their  
15 ratepayers.

16           Further, KCP&L seeks to shift additional risk  
17 to its ratepayers and thereby decrease their own corporate  
18 business risk, but there is not a proposed corresponding  
19 reduction in ROE. Please do not burden ratepayers with  
20 detrimental long-term changes to a system that has balanced  
21 their interest and the interest of the utilities for decades  
22 to address short-term problems KCP&L alleges to be  
23 experiencing.

24           Although KCP&L may claim that stagnant  
25 customer growth is a driving factor behind the need for rate

1 adjustment mechanisms, KCP&L's Chief Financial Officer  
2 reported during an earnings call that actual demand in 2014  
3 was up .4 percent, the industrial segment increased 2.3  
4 percent, the residential increased .2 percent, and there was  
5 growth in the number of customers in both commercial and  
6 residential segments.

7 To justify its tracker proposal in this case,  
8 KCP&L has placed great weight on its per-books earning  
9 results since its last Missouri general rate proceeding.  
10 Please keep in mind that these are unadjusted earning  
11 calculations and the results have not been analyzed using  
12 standard rate-making procedures to determine the impact of  
13 whether other non-recurring factors that would have affected  
14 these results.

15 Staff disagrees with KCP&L's assertion that  
16 any real or perceived problems are exacerbated by Missouri's  
17 broken regulatory model as per their testimony. For example,  
18 not included in their testimony was Mr. Kevin Bryant, former  
19 vice-president of KCP&L's speech to the board of director in  
20 which he cited a positive regulatory environment in Missouri  
21 for the 2014 upgrade in both the Standard & Poors and the  
22 Moody's credit rating. Great Plains has increased its  
23 corporate dividends paid to shareholders four years in a row  
24 and the owners of the company received a total shareholder  
25 return of 21 percent in 2014.

1                   Furthermore, KCP&L's hired witness,  
2 Dr. Overkast, cites eight states in a positive context  
3 regarding the regulatory environment in his white paper on  
4 policies. Missouri's regulatory environment received the  
5 same regulatory rate as three of these states and ranked  
6 higher than another. In particular, Utah and Oklahoma, which  
7 had extensive citing of their tariffs to show that those were  
8 states when enlightened models had the same ranking with  
9 Missouri, even with our supposedly regulatory broken model.

10                   Mechanisms, such as true-up periods, that  
11 shorten the time between costs being incurred and when they  
12 are reflected in rates to a mere four months, much shorter  
13 than the period of 11 to 28 months claimed by KCP&L witnesses  
14 Ives and Dr. Overkast, along with our support of justified  
15 single-issue rate-making mechanisms in appropriate  
16 circumstances, such as when vegetation management rules were  
17 first implemented, signal and exemplify a receptive and  
18 responsive environment where legitimate needs of the  
19 utilities are addressed.

20                   Finally, I urge the Commission to consider the  
21 policy reasons behind the limited exceptions to the  
22 single-issue rate-making prohibition, none of which justify  
23 KCP&L's requests in this case. Trackers should be used in  
24 limited rare circumstances for costs that are significantly  
25 volatile, difficult to predict, and without historical data.

1 All trackers requested do not meet the standard. Vegetation  
2 management, property taxes and cyber security are all normal  
3 recurring costs of doing business for KCP&L and therefore are  
4 inappropriate for tracker treatment. 0

5 As for the fuel adjustment clause, even if  
6 KCP&L was not barred by the 2005 stipulation agreement, which  
7 Staff believes they are, KCP&L does not meet the volatility  
8 and outside the control of the company's prong as part of the  
9 three-part test for granting a fuel adjustment clause.

10 Extraordinary rate-making mechanisms should not be driven by  
11 utility's fear of inadequate shareholder returns, but only by  
12 substantive analysis of the issues themselves.

13 Commissioners, please keep the scales  
14 balanced. Allow the Missouri model with the balanced  
15 regulatory lag to perform the necessary functions of  
16 balancing company and ratepayer interests while incentivizing  
17 cost control and improved management practices for utilities.  
18 Please, please do not shift all the risk to the ratepayers  
19 and allow all the rewards to stay in KCP&L's pockets.

20 Thank you. If you have any question, I'll be  
21 happy to answer them, or Staff witnesses Cary Featherstone,  
22 Charles Hyneman, or Mark Oligschlaeger will be on the stand  
23 shortly and can clarify and expand on any point.

24 JUDGE BUSHMANN: Thank you.

25 CHAIRMAN KENNEY: Just a couple.



1 MS. MERS: Good morning.

2 CHAIRMAN KENNEY: Good morning. Thank you.

3 Is there a Staff witness that will -- or that can discuss how  
4 much of a reduction in ROE would be appropriate if we were to  
5 grant certain trackers?

6 MS. MERS: I believe that you could probably  
7 pose that question to any of the Staff witnesses today, Mark,  
8 Charles Hyneman or Cary Featherstone could be -- could talk  
9 on that at that point.

10 CHAIRMAN KENNEY: And then a second question  
11 as to your last point regarding the standards applicable for  
12 allowing single-issue rate-making mechanisms. Would the  
13 Company's inability to control certain expenses be something  
14 that we should take into account when determining whether to  
15 allow for a single-issue rate-making mechanism.

16 MS. MERS: I believe that it is something that  
17 should be taken into account but then on the flip side, it  
18 also needs to be recognized that trackers can work as a  
19 reverse incentive for them not to control costs once it's  
20 granted in place because they know that they're going to get  
21 that dollar-for-dollar recovery, so they may not have the  
22 same stringent management control as they would if the  
23 tracker was not in place. But -- again, Staff witnesses that  
24 will testify today can probably enlighten you more on that.

25 CHAIRMAN KENNEY: Okay. Thank you. No other

1 questions.

2 JUDGE BUSHMANN: Thank you. Opening by Public  
3 Counsel.

4 MR. POSTON: Good morning. May it please the  
5 Commission. When we talk about policy, what we're really  
6 talking about or what we should be talking about is public  
7 policy because protecting the public is the recognized  
8 primary purpose of this Commission.

9 And like Mr. Fischer had done, I looked up a  
10 dictionary word on the Webster Merriam -- Merriam Webster and  
11 it gave two definitions. And the first definition basically  
12 defines public policy as a legislative and judicial acts that  
13 tell us what things are contrary to the public good. And the  
14 second definition says public policies are principles of law  
15 that invalidate those things that are contrary to the public  
16 good. Both definitions suggest a goal of eliminating things  
17 that are contrary to the public good. In this case, there  
18 are significant questions of public policy.

19 Often policy witnesses are the first witnesses  
20 to be called and I don't know why policy was scheduled for  
21 today since the issues we addressed last week also involves  
22 serious policy questions regarding ROE, rate design, electric  
23 vehicle charging stations, rate case expense, among others.

24 And I won't repeat all the reasons why we  
25 believe our positions on last week's issues promote good

1 policies for this Commission, but I would like to briefly  
2 highlight a few. Much of what I addressed in my general  
3 opening last week was to show the Commission that the facts  
4 -- show them the facts on high poverty numbers, five rate  
5 increases in eight years, and an economy in the KCP&L area  
6 that has not recovered since the recession. Considering  
7 these facts, it's not difficult to understand that even a \$5  
8 monthly increase has potential of making a meaningful impact  
9 on the quality of life for lower, fixed-income ratepayers.

10 It's good public policy to protect the most  
11 vulnerable of our population, the poor, the elderly. We ask  
12 you to keep these facts in mind when deciding all issues in  
13 this case that have a rate impact, which I believe is most  
14 every issue.

15 The issue with potentially the most policy  
16 implications is electric vehicle charging station. We assert  
17 it's contrary to the public good to increase rates for this  
18 new service based on scant amount of analysis and evidence  
19 provided by the Company. This is a \$20 million experiment  
20 taken by the Company, yet they want customers that don't  
21 subscribe to the service to pay all the costs and bear all  
22 the risk. That is not contrary to the public good.

23 Do the positives associated with electric  
24 vehicle fueling stations outweigh the negatives? We don't  
25 know because it hasn't been studied in any way. And the

1 Company rolled out this plan without first seeking input from  
2 the Commission, the Company's customers, policy makers, or  
3 any competitors that currently provide this service. So we  
4 ask you to take a cautious approach with this and keep it out  
5 of rates for the time being.

6 The Company introduced this unstudied issue to  
7 the case three to four months late and an issue with so many  
8 public policy considerations surrounding it that need far  
9 more time to be understood and vetted before the Commission  
10 establishes policy on these issues and that can't be  
11 accomplished in a working docket.

12 Another issue of public policy that I'd like  
13 to briefly address is, again, the residential customer  
14 charge. High customer charges are harmful to customers  
15 because it takes away the customer's ability to control their  
16 bill and in doing so they erode incentives for them to be  
17 energy efficient. And it's no secret that energy efficiency  
18 helps the customers by allowing them to save money and it  
19 helps the environment by reducing fossil fuel emissions.

20 Just last month, the Commission considered the  
21 public policy implications of raising the customer charge for  
22 Ameren's residential customers and found a 50 percent  
23 increase would take away the customer's ability to control  
24 their bill for either economic reasons or for the general  
25 desire to conserve energy. And that was good public policy

1 then. And it is now, only a month later. Except here  
2 KCP&L's residential customers already pay a \$9 customer  
3 charge, a full dollar over that charge across the state by  
4 Ameren.

5 To the extent the Commission's interested in  
6 making rate design changes that address the coupling type  
7 issues of attempting to disconnect sales from usage, we ask  
8 that you wait until after you've had the coupling docket  
9 before considering making rate design changes that seek to  
10 achieve those purposes.

11 I believe two witness testified in the first  
12 week, including the Company witness who testified that  
13 raising the customer charge does not achieve the same purpose  
14 as a coupling. And one thing I hope to learn from the  
15 coupling document is why other states or some other states  
16 who have gone to the coupling have since moved away from that  
17 form of rate design. So we ask you to implement good public  
18 policy and keep the customer charge at \$9, which is already  
19 above most other electric companies in the region and which  
20 was agreed to in this case by all parties except KCP&L.

21 Rate case expense also raises public policy  
22 issues. In the first week, we saw KCP&L's high-priced  
23 outside attorneys do a substantial portion of the rate cases  
24 for them -- we've also seen that this morning -- while the  
25 Company's attorneys watched, the attorneys that are

1 experienced and fully capable of doing the same work. And  
2 the rates charged by these attorneys, according to Missouri  
3 Bar poll, are among the highest in the state.

4 KCP&L wants its customers to pay the high fees  
5 for extra attorneys despite the fact that customers already  
6 pay the salaries for the Company attorneys who sit and watch.  
7 The outside attorneys urge the Commission to raise customer  
8 rates, increase profits for this company, and while doing so,  
9 they made far more money in a half day's work than what many  
10 KCP&L residential customers that are on social security or  
11 disability receive in an entire month.

12 Good public policy dictates that this  
13 Commission should only authorize expenses that are necessary  
14 for the services received and high-priced attorneys and  
15 unneeded consultants are not necessary for KCP&L to present  
16 its evidence and argue its case. Allowing rates to increase  
17 for costs that are not necessary is inherently contrary to  
18 the public good and for that reason, rate case expense should  
19 be shared.

20 On the FAC, I'll address those issues in  
21 greater detail when they come up with the next group of  
22 witnesses, but I will say that an FAC is a huge shift of risk  
23 from the company to customers and the facts of this case will  
24 show that it's poor public policy to allow KCP&L to violate  
25 an agreement that agreed to not seek an FAC before June of

1 this year.

2 FACs will also show it's poor public policy to  
3 allow KCP&L to implement FAC at this time, especially when  
4 their own facts show an FAC is not necessary. Customers  
5 should not needlessly take on this risk. Again, I will  
6 address the FAC when those issues come up tomorrow.

7 And lastly, I'd like to discuss one more  
8 public policy consideration being made by the Commission in  
9 this case and that's the policy involving trackers. OPC will  
10 be putting Mr. Ted Robertson on the stand today to address  
11 tracker policy. Mr. Robertson's a CPA with over 25 years of  
12 experience in utility company accounting.

13 Mr. Robertson largely concurs with the  
14 testimony of Staff witness Mr. Mark Oligschlaeger regarding  
15 trackers. A recognized problem with trackers is they violate  
16 the matching principle, where revenues and expenses should be  
17 matched to the same period of time. Trackers, on the other  
18 hand, typically allow increases in one expense item to be  
19 deferred to future period regardless of whether other  
20 expenses have decreased or revenues increase to make that  
21 deferral unjustified. It's quite possible that during the  
22 period of deferral, the Company is already earning in excess  
23 of its authorized return and deferral is simply unnecessary  
24 because increased expenses of the tracker item could have  
25 been covered by excess profits.

1           The evidence in this case and the testimony of  
2           MECG witness Mr. Brosch shows that KCP&L anticipates cost  
3           savings in the millions. And where are KCP&L's trackers for  
4           these expenses? Instead they're asking to track only their  
5           expected increases in costs and it's not hard to see how  
6           that's a lopsided proposition from a customer's perspective.

7           Trackers essentially create the potential for  
8           a double recovery by deferring an expense that rates may have  
9           already provided enough revenues to cover, yet the expenses  
10          are allowed to raise future rates.

11          KCP&L seeks trackers in this case to guarantee  
12          it earns its authorized return, but rates are only supposed  
13          to provide an opportunity to earn, not a guarantee.  
14          Guarantees provide a disincentive to the Company to control  
15          costs, and that's how rates are purposely designed to work.  
16          Regulatory lag works to give the Company the necessary  
17          incentive to control cost. Incentives that would have been  
18          given naturally if KCP&L were in a competitive market.

19          The Commission cited to this disincentive to  
20          control costs in its Report and Order in the Ameren case  
21          where the Commission concluded that by their nature, cost  
22          trackers tend to reduce the Utility's incentive to  
23          aggressively control costs by ensuring that all costs will be  
24          recovered. Under trackers, such costs will be subject to a  
25          prudence review, but a prudence review cannot control costs



1 as sufficiently as a strong economic incentive.

2 Staff witness Mr. Oligschlaeger provides a  
3 good explanation in his rebuttal testimony of regulatory lag  
4 and how such lag acts to benefit both customers and a  
5 company. And should not be viewed negatively as the Company  
6 wants you to do.

7 We're not saying the Company should not be  
8 able to recover its property tax expense, its vegetation  
9 management expense, or its cyber security expense. Rather,  
10 we're saying the facts show there's sufficient historical  
11 data to set a test year level of expense to include in rates  
12 to compensate the Company for those expenses. And the  
13 evidence will be offered tomorrow when those issues are  
14 addressed.

15 We ask and find that you be consistent with  
16 your Ameren decision and find that the trackers requested in  
17 this case will be poor public policy and against the greater  
18 increase over what the Company earns. Instead the expenses  
19 KCP&L seeks to track should be treated as normal expenses  
20 where a reasonable level of historical data can and should be  
21 included in rates. Thank you.

22 COMMISSIONER HALL: I have no questions, thank  
23 you.

24 CHAIRMAN KENNEY: No questions, thank you.

25 JUDGE BUSHMANN: Opening by MECG.

1 MR. WOOD: Good morning, may it please the  
2 Commission. David Woodsmall on behalf of MEGC. Now, I note  
3 that the opening statement today is broadly titled policy and  
4 I agree with many of the points that Mr. Poston made about  
5 other policy issues, but I'm going to limit my discussion  
6 today to the various trackers and fuel adjustment clause  
7 requested by KCP&L.

8 In its testimony, KCP&L accuses Staff of,  
9 quote, throwing spaghetti at the wall to see what sticks. I  
10 was interested about this expression so I looked it up this  
11 weekend. According to one English Web site, it means, quote,  
12 trial and error method, try something to see what works,  
13 unquote. I find it interesting that KCP&L would invoke this  
14 cliché in discussing other party's testimony because, as it  
15 applies to deferral accounting, KCP&L was clearly just  
16 throwing spaghetti at the wall to see what might work with  
17 this Commission.

18 As KCP&L has mentioned, KCP&L has asked that  
19 the Commission implement deferral accounting for future costs  
20 in the form of five separate tracker mechanisms in this case.  
21 First KCP&L seeks a property track. Second, KCP&L seeks a  
22 vegetation management tracker, a cyber security tracker, and  
23 given the Commission's recent decisions on fuel adjustment  
24 clauses, they seek a transmission tracker, and finally they  
25 seem the implementation of deferral accounting in the context

1 of a fuel adjustment clause. So five separate instances in  
2 which they seek mechanisms to defer costs into future rate  
3 cases.

4 In addition, KCP&L proposes past -- to be able  
5 to recover past deferrals. Specifically, they seek to  
6 recover in rates in this case costs deferred associated with  
7 LaCygne construction accounting as well as merger transition  
8 costs that were incurred seven years ago in the context of  
9 the KCP&L-Aquila merger. I venture to say that absent  
10 KCP&L's throwing spaghetti at the wall, their broad brush  
11 request for deferral mechanisms and putting aside its request  
12 for an inflated ROE, this case, just like Empire's last  
13 month, should have settled. But KCP&L is asking for all  
14 these deferral mechanisms, so we have to address them and the  
15 Commission has to decide them.

16 Given KCP&L's request for numerous tracker  
17 mechanisms, it is important that the Commission have a  
18 thorough understanding of the standard to be used when  
19 considering such requests. Unlike a fuel adjustment clause,  
20 there is no specific statutory standard for a tracker.  
21 Instead, the standard is contained in language adopted by the  
22 Court of Appeals.

23 Specifically, in 1992, the Commission  
24 considered its first request for a tracker. In that case,  
25 the Commission said that rate -- that rate-making is usually

1 based on historical costs and deferrals of costs will break  
2 this matching. So the Commission said the limited basis in  
3 which deferrals are allowed, is when costs are extraordinary,  
4 unusual and unique, and not recurring.

5 On appeal, the Western District Court of  
6 Appeals agreed with the Commission's limited use of deferral  
7 accounting. The Court said because rates are set to recover  
8 continuing operating expenses plus a reasonable return on  
9 investment, only an extraordinary event should be permitted  
10 to adjust the balance to permit costs to be deferred for  
11 consideration in a later period, unquote. This is the factor  
12 that KCP&L refuses to recognize. The extraordinary standard.

13 You heard Mr. Fischer go through and talk  
14 about all the deferrals they're seeking, but he never once  
15 used the word extraordinary. They refuse to recognize the  
16 Court's language on this, the language that binds the  
17 Commission.

18 Since the 1992 decision, the extraordinary  
19 standard has been widely applied. Less than a year ago, this  
20 Commission, these current five Commissioners, considered  
21 KCP&L's request for a transmission tracker. Again, the  
22 Commission applied the extraordinary standard. The  
23 Commission pointed out that it, quote, evaluated the  
24 transmission costs to determine if they are an unusual and  
25 infrequent occurrence. The Commission concludes that they

1 are not. As such, the Commission rejected KCP&L's requested  
2 transmission costs. So clearly, 23 years later, the  
3 Commission's still using the extraordinary standard.

4 In the 23 years of applying the extraordinary  
5 standard, it appears that the Commission is allowed deferral  
6 accounting for two general types of costs. First the  
7 Commission for acts of God, including tornadoes, ice storms,  
8 and floods. Second, the Commission has allowed for deferral  
9 accounting for new costs that have been imposed as a result  
10 of legislation and rules. This includes renewable energy  
11 standard rules, vegetation management standards -- vegetation  
12 management rules and gas pipeline replacement.

13 In both cases, extraordinary costs were  
14 incurred that were not otherwise already included in  
15 utility's costs of service. So that is one focus of the  
16 extraordinary standard. Is the event incurring costs that  
17 are not already in the costs of service. And in these cases,  
18 you can see tornadoes, new rules, ice storms. They're  
19 incurring costs that aren't in cost of service. Transmission  
20 cost, property taxes, vegetation management, they're already  
21 in cost of service. They're not extraordinary.

22 In this case, MEGG presents the testimony of  
23 Mike Brosch. The Commission is undoubtedly familiar with  
24 Mr. Brosch. At one time, he was the Commission's own chief  
25 accountant. After that, he formed his own consulting firm.

1 In this role, he has consulted for numerous state utility  
2 commission staffs and customer groups. He has approximately  
3 40 years of regulatory experience.

4 As Mr. Brosch demonstrates, there are too many  
5 -- two primary problems -- there are two primary problems  
6 that occur when you implement deferral accounting. First,  
7 the deferral of costs from a previous period precludes the  
8 Commission from considering other costs from that period that  
9 have decreased or revenues from that period that have  
10 increased.

11 The notion of offsetting costs in revenues  
12 isn't mythology. It occurs. In this case, there are  
13 numerous examples of offsetting costs in revenues that should  
14 be considered against any deferred cost. For instance, Staff  
15 witness Featherstone details that debt costs are decreasing.  
16 In addition, KCP&L has replaced the expensive equity  
17 component in its capital structure with more debt. So their  
18 costs are decreasing. Furthermore, off-system sales margins  
19 are increasing and employee levels are decreasing.

20 Finally, there is evidence that Staff  
21 mentioned that KCP&L expects to see growth in the number of  
22 customers as well as the usage of these customers. Each of  
23 these types of offsetting factors would be ignored under  
24 KCP&L's deferral accounting request.

25 The second problem that Mr. Brosch discusses

1 is that the implementation of deferral accounting creates an  
2 assumption that costs will be recovered. The only solution  
3 for this assumption is a prudence review. And as you know,  
4 those reviews are largely ineffective. Given the essential  
5 guarantee of recovery of these costs, the utility loses the  
6 incentive to minimize these costs. In fact, as Mr. Brosch  
7 points out, the utility will simply stop focusing on these  
8 areas where costs are guaranteed recovery and instead turn  
9 all their focus elsewhere.

10 The bottom line is that deferral accounting  
11 leads to higher rates. That can't be denied. As I will show  
12 later, Kansas has statutorily created several tracker  
13 mechanisms. The effect is obvious. Largely because of these  
14 tracker mechanisms in Kansas, the Kansas average retail rate  
15 is 16.7 percent higher than Missouri. Similarly, the KCP&L  
16 rate in Kansas is 17 percent higher than Missouri.

17 As Staff points out, the regulatory model is  
18 not broken. In fact, as RRA notes, Missouri is ranked with  
19 an A2. This is an average rate. But interestingly, this is  
20 the same rating as RRA gives to Kansas, which has implemented  
21 these numerous trackers.

22 So despite the negative effect on rates,  
23 MECG has recognized that there are indeed times when deferral  
24 accounting through a tracker may be appropriate. Given that,  
25 the question becomes how should you assess a request to

1 implement deferral accounting? As mentioned, the overarching  
2 criteria is that the cost must be extraordinary.

3           Once you make that determination, however,  
4 Mr. Brosch suggests that you apply five additional criteria.  
5 First, the costs should be substantial. They should be  
6 substantial enough to have a material impact on the utility's  
7 financial performance. After all, while you probably want to  
8 grant deferral accounting for an ice storm, you don't want to  
9 grant it if one limb falls off because of wind.

10           Second, these costs should be beyond the  
11 control of management. You don't want to grant deferral  
12 accounting for costs that were the result of management's  
13 decision to defer or cancel routine preventative maintenance.

14           Third, the costs in question should be  
15 volatile. Volatility as the Commission has previously  
16 recognized is not simply that the costs are going up. Costs  
17 that are going up can be reflected in rate cases. The  
18 Commission has taken the position that volatility is  
19 demonstrated by the costs going up and down, unpredictable.

20           Fourth, a deferral accounting mechanism should  
21 be straightforward and simple to administer. In this case,  
22 as an example, KCP&L has asked for a tracker for cyber  
23 security costs that would include labor costs. The problem  
24 is that it's very difficult, if not impossible, to  
25 distinguish labor costs that are used for cyber security from



1 labor costs for regular IT. Therefore, these costs are not  
2 distinguishable. Deferred costs should be straightforward  
3 and easy to administer.

4 Fifth, a deferral request should be balanced.  
5 And by this, I mean and Mr. Brosch means, that not only  
6 should the deferred costs be considered, but also offsetting  
7 gains. For instance, vegetation management. If you have a  
8 vegetation management program where trees are being trimmed  
9 so they avoid contact with limbs, you would expect to see a  
10 reduction in future maintenance. You would also expect  
11 because you don't have the outages, to see an increase in  
12 sales. Those type of factors aren't picked up in the  
13 vegetation management request. It is not balanced.

14 In his testimony, Mr. Brosch has applied the  
15 extraordinary standard to each of the tracker requests. As  
16 he concludes, deferral accounting for property taxes is  
17 inappropriate. First these costs are not extraordinary,  
18 they're not substantial, and they're not volatile. You can  
19 see that here in a chart taken from Mr. Brosch's testimony.  
20 While the property taxes are indeed increasing, they're not  
21 volatile. And in fact, you know when these property taxes  
22 are going to hit every year. You can time a rate case to  
23 pick up these costs. Property taxes are easily assumed in  
24 the context of traditional rate-making.

25 Now, I mentioned that Kansas has statutorily

1 created numerous trackers. Kansas has expressed  
2 authorization, if not a mandate. Included here is the  
3 language for Kansas property tax tracker. While KCP&L asked  
4 for a property tax tracker in Missouri, it cannot point to  
5 any type of authority for the Commission to implement such a  
6 tracker. As you can see, in Kansas, if the utility requests  
7 a property tax tracker, the Commission shall approve that  
8 tracker. You have clear statutory authority, a mandate, in  
9 fact, for property tax tracker. KCP&L doesn't point to  
10 similar language in Missouri.

11 Next Mr. Brosch applies his criteria to  
12 KCP&L's request for a vegetation management tracker. Again,  
13 costs that are not extraordinary, substantial, volatile,  
14 beyond the control of management, or balance. You can see  
15 here in another chart taken from his testimony. Vegetation  
16 management costs are pretty stable. Since the Commission  
17 issued its rule, we have clear history. We can set rates  
18 based upon these costs. So they don't qualify for a tracker  
19 mechanism.

20 For unknown reasons, KCP&L is very late in  
21 requesting a vegetation management tracker. The vegetation  
22 management rule was promulgated June 30th, 2008. That will  
23 be seven years ago tomorrow. Immediately after the rule was  
24 promulgated, Ameren and Empire asked for trackers for these  
25 costs. Recognizing that these costs were newly imposed, they

1 weren't in cost of service, and there was no operational  
2 history by which to assess a proper amount to include in  
3 rates, the Commission granted such trackers. Now given the  
4 seven years since the passage of the rule, the vegetation  
5 management tracker is no longer vogue.

6 In the recent Ameren case, the Commission  
7 rejected Ameren's request to continue the tracker mechanism.  
8 In addition, in its recent case, Empire voluntarily  
9 discontinued its vegetation management tracker. This tracker  
10 is clearly going out.

11 Next Mr. Brosch applies his criteria to  
12 KCP&L's cyber security tracker request. Again, these costs  
13 are not material, they're not volatile, and they're not  
14 substantial. As you can see here, KCP&L's cyber security  
15 costs in a chart taken from Mr. Brosch, the costs are, in  
16 fact, decreasing. And as I mentioned, this tracker mechanism  
17 is not balanced. It cannot distinguish the labor costs that  
18 are devoted solely to cyber security and those labor costs  
19 that are for typical IT purposes.

20 KCP&L readily admits that the nature of its  
21 cyber security program and the costs to be incurred are  
22 largely unknown. Here's two quotes from Mr. Rush's direct  
23 testimony. The cost of compliance is undefined at this time  
24 but will be substantial. Quote, KCP&L is working diligently  
25 to develop an overall plan, unquote.

1           In a recent American Electric Power case, the  
2 West Virginia Commission rejected AEP's request for a cyber  
3 security tracker. The Commission pointed out that given the  
4 lack of concrete plans and lack of specific cost data, such a  
5 request was premature. In fact, OPC witness Mark points out  
6 that he is aware [sic] of any other instance in which a state  
7 utility commission has ever implemented a cyber security  
8 tracker.

9           The fourth tracker that KCP&L requests is a  
10 transmission tracker. This request was not originally in  
11 KCP&L's request -- in their case. In the recent Ameren and  
12 Empire cases, however, the Commission limited the amount of  
13 transmission costs that it would allow to be included in the  
14 fuel adjustment clause. It limited those costs to only  
15 transmission costs that were associated with purchase power  
16 and off-system sales.

17           The Commission did not allow transmission  
18 costs to the extent that they related to the utility's  
19 generation and transmission of energy for native load. Given  
20 this, KCP&L now seeks to avoid the Commission's finding and  
21 instead asks for a transmission tracker. It is clear,  
22 however, that there is no statutory authority for such a  
23 tracker.

24           And this is the interesting part. The General  
25 Assembly has expressly allowed for the deferral of some

1 amount of transmission costs. The General Assembly could  
2 have allowed for the deferral of all transmission costs, but  
3 it didn't do that. Nevertheless, KCP&L wants to avoid the  
4 limits of Section 386.266.

5 What happens is whenever it suits them, KCP&L  
6 wants to invoke Section 386.266, for instance when they want  
7 to seek a fuel adjustment clause. But when it doesn't suit  
8 them, they want to avoid that section. It is well  
9 established that the Commission is a creature of statute.

10 Quote, the Commission's powers are limited to those conferred  
11 by the above statute, either expressly or by clear  
12 implication, is necessary to carry out the powers  
13 specifically granted, unquote.

14 The General Assembly has set forth the extent  
15 to which the Commission can allow for the deferral of  
16 transmission costs. As such, it confounds logic that KCP&L  
17 now claims it should be allowed to defer all transmission  
18 costs. If such authority did exist as KCP&L apparently  
19 claims, why did the General Assembly feel the need to include  
20 such costs in the fuel adjustment clause? Clearly such  
21 authority doesn't exist.

22 As I mentioned, Kansas has mandated multiple  
23 trackers, including a transmission tracker. As you can see,  
24 where it wants to, a legislature can provide such expressed  
25 authority. Clearly Missouri has not provided such authority.

1           You can see here language, such electric  
2 utility shall have a right to implement a transmission  
3 delivery charge. Clear statutory authority in Kansas.

4           As can be seen, each of KCP&L's requested  
5 trackers should be disallowed, consistent with the Court of  
6 Appeals dictates none of these costs are considered  
7 extraordinary. Further, none of these costs are material.  
8 In specific instances, they're not beyond the control of the  
9 utility, they're not balanced, and they're not  
10 straightforward. As such, the Commission should reject each  
11 of these.

12           In addition to the deferral accounting that  
13 KCP&L is requesting via a tracker mechanism, KCP&L is also  
14 seeking to implement deferral accounting for fuel costs  
15 through a fuel adjustment clause. As I mentioned earlier,  
16 the Commission does not -- or does have specific statutory  
17 authority to implement a fuel adjustment clause. That is  
18 noticeably in contrast to the lack of statutory authority for  
19 trackers. Therefore, the use of the extraordinary standard  
20 does not apply to a fuel adjustment clause.

21           Instead, the Commission has established the  
22 criteria for considering a fuel adjustment clause in previous  
23 cases. In this case, the Commission is faced with two  
24 overarching fuel adjustment clause issues. First, does  
25 KCP&L's request for a fuel adjustment clause violate its

1 commitment from the regulatory plan. Second, does KCP&L's  
2 request for a fuel adjustment clause meet the Commission's  
3 stated criteria.

4 As I mentioned two weeks ago, if you answer  
5 yes to both of these questions, then you have to address 16  
6 separate issues regarding how the fuel adjustment clause  
7 should be structured. If you answer no to either of these  
8 overarching questions, then you simply avoid those 16  
9 questions.

10 Turning to the first issue. In 2005, KCP&L  
11 and several parties, including the Commission's Staff and  
12 Public Counsel, executed a stipulation designed to provide  
13 ratepayer support for the construction of Iatan 2. Through  
14 this stipulation, KCP&L received over \$185 million in  
15 revenues that were not otherwise justified by normal  
16 rate-making.

17 This was done to maintain KCP&L's credit  
18 rating while it was constructing Iatan 2. Among other  
19 things, ratepayers received a commitment from KCP&L not to  
20 seek a fuel adjustment clause prior to June 1, 2015. Here's  
21 the actual language. And again, there has been talk about  
22 whether this language is ambiguous. And I would maintain  
23 given the second sentence here that talks about the authority  
24 that is granted prior to June 1st, 2015, that is the  
25 authority to request an IEC that it's not ambiguous.

1 KCP&L cannot seek an FAC -- cannot seek it  
2 until after June 1st, 2015. Here again is the regulatory. I  
3 want to contrast this with some language I found in another  
4 document just this weekend. Here's the current language.  
5 While digging through documents this week, we found a KCP&L  
6 filing with the SEC, which supports the customer's  
7 interpretation.

8 As you know, KCP&L takes the position that  
9 June 1st, 2015 is a limitation on their ability to, quote,  
10 utilize a fuel adjustment clause. The date refers to utilize  
11 under KCP&L's interpretation. On the other hand, customers  
12 assert that the date is a limitation on KCP&L's ability to,  
13 quote, seek, unquote, a fuel adjustment clause. The date  
14 refers to the word "seek."

15 In an SEC filing, I assert that KCP&L adopted  
16 the customer's interpretation. Here's the language from an  
17 SEC filing from 2005. As you can see, because of the  
18 placement of the comma, the date restriction, June 1st, 2015,  
19 applies to the word "seek." The date doesn't respond -- or  
20 refer to the word "utilize." There's a common between there.  
21 So in this SEC filing, KCP&L has said that KCP&L will not  
22 seek prior to June 1st, 2015. This is a pleading, this is a  
23 document filed with the SEC, attested to by KCP&L officers.  
24 Given this, the Commission should reject KCP&L's request and  
25 avoid all other fuel adjustment clause issues.



1 All the consumers in this case agree --  
2 disagree with KCP&L's self-serving interpretation. As OPC  
3 witness Mantle points out, KCP&L is precluded from seeking a  
4 fuel adjustment clause, quote, until the next general rate  
5 proceeding filed by KCP&L, unquote. Similarly, MECG witness  
6 Brosch points out that KCP&L is limited to seeking an interim  
7 energy charge prior to that date. Of course, you may suggest  
8 that the interpretation of the customers is like KCP&L's,  
9 that is self-serving.

10 There's another party to this case, however.  
11 An objective party. Staff, which is given the task of  
12 balancing the interests, agrees with customers. Staff states  
13 that it cannot support the fuel adjustment clause because the  
14 regulatory plan prohibits such a request.

15 Ultimately, I would encourage the Commission  
16 to talk to two individuals that were participants in the  
17 regulatory plan discussions. First Staff witness  
18 Featherstone testifies on the fuel adjustment clause. And he  
19 will tell you Staff's position is that KCP&L cannot request  
20 this until after June 1st, 2015. Second, OPC witness Mantle,  
21 who was a member of Staff in 2005 and who was part of those  
22 discussions, will also tell you the plain meaning of this  
23 provision is that KCP&L's request for a fuel adjustment  
24 clause is premature. I would encourage you to speak with  
25 both of those participants from the regulatory plan

1 di scussions.

2 In my opening statement two weeks ago, I  
3 addressed KCP&L's claims that it could not earn its  
4 authorized return. I had hoped at that to avoid addressing  
5 that again, but KCP&L continues to bring that up in the  
6 context of its opening statements.

7 KCP&L attempts to use this as a basis for its  
8 claim that it needs multiple trackers and fuel adjustment  
9 clauses. KCP&L claims that because of its alleged reduced  
10 return on equity, it can't possibly earn its authorized  
11 return and that the mechanisms or the regulatory paradigm in  
12 Missouri is broke. In fact, now KCP&L claims that it's so  
13 broken, that it may be inherently confiscatory.

14 As Staff and MECG's testimony reveals,  
15 however, KCP&L's claims that it cannot earn its authorized  
16 return is largely self-inflicted. First KCP&L's return on  
17 equity calculation includes several costs that are inflated,  
18 costs like the costs of outside attorneys that should be done  
19 in-house, and these costs have not been removed from their  
20 return on equity calculation.

21 Second, as the overwhelming evidence in this  
22 case demonstrates, KCP&L improperly assigns and allocates  
23 costs to its unregulated affiliates. So to the extent those  
24 costs remain with KCP&L, naturally return on equity levels  
25 are going to be deflated. That said, the return on equity at

1 the unregulated affiliates will be much higher than they  
2 should be.

3 Third, KCP&L's return on equity conclusions  
4 fail to normalize for weather.

5 Fourth, KCP&L's return on equity fails to  
6 recognize that it has forfeited revenue dollars to its  
7 unregulated affiliates.

8 Fifth, KCP&L has manipulated the  
9 jurisdictional demand allocator to unnecessarily deflate its  
10 actual return on equity.

11 Sixth, as the shareholder's report indicates,  
12 and Mr. Featherstone points out, return on equity is not the  
13 entire story.

14 Inflated cost, and I went through this before,  
15 KCP&L has at least \$140,000 of costs that Staff identified  
16 associated with travel, meals, and conferences for  
17 unregulated affiliates. I'm sure there's more costs. You  
18 can't find them all. When Staff attempted to review these  
19 costs, KCP&L simply withdrew them from the case. That said,  
20 they didn't withdraw -- they didn't take these costs out of  
21 its ROE calculation. The ROE calculation continues to  
22 include these costs that shouldn't be in there.

23 KC&L also incurs inflated costs in the form  
24 of A&G expenses. We went through this last week. KCP&L's  
25 A&G expenses on a per customer basis are much higher than any

1 other utility in the region. In fact, if KCP&L simply got  
2 their A&G expenses down to the level of the second company,  
3 rates would be \$14 million lower. ROE is deflated because of  
4 these excessive A&G expenses.

5 In addition to incurring high levels of costs,  
6 KCP&L also fails to allocate these costs to its unregulated  
7 affiliates. As Mr. Collin testified last week, KCP&L retains  
8 all costs for services that are performed for other  
9 companies. It then relies upon an assignment or allocation  
10 of these costs. That said, while Ameren allocates 6.9  
11 percent of its indirect costs to parent companies and  
12 Southern Company allocates 3.8 percent, KCP&L only allocates  
13 0.49 percent of its indirect costs to its parent company.

14 Obviously when it keeps these costs of other  
15 unregulated affiliates, their return on equity is going to be  
16 deflated. They don't account for this in their calculation.  
17 Next, KCP&L -- as Staff mentions, KCP&L fails to normalize.  
18 Fails to normalize primarily for weather. The Commission  
19 said -- had this decision in its recent Ameren earnings  
20 complaint. It said you have to weather -- normalize for  
21 weather, that the ROE in surveillance reports are inherently  
22 unreliable given the fact that they fail to normalize.

23 Fifth, KCP&L fails to account for the revenues  
24 that it forfeited to its unregulated affiliate. Here is an  
25 example of two projects that should have been done by KCP&L

1 that would have brought in transmission revenues. KCP&L gave  
2 that opportunity to its affiliate. It's easy to see when you  
3 give up your revenue opportunities, you're not going to make  
4 your ROE. That said, I'm sure the ROE of its unregulated  
5 affiliate is much higher thanks to KCP&L.

6 Again, Staff has pointed out that KCP&L also  
7 has manipulated its earnings. While it reports costs for  
8 2014, it uses the demand allocator for jurisdictional  
9 purposes from 2013. That has the effect of lowering  
10 Missouri's authorized -- or lowering Missouri's earned return  
11 on equity.

12 Finally, as Staff points out, the focus on ROE  
13 is misleading. KCP&L considers as its primary metric what's  
14 called total shareholder return. This is not only the  
15 increase in shareholder price but also dividends, and when  
16 you look at that, KCP&L is performing in top tier.

17 That's all I had on this, but I'd like to  
18 address one question posed by the chairman to Staff counsel.  
19 Specifically, he asked about the effect of ROE on  
20 implementing -- the effect on ROE from implementing a fuel  
21 adjustment clause.

22 And I'm sure other witnesses can point to  
23 other metrics, other data, but one thing that I'd like to  
24 point out is that in 2012, when Kansas and Missouri issued  
25 their decisions, the Missouri authorized a return on equity

1 of 9.7 percent. In the same month, Kansas, which has a fuel  
2 adjustment clause, issued -- authorized a return on equity of  
3 9.5 percent. So there, the -- the existence of a fuel  
4 adjustment clause may lead one to believe that it's worth 20  
5 basis points. That's all the comments I had.

6 JUDGE BUSHMANN: Questions?

7 CHAIRMAN KENNEY: No questions, thank you.

8 COMMISSIONER HALL: Just a couple. Good  
9 morning.

10 MR. WOODSMALL: Good morning.

11 COMMISSIONER HALL: I was wondering what  
12 trackers that this Commission has established would you view  
13 as appropriate?

14 MR. WOODSMALL: Some of the trackers that  
15 maybe not currently, but historically, we viewed as  
16 appropriate, the vegetation management tracker --

17 COMMISSIONER HALL: So you would view those  
18 expense as extraordinary?

19 MR. WOODSMALL: The -- when you use the word  
20 "extraordinary," you need to not necessarily refer to the  
21 word "expenses." The events that cause those expenses were  
22 extraordinary. The Commission issuing a rule outside of a  
23 rate case that imposed costs on the utility that were  
24 otherwise not in their cost of service.

25 So we did a rate case, we included costs for

1 the utility, then the Commission came around later and said  
2 we're going to impose these requirements on you. And that  
3 imposed costs on the utility. So there, we agreed with a  
4 tracker.

5 Other examples are situations like gas  
6 pipeline replacement, the Commission came out in a rule in  
7 the 1990s that accelerated the -- the inspection of those and  
8 the replacement of certain pipelines and that imposed costs,  
9 and we agreed with trackers there.

10 Other trackers are acts of God. Same thing,  
11 they're extraordinary. They impose costs: A tornado, a  
12 flood, an ice storm.

13 COMMISSIONER HALL: Well, aren't those  
14 typically AAOs as opposed to trackers?

15 MR. WOODSMALL: They can be.

16 COMMISSIONER HALL: So I'm intrigued by your  
17 view that for a tracker to be appropriate, the expenses have  
18 to be extraordinary.

19 MR. WOODSMALL: They do. And I don't want to  
20 engage in semantics, but an AAO and a tracker do the exact  
21 same things. To show that, KCP&L in its last year in its  
22 transmission tracker request, asked for an AAO or a tracker,  
23 whichever the Commission wanted. They do the same thing.  
24 While AAOs are often used for those acts of God, Ameren had a  
25 storm tracker. So an AAO, a tracker, they do the same thing.

1                   COMMISSIONER HALL: And do you believe that  
2 that storm tracker was appropriate?

3                   MR. WOODSMALL: Do I believe it? I believe  
4 that at the time, there were concerns that there had been  
5 numerous storms on succession. That didn't play out, so I  
6 believe with the passage of time and the information,  
7 evidence that was developed, I don't think it was necessary  
8 anymore.

9                   COMMISSIONER HALL: Any other trackers that  
10 you believe were appropriate?

11                   MR. WOODSMALL: Some of the other trackers  
12 that we've agreed to are situations in which it is impossible  
13 or virtually impossible to set an ongoing amount of a cost.  
14 For instance, we agreed to a tracker for O & M costs when  
15 KCP&L finished Iatan 2. And when I say "O & M costs," we're  
16 talking about how much maintenance do they do on a new plant?  
17 No one knows. This plant hasn't been operating. There's not  
18 one day of experience. So we agreed to a tracker there.

19                   We agreed to the same thing with regards to  
20 Empire's Plum Point plant. Now after the passage of time, we  
21 have data, we sought and I think KCP&L has agreed to  
22 eliminate that tracker.

23                   Another instance is pension and OPEBs.  
24 Pension and OPEB costs are largely based upon what is the  
25 return they're receiving on their funded plan from the



1 market? No one knows what the return is going to be on that  
2 plan going forward. So it is impossible to determine an  
3 appropriate level going forward. So we've agreed there since  
4 it's virtually impossible to -- to make such an estimate, a  
5 tracker is appropriate.

6 COMMISSIONER HALL: What do you believe the  
7 standard for review would be on a Commission decision to  
8 establish a tracker?

9 MR. WOODSMALL: The standard of review? Well,  
10 first off, the standard of review of all Commission decisions  
11 is whether it's lawful and whether it's reasonable. And by  
12 reasonable, whether it's arbitrary and capricious, whether  
13 it's supported by competent and substantial evidence.

14 But the first part is whether it's lawful.  
15 And I refer back to the previous statement that I made while  
16 giving my opening statement, lawfulness will largely turn on  
17 whether there is statutory authority. And I noted the  
18 language from a previous Court of Appeals decision that the  
19 Commission is a creature of statute. It has to either have  
20 expressed statutory authority or necessarily implied, I think  
21 were the words.

22 And I can't see outside of the Court of  
23 Appeals decision, which allows for deferral of extraordinary  
24 costs, I can't find any other statutory authority for the use  
25 of deferral accounting.

1                   COMMISSIONER HALL: So what statutory  
2 authority do you believe we have for any tracker? Statutory  
3 authority.

4                   MR. WOODSMALL: The only statutory authority  
5 you have for any tracker is that contained in 386.266, which  
6 is a fuel adjustment clause.

7                   COMMISSIONER HALL: So you would argue that we  
8 have no statutory authority for any tracker?

9                   MR. WOODSMALL: You don't have any statutory  
10 authority. You have case law that allows for deferral of  
11 extraordinary costs.

12                  COMMISSIONER HALL: Okay. Thank you.

13                  MR. WOODSMALL: Thank you.

14                  JUDGE BUSHMANN: Before we get started with  
15 witnesses, why don't we take a short break. We'll be in  
16 recess until about five minutes after 10:00.

17                  (A break was held.)

18                  JUDGE BUSHMANN: Let's go back on the record.  
19 We're now ready to start witness testimony.

20                  MR. HACK: KCP&L calls Scott Heidtbrink.

21                  (SCOTT HEIDTBRIK, having been first sworn by  
22 Judge Bushmann, testified as follows:)

23                                   DIRECT EXAMINATION

24                  QUESTIONS BY MR. HACK:

25                   **Q. State your name for the record, please, and**

1 **spell your last name.**

2 A. Scott Heidtbrink, H-e-i-d-t-b-r-i-n-k.

3 **Q. Mr. Heidtbrink, where are you employed and in**  
4 **what capacity?**

5 A. I'm employed with Kansas City Power & Light as  
6 the executive vice-president and chief operating officer.

7 **Q. Mr. Heidtbrink, did you prepare or cause to be**  
8 **prepared and filed in this docket direct testimony?**

9 A. I did.

10 **Q. And for the reporter's information, it's been**  
11 **marked as Exhibit 114. Do you have any changes to make to**  
12 **that testimony?**

13 A. I do. On page 16, line 20, it refers to costs  
14 by 3 million. That should be 2.6 million, which is  
15 consistent with four lines down, line 23, the 2.6 million.

16 **Q. Thank you. Subject to that change, if I were**  
17 **to pose the questions to you today that are included in this**  
18 **testimony, would your answers be substantially the same?**

19 A. Yes.

20 **Q. And are those answers true and correct to the**  
21 **best of your knowledge and belief?**

22 A. Yes.

23 MR. HACK: With that, I would offer Exhibit  
24 114. Mr. Heidtbrink will not be back after this morning, and  
25 tender Mr. Heidtbrink for cross.

1 JUDGE BUSHMANN: Any objections to the receipt  
2 of that exhibit? Hearing none, it will be received into the  
3 record.

4 (KCPL Exhibit Number 114 was received into the  
5 record by Judge Bushmann.)

6 JUDGE BUSHMANN: First cross-examination would  
7 be by MEGG.

8 MR. WOODSMALL: No questions.

9 JUDGE BUSHMANN: Public Counsel.

10 MR. POSTON: No questions.

11 JUDGE BUSHMANN: Commission Staff.

12 MS. MERS: No questions.

13 JUDGE BUSHMANN: Any questions from the  
14 Commissioners? Mr. Chairman?

15 CHAIRMAN KENNEY: I don't have any questions.  
16 Thank you very much.

17 COMMISSIONER HALL: No questions, thank you.

18 COMMISSIONER KENNEY: I have some.

19 QUESTIONS BY COMMISSIONER KENNEY:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. You're the CEO of the organization?

23 A. COO.

24 Q. I'm sorry, yes, COO, chief operating officer.

25 How do you feel the customer service of KCP&L has been

1 **towards its customers, if you had to rank it on a scale of 1**  
2 **to 10, in your opinion?**

3 A. On a scale of 1 to 10, I would say in the 3 to  
4 4 range.

5 **Q. Okay. Wow, that's remarkably honest.**

6 A. Well, I meant one being good. By the way you  
7 said that, I thought you meant --

8 **Q. Okay. Well --**

9 A. I think we provide really good service. I  
10 mean, there's always some opportunities, you know, I think  
11 back to the public hearings a couple things that came up, but  
12 if you have a customer rep and a call center and you think  
13 about all the myriads of things they need to know and could  
14 get asked by any customer, there will be mistakes once in  
15 awhile. But by and large, if you look at our customer  
16 service metrics, just different things we track, we do a good  
17 job and our employees are proud of that.

18 **Q. So in all the public hearings, you didn't --**  
19 **or I don't know how many you were at, you didn't pick up on a**  
20 **theme of consistent, every single public hearing there was**  
21 **kind of a general theme amongst the people that came and**  
22 **testified of poor customer service, of kind of a -- of just**  
23 **an attitude that the customer really wasn't, as I kind of**  
24 **just being blown off or placated or told things?**

25 A. Well, again, I was at two of the hearings, and

1 then I read the transcripts from the ones, like Marshall that  
2 I wasn't at. But if you actually look, there was just -- it  
3 was a few events. It wasn't, you know, like Marshall there  
4 were several customers, but it was all kind of around the  
5 APAC issue for the most part. Bruce Watkins -- we do have a  
6 customer rep that made a mistake, but again, we use that as  
7 an opportunity to counsel that customer rep and actually to  
8 the rest of our customer reps as well. So I think -- you  
9 don't have the people that are satisfied with our service  
10 that come to the hearings. And so it's the ones that are --

11 **Q. That's an interesting point because all the**  
12 **other public hearings I've sat through and I've -- granted**  
13 **I've only been here a year and a few months, but sat through**  
14 **public hearings, there always was people who came to public**  
15 **hearings that said, you know, I'm very satisfied with the**  
16 **service, but I don't think they need to have this rate**  
17 **increase. Or yes, they've been very good, but we don't need**  
18 **that.**

19 **Really interestingly was there was an absolute**  
20 **lack of that at the public hearings that we attended. And**  
21 **even going into there was also a lack of people coming**  
22 **forward saying that KCP&L was a good public and community**  
23 **partner?**

24 **A. Right.**

25 **Q. So my question, then, would be: Did your**

1 regulatory team even think of asking people to come testify  
2 that you are in a community partner with? If you did ask,  
3 did the people say no, we don't want to testify? Or did they  
4 not even think to ask people that they participate with the  
5 community to come and testify on their behalf?

6 A. Well, I think Darri n would have to answer that  
7 from the regulatory, but I don't think we ever sol icit people  
8 to come and to testify on our behal f.

9 Q. Okay.

10 A. But he could say that for sure.

11 Q. Okay. How important do you think it is that  
12 KCP&L has a good relationship with the Commissioners here?

13 A. Oh, I think it's very important. You know,  
14 you're the -- ultimately the proxy for the customer, so...

15 Q. Because one of the things I've noticed over  
16 the last year and -- since I've been here, is how di fferent  
17 KCP&L is compared to most of the other companies that we deal  
18 with, just how unengaged they are with the Commission. Is  
19 that a strategy that you-guys put forth, or is it just you  
20 only show up when you have a rate increase?

21 A. Well, it's not a strategy we have to be  
22 unengaged. It might be the way we're interpreting what we  
23 can come and talk about and when we can do that. And again,  
24 because of this, you talk about the amount of rate increase,  
25 four for the CEP and then another on this one, and then we

1 have different jurisdictions with GMO, there's not a lot of  
2 windows in between rate cases to where you have had the  
3 opportunity maybe. But if there is other opportunities, I  
4 think we would love that.

5 Q. Because it's just been a remarkable difference  
6 between all the other companies that we regulate that are  
7 just keeping us informed of, hey, this is what's going on in  
8 our service area, this is what we're doing. And, you know,  
9 then there was the one time I picked out that we were  
10 informed of something, which was this thing about the whole  
11 charging stations on the cars --

12 A. Uh-huh.

13 Q. -- which I found it very interesting that we  
14 rarely hear from your company, but when you had something  
15 pretty big to roll out, you guys scheduled a phone conference  
16 with every one of the Commissioners. Whereas every other  
17 company we deal with, usually would get in the car and come  
18 down and like to have a face-to-face with the Commissioners.

19 And I just found that very interesting in one  
20 of the Commissioners commented that their conversation, the  
21 person was in the car driving somewhere else and it was hard  
22 to hear. I know when I was supposed to have mine, they  
23 completely forgot about it and had to call back the next day.

24 And so after I listened to the public hearings  
25 and I looked at the lack of engagement that KCP&L has with



1 the Commission, it's kind of like why would I think that you  
2 care about the customer and their complaints and just  
3 placating them when you really don't do a real good job of  
4 trying to have a good solid relationship with the people that  
5 hold the purse strings that have a huge effect.

6 So as I look at all these public hearings, and  
7 I also have my own experience, do you think that KCP&L could  
8 be doing a better job engaging the Commission and/or do you  
9 think they also could be doing a better job of engaging the  
10 customers in heading off complaints before they get there?

11 A. Well, again, on the customer side, I really do  
12 think by and large we do a very good job of that. We take a  
13 lot of pride in that. That's important. I can go out,  
14 supervisor training, all-employee training talking about how  
15 do you get in front of those issues, how do you stay on top  
16 of them? So you will hear, it's isolated. We're not  
17 perfect. In terms of the relationship and how we come across  
18 to the Commission, I can tell you I'm horrified that that's  
19 the perception. Our CEO will be horrified and we will work  
20 to rectify that because that is not what -- what we want or  
21 that's not a goal.

22 Q. Because this has been a very big sticking  
23 point from me from the public hearings. As I understand,  
24 there's isolated instances.

25 A. Right.

1           Q.       But I notice themes coming up of the people  
2 that's being told -- just placated, just tell them what they  
3 want to hear or tell them oh, we're doing this, whatever.  
4 And even from some of the employees at KCP&L while the people  
5 were up making their complaints, the rolling of eyes, stuff  
6 of that nature, I just got a very big sense that the culture  
7 inside KCP&L is one that the customer is not first and the  
8 customer is kind of just thought of after the fact.

9                   And yeah, I know you can say yeah, we got  
10 great reliability and things, but I don't really -- I view  
11 those things as two completely things.

12                   Then when I look at the way that I feel that  
13 it's just oh, yeah, just whatever, just let the Commission  
14 know that and compared to what all the other companies that  
15 we deal with and just how proactive we are on, hey, we're  
16 excited about this, this is what's going on. It's crickets  
17 from your guy's company and it just reminds me of what I saw  
18 from the public hearings to how I feel that your company is  
19 engaged in this. It leaves me with -- with a real big  
20 question on what is the culture inside of KCP&L.

21           A.       And again, I can tell you I wasn't at the  
22 Marshall hearing because we had a board meeting that day, but  
23 the word was back to me within an hour. I was at the  
24 hearings that night. I was already on the phone with our  
25 head of engineering, our head of operations asking for

1 reports, follow-ups. I'm sorry it doesn't come across that  
2 we're doing that, but we are -- take those very seriously.  
3 We are all over them. We've been in multiple contacts with  
4 all those customers, but more importantly, we work very hard  
5 that they don't come up. So I'm horrified that we're coming  
6 across that way and we will work to correct it.

7 **Q. Thank you for your candor and I just**  
8 **appreciate you allowing me to get answers to some of those**  
9 **questions.**

10 A. Thank you.

11 **Q. And if you have any information on your**  
12 **customer satisfaction, your employee satisfaction, I think**  
13 **that is key to the culture of the organization. I asked**  
14 **earlier in the hearing about those things. I would be very**  
15 **interested to see those.**

16 A. We'd be happy to pull those together.

17 **Q. Great, thank you.**

18 JUDGE BUSHMANN: Commissioner Hall.

19 COMMISSIONER HALL: A couple questions as  
20 well, unrelated to that line of inquiry.

21 QUESTIONS BY COMMISSIONER HALL:

22 **Q. On page 17 of your direct testimony, you**  
23 **discuss -- actually, I'm sorry, on page 18, you discuss**  
24 **what's happened with dividends since 2009. Could you explain**  
25 **the relevance of that to me?**

1           A.       Well, I think some of the questions that's  
2 come back and forth is, you know, the effect on our  
3 shareholders, the owners of the company. I think what we are  
4 trying to say is that if you look at the lag, and I think  
5 Darrin Ives in his testimony talks about that's amounting to  
6 the last several years of about 30 million a year that the  
7 shareholders lose out on. In addition to that, we also cut  
8 the dividend in 2009, cut it in half. And so, again, it's  
9 showing that we know it's tough, there's all these  
10 regulations, all these stuff coming up that we need to make  
11 investments, we know that's hard on the customer, but our  
12 shareholders also take substantial action in it.

13           **Q.       So dividends have gone down roughly 50 percent**  
14 **since 2008?**

15           A.       2009 we cut the dividend from a buck 66 down  
16 to \$.83, and now it's up to \$.98, \$.99. \$.98, I think.

17           **Q.       And what has happened with share prices over**  
18 **that time period?**

19           A.       Oh, I don't know what the share prices were  
20 exactly in 2008, but generally speaking, our share price has  
21 gone down.

22           **Q.       So couldn't one interpretation of this**  
23 **reduction in dividends being that there's a relationship**  
24 **between the reduction in dividends and the increase in share**  
25 **price?**

1           A.       Well, actually, when we cut the dividend, the  
2 share price took a big hit. What I'm saying is when we  
3 reinstated and as we've had the dividend coming back, our  
4 share price has been increasing again.

5           **Q.       So would I be wrong to assume that there's not**  
6 **some relationship between the reduction and the dividend and**  
7 **the increase in share price? Because I mean, frequently**  
8 **boards have a choice whether to reinvest in the company,**  
9 **which frequently leads to increased share price, or pay that**  
10 **out as dividend.**

11          A.       I think typically as our dividend goes up, our  
12 share price has been going up.

13          **Q.       Always?**

14          A.       My gut instincts is yes. I don't have the --

15          **Q.       Okay. What's happened with dividends for**  
16 **Great Plains over this time period?**

17          A.       That's what I was referring to. It went from  
18 the buck 66 in '09 to \$.83 --

19          **Q.       Oh, okay.**

20          A.       -- and we're back up to \$.98, I believe it is.  
21 \$.98 per share.

22          **Q.       Oh, I thought you were referring to dividend**  
23 **for KCP&L.**

24          A.       The dividends at Great Plains Energy.

25          **Q.       Okay. Thank you.**

1 JUDGE BUSHMANN: Cross based on Commissioner  
2 questions? MEGG.

3 MR. WOODSMALL: Yes, very briefly.

4 CROSS-EXAMINATION

5 QUESTIONS BY MR. WOODSMALL:

6 Q. You were asked some questions about  
7 Commissioner Rupp about KCP&L's relationship with its  
8 customers. Do you recall that?

9 A. Yes.

10 Q. And you're familiar that Great Plains has both  
11 a KCP&L operating company as well as a GMO operating company?

12 A. Yes.

13 Q. Are you aware that on GMO bills, there is no  
14 reference to their service provider being GMO?

15 A. Yes.

16 Q. You're aware of that?

17 A. Uh-huh.

18 Q. So the only designation on those customer  
19 bills is that their provider is KCP&L?

20 A. Correct.

21 Q. Okay. Are you aware that GMO rates are set  
22 separately from KCP&L rates?

23 A. Yes.

24 Q. And that those rates are published in tariffs  
25 and available on the Commission Web site?

1 A. Yes.

2 Q. Can you tell me how a GMO customer who has a  
3 bill that says KCP&L can find its rates?

4 A. I haven't been on that Web site to check. I  
5 would assume when you go in the KCP&L Web site that it would  
6 direct you to the GMO versus the KCP&L tariffs.

7 Q. But if you're a GMO customer and you don't  
8 even know GMO exists, why would you even look there?

9 A. Well, I think you would look at KCP&L Web site  
10 and when you got to KCP&L, then I think you would see the  
11 references or the distinction between KCP&L and GMO.

12 Q. You haven't looked at that?

13 A. I have not.

14 Q. So you don't know if you're meeting your  
15 customer needs for purposes of providing them tariffs and  
16 rates that they can easily understand and calculate their own  
17 bill?

18 A. What I do know is that I have not heard of any  
19 complaints from a customer that they couldn't find it, so I  
20 would be led to believe that it's not a problem.

21 Q. Would you believe that that is an important  
22 function of the Commission?

23 A. Yes.

24 Q. Do you believe that the GMO bill should have  
25 some designation that their service provider is GMO?

1           A.       Again, I don't know the history on the issue  
2 or what discussions have taken place. I think I would have  
3 to ask Darri n Ives or Tim Rush maybe that might have more  
4 hi story.

5           **Q.       But as the chief operating officer, do you**  
6 **believe GMO customer bills should tell the customer that**  
7 **their service provider is GMO?**

8           A.       Again, having not -- I don't know what the  
9 pros and cons all are. I haven't really thought that  
10 through. But I do know I've never heard a complaint from a  
11 GMO complaint from any customer or any confusion at all. You  
12 know, I live up in the GMO service territory, church, my kids  
13 went to school with GMO family, you know, friends, I've never  
14 heard anything. So I don't know, I'd have to think that  
15 through.

16           **Q.       If I told you hypothetically that there is**  
17 **customer confusion, that GMO customers do not believe -- do**  
18 **not understand that their service provider is GMO, do you**  
19 **think that's something that you should clarify and correct?**

20           A.       I would think that if it is causing a problem  
21 for customers, yes, we need to correct it.

22                   MR. WOODSMALL: Thank you. No further  
23 questi ons.

24                   JUDGE BUSHMANN: Public Counsel .

25                   MR. POSTON: No questi ons.



1 JUDGE BUSHMANN: Commission Staff.

2 CROSS-EXAMINATION

3 QUESTIONS BY MS. MERS:

4 Q. Commissioner Hall asked you a few questions  
5 about shareholder return. Are you familiar with the 2014  
6 Great Plains Energy annual report?

7 A. Yes.

8 Q. Are you familiar with the fact that in that  
9 report, it was reported that there was a 21 percent return  
10 for shareholders?

11 A. TSR, yes.

12 MS. MERS: No further questions.

13 JUDGE BUSHMANN: Redirect by KCP&L?

14 MR. HACK: Thank you. Just a few. If I may  
15 approach, Commissioners, we filed some Responses to Requests  
16 for Information last week. I do not have copies as I sit  
17 here today.

18 REDIRECT EXAMINATION

19 QUESTIONS BY MR. HACK:

20 Q. Do you know, Mr. Heidtbrink, whether the  
21 Company surveys customers and employees regarding  
22 satisfaction for customers and engagement for employees?

23 A. Oh, yeah, I mean, it's from a customer service  
24 communications, all those, I think there's close to 200  
25 different kinds of metrics we look at ranging from length of

1 time to meet service commitments to average speed of answer.  
2 Just all sorts of things.

3 **Q. Does KCP&L take action in response to survey**  
4 **findings from both customers and employees?**

5 A. Absolutely.

6 MR. HACK: May I approach?

7 JUDGE BUSHMANN: You may.

8 BY MR. HACK:

9 **Q. I'm going to say this is a filing we made last**  
10 **Friday and it's entitled Response to Commissioner Requests**  
11 **for Information, and Attachment 3 contains a document**  
12 **entitled KCP&L Customer Employee Satisfaction. I would just**  
13 **ask that you take a quick look at it and maybe briefly**  
14 **describe conclusions from a couple of the tables.**

15 MR. WOODSMALL: Your Honor, may I voir dire  
16 the witness briefly?

17 JUDGE BUSHMANN: You may.

18 VOIR DIRE EXAMINATION

19 QUESTIONS BY MR. WOODSMALL:

20 **Q. Have you ever seen this document before, sir?**

21 A. I have not.

22 **Q. Are you familiar with the numbers, conclusions**  
23 **reached in that document?**

24 A. No, I was just taking a look now to see what  
25 they are.

1 MR. WOODSMALL: Your Honor, I don't believe a  
2 proper foundation has been established for entering any of  
3 the information contained in this document.

4 JUDGE BUSHMANN: Well, they're not offering  
5 it. He's just asking him questions about it. He can testify  
6 about what he knows about it.

7 MR. WOODSMALL: Well, he says he hasn't seen  
8 it, but Mr. Hack said he was going to ask him questions about  
9 the conclusions reached therein.

10 JUDGE BUSHMANN: I'll let him have a chance to  
11 review the document first and then we'll talk about  
12 Mr. Hack's questions about it.

13 MR. HACK: Thank you, Your Honor.

14 THE WITNESS: Okay.

15 FURTHER REDIRECT EXAMINATION

16 QUESTIONS BY MR. HACK:

17 Q. I asked you earlier whether the Company  
18 surveyed customers for satisfaction and employees for  
19 engagement, and you said yes. Do you remember?

20 A. Right.

21 Q. I'm going to represent to you that that  
22 document that I just handed to you, Attachment 3 from the  
23 filing last Friday, contains a summary of some customer  
24 survey and employee engagement survey results. Have you  
25 reviewed customer survey -- customer satisfaction survey

1 **results with the Company before?**

2 A. I have before, yes.

3 **Q. And do the results there shown on that page**  
4 **reflect your recollection of survey results you've seen in**  
5 **the past?**

6 A. They do.

7 **Q. Can you tell me, from the top chart, what**  
8 **customer satisfaction with the customer satisfaction question**  
9 **is asked and what is provided?**

10 A. It says thinking about KCP&L, please tell me  
11 if you have a favorable or an unfavorable impression of the  
12 company. This was taken in March of '15. It compares our  
13 response rate to four other Kansas City area companies, both  
14 utility and non -- I don't want to get into the names there.  
15 But on the favorable, we're 80 percent. The next closest is  
16 a 45 percent favorable. So as compared to those.

17 And then on the unfavorable, we're at a 12  
18 percent, there is one better on the unfavorable at 9 percent,  
19 but the others are kind of at the 21 and 23.

20 And down at the bottom, it talks about overall  
21 satisfaction with KCP&L service, this isn't comparing us to  
22 others. Those numbers span from back in the spring of '14  
23 through the spring of '15, and they run right in the high 80s  
24 in terms of totally satisfied.

25 **Q. If you go to the second page, I believe there**

1 **is a chart regarding employee engagement; is that correct?**  
2 **Maybe the third page.**

3 A. Third page.

4 **Q. My apologies.**

5 A. Okay. So nearly 80 percent of our employees  
6 say they're proud to work for KCP&L. Nearly 70 percent would  
7 recommend KCP&L is a great place to work. We go through  
8 there's a couple more. The disagree for those is 3 percent  
9 and 6 percent respectively.

10 **Q. Regarding company culture, Mr. Heidtbrink, can**  
11 **you describe your involvement in what was called the Ideas**  
12 **Campaign?**

13 A. Yeah, we had had an engagement survey and one  
14 of the things that kind of a theme that came out of it was  
15 people not feeling like they're heard or if they have an  
16 idea, it just kind of gets lost. And so we initiated, and I  
17 led an Ideas Campaign across the Company where we basically  
18 asked employees, said any idea you have, submit them, they'll  
19 get a fair shake. The answer may be yes, may be no, but if  
20 it's no, you will be a told why. So we made the commitment  
21 to do that.

22 I think we had about 290 ideas come in. We've  
23 responded back now to about 200 of them. The others are  
24 still -- some take longer to respond to than others, so we're  
25 still working on those.

1           The other thing we did is I went around to  
2 every location on the delivery and generation side of the  
3 business and basically just asked employees, where are we not  
4 -- you're out there every day. Where do you hear that we're  
5 not doing so hot? Or what are things that you think we can  
6 change to save costs and to do better? I think we ended up  
7 with close to 400 action items there and every one has been  
8 followed up on.

9           So we do a lot to try to engage our employees,  
10 to listen to them. I think, again, the biggest problem  
11 historically is people get busy and they just never get an  
12 answer back. It doesn't make sense. We have to tell people  
13 the why, so we really focus on that.

14           **Q. From a customer satisfaction perspective,**  
15 **would you like for Kansas City Power & Light and GMO to be**  
16 **the perfect company?**

17           A. Oh, absolutely.

18           **Q. Is that where we drive to go?**

19           A. Yes.

20           **Q. Will we ever get there?**

21           A. No.

22           **Q. But we keep working?**

23           A. Exactly. There's so many transactions, so  
24 many things going on at any given time, you just don't bat a  
25 thousand. But you know, that said, it's how you react to the

1 ones you don't, and I've never seen anything but a sense of  
2 urgency and the way we react to an issue when they do come up  
3 and, you know, what I hear back and following up with the  
4 customers are the ones that I end up talking to is that we do  
5 a good job of following that up. They appreciate it. So  
6 again, it pains me to hear that that's not coming across, so  
7 we will work on that.

8 **Q. And finally, in terms of engagement with the**  
9 **Public Service Commission, what is the Company's commitment**  
10 **going forward?**

11 A. Well, we will seek out ways to be more engaged  
12 with the Commissioners, you know, to any extent that we can.

13 **Q. Maybe one more question. In terms of engaging**  
14 **with Commissioners, do your lawyers occasionally advise you**  
15 **that communication might be problematic given ex parte rules?**

16 A. Yes, they do. And that's where part of my  
17 reaction was because perhaps ours are interpreting things  
18 differently than others are, so I would be very interested to  
19 know more about that.

20 **Q. And just on a topic that is a hot topic for**  
21 **this case, electric vehicle charging stations, the clean**  
22 **charge network, are you aware that the company requested a**  
23 **working docket related to that topic?**

24 A. Yes.

25 **Q. And ex parte concerns, are you aware, caused**

1 **that request to be tabled and delayed?**

2 A. Yes.

3 MR. HACK: No further questions.

4 MR. WOODSMALL: Your Honor, you mentioned  
5 earlier KCP&L's request to offer this document, Friday's  
6 information request.

7 JUDGE BUSHMANN: At some point after you've  
8 had a chance to review it.

9 MR. WOODSMALL: Yeah, and I mentioned earlier  
10 today that I hadn't had a chance to review it, I may have  
11 some questions about it. I've had a chance to review it real  
12 quickly. I can put aside my concerns by asking him a couple  
13 questions, if we want to do it now and I'd have no problems  
14 with redirect, but that will avoid my future objection to it.

15 MR. HACK: Is this on Attachment 3?

16 MR. WOODSMALL: Yeah, Attachment 3.

17 JUDGE BUSHMANN: It would probably be on the  
18 whole thing, wouldn't it?

19 MR. WOODSMALL: Well, the other ones I don't  
20 have a problem with either. So this would put aside my whole  
21 objection to the document.

22 JUDGE BUSHMANN: Any objections to that  
23 procedure here while I have him on the stand?

24 MR. HACK: I don't think so, not knowing.

25 JUDGE BUSHMANN: Go ahead, Mr. Woodsmall.



1 MR. WOODSMALL: Thank you.

2 RECROSS-EXAMINATION

3 QUESTIONS BY MR. WOODSMALL:

4 Q. Do you still have the document in front of you  
5 that Mr. Hack handed you?

6 A. Yes.

7 Q. Do you have Attachment 3?

8 A. Yes.

9 Q. Would you agree that at the top, it says KCP&L  
10 conducts multiple surveys, this would be for surveys  
11 conducted by KCP&L; is that correct?

12 A. Yes.

13 Q. Okay. And then there are several charts, the  
14 top chart identifies KCP&L; is that correct?

15 A. Yes.

16 Q. Is there any designation for whether customers  
17 have a favorable or unfavorable impression of GMO?

18 A. No.

19 Q. Okay. So for purposes of this survey, you  
20 have not distinguished between KCP&L and GMO; is that  
21 correct?

22 A. That's correct.

23 Q. Have you asked any questions about how KCP&L,  
24 how customers view KCP&L relative to how other customers view  
25 their electric provider?

1 A. Could you repeat that, please?

2 Q. Yeah, it was inartfully worded.

3 There are questions regarding how KCP&L's  
4 customers view KCP&L. Have you ever compared your results  
5 with how other electric utilities -- Ameren, Empire, Westar  
6 -- are viewed by their customers?

7 A. Not to my knowledge.

8 Q. Okay. Finally, you made the comment that you  
9 don't bat a thousand.

10 A. Uh-huh.

11 Q. Do you believe that that only applies to  
12 customer service or would that apply to other parts of the  
13 company?

14 A. Oh, I think other parts of the company as  
15 well, yes.

16 Q. So you would agree even in the context of  
17 procuring fuel, the way you dispatch units, those type of  
18 things, that it's impossible to bat a thousand; is that  
19 correct?

20 A. Yes.

21 MR. WOODSMALL: Okay. No further questions.  
22 Thank you.

23 JUDGE BUSHMANN: Mr. Hack, would you like to  
24 have this marked as an exhibit and offer it at this time?

25 MR. HACK: We certainly would.

1 JUDGE BUSHMANN: Do you have a copy for the  
2 court reporter?

3 (KCPL Exhibit Number 149 was marked for  
4 identification by the court reporter.)

5 MR. HACK: KCP&L would move for the admission  
6 of 149.

7 JUDGE BUSHMANN: 149 is titled In Response to  
8 Commissioner Requests for Information, consisting of several  
9 attachments. Are there any objections to the receipt of that  
10 exhibit?

11 MR. POSTON: Judge, I would ask that we delay  
12 this as we were going to do originally. I would like to  
13 speak about -- internally with some Public Counsel witnesses  
14 that would have more familiar -- familiarity with at least  
15 the Attachment 1 about annual energy savings. I'd like to  
16 just talk about this internally before I waive any objection.

17 JUDGE BUSHMANN: Okay. How much time do you  
18 need?

19 MR. POSTON: I can try to do that this  
20 afternoon.

21 MR. HACK: And Your Honor --

22 JUDGE BUSHMANN: Why don't we defer a ruling  
23 on that, but since it's been offered, we'll wait to see if  
24 Public Counsel has any objection.

25 MR. HACK: And if I may, that would be a

1 different witness for that part of the -- that part of the  
2 document, of the exhibit.

3 JUDGE BUSHMANN: All right. I'll defer ruling  
4 on that.

5 MR. POSTON: Thank you.

6 JUDGE BUSHMANN: Mr. Heidtbrink, you may step  
7 down, sir. Thank you for your testimony. Call your next  
8 witness.

9 MR. HACK: KCP&L calls Darrin Ives.

10 JUDGE BUSHMANN: Mr. Ives, just a reminder  
11 that you're still under oath.

12 THE WITNESS: Yes, sir.

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. HACK:

15 **Q. I believe he had -- Mr. Ives has provided**  
16 **foundation for all of the exhibits. This will be his last**  
17 **time to testify, so I would on behalf of KCP&L move for the**  
18 **admission of Exhibits 118-HC and NP, which is his direct**  
19 **testimony, Exhibit 119-HC and NP --**

20 JUDGE BUSHMANN: 119 has already been  
21 received.

22 MR. HACK: Okay.

23 JUDGE BUSHMANN: So we're finished with that  
24 one.

25 MR. HACK: Exhibit 120, which is Mr. Ives'

1 rebuttal testimony, and Exhibit 121, both HC and NP, which is  
2 Mr. Ives' surrebuttal testimony.

3 JUDGE BUSHMANN: Any objections to the receipt  
4 of those exhibits?

5 MR. WOODSMALL: Your Honor, I don't think I  
6 have an objection, and in fact, I'm probably okay with it  
7 coming in. I just note that by accepting it now, there is an  
8 implicit assumption that the stipulation will get done and  
9 will get approved. He's scheduled to testify on several  
10 other issues that will be subsumed by that stipulation, so I  
11 just wanted to make you aware of that.

12 MR. HACK: I guess in response, and I don't  
13 disagree with that. To the extent we cannot move forward  
14 with the settlement, we will certainly bring Mr. Ives back  
15 and make him available.

16 JUDGE BUSHMANN: All right.

17 MR. POSTON: Judge, you said one of those  
18 exhibits had already been admitted, which exhibit was that?

19 JUDGE BUSHMANN: My records show that Exhibit  
20 119, Ives Supplemental Direct, HC and NP, has been offered  
21 and received into the record.

22 MR. POSTON: Okay.

23 JUDGE BUSHMANN: The others have not.

24 MR. POSTON: Okay. Thank you. That's all.

25 No objections.

1 JUDGE BUSHMANN: With the understanding that,  
2 if necessary, Mr. Ives will be available for  
3 cross-examination on other issues, I will admit into the  
4 record Exhibit 118, 120 and 121.

5 (KCPL Exhibit Numbers 118-HC, 118-NP, 120,  
6 121-HC and 121-NP were received into evidence by Judge  
7 Bushmann.)

8 MR. HACK: We tender Mr. Ives for  
9 cross-examination.

10 JUDGE BUSHMANN: First cross would be by MEEG.

11 MR. WOODSMALL: No questions.

12 JUDGE BUSHMANN: Public Counsel.

13 MR. POSTON: No questions.

14 JUDGE BUSHMANN: Commission Staff.

15 CROSS-EXAMINATION

16 QUESTIONS BY MS. MERS:

17 Q. Good morning, Mr. Ives.

18 A. Good morning.

19 Q. Do you have your surrebuttal testimony in  
20 front of you?

21 A. I do.

22 Q. Could you please refer to the chart on page  
23 30?

24 A. I'm there.

25 Q. Is it your testimony that KCP&L never earned

1 **its authorized return on equity in any year from 1993 to**  
2 **2006?**

3 A. That is my testimony.

4 Q. **Am I correct in reading your chart that it**  
5 **shows a 14.13 percent ROE in 1998?**

6 A. It does.

7 Q. **And am I correct in reading your chart that it**  
8 **also shows a 13.55 percent ROE in 2002?**

9 A. It does, and it shows our authorized levels  
10 were still at 15 percent.

11 Q. **Sure. Thank you. KCP&L never filed for rate**  
12 **relief in this period?**

13 A. We did not.

14 Q. **And you also had five rate reductions during**  
15 **this period; correct?**

16 A. Through settlements with Staff, yes.

17 MS. MERS: Thank you. No further questions.

18 JUDGE BUSHMANN: Questions from the  
19 Commissioners? Mr. Chairman.

20 CHAIRMAN KENNEY: No, thank you, Mr. Ives.  
21 Thank you.

22 COMMISSIONER STOLL: I have no questions.  
23 Thank you for your testimony.

24 JUDGE BUSHMANN: Commissioner Hall.

25 COMMISSIONER HALL: Yes.

1 QUESTIONS BY COMMISSIONER HALL:

2 Q. I have actually a couple questions about an  
3 issue that you testified about last week, the week before  
4 last and that's the clean charge pilot project.

5 A. Okay.

6 Q. I was wondering if you could explain to me  
7 what type of economy of scale the Company was seeking with a  
8 thousand charging stations.

9 A. Yes, I would say a couple things. We felt  
10 when we looked at what it would take to put a backbone in in  
11 our jurisdiction in order to reduce range anxiety, that we  
12 needed to have enough charging stations near places of work  
13 that people would lose that range anxiety. That would help  
14 promote adoption of cars and help them feel comfortable that  
15 they had more than just a home charging station to put in.

16 We were able at that size also to work with  
17 charge point to negotiate a level of discount as a result of  
18 the economies of scale and I don't think it's highly  
19 confidential from a standpoint of just talking about it in  
20 percentages. It's my understanding that we were able to get  
21 around a 40 percent reduction in the installation cost per --  
22 per station as we worked with charge point through that  
23 installation.

24 So there were two facets to it. One was we  
25 had some construction economy of scale, and two, and most



1 importantly, it put us in the spot where we felt like we had  
2 enough of a backbone in order to support up to 10,000 cars  
3 that the people would have the flexibility to charge and  
4 reduce that range anxiety.

5 COMMISSIONER HALL: Okay. Thank you.

6 JUDGE BUSHMANN: Commissioner.

7 COMMISSIONER RUPP: Yes.

8 QUESTIONS BY COMMISSIONER RUPP:

9 Q. Good morning.

10 A. Good morning.

11 Q. **This is your last time testifying, so I was**  
12 **told that you could give me an update on all the customer**  
13 **service issues that were brought up in the local public**  
14 **hearings. This would be an opportunity for to you do that.**

15 A. I believe I can. And I included a fair amount  
16 of updates in my surrebuttal testimony. The first one that I  
17 had in there was Ms. Sarah Carter, who testified about an  
18 inability to remain enrolled in the level pay plan after her  
19 husband had passed away and she was trying to change service  
20 into her name. Mr. Heidtbrink spoke about that a little bit.  
21 We went back, we certainly looked at her situation in  
22 particular and then we looked overall what our process is for  
23 that.

24 It was clear to us after looking at that that  
25 we had had a bad outcome come from a CSR that -- that just

1 gave a wrong answer. We messed that up. We worked very  
2 quickly after that public hearing with Ms. Carter, I think  
3 within two days or so, we had that resolved with her and on  
4 the level payment plan and everything we had done, the  
5 follow-up training with the individual CSR, and as  
6 Mr. Heidtbrink mentioned, it gave us an opportunity to have  
7 that discussion across our broad set of CSRs. Certainly  
8 within our policy is that type of circumstance and she should  
9 have been allowed to stay on level pay and change her name.

10           The second one that you spoke about with  
11 Mr. Heidtbrink I think was Marshall and the number of  
12 customers that were having voltage concerns and issues as a  
13 result of APAC. There were a couple of things there. First,  
14 Mr. Jacoby had been fairly upset about placement of a  
15 regulator station that was close to the proximity of his  
16 house. We went and spoke with Mr. Jacoby again.

17           I would just -- and I think I mentioned this  
18 in testimony, we had had discussions with Mr. Jacoby in  
19 advance of putting that regulator station in. We felt with  
20 our folks out in the field that we had agreement to put it  
21 there. It was after it got installed, Mr. Jacoby became  
22 upset. I think maybe it was bigger, maybe it was more of an  
23 eyesore than he anticipated in the discussions.

24           Regardless, subsequently, we've talked with  
25 him, we've agreed to move that regulator station, talked with

1 him about where we would move it away from his house. And my  
2 understanding is the discussions have gone well with him. He  
3 is in agreement with where we're going to move that regulator  
4 station to and he has even gone so far as to ask that we  
5 consider whether we can become the service provider for him  
6 rather than the Marshall utilities that serve him today. So  
7 I think those discussions have gone well with him.

8 On the voltage availability issues, that and  
9 we talked about this, Mr. Heidtbrink did a little bit, it's  
10 really a result of the impact of the APAC quarry and it's a  
11 start-up of a couple large crusher machines that occurs in  
12 the morning. We had previously spoken with APAC about  
13 putting some soft-start controls on their equipment to try  
14 and mitigate the voltage impacts of what was going on.

15 They did that. What we found as we went back  
16 after the public hearings is that even with those  
17 soft-starts, they were starting them so closely together that  
18 it didn't allow the voltage to recover from the first crusher  
19 before they would hit it again with the second crusher and it  
20 was causing a repetitive problem. We've spoken with APAC  
21 about separating those starts a little bit to try to mitigate  
22 that voltage impact.

23 We've also done -- installed some more voltage  
24 monitoring to see if we can tell what's going on after they  
25 make that separation and see if that helps improve our

1 si tuati on.

2                   And then lastly, I think I mentioned in here,  
3 we've continued to pursue additional investment that might be  
4 necessary if that doesn't work in order to stabilize the  
5 voltage in the Marshall area, and our engineering department  
6 is also talking about bringing in some third-party resources  
7 to see if there are things beyond what we've thought of that  
8 might be a long-term solution in the event that our work with  
9 APAC doesn't resolve the issue.

10                   So we're making progress there. I wouldn't  
11 say that we have a definitive answer yet at this point, but  
12 as Scott mentioned, we've been active in it and I think we're  
13 on a path where we should get some resolution on that one.

14                   **Q.       What about one of the things that stuck in my**  
15 **mind because it happened in Marshall and it happened in**  
16 **another public hearing, I don't have my notes in front of me.**  
17 **But there was a few times in the Marshall public hearing**  
18 **where people had had the voltage monitors in their house and**  
19 **then when they asked for the results on several different**  
20 **occasions, they were told that they were lost and then in a**  
21 **second local public hearing, you know, someone had been**  
22 **trying to get a customer service issue and then KCP&L had no**  
23 **record of them ever doing anything.**

24                   So I was seeing this pattern of, well, we're  
25 either losing the information or we're not wanting to share

1 **it with the customers or it's, like, just let them --**  
2 **hopefully they forget about it. Did you find anything?**

3 A. I'm looking through here. I thought I had one  
4 -- one item that I spoke about. Maybe it doesn't have it in  
5 there. The short answer is I do not think I've found any  
6 particular circumstance where -- where anybody internally was  
7 aware that we had lost records, we hadn't gotten back with  
8 folks. Clearly in those folks' situation, it appeared to be  
9 true and impactful to them.

10 We constantly talk and train with our folks  
11 about customer response and getting back with customers,  
12 getting them the answer. So if we had failures there, you  
13 know, we'll continue to train on that and try to make sure it  
14 doesn't happen again. I don't have a great answer for those  
15 individual circumstances.

16 I also had listed in my surrebuttal testimony,  
17 I think -- I think it was in Marshall as well, Mr. Fischer  
18 had testified that he had some lines -- poles and lines  
19 running down a property to his barn. It was property that he  
20 had actually sold to somebody else that were impacting some  
21 trees that had been planted in that area.

22 We did ultimately talk with Mr. Fischer as  
23 well as the new owner of the property out there. We were  
24 able to go out, remove those poles, remove those lines. My  
25 understanding is Mr. Fischer was -- was very appreciative of

1 getting that done and protecting those trees that were  
2 growing back up on that line, so I think that's been  
3 resolved.

4 We had an individual in Gladstone also express  
5 concern about trees near power lines on his property and we  
6 talked with him, went out, trimmed a couple trees that he was  
7 concerned were of issue that may cause outages on his line.  
8 I understand that's been resolved.

9 And then there was an individual at the -- at  
10 the downtown meeting that had talked about a leaning pole and  
11 there was discussion about whether or not that pole was ours  
12 or AT&T's, and I think she was an individual that had lost  
13 some of her -- her information in working with us. Where we  
14 ended up after that meeting, we spoke with AT&T. They went  
15 out, looked at the pole, didn't necessarily believe it was a  
16 lean that was outside of compliance, but they agreed to  
17 change the pole based on the input that we gave them as a  
18 result of the customer's response at the public hearing.

19 We settled on a damage claim with Ms. Payne,  
20 even though we didn't necessarily believe that it was a  
21 damage as a result of our pole, and we did find, this is the  
22 one I was thinking of, we did find some receipts and  
23 paperwork for Mrs. Payne that we were able to get back to her  
24 upon our settlement of the claim with her.

25 **Q. What about the one in the downtown meeting was**

1 certain type of breaker box or something and when he called,  
2 he was told that with the gentleman who was in the apartment  
3 building and there was a certain type of breaker box or  
4 something, and when he called, he was told that, no, that  
5 that wasn't there, that they don't exist, you had none of  
6 them, but he was saying it's right in front of me, this is  
7 here and it was the error that you guys didn't realize what  
8 you had and where it was?

9 A. I think it was a gentleman that was -- was  
10 talking about the -- having an analog meter and doing some  
11 meter voltage testing on his own that he thought had -- was  
12 emanating a large electromagnetic pulse off those meters. I  
13 think that's the discussion. I don't -- I don't recall -- I  
14 don't recall hearing of a follow-up discussion with that  
15 individual. I know we took down notes from that meeting and  
16 had a plan to follow-up. I have not heard about that one,  
17 one way or another.

18 Q. In your opinion, why if the KCP&L local public  
19 hearings did we not here anyone come forward and say they're  
20 a good community partner whereas in all the other gas and  
21 electric cases we've had, there was usually a handful of  
22 people that said, yeah, they're a good community partner but  
23 we don't really want them to have more rates, but they are  
24 good, they're part of the community. Why was that lacking in  
25 all the public hearings?

1           A.       You know, that's a great question. I thought  
2 about that particularly since you spoke with Mr. Heidtbrink.  
3 You know, first, I think he deferred a question to me and I  
4 would go ahead and answer that. We do not solicit any  
5 particular entities or parties to affirmatively come out to  
6 public hearings with any sort of attempt to, you know, talk  
7 about our community involvement or anything else. We leave  
8 that open to those that want to participate and come out  
9 without any influence of who we submit to that process.

10                   On your broader question, you know, I've  
11 attended public hearings over the last several rate cases and  
12 we have had a number of rate cases over the last eight years  
13 with the implementation of the comprehensive energy plan.  
14 And in general, as I recall, we have had very few -- until  
15 this set of meetings, very few customers that have gotten up  
16 and had service-related issues that they've talked about. It  
17 has been more like you've mentioned historically where we've  
18 had people come up and talk about they've had a number of  
19 rate increases, it's hard for us to bear those. We had more  
20 this time than I've experienced in the past, which, you know,  
21 has raised some discussion internally for all of us to deal  
22 with.

23                   On the flip side of that, we do have across  
24 all of our service territories 800,000 customers, and we  
25 probably have had some missteps and some problems in a few



1 areas as we heard in these public hearings. I don't think,  
2 and I think consistent with the -- the customer surveys and  
3 what we see when we survey customers, I think we have  
4 generally positive results and positive thoughts from our  
5 customers. I really can't explain why we didn't have people  
6 out this time talking about us being a good community partner  
7 because I believe over the course of a year, year in and year  
8 out, we hear that a lot from the Kansas City community and  
9 from our customers.

10 **Q. On the Attachment 3 or whatever we called it**  
11 **that was just offered on KCP&L's offering Number 149, KCP&L**  
12 **did these own -- these own internal studies on customer**  
13 **satisfaction and employee satisfaction or did they contract**  
14 **with a third-party?**

15 A. We do both. I think these may have been a  
16 result of surveys that we've conducted. We do third-party  
17 surveys, we participate in JD Power, we do some contracted  
18 and some internal-run, employee-based surveys. I think this  
19 last time we did our employee survey, we moved it to an  
20 internal survey.

21 We previously had had a third party and as a  
22 cost-reduction strategy, we modeled our employee survey after  
23 what we had done for the past two or three times but we ran  
24 it internally through -- this is not what it was, but it was  
25 something like a Survey Monkey that allowed it to be done

1 electronically with our employees. So we participate both  
2 with external third-parties and we conduct a number of  
3 surveys through our communications and public affairs  
4 internally as well.

5 Q. I mean, because I have not had a chance to  
6 fully digest all the numbers here, but the first one that I  
7 looked at was how you compared yourself to the four other  
8 companies. It was their favorable. It was interesting,  
9 though, that -- I'll just take one of them. One company, 61  
10 percent of the respondents were not in the area or didn't  
11 know of one of the other companies.

12 So when you say, okay, we have an 80 percent  
13 favorable and the other company has a 35 percent favorable,  
14 but when 61 percent of the respondents say that is not even  
15 my area, I don't even know the Company, we're not really  
16 comparing apples to apples. And if you go back, another one  
17 was a 45 percent. Either wasn't in their area or don't know.

18 So you know, that's the funny thing about  
19 statistics, you can make them do whatever you want. And I  
20 would just want to make sure that the questions you were  
21 asking, like opinion poles, how you word the question, if you  
22 want the response you want to get, you can get it by asking  
23 the right question.

24 And when I look at the comparative over these  
25 other companies, this isn't telling me much. It's telling me

1 that this is a survey to make KCP&L feel good about their  
2 customer satisfaction when 7 percent of the people are not in  
3 your area or have not heard of KCP&L, but 61 percent -- you  
4 can't compare those numbers and say, hey, we're 80 percent  
5 and everyone else is 35. So just if you want to pass that up  
6 the line of maybe whoever creates these surveys, it's how you  
7 word the question and what your sample data is that will give  
8 you better results. And that's just the first one I've  
9 looked at out of the three pages that are here.

10 A. Well, and I agree. And no survey is perfect  
11 by any stretch, particularly when you're surveying  
12 perceptions and customer and employee involvement engagement.  
13 And I think that's why Mr. Heidtbrink mentioned, we probably  
14 have close to 200 metrics that -- that we look at in a number  
15 of different surveys that we conduct in a number of different  
16 forums.

17 Some are -- are random surveys that reach out  
18 to customers in our service territory, some are survey  
19 responses to people that have proactively reached out and  
20 asked us for, you know, question through the call center or  
21 had an issue. So we try not to look at just people that  
22 contact us, we also try not to look at just a purely random  
23 sample. And the intent of all that through -- through our  
24 group, our public affairs and marketing group is to try and  
25 have an overarching balanced approach so we can take as many

1 biases out of it as we can.

2 Q. Okay. Yeah, I just -- would ask you to take a  
3 look at the internals on this because if I was brought this  
4 about my organization, that's the first thing I would say. I  
5 would probably just toss it because right there, the first  
6 question is completely, it's skewed. Thank you.

7 A. Understood.

8 JUDGE BUSHMANN: Cross based on Commission  
9 questions? MEEG.

10 MR. WOODSMALL: No questions.

11 JUDGE BUSHMANN: Public Counsel?

12 RECROSS-EXAMINATION

13 QUESTIONS BY MR. POSTON:

14 Q. Would you agree with me that the customer  
15 complaint issues you just addressed with Commissioner Rupp  
16 were not resolved with the customers until after these issues  
17 were raised publicly before the Commission?

18 A. I agree we have followed up after the public  
19 hearings to address those, yes.

20 MR. POSTON: Thank you. That's all.

21 JUDGE BUSHMANN: Commission Staff.

22 MS. MERS: No questions, thank you.

23 JUDGE BUSHMANN: Redirect.

24 MR. HACK: No questions.

25 JUDGE BUSHMANN: Mr. Ives, you may step down.

1 Thank you. We are ready for the next witness.

2 MR. FISCHER: At this time, the Company would  
3 call Mr. Ed Overkast to the stand.

4 (ED OVERKAST, having been first sworn by the  
5 COURT/CLERK, testified as follows:)

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. FISCHER:

8 Q. Please state your name and address for the  
9 record.

10 A. It's H. Edwin Overkast, and my address is P.O.  
11 Box 2046, Medina, Georgia.

12 Q. Who's your employer, sir?

13 A. I'm employed by Black & Veatch Corporation in  
14 management consulting.

15 Q. And on whose behalf are you testifying in this  
16 proceeding?

17 A. I'm testifying on behalf Kansas City Power &  
18 Light.

19 Q. Did you cause to be filed certain rebuttal  
20 testimony, and I can tell you and the reporter has been  
21 marked as Exhibit 129 and surrebuttal testimony, which has  
22 been filed and marked as Exhibit 130?

23 A. Yes, I did.

24 Q. Did you have any corrections that needed to be  
25 made to either of those exhibits?

1 A. None that I'm aware of.

2 Q. If I were to ask you the questions contained  
3 in that testimony today, would your answers be the same?

4 A. Yes, they would.

5 Q. And are they accurate to the best of your  
6 knowledge and belief?

7 A. Yes, they are.

8 MR. FISCHER: Judge, with that, I would move  
9 to -- for the admission of KCP&L Exhibit 129 and 130 and  
10 tender the witness for cross.

11 JUDGE BUSHMANN: Any objections to those  
12 exhibits? Hearing none, they'll be received into the record.

13 (KCPL Exhibit Numbers 129 and 130 were  
14 received into evidence by Judge Bushmann.)

15 JUDGE BUSHMANN: First cross will be by MECG.

16 MR. WOODSMALL: Yes, very briefly, Your Honor.

17 CROSS-EXAMINATION

18 QUESTIONS BY MR. WOODSMALL:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. In your testimony, you provide an attachment  
22 and that attachment is kind of a survey of regulatory  
23 mechanisms used in other states; is that correct?

24 A. Yes, that's correct.

25 Q. In conducting your survey, did you look at the

1 **underlying statutes or rules or case law for any of those**  
2 **states?**

3 A. No, I did not.

4 MR. WOODSMALL: Okay. No further questions.

5 Thank you.

6 JUDGE BUSHMANN: Cross by Public Counsel.

7 MR. POSTON: No questions.

8 JUDGE BUSHMANN: Commission Staff.

9 CROSS-EXAMINATION

10 QUESTIONS BY MS. MERS:

11 Q. **Good morning.**

12 A. Good morning.

13 Q. **How much are you being paid for your testimony**  
14 **today?**

15 A. My hourly rate?

16 Q. **Yes.**

17 A. You want to know what my hourly rate is?

18 Q. **I would love to know what your hourly rate is.**

19 A. I think that's confidential.

20 Q. **I don't. I think we had a discussion about**  
21 **that not being marked confidential.**

22 **That's okay. I can withdraw.**

23 COMMISSIONER HALL: Well, no, I don't think we  
24 should withdraw that.

25 CHAIRMAN KENNEY: Hold on a second. Hold on a

1 second.

2 MS. MERS: Thank you.

3 JUDGE BUSHMANN: I was waiting for a response  
4 from the Company.

5 MR. FISCHER: Judge, we've got an issue  
6 pending, I know, in the hearing on similar type expenses  
7 where we have provided an hourly rate for lawyers, but we've  
8 not done so for outside providers and their total, for  
9 example, the depreciation study, all those things. We still  
10 ask that that be kept confidential out of deference to the  
11 providers that didn't provide that to the company with the  
12 idea it would be made public. And I understand from what you  
13 said earlier that that might be an issue that's raised at the  
14 agenda meeting, but I guess we'd like to be consistent with  
15 that approach.

16 JUDGE BUSHMANN: Am I correct, though, that  
17 other expert -- outside experts have testified previously as  
18 to what their hourly rate was? Mr. Hebert, I think.

19 MR. FISCHER: I think Mr. Robert Hebert may  
20 have said what his hourly rate was.

21 COMMISSIONER KENNEY: Judge, was there an  
22 objection? And the basis for the objection recited?

23 JUDGE BUSHMANN: I've not heard one.

24 MR. FISCHER: I guess I would object on the  
25 grounds that we've recited. We have deferred to the service



1 providers throughout the case regarding what's confidential  
2 and not. And obviously the witness has suggested he'd like  
3 to keep that confidential.

4 JUDGE BUSHMANN: All right. For right now,  
5 I'm going to sustain the objection, pending the result of the  
6 Commission vote on the agenda order.

7 MR. WOODSMALL: Your Honor, do you need me to  
8 supplement my motion regarding that previous highly  
9 confidential designation as it applies to the attorneys or  
10 separate motion? Because my -- the joint motion filed with  
11 OPC did not extend to Mr. Overkast; s testimony and I can  
12 supplement it if you'd like.

13 JUDGE BUSHMANN: That's up to you.

14 MR. WOODSMALL: Or I can do it verbally.

15 JUDGE BUSHMANN: That's up to you. It's not  
16 my call. If you want to supplement it, you have the right to  
17 do that.

18 MR. WOODSMALL: All right. I'll do that  
19 before your agenda meeting on Wednesday.

20 CHAIRMAN KENNEY: Judge, I'm sorry, what was  
21 the objection and the basis for it?

22 JUDGE BUSHMANN: Mr. Fischer, can you state it  
23 again?

24 MR. FISCHER: Yes, Judge. We would object to  
25 the -- this question on the grounds that it's calling for

1 confidential information, which is being asked for in public  
2 session. And also --

3 CHAIRMAN KENNEY: Let me just ask a question,  
4 though, because I still don't understand the basis of that  
5 objection. It's not that it's irrelevant or that it's  
6 attorney-client privilege or something to that effect. I  
7 just want to make sure I understand. The Rules of Civil  
8 Procedure with respect to the rates that experts charge for  
9 their services, is that -- do our -- and I haven't been in a  
10 courtroom for awhile, so I don't remember. Is that protected  
11 under the Rules of Civil Procedure?

12 MR. FISCHER: Yeah, Judge, I don't think it's  
13 protected under the Rules of Civil Procedure. I think it  
14 would be under the Commission's rules on confidential  
15 information, market sensitive information, market -- in  
16 competition with others. That's the area where things are  
17 kept confidential.

18 JUDGE BUSHMANN: Okay. I understand that. It  
19 could be provided in-camera though.

20 COMMISSIONER HALL: Exactly.

21 MS. MERS: Can we do an offer of proof  
22 in-camera then?

23 JUDGE BUSHMANN: We can go in camera.

24 CHAIRMAN KENNEY: Well, let me just -- let me  
25 just -- we can do all that in a second. I just want to make

1 sure because I've asked this question before myself and the  
2 usual purpose for asking it is to reveal any bias that the  
3 expert has. So, I mean, it seems to me it's a perfectly  
4 reasonable area of inquiry and I just want to make sure that  
5 we're not designating this as a privileged -- as privileged  
6 or confidential information improperly.

7 We typically try to protect the utility's  
8 confidential information as being market sensitive and  
9 competitive. I didn't know we extended that to all the  
10 experts that you guys hire, too. So if it's more prudent to  
11 defer a decision to this until later, I'm happy to do it, but  
12 I just want to make sure I'm understanding the basis of the  
13 confidential nature of the information.

14 MR. FISCHER: Mr. Chairman, historically,  
15 traditionally, that kind of information has been kept  
16 confidential by the Commission. Whenever utilities have  
17 hired outside firms, included in that, for example, in rate  
18 case expense or depreciation studies or decommissioning  
19 studies or on any variety of things, it's felt that that is  
20 confidential information that was not intended by the  
21 provider to be made public. They are competing out there  
22 with other -- with other providers to provide similar  
23 information to public utilities across the country, and that  
24 kind of information would be sensitive to them and that's one  
25 of the basis for the confidential designations of the rule, I

1 believe.

2 MR. WOODSMALL: Your Honor, since it appears  
3 that KCP&L isn't trying to invoke this on behalf of the  
4 witness, may I voir dire the witness with one question to try  
5 to get to the bottom of this?

6 JUDGE BUSHMANN: I don't understand the  
7 purpose of your request.

8 MR. WOODSMALL: Well, what I was going to ask  
9 him is: How does revealing your hourly rate negatively  
10 impact you?

11 JUDGE BUSHMANN: Well, this whole issue of  
12 vendor classification is subject to your motion, which is now  
13 pending and has not yet been ruled by the Commission.

14 MR. WOODSMALL: I understand that. But KCP&L  
15 is arguing that this is competitively sensitive. They're  
16 arguing that on behalf of this witness and I think asking him  
17 how this is competitively sensitive will reveal whether it  
18 needs protection.

19 JUDGE BUSHMANN: You can ask that question.

20 VOIR DIRE EXAMINATION

21 QUESTIONS BY MR. WOODSMALL:

22 Q. Mr. Overkast, can you tell me how revealing  
23 your hourly rate here in public could negatively effect you?

24 A. This business is very competitive. We're  
25 constantly submitting responses to RFPs. I will say that I'm

1 billing at my standard billing rate, the standard rate that  
2 we quote for work.

3 **Q. But if your -- if your rate is less than**  
4 **others, you would certainly want the world to know that,**  
5 **wouldn't you?**

6 A. Well, I would think my rate's less than others  
7 just because of the quality of service you get for the rate  
8 that you pay me, because you're buying 40 years of experience  
9 in this business and -- but nevertheless, it is -- it is  
10 something that I don't feel comfortable revealing for  
11 competitive reasons.

12 MR. WOODSMALL: No further questions.

13 JUDGE BUSHMANN: Okay. Well, since this issue  
14 about revealing information in public session is now part of  
15 a pending Order or motion that has not been resolved, I don't  
16 think we can reveal it now in open session. But there's no  
17 prohibition on revealing it in closed, in an in-camera  
18 session. So we're going to go in-camera.

19 MS. MERS: Thank you.

20 (REPORTER'S NOTE: At this point, an in-camera  
21 session was held, which is contained in Volume 17, page 1348  
22 of the transcript.)  
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1 JUDGE BUSHMANN: We're now back in public  
2 sessi on. You may proceed.

3 BY MS. MERS:

4 Q. Do you primarily testify on behalf of  
5 utilities?

6 A. I would say yes.

7 Q. Thank you.

8 A. I primarily testify on behalf of utilities,  
9 although not exclusively.

10 Q. Okay. Thank you.

11 A. And I believe I answered a data request where  
12 I explained my rationale for that.

13 Q. Thank you.

14 MS. MERS: I have no further questions.

15 JUDGE BUSHMANN: Questions by Commi ssi oners.  
16 Mr. Chair man.

17 CHAIRMAN KENNEY: Just a couple.

18 QUESTIONS BY CHAIRMAN KENNEY:

19 Q. I haven't seen the answer to the data requests  
20 because those usually don't make their way into evidence. So  
21 what was your explanation for primarily representing  
22 utilities and not representing --

23 A. I only take cases where I'm going to testify  
24 on something that I believe is correct. I've been testifying  
25 for almost 40 years and I don't ever testify a different way

1 for different clients. In fact, I won't take a case unless I  
2 believe that the position I'm being asked to take is the  
3 correct position. And so that limits me to mostly utilities,  
4 although I have testified on behalf of customers and  
5 marketers in certain areas.

6 I testified on behalf of marketers on the  
7 unbundling in Connecticut because I'm extremely familiar with  
8 what's fair and reasonable when you unbundle a gas system. I  
9 testified on behalf of customers of a Trans-Alaska Pipeline  
10 case because the other parties were misusing an economic  
11 concept. But basically, I only testify on things that I  
12 believe are correct.

13 **Q. Would you be able to say in the last -- I know**  
14 **you've been doing this 40 years, but let's say in the last**  
15 **five years, the percentage of your engagements that have been**  
16 **on behalf of utilities versus customers or other entities?**

17 A. Five years? I'd have to look and see. But  
18 it's going to be the great majority because I generally  
19 testify for utilities.

20 **Q. Greater than 90 percent?**

21 A. I would say so, yes.

22 **Q. Greater than 95 percent?**

23 A. Yes.

24 **Q. Approaching 99 percent?**

25 A. In the last five years, yes.



1 Q. Okay. Okay.

2 CHAIRMAN KENNEY: Thanks. No other questions.

3 QUESTIONS BY COMMISSIONER HALL:

4 Q. Good morning.

5 A. Good morning.

6 Q. Do you believe that trackers and a FAC reduce  
7 risk to the company?

8 A. Yes, they do.

9 Q. And do you believe that to the extent trackers  
10 are established and FAC is instituted, that that -- that it  
11 would be appropriate for the Commission to take some downward  
12 adjustment to an ROE?

13 A. No, I don't. And the reason for that is that  
14 --

15 Q. You anticipated my next question.

16 A. Well, I think the whole point is that when you  
17 look at the comparable companies, you have to understand what  
18 they have. And if you look at the list of comparable  
19 companies used in this case, they have fuel adjustment  
20 clause, they have trackers --

21 Q. Okay.

22 A. -- some of them have --

23 Q. But that's not really my question. So let's  
24 say if we were to decide to -- to not institute an FAC in  
25 this case and we were to deny all the tracker requests, right

1 now the Company is seeking a 10.3 ROE. Would your  
2 recommendation be that we need to adjust up that ROE in light  
3 of our refusal to establish those trackers and FAC?

4 A. Yes, I would, and --

5 Q. So --

6 A. -- and --

7 Q. -- you do agree that there is an inverse  
8 relationship between trackers and a FAC and ROE?

9 A. But you have to remember the benchmark, and if  
10 the --

11 Q. I understand all that.

12 A. -- and if the benchmark already includes all  
13 that --

14 Q. I understand that. Do you believe every  
15 public utility should have an FAC?

16 A. I can imagine some circumstances where it  
17 wouldn't be necessary.

18 Q. Give me an example.

19 A. Suppose you had a utility with 100 percent of  
20 their generation was hydroelectric and they had enough excess  
21 capacity that they never had to buy any market power so they  
22 could always meet their load.

23 Q. Are there any such utilities in this country?

24 A. Not anymore.

25 Q. Okay. So in reality, are there any utilities

1 **in this country that you're aware of that should not have an**  
2 **FAC? You don't have to name it, but I'm looking for the**  
3 **characteristics of that utility.**

4 A. No, I don't believe so. I believe with the  
5 way markets are now and with participation and RTOs and ISOs  
6 where there are energy markets based on -- upon zonal pricing  
7 and that sort of thing, that every utility should have a full  
8 tracking fuel adjustment clause. And further, that those  
9 fuel costs should be separately accounted for in rate making  
10 so that they don't even appear in base rates. They're just  
11 like the PGA, separate completely.

12 **Q. Do you believe that in order for the**  
13 **Commission to establish a tracker in this case, that it's**  
14 **necessary for us to determine that those expenses are**  
15 **extraordinary?**

16 A. No, I do not.

17 **Q. Elaborate, please.**

18 A. Well, I think if -- if I understand what the  
19 process is in -- in Missouri, and in Missouri a tracker is a  
20 little different than what I'm used to. But at least in  
21 Missouri, there's the accounting authority order and that  
22 clearly is based on extraordinary costs. And that's  
23 something that the utility comes in when it occurs. There's  
24 an ice storm and they have a lot of damage or there's a  
25 tornado and they come in and they ask for the authority to --

1 to defer the costs associated with -- with restoring service  
2 and they don't know how much it's going to be at that point,  
3 that's really -- that's the extraordinary circumstance and  
4 that's an accounting authority order that's separate from a  
5 rate case process.

6 But in the rate case process, it's a little  
7 bit different because what you're doing is you're developing  
8 a historic test year and you're really asking the question  
9 does that test year really give me a good forecast of what  
10 costs are likely to be in a future period. And if it  
11 doesn't, and if you can't say, you know, with some level of  
12 reasonable certainty that that forecast is accurate, then a  
13 tracker serves to benefit both customers and shareholders.

14 I mean, depending on how the things actually  
15 turn out. And in that way, it's completely balanced because  
16 the tracker is not a guarantee of recovery. The tracker  
17 allows you to defer the costs, but those deferred costs have  
18 to be reviewed and approved in a subsequent rate case and  
19 this is all done in the rate case process. And that's  
20 separate from what really an accounting authority order is  
21 used for. So I don't believe they have to be extraordinary.  
22 Just difficult to project with any accuracy.

23 **Q. It's your belief that the regulatory**  
24 **environment in Missouri is below average; is that correct?**

25 A. Well, I think the regulatory environment in

1 Missouri is more difficult than it needs to be because you  
2 have -- you don't have fuel adjustment clauses that are  
3 consistent with what other jurisdictions have and you have  
4 severe limits on the number of other kinds of cost recovery  
5 mechanisms that are available.

6 You've got jurisdictions that -- where  
7 trackers actually mean that they track costs in real time.  
8 They're not just deferred costs. And I think that the real  
9 issue is that you've got a historic test year that does not  
10 give you a good forecast of what certain costs will be. A  
11 good example is fuel adjustment. There's no way that the --  
12 looking sitting here today and running your models that you  
13 can get a good estimate of what fuel costs will actually be  
14 in the future period.

15 And I'm not alone in that. I mean, one of the  
16 people that's been cited as an expert in this issue is Alfred  
17 Kahn, who is a -- probably the best known regulatory  
18 economist in the last 50 or 60 years. And he's been cited in  
19 several people's testimony with respect to regulatory lag and  
20 -- and yet he support -- he would support everything that  
21 I've said in my testimony related to the fuel adjustment  
22 clause.

23 **Q. Well --**

24 A. And he would start out by saying, for example,  
25 that there's no way to get a reasonable forecast of what fuel

1 adjustment costs are going to be out there in the future from  
2 a historic period.

3 **Q. Well, let me ask you this: Moody's has --**  
4 **has, as indicated in some testimony report by Staff, cited a**  
5 **constructive regulatory environment in Missouri. And there**  
6 **is statements by company representatives to the audit**  
7 **committee that reference a -- a regulated utility business**  
8 **model with support of cost recovery. Are those -- are those**  
9 **accurate statements?**

10 A. Well, they're accurate to the extent that --  
11 let's look at your gas companies. Your gas companies have  
12 full tracking PGAs.

13 **Q. Well, I don't think we're talking about gas**  
14 **companies.**

15 A. Well, but it's part of the regulatory process.

16 **Q. I think they were talking as it effects this**  
17 **company. I mean, that would be -- that would be very odd for**  
18 **-- for -- for KCP&L to be speaking to its audit committee and**  
19 **talking about a supportive --**

20 A. Well --

21 **Q. -- regulatory environment with regards to gas.**

22 A. You didn't tell me that was KCP&L talking.  
23 You just said that somebody made the statement.

24 **Q. Well, it was.**

25 A. If it's KCP&L, then KCP&L would doubtless be

1 talking about, for example, the regulatory plan that's been  
2 in effect for ten years that allowed them to build the energy  
3 center and to maintain financial viability while that was  
4 going on. That's a positive thing. But when you look at the  
5 results, and really all -- all investors care about, they  
6 don't care about what you've allowed or don't allow. They  
7 care about what you actually earn and if you can't earn your  
8 allowed return, then that can't be a constructive  
9 environment.

10 **Q. Are shareholders getting increased value when**  
11 **-- when share prices go up?**

12 A. Shareholders, that's part of their -- that's  
13 part of their earnings for at least the ones who were  
14 invested in the period when the -- when the prices went up.

15 **Q. Are you aware, is -- is the company having**  
16 **trouble accessing capital?**

17 A. Not to my knowledge.

18 COMMISSIONER HALL: Okay. Thank you.

19 JUDGE BUSHMANN: Any cross based on Commission  
20 questions? MECG?

21 MR. WOODSMALL: Thank you, Your Honor.

22 RE-CROSS-EXAMINATION

23 QUESTIONS BY MR. WOODSMALL:

24 **Q. Working backwards, you were just asked some**  
25 **questions by Commissioner Hall regarding KCP&L's statements**

1 **to its audit committee. Do you recall that?**

2 A. Yes.

3 **Q. And in that, you said that doubtless KCP&L was**  
4 **referring to the regulatory plan in effect for ten years. Do**  
5 **you recall making that statement?**

6 A. Yes.

7 **Q. Do you believe that the regulatory plan is**  
8 **still in effect?**

9 A. No.

10 **Q. Do you realize that the regulatory plan, the**  
11 **vast majority of it, expired five years ago in 2010?**

12 A. Yes.

13 **Q. So KCP&L would be referring to their audit --**  
14 **referring to that in current statements to its audit**  
15 **committee?**

16 A. But it's my understanding that there are still  
17 parts of that, the cost of which are being recovered today.

18 **Q. Does the regulatory plan provide any ratepayer**  
19 **support currently?**

20 A. To the extent their amortization's in current  
21 rates, yes.

22 **Q. But customers aren't providing any additional**  
23 **amortization; is that correct?**

24 A. No, but those -- those amortizations are part  
25 of the costs that was incurred during the period of the plan



1 and that obviously has helped them maintain their financial  
2 integrity during a heavy period of construction.

3 **Q. So you believe the regulatory plan has**  
4 **benefits to KCP&L as long as regulatory amortizations are**  
5 **included in rates?**

6 A. As long as they are able to recover the costs  
7 that they incurred and deferred, then those costs are  
8 beneficial to KCP&L.

9 **Q. Do you believe the regulatory plan called for**  
10 **deferred costs?**

11 A. I don't know all the details of the regulatory  
12 plan, but I've heard in here today that those costs were to  
13 be covered -- recovered over -- certain costs were to be  
14 recovered over ten years, and that would be -- that would be  
15 putting them into today -- that would mean they would be in  
16 rates today. I believe that you even said there's some costs  
17 -- deferred costs in rates today.

18 **Q. What costs are being deferred and recovered**  
19 **over ten years?**

20 A. I can't tell you exactly.

21 **Q. Have you read the regulatory plan?**

22 A. No.

23 **Q. But you believe in response to Commissioner**  
24 **Hall that KCP&L is referring to that document when it talks**  
25 **to its audit committee?**

1 A. I'm sure that's got to be part of it.

2 Q. You're sure?

3 A. Yeah. I'm thinking about what happens for a  
4 utility. A utility that is able to recover costs during a  
5 are period of heavy construction, whether they're deferred or  
6 not, that is a positive attribute of the regulatory process.

7 Q. So you're sure KCP&L is referring to documents  
8 that have expired five, six years ago when it talks to its  
9 audit committee?

10 A. If they're collecting costs today, that's part  
11 of -- part of --

12 Q. And I notice you said "if they're collecting  
13 costs." You're not sure if they're collecting those costs?

14 A. Other than what I've heard you say.

15 Q. Working backwards, you said that you're sure  
16 that the standard in Missouri is not extraordinary. Do you  
17 recall that?

18 A. Yes.

19 Q. Okay. Did you consult any statutes, rules, or  
20 court orders to make that determination?

21 A. I consulted the -- the standards that were  
22 spelled out in decisions by the Commission related to AAOs  
23 and to trackers.

24 Q. Okay. So last year, eleven months ago when  
25 the Commission issued its Order on transmission tracker where

1 **they said the standard was extraordinary, you disagree with**  
2 **the Commission's finding there; is that correct?**

3 A. It's my understanding that in the last case,  
4 that was a request for accounting authority order, not a  
5 tracker. And to the extent that it was an accounting  
6 authority order, the standard of extraordinary cost, even as  
7 I read the way the Commission deals with it, would have been  
8 required.

9 **Q. Did you read the pleadings in that case?**

10 A. No, I did not.

11 **Q. Did you read the testimony in that case?**

12 A. No, I did not.

13 **Q. Did you read the Order in that case?**

14 A. No.

15 **Q. So you believe, though, that it refers to an**  
16 **accounting authority order, not a tracker?**

17 A. That's my understanding, yes.

18 **Q. Okay. You said that extraordinary doesn't**  
19 **apply, rather, quote, the standard is, quote, difficult to**  
20 **predict with any accuracy, unquote. Do you recall saying**  
21 **that?**

22 A. Yes.

23 **Q. Do you believe property taxes are difficult to**  
24 **predict with any accuracy?**

25 A. Based on historic values, yes.

1           **Q.       You really believe property taxes are**  
2 **difficult to predict with any accuracy?**

3           A.       On the basis of historic test period, yes.

4           **Q.       Do you believe vegetation management costs**  
5 **are, quote, difficult to predict with any accuracy?**

6           A.       On that one, I'm not as certain. And as I  
7 understand, that's not going to be an issue for the tracker  
8 in any event.

9           **Q.       But when you filed your testimony, you were**  
10 **hell bent on getting KCP&L a vegetation management tracker --**

11                   MR. FISCHER:   Objection, Your Honor, I think  
12 that's argumentative.

13                   JUDGE BUSHMANN:   Sustained.

14 BY MR. WOODSMALL:

15           **Q.       You were desirous of convincing the Commission**  
16 **to grant KCP&L a vegetation management tracker; is that**  
17 **correct?**

18           A.       And that's because I understood that the  
19 purpose of the tracker was to allow for certain kinds of  
20 economies between operating companies that would not exist  
21 absent the tracker.

22           **Q.       But those costs aren't difficult to predict**  
23 **with any accuracy; is that correct?**

24           A.       No, they -- in that case, they would be  
25 difficult to predict.

1           **Q.       So they are difficult to predict, but you no**  
2 **longer believe they're difficult to predict?**

3           A.       No, you're -- you're misstating what I've  
4 said. I said, if you heard what I said, when I supported the  
5 tracker, it was under the concept that there were certain  
6 economies of scale associated with moving dollars between  
7 operating jurisdictions.

8                   I mean, it's pretty obvious to me that if you  
9 -- if you go out and you hire a company to trim trees in  
10 Missouri, there's going to be a cost for them to move their  
11 equipment to Missouri. And then if you want them to move it  
12 to Kansas, you're going to pay a cost for them moving it to  
13 Kansas. If there was a way that you could work more in  
14 Missouri one year and more in Kansas the next because you had  
15 these trackers, then that would create some economies of  
16 scale that wouldn't exist in the absence of those trackers.  
17 And that was the basis for me saying in my testimony that I  
18 supported the tracker because that creates uncertainty over  
19 what the actual dollars for tree trimming would be.

20           **Q.       Okay. Let me ask you the question: Do you**  
21 **believe payroll expenses are difficult to predict with any**  
22 **uncertainty -- with any accuracy, I'm sorry?**

23                   MR. FISCHER: Judge, I think I'm going to  
24 object on the grounds that I think this is going well beyond  
25 the scope of any questions that were asked by the bench.

1 MR. WOODSMALL: Your Honor, I'm simply asking  
2 him to apply the standard he gave in response to the question  
3 by Commissioner Hall. I just have two quick questions on  
4 this.

5 JUDGE BUSHMANN: I'll overrule it.  
6 BY MR. WOODSMALL:

7 Q. Do you believe payroll costs are difficult to  
8 predict with any accuracy?

9 A. No.

10 Q. But you believe property taxes are difficult  
11 to predict with any accuracy?

12 A. Using historic test year to project into a  
13 future test year, yes. And I can explain that, if you'd  
14 like.

15 Q. No, I'm just simply asking payroll -- property  
16 taxes are difficult to predict?

17 A. To predict property taxes in a future period  
18 using a historic period is a difficult thing to do.

19 Q. Okay.

20 A. Unless you're willing to make proforma  
21 adjustments, of course, out into the future year.

22 Q. Real quick, you said that it is -- that fuel  
23 models can't reasonably forecast fuel costs; is that correct?

24 A. Yes.

25 Q. Does Black & Veatch run fuel models for

1 **customers?**

2 A. Yes, we do.

3 **Q. Do you tell your customers when you do that**  
4 **that your results can't reasonably predict fuel costs?**

5 A. Well, you know, it's true of -- of everybody's  
6 model. And the reason it's true is because there are too  
7 many variables in projecting what the fuel costs are for a  
8 future period. For example, we don't know what the market  
9 prices of fuels are going to be with any certainty. Those --  
10 those vary even with the economy.

11 **Q. But again --**

12 A. I remember -- I'll give you an example.

13 **Q. Well, let me, but again --**

14 A. I want to finish my answer.

15 **Q. -- Black & Veatch. Well, your counsel can do**  
16 **that on redirect. But again, Black & Veatch takes money from**  
17 **customers to run models; is that correct?**

18 A. Yes.

19 **Q. Moving on, last area, you were talking about**  
20 **whether there should be a reduction and return on equity**  
21 **associated with implementation of trackers. Do you recall**  
22 **those questions?**

23 A. Yes.

24 **Q. And first off, are you a certified financial**  
25 **analyst?**

1 A. No.

2 Q. Okay. Would you agree that the comparable  
3 company group is picked based on credit rating?

4 A. Yes. Among other things.

5 Q. Okay.

6 A. Size, a variety of factors.

7 Q. Okay. And I believe you did agree to  
8 Commissioner Hall's question that trackers reduce risk?

9 A. Yes, they do.

10 Q. And as risk is reduced, credit rating can  
11 increase; is that correct?

12 A. Well, the credit rating will increase when --

13 Q. It's a yes-or-no question. As risk is  
14 reduced, credit rating can increase; is that correct?

15 A. Well, I can't answer the question as posed.

16 Q. You can't answer that question?

17 A. No, the reason I can't answer that question is  
18 because you said can the credit rating increase. There are  
19 lots of other factors. That's not the only one.

20 Q. Okay. As -- holding all else equal, if risk  
21 goes down, credit rating may increase; is that correct?

22 A. It may, yes.

23 Q. Okay. And in such a case, if credit rating  
24 goes up, the comparable group may change; is that correct?

25 A. It may.





1           **Q.        Would Utah and Oklahoma, which were two states**  
2 **that you copied tariffs extensively from in your policy**  
3 **paper, would you say that they have better regulatory**  
4 **environments?**

5           A.        As it relates to fuel adjustment clause and  
6 trackers, yes.

7           **Q.        Are you familiar with the surrebuttal filed by**  
8 **Staff witness Cary Featherstone?**

9           A.        Yes.

10          **Q.        Do you have a copy of that up there?**

11          A.        No.

12                    MS. MERS: May I approach.

13                    JUDGE BUSHMANN: You may.

14 BY MS. MERS:

15          **Q.        This is a financial report listing the**  
16 **Commissions from SNL. Could you read what Missouri's -- what**  
17 **our RRA ranking is?**

18          A.        A-2.

19          **Q.        Okay. Could you read what Oklahoma's RRA**  
20 **ranking is?**

21          A.        It's A-2, the same.

22          **Q.        Okay. And then could you read what Utah's**  
23 **ranking is?**

24          A.        A-2.

25                    MS. MERS: No further questions. Thank you.

1 JUDGE BUSHMANN: Redi rect?

2 REDI RECT EXAMI NATION

3 QUESTIONS BY MR. FISCHER:

4 Q. Yeah, let's just go from the end here. I'll  
5 just ask you about the regulatory ratings in Oklahoma and  
6 Utah and Missouri. Would -- would other things also come  
7 into play in making those rankings besides just fuel clauses  
8 and trackers? Would ROEs, for example, or anything else come  
9 into play?

10 A. Yes, there's a number of other things that  
11 would come into play. For example, how long it takes to get  
12 a rate case processed would come into play. Whether  
13 companies actually earn their allowed return would come into  
14 play. I mean, so there's lots of factors.

15 Q. You had quite a number of questions from the  
16 bench and also from Mr. Woodsmall regarding issues that you  
17 suggested historic test year numbers couldn't be used as a  
18 reasonable forecast for the year after rates are in effect.  
19 And I'd like to ask you to expand on that.

20 A. Okay. The fundamental problem here is that  
21 after you've got -- total fuel costs is going to be made up  
22 of a number of different things. It's going to be made up of  
23 the prices of the fuels you buy, and not just the average  
24 price over the year. It's the price fluctuations. As you  
25 know when, like, for example, when gas is a fuel, gas costs

1 differ between summer and winter and that sort of thing. So  
2 it's not -- you'd have to project the prices.

3           Secondly, you have to project how the system  
4 is going to operate. And what you do in a rate case is you  
5 assume normal weather and normal weather means certain things  
6 about which plants operate and where they operate on their  
7 heat rate curves. And every fossil plant has a heat rate  
8 curve, that is the cost to produce a kilowatt hour out of  
9 that plant changes based on how the plant is loaded.

10           And the lowest cost point on that heat rate  
11 curve is not typically the -- the minimum -- I mean the  
12 lowest cost point is not typically full load. It's something  
13 less than full load. So if you think about it, the cost of  
14 producing that kilowatt hour declines as you approach the  
15 optimum level of output from the plant and it starts to go  
16 back up as you load the plant more and more toward full load.

17           So you have to project where on that heat rate  
18 curve this plant is going to be operating to -- to determine  
19 what the costs would be. And then every plant has a  
20 different heat rate curve. So it depends on which plants are  
21 operating when.

22           And then you get to things like hydroelectric  
23 power, which understand Kansas City Power & Light purchases  
24 hydroelectric power. That power depends on rainfall.  
25 Normal rainfall, drought conditions, much less high snow

1 pack, heavy rainfall, much more output.

2 In fact, the Company that Kansas City Power &  
3 Light buys their -- buys their hydroelectric power from, I've  
4 actually studied for another purpose their -- their output  
5 from their hydro units and it's extremely variable. It's --  
6 in low water years, it's about 200,000 megawatt hours and in  
7 high water years, it's somewhere almost 600,000 megawatt  
8 hours. So a pretty big difference just depending on when the  
9 water is or what the level of water is. And if you're going  
10 to get this right, you have to understand what that is.

11 There are also -- you're also buying wind.  
12 Wind power is variable, so it depends on how the wind blows.  
13 If you have a windy year, you're going to get more power, if  
14 you don't, you're going to get less. So all that factors in.

15 And then on top of that, you have to know what  
16 the customer loads is, and the chances that weather will be  
17 exactly normal, as you use it in the context of normalizing  
18 the values in a rate case are, in fact, close to zero. I  
19 mean, you may end up with normal weather in total, but it  
20 won't be in the same pattern.

21 So for example, let's suppose you have a cold  
22 March, but a warm January, and those two just happen to set  
23 off -- they offset each other in terms of normalizing degree  
24 days. In January, all your big cold units are going to be  
25 available. By March, you've taken out a unit for

1 maintenance. So you're going to have a different cost for that  
2 cold weather in March than you're going to have if that cold  
3 weather had occurred in January. And that makes it virtually  
4 impossible to forecast what fuel costs are accurately out  
5 into a future period.

6 And, you know, if you -- if you -- if you want  
7 to look, you can -- you can see where Alfred Kahn himself  
8 talks about the fact that you can't make an accurate forecast  
9 for -- for fuel costs. That's why I say, you know, if it --  
10 if you're going to rely on Alfred Kahn as a basis for not  
11 approving a fuel adjustment clause because of his discussion  
12 of regulatory lag, you're ignoring what he's said.

13 His actual -- I have actual testimony from him  
14 that would agree with mine completely. He testified in front  
15 of a legislative committee in New York state where he said  
16 fuel adjustment clause is a formula rate. If you had to do  
17 without fuel adjustment clause, you would have to be able to  
18 forecast rates, prospectively, you can't do that because you  
19 don't know what the fuel prices are, you don't know what the  
20 heat rates are.

21 So he comes to the conclusion, as I said one  
22 of the best well-known regulatory economists in the last 50  
23 years, that the fuel adjustment clause fully tracked all fuel  
24 costs was the best possible solution. And he said that in  
25 front of a legislative committee, and that's what's actually

1 happened in New York. Subsequent to that, they approved the  
2 continuation of fuel adjustment clauses under the PERPA  
3 hearings.

4 **Q. Mr. Overkast, you were also asked some**  
5 **questions, I think from Commissioner Hall, regarding whether**  
6 **every public utility needed a fuel adjust the clause. Do you**  
7 **recall that line of questioning?**

8 A. Yes.

9 **Q. When you surveyed the other electric companies**  
10 **around the country, what did you find?**

11 A. I found that there was one that didn't have it  
12 and it was -- I'm drawing a blank now who it was, it's in my  
13 testimony or it is in the report, but it is a utility with  
14 heavy hydroelectric generation.

15 **Q. One except for KCP&L?**

16 A. Yeah, one except for KCP&L.

17 **Q. You were asked some questions regarding the**  
18 **benchmarking process that's often done in relationship to**  
19 **estimating ROEs?**

20 A. Yes.

21 **Q. I believe you said that the -- all the**  
22 **companies in the benchmarking group would have an FAC?**

23 A. Yes.

24 **Q. You were also asked some questions I think**  
25 **about how you could predict property taxes. Why would not**

1 **the use of the historic test year property tax be a good**  
2 **estimate of the property tax for the year after the rates are**  
3 **in effect if you know those rates are going up?**

4 A. Well, there's several reasons that the  
5 historic projection would be too low or too high, as the case  
6 may be. And that would include, let's take the case of too  
7 low. That would include the fact that you added property  
8 that is now in the future period. You're going to add new  
9 property that's going to be subject to the tax. You can have  
10 reassessments and you don't know what the millage rate is  
11 going to be on the property tax today for next year because  
12 that's going to be determined in the next -- in the next  
13 year.

14 So you're either low or high based on how --  
15 how the property's assessed, you're low or high on the basis  
16 of the millage rate that's set. I mean, you can take my  
17 county for example. We know that the property values have  
18 gone up fairly significantly for the property tax assessment,  
19 but they haven't set the millage rate. Now, if they want to  
20 raise the same tax revenue, they have to lower the millage  
21 rate. And I don't expect them to lower the millage rate  
22 because it's the easy way out to keep the millage rate the  
23 same and collect more revenue for taxes, which is exactly  
24 what the school board did.

25 **Q. If you knew the property taexs were going up,**



1 **could the Commission make an adjustment to the test year**  
2 **level that would be more accurate?**

3 A. Sure. And that's what a lot of jurisdictions  
4 do. A lot of jurisdictions don't stick to the Missouri  
5 prescription that says we're going to cut off all adjustments  
6 at some date certain. There are a number of jurisdictions,  
7 and I've worked in those jurisdictions where they did allow  
8 to you make proforma adjustments, which are beyond the  
9 normalizing and annualizing adjustments for the historic  
10 period. And that proforma adjustment would be to say, on  
11 average, tax rates have gone up 5 percent per year and we're  
12 going to go up to 5 percent for the test year and 5 percent  
13 for the rate year and that would be a reasonable estimate of  
14 the property tax in the rate-effective period.

15 **Q. Do you know if this Commission has done**  
16 **something similar to that with the issue of forecasted fuel**  
17 **costs in the '80s?**

18 A. I believe that they did.

19 **Q. Okay. You were also asked I think some**  
20 **questions regarding well, whether you needed a fuel**  
21 **adjustment clause and you made a comment that with the**  
22 **current participation in ISOs, every utility should have a**  
23 **full tracking clause. Do you recall that discussion?**

24 A. Yes.

25 **Q. Would you -- would you explain why**

1 **participation in RTOs and ISOs has a -- is a factor in that**  
2 **decision?**

3 A. Well, to the extent that you have market  
4 considerations for -- for load nodes and generation nodes,  
5 and what that is is a load node is the point at which power  
6 flows in to customers. It might be -- for example, it might  
7 be a transmission substation that feeds loads and a  
8 generation node is where the power comes from the step up  
9 transformers of the generation and enters in to the bulk  
10 power system, the bulk transmission system.

11 So those nodal prices are what determines the  
12 cost for -- for the energy you buy and also for the energy  
13 that you sell. And then in addition to that, there are  
14 transmission costs associated with the number of kilowatt  
15 hours that pass through those nodes. That's the way the ITO  
16 or RTOs transmission costs are recovered.

17 So all that creates variability. And the  
18 variability, I've done some work for another client that's in  
19 SPP and the variability for that client based on the period  
20 that we looked at, there were hours where the fuel costs for  
21 that client was over \$200 a megawatt hour and there were  
22 other hours where that cost was \$15 a megawatt hour. So  
23 there's a lot of within-year variability in prices.

24 And it's the high-cost hours aren't  
25 necessarily the cost hours that you would expect. I mean,

1 every -- every hour of the day, all 1 through 24 hours, had  
2 at least one hour where the cost exceeded a hundred dollars.  
3 So even in the middle of the night, you can have costs that  
4 exceed a hundred dollars an hour for -- for a load node  
5 that's part of SPP.

6 **Q. And that would include transmission costs for**  
7 **SPP?**

8 A. That would include transmission costs.

9 **Q. You used the term "full tracking clause."**  
10 **What did you mean by that?**

11 A. A full tracking clause is one that recovers a  
12 hundred percent of the fuel and fuel-related costs.

13 **Q. Is -- does that differ from what has been used**  
14 **in Missouri at 95/5 sharing clause?**

15 A. Yes. The 95/5 that's used in Missouri  
16 essentially you're either giving a windfall to the utility if  
17 the number's high, they get to keep 5 percent; if the  
18 number's low, you're essentially penalizing them by not  
19 allowing them to recover prudently incurred costs.

20 **Q. Are you aware of other jurisdictions that have**  
21 **that sharing mechanism?**

22 A. Yeah, there are jurisdictions that have  
23 sharing mechanisms, but you have to look at each jurisdiction  
24 individually. I mean, for example, some jurisdictions you  
25 have a sharing mechanism, but they're also using a forecast

1 of the cost into the future rate-effective period and they're  
2 allowing for all kinds of adjustments to those fuel prices.  
3 For example, inflation adjustments or something like that  
4 that -- and then they turn around and have a sharing  
5 mechanism if those costs come in below their estimates,  
6 essentially.

7 So I think you have to -- you have to be very  
8 careful in saying because there's a -- there's a -- not a  
9 hundred percent recovery that the utility has no chance of  
10 actually recovering its fuel costs because if you've -- if  
11 you've actually done a decent job estimating what those costs  
12 might be, the fact that you have a sharing mechanism is -- is  
13 not the same as when you -- when you know you can't be  
14 estimating the cost historically.

15 **Q. I believe when you were talking with**  
16 **Mr. Woodsmall, you were talking about the relationship with**  
17 **trackers and regulatory ratings and credit ratings. Do you**  
18 **recall that?**

19 A. Yes.

20 **Q. And I believe you may have been cut off before**  
21 **you had an opportunity to finish your answer. Would you like**  
22 **to finish your answer there?**

23 A. Yes.

24 MR. WOODSMALL: Your Honor, is there a  
25 question pending or just a request for a narrative? I don't

1 hear a question in that.

2 BY MR. FISCHER:

3 **Q. What was your view -- or would you elaborate**  
4 **upon your position on the relationship between trackers in**  
5 **the regulatory mechanisms and credit ratings?**

6 A. I think I ended up answering that anyway, but  
7 I think part of it is there's more to the credit rating than  
8 just whether you have a tracker or not. I mean, what people  
9 want to know -- is with respect to credit rating is: Are  
10 they going to be able to pay their debt because they've got a  
11 regulatory environment that gives them a reasonable  
12 opportunity to earn their allowed return?

13 And if you have years and years without being  
14 able to earn your allowed return, then that -- that's going  
15 to be a negative compared to if you have a -- well, let's  
16 take some other examples.

17 In the 1970s, nearly all the utilities were A  
18 or above rated. Today, they're almost all B rated, BBB  
19 rated. The lowest ratings. So something's happened to the  
20 -- to this pendulum of regulation in terms of -- in terms of  
21 ratings and -- and the BBB rating, even though they have a  
22 fuel adjustment clause, even though they have more trackers  
23 and there are other parts of the regulatory process that make  
24 that difficult and I'm not saying Missouri's terrible. I'm  
25 really not.

1                   They've done a good job getting Plum Point  
2 built. Iatan 2 built. They've done some things that they  
3 needed to do to keep their utilities creditworthy.  
4 Admittedly some of them on the edge, but at least  
5 creditworthy to be able to finance and build those plants.  
6 And -- and that's not -- that's not a new phenomenon. It  
7 happened in the '80s, there were people that were trying to  
8 finish plants and they were rated BBB minus, but that I  
9 think's one of the positive things about Missouri is that  
10 they've worked hard with their -- their utilities to try to  
11 keep them financially sound, but at some point, they've got  
12 to be able to show that they've got an opportunity to earn  
13 their allowed return to continue to be sound and to continue  
14 to improve their credit rating, which benefits customers.

15                   **Q.       Can trackers benefit customers if you have**  
16 **uncertainty in costs?**

17                   A.       Yes. And that's part of the reason that some  
18 jurisdictions have trackers that really track real time, not  
19 just deferral accounting. They recognize that these costs  
20 are uncertain. And so they institute a tracker. I mean, the  
21 infrastructure adjustment clauses are very common and that's  
22 something you have here in Missouri. I understand you have  
23 those for the gas utilities which -- which was a very  
24 positive move in terms of -- in terms of regulation to allow  
25 them to track replacing cast iron and bare steel mains.

1 So all those things enter in to this overall  
2 rating process and it's not just one thing.

3 **Q. If there are uncertainties related to cyber**  
4 **security cost, for example, could a tracker be used to**  
5 **benefit consumers?**

6 A. Yes, it could.

7 **Q. That, I think's, all I have, Judge. Thank**  
8 **you.**

9 JUDGE BUSHMANN: Thank you for your testimony,  
10 Mr. Overcast. You may be excused, sir.

11 We'll take a one-hour recess. We'll reconvene  
12 at one o'clock.

13 (A break was held.)

14 JUDGE BUSHMANN: Let's go back on the record.  
15 We have one more witness from the Company.

16 MR. FISCHER: Yes, Judge.

17 JUDGE BUSHMANN: Mr. Rush, you're still under  
18 oath.

19 THE WITNESS: Yes, sir.

20 DIRECT EXAMINATION

21 QUESTIONS BY MR. FISCHER:

22 **Q. Please state your name for the record.**

23 A. Tim Rush.

24 **Q. And are you the same Tim Rush that appeared**  
25 **earlier and caused to be filed in this case direct testimony**

1 **marked Exhibit 134, rebuttal 135, and surrebuttal marked 136**  
2 **both HP and NP versions?**

3 A. Yes, I did.

4 **Q. Did you find some additional corrections that**  
5 **you wanted to make in that testimony?**

6 A. I did. With regard to my rebuttal testimony  
7 on page 20, on line 10, at the very end of that sentence --  
8 or at the end of that line, it reads "ration." That should  
9 say "ratio." And the same on line 15, the second word says  
10 "ration" and it should say "ratio." With those corrections,  
11 that's all I have.

12 MR. FISCHER: Judge, Mr. Rush will be up a  
13 little later on some other sure, so I'll just tender him for  
14 cross.

15 JUDGE BUSHMANN: Very good. First cross will  
16 be for MPEG.

17 MR. WOODSMALL: Yes, thank you.

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. WOODSMALL:

20 **Q. Were you here when Mr. Overkast testified?**

21 A. I was.

22 **Q. And do you recall him talking about that fuel**  
23 **models aren't accurate and one of the reasons he gave is**  
24 **because KCP&L buys a large amount of hydropower. Do you**  
25 **recall that?**



1           A.       I don't remember the word large hydropower,  
2 but we do buy hydropower.

3           **Q.       You do buy hydropower?**

4           A.       Yes.

5           **Q.       Is it less than 1 percent?**

6           A.       I would suspect so, yes.

7           **Q.       Ninety-seven percent of KCP&L's power is coal  
8 and nuclear?**

9           A.       I think of our generation, that is correct,  
10 yes.

11          **Q.       And then you use more wind than hydro; is that  
12 correct?**

13          A.       Yes.

14          **Q.       And more gas and fuel oil than hydro?**

15          A.       I don't know that one.

16          **Q.       Okay. No further questions. Thank you.**

17                 JUDGE BUSHMANN: Public Counsel.

18                 MR. POSTON: No questions.

19                 JUDGE BUSHMANN: Commission Staff.

20                 MS. MERS: Just a few.

21                         CROSS-EXAMINATION

22           QUESTIONS BY MS. MERS:

23           **Q.       Mr. Rush, are you familiar with the operations  
24 of KCP&L Greater Missouri Operation Company, or GMO?**

25           A.       Yes. According to what you're asking about

1 me, yes.

2 **Q. Does GMO currently have a property tax**  
3 **tracker?**

4 A. They do not.

5 **Q. To your knowledge, do any utilities that**  
6 **operate in Missouri, or their Missouri operations, currently**  
7 **have a property tax tracker?**

8 A. Are you talking about electric utilities or  
9 gas or water?

10 **Q. Electric utilities.**

11 A. I'm not aware of any.

12 **Q. Thank you. Does GMO currently have a**  
13 **vegetation management tracker?**

14 A. It does not.

15 **Q. Does any Missouri utility currently have a**  
16 **vegetation management tracker?**

17 A. Yes.

18 **Q. Which utilities?**

19 A. I believe Ameren and Empire District currently  
20 have vegetation management trackers that are scheduled to  
21 cease when their rates become effective.

22 **Q. Okay. Does GMO currently have a tracker for**  
23 **cyber security costs?**

24 A. No.

25 **Q. Does any Missouri utility currently have a**

1 **cyber security cost tracker?**

2 A. I do not know.

3 **Q. Does GMO currently recover SPP-allocated**  
4 **transmission expenses as part of its fuel adjustment costs?**

5 A. It does for a portion of its SPP transmission  
6 costs.

7 **Q. Does GMO currently have a standalone tracker**  
8 **for SPP allocated transmission expenses?**

9 A. No, it does not.

10 **Q. Thank you. No further questions.**

11 JUDGE BUSHMANN: Questions by Commissioners.

12 Mr. Chairman.

13 COMMISSIONER KENNEY: No questions. Thank you  
14 very much.

15 COMMISSIONER HALL: No questions, thank you.

16 JUDGE BUSHMANN: So no need for recross.

17 Redirect.

18 REDI RECT EXAMI NATION

19 QUESTIONS BY MR. FISCHER:

20 **Q. Mr. Rush, you were asked whether -- let's see,**  
21 **whether GMO had a property tax tracker; is that right?**

22 A. Yes.

23 **Q. And you were also asked whether KCP&L had a**  
24 **property tax tracker; is that correct?**

25 A. They didn't ask that specific question.

1           **Q.       Let me ask you: Are you familiar with whether**  
2 **KCP&L has another rider in effect in Kansas related to**  
3 **property taxes?**

4           A.       I'm aware of that, yes.

5           **Q.       Would you explain how that works?**

6           A.       We have a property tax rider in Kansas that  
7 allows the utility on an annual basis to update and recover  
8 the property taxes that have been incurred for that year, so  
9 that they're always kept whole with regard to the changes  
10 that occur in property taxes. So it's a rider, not a  
11 tracker. And that means that it's actually on the bill as a  
12 recovery mechanism, similar to a fuel adjustment clause.

13           **Q.       You were asked whether, I think, GMO had a**  
14 **standalone SPP transmission tracker. Do you recall that?**

15           A.       Yes, yes.

16           **Q.       Have other utilities in the state had various**  
17 **forms of trackers or recovery through fuel clauses of ISO or**  
18 **RTO transmission expenses?**

19           A.       Yes, they have.

20           **Q.       Would you explain your understanding of that**  
21 **situation?**

22           A.       Well, my understanding is that Ameren  
23 currently, and mostly to be changed when rates go into  
24 effect, was allowed to recover their transmission costs  
25 through their fuel adjustment clause and these were the MISO

1 costs, essentially all costs imposed by MISO with the  
2 exception of administrative cost, they were allowed to  
3 recover that on the energy basis on the fuel adjustment  
4 clause. And that -- that process worked for a period of time  
5 until recently of an issue before the Commission that was  
6 brought and the Commission changed that to only a portion of  
7 those transmission costs were to be recovered. And that will  
8 be in the rates that go effective at some point shortly.

9 **Q. In KCP&L's last rate case, did KCP&L ask for a**  
10 **standalone SPP transmission tracker?**

11 A. The Company did, yes.

12 **Q. And do you recall what the Commission said in**  
13 **the first Order?**

14 A. The Commission essentially said that we had  
15 the authority to go ahead and establish a tracker independent  
16 of an Order from the Commission. We requested a rehearing on  
17 that issue and the -- because we wanted clarity to say that  
18 specifically an Order from the Commission authorizing us to  
19 do that. There was some arguments or discussion about the  
20 accounting treatment.

21 We then came back -- that was denied, the  
22 request for rehearing was denied. Company came back and  
23 asked for an accounting authority order later on outside the  
24 context of a rate case and requested the Commission to allow  
25 us to defer those costs until the next rate case to be

1 evaluated.

2 **Q. And what was the decision of the Commission in**  
3 **that case?**

4 A. The Commission denied the ability to implement  
5 an accounting authority order but said come back and  
6 basically file for a recovery of the transmission costs  
7 through the fuel adjustment clause as is customary, and I  
8 think the reference was to the Ameren rate case -- or the  
9 Ameren tariff, excuse me, that allowed for transmission costs  
10 to be recovered through the fuel adjustment clause.

11 **Q. And did KCP&L follow that direction?**

12 A. Yes, we did.

13 MR. FISCHER: Okay. That's all I have, Judge.

14 JUDGE BUSHMANN: Thank you Mr. Rush. You may  
15 step down.

16 JUDGE BUSHMANN: Staff can call its first  
17 witness.

18 MS. KLIETHERMES: Staff calls Cary  
19 Featherstone to the stand.

20 (CARY FEATHERSTONE, having been first sworn by  
21 the Judge Bushmann, testified as follows:)

22 DIRECT EXAMINATION

23 QUESTIONS BY MS. MERS:

24 **Q. Will you please state your name and spell your**  
25 **name for the record?**

1           A.       Carry G. Featherstone,  
2 F-e-a-t-h-e-r-s-t-o-n-e.

3           **Q.       And who are you employed by?**

4           A.       The Missouri Public Service Commission.

5           **Q.       And did you cause to be prepared, or prepare**  
6 **it yourself, portions of Staff's cost of service, direct**  
7 **filings, rebuttal filings, or surrebuttal filings in this**  
8 **case?**

9           A.       I did.

10          **Q.       And are those accurate to the best of your**  
11 **knowledge?**

12          A.       I've got a couple of corrections.

13          **Q.       Okay.**

14          A.       My rebuttal testimony, page 27, line 20, the  
15 word "increase" should be "decrease." And on my surrebuttal  
16 testimony, page 52, line 19, some of the KCP&L witnesses have  
17 been correcting the 5.9 percent ROE to 5.69 percent. And we  
18 received the annual surveillance report which shows a 6.1  
19 percent ROE for 2014. Those would be my corrections.

20          **Q.       Okay. And if I ask you the same questions**  
21 **posed in your filings, would you give the same responses**  
22 **today?**

23          A.       I would.

24                   MS. MERS: All right. Mr. Featherstone will  
25 be taking the stand for another issue, so at this point, I'd

1 I like to tender him for cross.

2 JUDGE BUSHMANN: Okay. First cross will be by  
3 Public Counsel.

4 MR. POSSTON: Thank you.

5 CROSS-EXAMINATION

6 QUESTIONS BY MR. POSTON:

7 Q. You're Staff's policy witness; is that  
8 correct?

9 A. Yes.

10 Q. And you've been involved in KCP&L rate cases  
11 and other cases involving KCP&L going back to the 1980s; is  
12 that correct?

13 A. My first case was the '81 rate case with  
14 Kansas City Power & Light.

15 Q. Did you participate in Case Number  
16 EU-2005-0329, which has been referred to as KCP&L's  
17 regulatory plan case?

18 A. Did you say EU?

19 Q. Oh, I'm sorry, E0. I've been corrected.

20 A. It was the regulatory plan case, the 329 case?

21 Q. Correct.

22 A. Yes.

23 Q. Were you involved in the meetings that  
24 resulted in stipulation agreement that was filed in that  
25 case?



1           A.       There were -- the meetings took place over  
2 probably most of the winter and spring of 2005, so there were  
3 -- I couldn't begin to tell you how many meetings we had.  
4 There were countless meetings. But yes, I was involved in  
5 the meetings that related to, say, the bulk of the regulatory  
6 plan, I attended all of those meetings. The meetings related  
7 to -- we broke them out into groups. The meetings that were  
8 relating to the energy efficiency programs and demand-side  
9 management, those meetings I attended probably most of those  
10 but not all.

11           **Q.       And are you familiar with the stipulation and**  
12 **agreement that was filed in that case?**

13           A.       Yes.

14           **Q.       And are you familiar with the provision and**  
15 **agreement that's been in dispute about the June 1st, 2015,**  
16 **date and what that means?**

17           A.       Yes. I can tell you what my view of those --  
18 of what that paragraph means.

19           **Q.       Please. Please do.**

20           A.       That it was the two sentences have to be read  
21 in totality. You have to -- the first sentences have to be  
22 read in totality. The first sentence tells KCP&L what it  
23 cannot get and the second sentence is what it can get. And  
24 it's all linked to the June 1, 2015, date. And it was in my  
25 view that what we negotiated in this agreement, this contract

1 was that they could not seek or request a fuel clause prior  
2 to June 1 of 2015.

3 **Q. Do you think it's good public policy to allow**  
4 **the public utility to violate a stipulation and agreement?**

5 A. No.

6 **Q. I'd like to discuss a few other public policy**  
7 **issues with you. Are you familiar with the National**  
8 **Association of Regulatory Commissioners, NARUC?**

9 A. Yes.

10 **Q. Are you familiar with the National Association**  
11 **of State Utility Consumer Advocates, also called NASUCA?**

12 A. I've heard of them. I've not been involved  
13 with any of those. I guess it works the same as the  
14 Commissioners, when they get together, I guess it's the state  
15 consumer advocates. It's an organization.

16 **Q. Okay. Is it your understanding that those**  
17 **organizations, when they meet, they often will issue policy**  
18 **resolutions regarding certain -- certain issues and with the**  
19 **purpose of guiding policymakers like state commissions and in**  
20 **the policies that they establish for their states?**

21 A. I know that NARUC does and I'm not -- I'm not  
22 familiar with the consumer advocate organization. I assume  
23 they do that.

24 **Q. Have you ever seen a resolution from a**  
25 **consumer -- the NASUCA?**

1 A. Yes.

2 Q. Okay. Have you ever seen a resolution from  
3 NARUC?

4 A. I'm sure I have. I can't pinpoint any  
5 particular ones, but I'm sure I have at various times.

6 MR. POSTON: Your Honor, I'd like to have two  
7 exhibits marked, and I'm not quite sure what number we're up  
8 to.

9 JUDGE BUSHMANN: 314 and 315.

10 MR. POSTON: I'd like to have 314 will be the  
11 NARUC exhibit and 315 will be the NASUCA exhibit.

12 (OPC Exhibit Numbers 314 and 315 were marked  
13 for identification by the court reporter.)

14 BY MR. POSTON:

15 Q. If you could take a moment to look over what's  
16 been marked as 314 and 315.

17 A. Did you want me to look at both of them at the  
18 same time?

19 Q. If could, yeah. Have you had time to look  
20 over those?

21 A. Yes, briefly.

22 Q. Okay. Do you believe the Commission could be  
23 assisted by resolutions from NARUC or NASUCA in terms of  
24 developing policy here in Missouri?

25 A. I know our Commissioners participate in the

1 NARUC conferences and they go on a regular basis to those.

2 Q. Okay.

3 A. And there's various Staff members that do the  
4 same.

5 Q. All right.

6 A. So I assume so.

7 Q. Okay. Turning first to Exhibit 314, would you  
8 agree that this appears to be a NARUC resolution titled  
9 Resolution on Expanding the Alternative Fuel Vehicle Market,  
10 dated November of 2012?

11 A. That's what it appears to be. I'm having  
12 trouble finding the date.

13 Q. On the very back, bottom of the back page,  
14 second page.

15 A. It says it was adopted by NARUC Community of  
16 the Whole, November 14, 2012.

17 Q. Okay. So your testimony is that a resolution  
18 such as this could help the Commission in developing its  
19 policy decisions?

20 A. Yes, I assume so.

21 Q. In your professional opinion, does this appear  
22 to be an accurate copy of a NARUC resolution from November  
23 2012.

24 MR. FISCHER: Objection, Your Honor. I don't  
25 think there's any basis for speculating on that. No

1 foundation's been laid that this witness would know whether a  
2 document is a NARUC resolution or not.

3 JUDGE BUSHMANN: I think I'll let him go. He  
4 hasn't testified whether he recognizes it or not. I'll allow  
5 him to say whether or not he does.

6 THE WITNESS: It's in a format that I've seen  
7 resolutions. I haven't seen this particular one, but it's in  
8 a format that -- that I've seen resolutions from NARUC.

9 BY MR. POSTON:

10 Q. In your professional opinion, do you believe  
11 this is a NARUC resolution?

12 A. I assume it is.

13 Q. And does it address an issue that's before the  
14 Commission in this case?

15 A. The vehicle charging stations, yes.

16 Q. Okay.

17 MR. POSTON: Your Honor, I move for the  
18 admission of 314.

19 MR. FISCHER: Your Honor, I'll object to that.  
20 There's no proper foundation laid for this document. It  
21 appears to be an organization that is not a party to this  
22 case and there's been no foundation laid that  
23 Mr. Featherstone was involved in the development of it or for  
24 that matter was aware of it before he was handed it today on  
25 the stand.

1 JUDGE BUSHMANN: I'll sustain that objection  
2 because of lack of foundation.

3 MR. POSTON: Okay.

4 BY MR. POSTON:

5 Q. Let's turn to 315 then. Do you agree this  
6 appears to be a NASUCA resolution on increasing customer  
7 charges?

8 A. That's what the document says, yes.

9 Q. And have you seen this document before?

10 A. I have not.

11 MR. POSTON: That's all the questions I have.

12 JUDGE BUSHMANN: Cross by MEEG.

13 MR. WOODSMALL: Yes, thank you, Your Honor.

14 CROSS-EXAMINATION

15 QUESTIONS BY MR. WOODSMALL:

16 Q. Mr. Featherstone -- well, first, good  
17 afternoon?

18 A. Good afternoon.

19 Q. I believe you testified earlier to questions  
20 from Mr. Poston that you were involved in the workshops  
21 leading up to the KCP&L regulatory plan; is that correct?

22 A. Well, it was a long process. The answer is  
23 yes. There were workshops and then -- and those were open to  
24 many stakeholders, the public for that matter, and we had a  
25 series of meetings and sometimes we would meet here in the

1 ballroom on the fourth floor, there would be -- that many  
2 people would be involved. At some point, and I don't -- I  
3 don't remember when that transition took place, we went into  
4 a -- what I would call a normal sort of like a  
5 three-month-long prehearing conference where those were  
6 closed meetings, they were -- they were strictly people who  
7 had been involved in rate case proceedings before, they were  
8 represented by counsel. They generally were -- they were  
9 people who ultimately were either going to be signatories and  
10 many of them did sign on to the regulatory plan, and they  
11 were -- it was a rate case kind of setting where we were in  
12 the -- we went into Room 210 and we stayed there for long  
13 periods of time and ironed out the regulatory plan. Those  
14 were not -- and pardon me for my detail, but those were not  
15 workshops, by any means.

16 **Q. Okay. Thank you. That helps. Would you**  
17 **agree that Ms. Mantle was part of Staff and was involved in**  
18 **those discussions?**

19 A. Yes.

20 **Q. Do you recall whether either of the KCP&L**  
21 **witnesses were involved, Mr. Rush or Mr. Ives, in the**  
22 **discussions leading up to the prohibition regarding 179?**

23 A. Mr. Rush certainly was involved. I think he  
24 primarily -- he and Ms. Mantle I think were the facilitators  
25 or moderators of the -- the section. We put them into

1 different groups and I don't remember whether it was Group A  
2 or D, but it was the group that dealt with the energy  
3 efficiency programs, the low income programs, the demand-side  
4 management programs and so they were, I think, jointly  
5 running those -- those meetings. And sometimes we had  
6 simultaneous meetings going on so they couldn't obviously  
7 been at two places at one time.

8 **Q. So there was a group addressing energy**  
9 **efficiency, demand-side management and the other group was**  
10 **addressing regulatory amortizations, building Iatan 2 and the**  
11 **179 provision?**

12 A. There was a group that was sort of looking at  
13 the operational characteristics of the plant or proposed  
14 plant, Iatan 2. There was a group that was looking at the  
15 regulatory side, the financial side to see what -- what --  
16 how could we in a sort of a thinking outside the box sort of  
17 way, how could we come up with the way of KCP&L financing the  
18 power plant and protecting their financial matrix. And so  
19 the -- the regulatory amortizations was the result. We  
20 didn't go into it and say we're going to have a meeting about  
21 the regulatory amortizations.

22 **Q. I think you answered my question. Let me see**  
23 **if I can get to the bottom line. You were involved in the**  
24 **group that ultimately came out with the provision regarding**  
25 **section -- or Bill 179 as it's contained in the regulatory**



1 **plan; is that correct?**

2 A. I was -- I participated in those meetings,  
3 yes.

4 **Q. Okay. Can you tell me what was the procedural**  
5 **status of Senate Bill 179 at the time those meetings were**  
6 **going on?**

7 A. As I recall, I think -- our meetings on the  
8 regulatory plan started in really '03 and '04 and towards the  
9 first part of '05 is when we were working on the regulatory  
10 plan in earnest. And at that very same time, that -- as I  
11 recall, the SB179 bill was being discussed over at the  
12 Capitol.

13 **Q. So the bill was not yet passed to the general**  
14 **assembly; is that correct?**

15 A. That's right.

16 **Q. So the provision -- can you tell me the**  
17 **provision in the regulatory plan, I'm just going to call it**  
18 **the prohibition against using 179 mechanism, where did that**  
19 **provision come about?**

20 A. My impression, it was a very big -- it was  
21 very instrumental to the Office of Public Counsel, then the  
22 Public Counsel was John Coffman. And he would be involved in  
23 not only in the regulatory plan, negotiations and  
24 discussions, but he was also going to the Capitol, many times  
25 the same day that we were meeting and he would -- he was

1 involved in the SB179 discussions.

2 There was another gentleman named Stu Conrad  
3 who was representing some industrial clients, and I would say  
4 he and Mr. Coffman were the primarily two drivers of that  
5 particular paragraph.

6 **Q. And your belief, your opinion as to what was**  
7 **going on then, did KCP&L object to that provision?**

8 A. No. My impression, and I think some of the  
9 Company personnel and I differ on our recollections, my  
10 impression, the fuel clause was not as vital to KCP&L in 2005  
11 as it has now turned out to be in 2015 and even in 2010.

12 **Q. Can you tell me why you say that?**

13 A. They didn't have a fuel clause in Kansas and  
14 there was no indications that they -- and Kansas did have  
15 some utilities that had fuel clauses. But going back  
16 ten-year span, and I've been giving some thought to this  
17 since John Coffman, particularly his opening a couple weeks  
18 ago, it was really, I think, they didn't feel like they  
19 particularly needed the fuel clause, and this is my view.

20 **Q. And when you say "they?"**

21 A. Kansas City Power & Light.

22 **Q. Okay.**

23 A. They had a great deal of off-system sales and  
24 I think that a lot of the fuel clauses that were being  
25 structured, off-system sales were being flown in through

1 those fuel clauses, so I'm not sure that that was very  
2 attractive to Kansas City Power & Light.

3 Kansas Commission Staff sort of started, I  
4 think, KCP&L on the road to a fuel clause, along with the  
5 changing markets that occurred post-'05 and '6.

6 **Q. Thank you. And was it your interpretation at**  
7 **the time that KCP&L was precluded from seeking a fuel**  
8 **adjustment clause prior to June 1st, 2015?**

9 A. Yes.

10 **Q. And that is your interpretation today?**

11 A. It is.

12 MR. WOODSMALL: Your Honor, may I approach the  
13 witness?

14 JUDGE BUSHMANN: You may.

15 MR. WOODSMALL: I'd like to mark an exhibit.

16 JUDGE BUSHMANN: 507.

17 (MECG Exhibit Number 507 was marked for  
18 identification by the court reporter.)

19 BY MR. WOODSMALL:

20 **Q. I've handed you what's been marked as**  
21 **MECG 507. First of all, can you tell me who Jeanie Sell Latz**  
22 **is?**

23 A. That's a name from the past. I think she was  
24 a -- oh, she was an Executive Vice-President-Corporate and  
25 Shared Services and Secretary of Kansas City Power & Light.

1           **Q.       Well, and just for clarity, prior to reading**  
2 **that, were you aware that Ms. Latz was an officer of KCP&L?**

3           A.       Yes.

4           **Q.       Okay. Do you, in the normal course of**  
5 **business -- well, first off, can you tell me what this**  
6 **document states to be?**

7           A.       This is a Securities and Exchange Commission  
8 Form 8-K, and it's dated March 28th of 2005.

9           **Q.       And that is around the time that the**  
10 **regulatory plan was being executed; is that correct?**

11          A.       I know that was at the time when we were  
12 having the discussions and I think that's probably close to  
13 when the document was -- was executed.

14          **Q.       Do you review SEC filings of KCP&L in the**  
15 **normal course of business?**

16          A.       Yes. I mean, particularly during the rate  
17 case audits, we do.

18          **Q.       Okay. Turning to what is at the top marked**  
19 **Page 3 of 8.**

20          A.       Yes.

21          **Q.       If you go down to the bottom, Item 1.01.**  
22 **Would you agree that it states: On March 28, 2005, KCP&L**  
23 **filed a stipulation, what is known as the regulatory plan.**  
24 **Do you see that?**

25          A.       I do.

1           **Q.       So this was filed with the SEC after that**  
2 **regulatory plan was executed; is that correct?**

3           A.       Appears to be, yes.

4           **Q.       And would you turn the page, what is marked**  
5 **page 4 of 8. There is four subsections denominated; paren A,**  
6 **paren B, paren C, paren D. Do you see those?**

7           A.       I do.

8           **Q.       And would you agree that on the subsection**  
9 **identified as C, addresses the KCP&L prohibition against**  
10 **seeking a fuel adjustment clause? I believe it's the last**  
11 **sentence of that paragraph.**

12          A.       It says, "KCP&L will not seek prior to June 1,  
13 2015, to utilize any mechanism authorized in pending  
14 legislation or other change in state law that would allow  
15 riders, surcharges or changes in rates outside of a general  
16 rate case based upon a consideration of less than all  
17 relevant factors."

18          **Q.       Now I'm not going to ask you to be an English**  
19 **major here, but you would agree that there is a comma between**  
20 **the date of June 1, 2015, and the words "to utilize;" is that**  
21 **correct?**

22          A.       Yes.

23          **Q.       Okay.**

24               MR. WOODSMALL: Your Honor, I'd offer Exhibit  
25 507 into the record.

1 MR. FISCHER: Your Honor, I would object on  
2 the grounds that it lacks foundation. This witness is not a  
3 witness that can support this into the record.

4 MR. WOODSMALL: Your Honor.

5 JUDGE BUSHMANN: Your response?

6 MR. WOODSMALL: Oh. I believe he says that he  
7 looks at AKs in the normal course of business, he knows the  
8 -- the person as a KCP&L officer that attested to it. I  
9 think by way of analogy, earlier today, Mr. Heidtbrink had  
10 never seen the document placed in front of him before, so I  
11 mean, the fact that he hasn't seen it doesn't mean it lacks  
12 foundation. He can attest given the signature and everything  
13 else that it's -- that it's an authentic AK.

14 JUDGE BUSHMANN: Well, based on his testimony  
15 as he recognizes the name of the corporate officer who was  
16 ordered to file it, I think there's enough reliability here  
17 that authentication has been met. So I'll overrule the  
18 objection and Exhibit 507 is received into the record.

19 (MECG Exhibit Number 507 was received into  
20 evidence.)

21 MR. WOODSMALL: Thank you, Your Honor. I have  
22 no further questions.

23 JUDGE BUSHMANN: Cross by Kansas City Power &  
24 Light.

25

CROSS-EXAMINATION

1  
2 QUESTIONS BY MR. FISCHER:

3 Q. Featherstone, you were visiting with Public  
4 Counsel, I think, and perhaps Mr. Woodsmall about the process  
5 that was used to develop the stipulation and agreement in the  
6 regulatory plan stipulation?

7 A. Yes.

8 Q. Do you recall what month the discussion was  
9 held regarding the prohibition that we're talking about in  
10 this case related to SB179?

11 A. It was late in the process. This was not a  
12 prominent feature during that time frame. It certainly has  
13 become one now. The regulatory plan was about 1 and 2, pure  
14 and simple.

15 Q. But do you remember what month we started  
16 talking -- when we talked about that provision?

17 A. I wouldn't be surprised if it was the month of  
18 March. It was close to the end.

19 Q. But you don't recall?

20 A. No, not precisely.

21 Q. Do you recall who brought the language into  
22 the room to discuss that?

23 A. This was something that Mr. Coffman was deeply  
24 committed to.

25 Q. I understand that, but do you remember who

1 **brought the language into the room to discuss it?**

2 A. I don't. And when you say bring the language  
3 into the room, we would receive drafts of the regulatory plan  
4 stipulation through e-mail.

5 Q. **Do you remember who first e-mailed or brought**  
6 **that --**

7 A. I don't.

8 Q. **-- brought that language into the room to**  
9 **discuss it?**

10 A. I don't.

11 Q. **Do you remember whether originally it was**  
12 **planned to be a five-year prohibition?**

13 A. There was lots of discussions about when the  
14 plan was going to end and there were -- I know of at least  
15 three features that -- the plan ultimately became a -- a --  
16 when Iatan became in service, which was 2010, but there --

17 Q. **Was that the -- the regulatory plan had a term**  
18 **of June 1st, 2010 on it; right?**

19 A. Yes, but there -- but it said -- but with the  
20 exception of items that -- that was specific to beyond that  
21 date. And DSM -- excuse me.

22 Q. **I'm sorry, I didn't mean to interrupt,**

23 A. The DSM had a provision of -- I forget what  
24 that period is -- I think it was ten years, off-system sales  
25 was linked to as long as Iatan was in rate base and then



1 there was this prohibition for the SB179 surcharges.

2 **Q. The regulatory amortization provision to make**  
3 **sure the benefits would accrue to consumers, do you remember**  
4 **that provision?**

5 A. Are you talking about the additional  
6 amortizations?

7 **Q. Yes, on the regulatory amortizations.**

8 A. Yes, very well.

9 **Q. Yes. And that had a term, too, of ten years;**  
10 **right? A June 1st, 2015?**

11 A. I think if had a term that this was going to  
12 be addressed at some point by the parties and it ultimately  
13 was in the 2010 rate case. I don't think we had a real clear  
14 path as to how we were going to treat those additional  
15 amortizations. And as the witness on that issue in the 2010  
16 case, we didn't have a clear path on -- on how we were going  
17 to treat them until the parties filed their direct testimony  
18 in the 2010 rate case and then we all got together and we  
19 ended up resolving how to treat them.

20 MR. FISCHER: Judge, may I approach the  
21 witness?

22 JUDGE BUSHMANN: You may.

23 BY MR. FISCHER:

24 **Q. Mr. Featherstone, I'd like for you to read**  
25 **into the record, just so the record is clear, paragraph P**

1 **related to Amortizations: Ten-year recognition of future**  
2 **benefits.**

3 MS. MERS: Can I ask what document.

4 MR. FISCHER: I'm sorry, I haven't given you  
5 foundation. This is from the regulatory stipulation in  
6 EO-2005-0329.

7 MS. MERS: Thank you.

8 THE WITNESS: I have my copy here.

9 BY MR. FISCHER:

10 **Q. I'll take mine back. Twenty-seven is the**  
11 **version I have?**

12 A. Let's see if we can match up here. Is that  
13 it?

14 **Q. Yes.**

15 A. Okay. Which one?

16 **Q. Would you read the paragraph P?**

17 A. It's P, Amortizations: Ten-year recognition  
18 of future benefits. In order to ensure that the benefits of  
19 offsetting the rate base related to the amortizations  
20 contained in this agreement, accrued KCP&L's customers and in  
21 future rate proceedings, KCP&L agrees that any such benefits  
22 shall be reflected in its rates, notwithstanding any future  
23 changes in the statutory provisions contained in Chapters 386  
24 and 339, RSMo, come for at least ten years following the  
25 effective date of the Order approving stipulation and

1 agreement in this proceeding.

2 Q. Okay. Great. And do you recall that the  
3 Commission held hearings after the stipulations were filed in  
4 that case?

5 A. Yes.

6 Q. Do you recall that the Office of Public  
7 Counsel sponsored Russ Trippensee in that case?

8 A. Yes.

9 Q. And do you recall that Mr. Trippensee testified  
10 related to that prohibition on the single issue rate-making  
11 or the FS 179, that this agreement provides that KCP&L --  
12 Kansas City Power & Light nor the parties will avail  
13 themselves of any single-mechanism for a period of  
14 approximately ten years?

15 A. I believe so.

16 Q. Okay.

17 MR. FISCHER: I think that's all I have,  
18 Judge. Thank you.

19 JUDGE BUSHMANN: Questions by Commissioners?

20 CHAIRMAN KENNEY: No, thank you, Judge. Thank  
21 you for your testimony.

22 COMMISSIONER STOLL: I do.

23 QUESTIONS BY COMMISSIONER STOLL:

24 Q. Good afternoon, Mr. Featherstone.

25 A. Good afternoon, Commissioner.

1           Q.       You know, in reading the exhibit that  
2 Mr. Woodsmall presented, in that paragraph C, it says that  
3 Kansas City Power & Light will not seek prior to June 1st,  
4 2015, to utilize any mechanism and it goes on. Couldn't that  
5 be interpreted in a couple different ways? What I'm thinking  
6 of is will not seek to utilize. Could that be interpreted to  
7 mean that it wouldn't go into -- it wouldn't do this -- that  
8 the new rates would go into effect after June 1st, 2015?  
9 Have you heard any --

10           A.       That's certainly the Company's interpretation.

11           Q.       Is that their position?

12           A.       Yes.

13           Q.       And -- and your interpretation is that "will  
14 not seek" means will not propose to use this mechanism prior  
15 to June 1st, 2015, regardless of, you know, the rates going  
16 into effect after that?

17           A.       Correct. It's seek, will not file for, will  
18 not request. And I think that the -- for the Staff, and I  
19 think for other parties, the -- what really sort of captures  
20 or frames that first sentence is the second sentence in the  
21 stipulation where it addresses, but can we -- can we at least  
22 request an interim energy charge prior to June 1 of 2015.  
23 And I think that -- that sort of identifies for -- for  
24 everyone, I don't believe the language is ambiguous at all.  
25 I agree with John Coffman on that, on that matter.

1 I think that you will not have two -- two  
2 different fuel mechanisms. You would not have the -- the IEC  
3 in place and then -- and then also be able to request the  
4 fuel mechanisms or the fuel clause that was envisioned with  
5 SB179.

6 **Q. So you have to look at the agreement in its**  
7 **entirety and probably have a better understanding of exactly**  
8 **what will not seek --**

9 A. Yes.

10 **Q. -- means?**

11 COMMISSIONER STOLL: Okay. That's all I have  
12 right now. Thank you.

13 JUDGE BUSHMANN: Commissioner Hall?

14 COMMISSIONER HALL: I have no questions.  
15 Thank you.

16 JUDGE BUSHMANN: Recross based on Commission  
17 questions from Public Counsel.

18 RECCROSS-EXAMINATION

19 QUESTIONS BY MR. POSTON:

20 **Q. Just to follow-up on that last question.**  
21 **Could you explain what you were just saying about you**  
22 **wouldn't -- the Company would be seeking both an IEC and an**  
23 **FAC. Explain -- can you just explain why that is and how**  
24 **that is covered by that agreement?**

25 A. The -- Mr. Coffman was concerned, I mean,

1 essentially, he would come back and report back the thought  
2 that the fuel clause mechanism was going to pass the  
3 legislature. And he wanted this provision as part of the  
4 negotiations with the regulatory plan. He wanted this part  
5 of the plan to preclude Kansas City Power & Light from using  
6 this SB179 mechanism. And the Company came back -- certainly  
7 the Company would not want this paragraph.

8 This was not a desire of theirs. It was the  
9 Office of Public Counsel and Mr. Conrad, really. And they  
10 came back and said, well, if we can't have a fuel clause,  
11 could we at least request during this prohibition an IEC?  
12 And we had used the IECs several times prior to that. In  
13 fact, I was involved in developing the IEC where it was first  
14 used in the Empire case, the 2001 Empire case.

15 So this -- this provision, the second sentence  
16 was inserted at the request of KCP&L who said, well, if we  
17 can't have for a ten-year period of time the fuel clause, we  
18 can't seek one in that period of time, can we at least then  
19 have as an alternative an IEC.

20 **Q. So then under their interpretation, it would**  
21 **be permissible for them to request both an FAC and an IEC?**

22 A. Prior to June 1, 2015, they could request an  
23 IEC.

24 **Q. Under their interpretation?**

25 A. Under --

1 Q. Sorry, you're right. Go ahead.

2 A. Well, I think nobody disputes that piece of  
3 it.

4 Q. Right.

5 A. But that was the reason that was put in there  
6 so they could not ask for a fuel clause prior to that date  
7 but they could get an IEC prior to that date. My testimony  
8 is you would not need or you would not want to have a  
9 situation where the utility is having both mechanisms. So  
10 you wouldn't want this overlap, having an IEC and then having  
11 a fuel clause.

12 Q. At the time that this agreement was entered  
13 into by the parties, was the passage of Senate Bill 179 a  
14 certainty?

15 A. No, the session hadn't ended and it had not  
16 passed yet and certainly the governor had not signed the  
17 legislation.

18 MR. POSTON: Thank you. That's all I have.

19 JUDGE BUSHMANN: Recross by MECG.

20 MR. WOODSMALL: No questions, thank you.

21 JUDGE BUSHMANN: KCP&L.

22 MR. FISCHER: Yes, Judge, briefly.

23 RECROSS-EXAMINATION

24 QUESTIONS BY MR. FISCHER:

25 Q. Mr. Featherstone, Mr. Woodsmall was asking you

1 about the language and he suggested that it should be read in  
2 the context of the total agreement?

3 A. Yes.

4 Q. Would you turn to page 30 of the stipulation  
5 and agreement, the regulation plan stipulation agreement  
6 where it begins talking about the 2006 rate case that was to  
7 be filed?

8 A. Are you talking about the stip or the Order?

9 Q. The stip itself.

10 A. The stip itself? Yes.

11 Q. Does does it say there under -- well, let me  
12 just ask a couple of preliminary questions. Isn't it true  
13 that the Company agreed that it would file two mandatory rate  
14 cases and two optional rate cases -- perhaps two optional  
15 cases under the regulatory plan during the period?

16 A. Total of four. The first one, the last one  
17 were required and the two in between were optional, at the  
18 Company's option.

19 Q. Okay. The first rate case is, I think,  
20 addressed on page 30 of that stipulation and agreement and  
21 let me just read you the sentence I'm interested in. It  
22 says: Schedule: Rate schedules with an effective date of  
23 January 1, 2007, will be filed with the Commission on  
24 February 1st, 2006. Do you see that?

25 A. Yes.



1 Q. Okay. And then would you flip to page 34 of  
2 the agreement where it talks about the second rate case? It  
3 says schedule: Rate schedules with an effective date of  
4 January 1st -- January 1, 2008, may be filed with the  
5 Commission on February 1st, 2007. Do you see that?

6 A. Yes.

7 Q. Okay. And then if you flip to page 37, the  
8 third rate case is discussed where it says schedule: Rate  
9 schedules with an effective date of January 1, 2009, may be  
10 filed with the Commission on February 1st, 2008. Do you see  
11 that?

12 A. Yes.

13 Q. And then if you flip to page 41 of the  
14 agreement where it says schedule, this is on the fourth rate  
15 case. Rate schedules with an effective date of September 1,  
16 2010 will be filed with the Commission on October 1st, 2009,  
17 or eight months prior to the commercial in-service date of  
18 Iatan 2; is that right?

19 A. Yes.

20 Q. Now, if you go back to the provision that's in  
21 question here today, does it say KCP&L agrees that prior to  
22 June 1, 2015, it will not seek to file any mechanism  
23 authorized in current legislation known as SB179?

24 A. Are you at the --

25 Q. I'm on page 7, under the single-issue rate

1 mechanism.

2 A. Let me get there. Could you say your question  
3 again?

4 Q. Yeah, it's on page 7. I asked you whether it  
5 says KCP&L agrees that prior to June 1st, 2015, it will not  
6 seek to file any mechanism authorized in current legislation  
7 known as what's SB179?

8 A. It does not say that.

9 Q. So the parties knew what it meant to file a  
10 rate case, didn't they?

11 A. I'm having trouble with that because on the  
12 third rate case that you read, the Company didn't file their  
13 rate case on that date.

14 Q. But we knew what it meant to file that rate  
15 case. The case filing. We knew what that meant?

16 A. You do. And I think you agreed to also that  
17 second sentence that clearly frames the first. You know what  
18 that means to file a rate case, to seek the rate case.

19 Q. The first sentence could have said KCP&L  
20 agrees to prior to June 1st, 2015, it will not seek to file  
21 any mechanism; right?

22 A. It could have said that, yes.

23 Q. It did not; right?

24 A. It did not. It's not there.

25 MR. FISCHER: That's all I have, thanks.

1 JUDGE BUSHMANN: Redirect by Staff.

2 REDI RECT EXAMI NATION

3 QUESTIONS BY MS. MERS:

4 Q. Yes. We'll start with the last question  
5 first. Counsel was asking you about the words "to file." At  
6 the time, did anybody know what it was going to be like to  
7 file a fuel adjustment clause, how that process would work?

8 A. No, because there was no fuel clause mechanism  
9 that was even passed through the legislation.

10 Q. Okay. And the Commissioners have been  
11 interested in learning about any -- if there's any extrinsic  
12 evidence. Is there anything that you could tell us today  
13 that could help color why you have the understanding of that  
14 prohibition language from your experiences in those hearings  
15 and those meetings in that year-long process?

16 MR. FISCHER: Judge, I think I'm going to  
17 object. It's beyond the scope of the questions from the  
18 bench.

19 JUDGE BUSHMANN: Your response?

20 MS. MERS: My response would be not only today  
21 have -- has the evidence -- or the issue of maybe parole  
22 evidence, trying to explain what the parties have meant by  
23 this issue, I think the Commissioners actually had requested  
24 that maybe we could put somebody on the stand to explain that  
25 more. Cary Featherstone happens to be a person who would be

1 a perfect witness for that, so I was just trying to give the  
2 Commissioners little bit of leeway, trying to get anything --  
3 explain to them to help them with their determinations.

4 JUDGE BUSHMANN: Well, I think there were  
5 questions on cross about what meeting -- the understanding of  
6 the parties was, so I think I'll allow you to ask some  
7 additional questions about that, if it ties into that issue.

8 BY MS. MERS:

9 Q. Can you remember any -- or can you relate to  
10 us any -- is there anything in those hearings that you can  
11 particularly point to that colored your understanding why you  
12 believe it's a prohibition to utilize?

13 A. Well, there weren't hearings in the meetings.  
14 These were behind closed door confidential meetings between  
15 the parties. And sometimes it included KCP&L and sometimes  
16 it didn't. Sometimes the non-utility parties would meet, and  
17 in particular, a lot of times during those discussions, we  
18 would -- we were given sort of a status update report of  
19 where SB179 was in the legislative process.

20 And I think it became, as it -- as it does  
21 when people start speculating sort of towards the end of the  
22 legislative session, people start to speculate on what's  
23 going to pass and what's not going to pass. Mr. Coffman had  
24 a pretty good feel, as Mr. Conrad did as well, that they  
25 thought it was going to pass and indeed it did. And once

1 that became sort of planted in their minds, the regulatory  
2 plan, that negotiation sort of turned in that direction that  
3 they wanted to make sure that this paragraph, the  
4 single-issue rate mechanism was not going to be available to  
5 Kansas City Power & Light.

6 As part of the totality of the agreement,  
7 there was a lot of give and take, everybody got something and  
8 one of the key features that Public Counsel got was this  
9 paragraph. So it sort of defined what the probably their  
10 most valuable take, I guess. They were involved in the DSM  
11 as well, so there were some other things they were interested  
12 in, but this within game key.

13 **Q. Besides from the fuel adjustment clause and**  
14 **SB179, was the prohibition aimed at more than just that**  
15 **particular single issue rate-making mechanism?**

16 A. No. It was -- it was -- that was the  
17 principle, you know, when we were talking about SB179, it was  
18 fuel clause mechanisms, but it was a larger -- there were  
19 surcharges and what some referred to as single issue  
20 rate-making features. The fuel clause was certainly  
21 prominent, but there were other mechanisms that would -- that  
22 could come about because of SB179.

23 MS. MERS: Okay. No further questions. Thank  
24 you.

25 JUDGE BUSHMANN: Thank you, Mr. Featherstone,

1 you may step down.

2 THE WITNESS: Thank you.

3 JUDGE BUSHMANN: Call your witness.

4 MS. MERS: Staff's next witness will be  
5 Charles Hyneman.

6 DIRECT EXAMINATION

7 QUESTIONS BY MS. MERS:

8 Q. **Since this is Mr. Hyneman's last time on the**  
9 **stand, I would like to tender Staff Exhibit marked Number 215**  
10 **and Staff Exhibit 216, which is the rebuttal and surrebuttal**  
11 **testimonies, both NC and NP into exhibits.**

12 JUDGE BUSHMANN: Any objections? Hearing  
13 none, those two exhibits will be received into the record.

14 (Exhibit Numbers 215 and 216 were received  
15 into evidence by Judge Bushmann.)

16 MS. MERS: Okay. I present Mr. Hyneman for  
17 cross then.

18 JUDGE BUSHMANN: First cross would be by  
19 Public Counsel.

20 MR. POSTON: No questions. Thank you.

21 JUDGE BUSHMANN: MCG.

22 MR. WOODSMALL: No questions, thank you.

23 JUDGE BUSHMANN: Kansas City Power & Light.

24 MR. FISCHER: Thank you, judge.

25

CROSS-EXAMINATION

QUESTIONS BY MR. FISCHER:

**Q. Good afternoon, Mr. Hyneman.**

A. Good afternoon.

**Q. I have a few questions I'd like to ask of you, but first I'd like to just for the record get a little background on the record. It's correct you've been employed here at the Commission for over 20 years; is that right?**

A. Yes.

**Q. And you've been involved in numerous utility cases, including both Kansas City Power & Light and GMO; is that right?**

A. Yes.

**Q. And I believe you're a licensed certified public accountant here in Missouri?**

A. That's correct.

**Q. On page 45 of your surrebuttal, you indicate that certified public accountants are required to adopt and maintain an attitude of professionalism, audits and financial statements?**

A. I believe it's professional skepticism, but I don't have that testimony in front of me.

**Q. Okay. Either professional -- I think it said --**

A. I think it's both.

1           **Q.       Okay. And do you follow the standards of a**  
2 **CPA when you're conducting your audits in a rate case?**

3           A.       Absol utely.

4           **Q.       How would you describe the role of the**  
5 **Commission's Staff in rate cases?**

6           A.       The Commi ssi on Staff in rate cases is to  
7 provide the Commi ssi on with recommendations and testimony  
8 advocating and supporting its position to ensure that the  
9 Commission has the best available information to order just  
10 and reasonable rates in the rate case.

11           **Q.       Do you remember in one KCP&L case, executive**  
12 **director said he viewed it as they're supposed to be a**  
13 **neutral party in the rate case to provide a fair and**  
14 **equitable solution to a rate case to the Commissioners.**  
15 **Would that be something that you could agree to?**

16           MS. MERS:   Obje cti on, relevance.

17           JUDGE BUSHMANN:   Response?

18           MR. FISCHER:   I'm just trying to understand  
19 where Mr. Hyneman is coming from, what he sees as the role of  
20 the Staff in recommending what he's recommending in this  
21 case.

22           JUDGE BUSHMANN:   Overruled.

23           THE WITNESS:   You had several components to  
24 that question.   Could you repeat?

25



1 BY MR. FISCHER:

2 Q. Yeah, I was just asking, would you agree that  
3 the Staff is supposed to be a neutral party in the rate case  
4 to provide a fair and equitable solution to the rate case to  
5 the Commissioners?

6 A. Yes.

7 Q. From your perspective, is it the role of the  
8 Commission Staff to be fair, objective, and unbiased in rate  
9 cases?

10 A. Absolutely, it is.

11 Q. And on page 8, you testified in your rebuttal,  
12 the hallmark of utility rate setting is that it is fair and  
13 unbiased and there are no predetermined winners and losers;  
14 is that true?

15 A. That's correct.

16 Q. Do you agree that the utility rate setting  
17 process should be fair and unbiased to both consumers and the  
18 Company's owners?

19 A. To its customers and the shareholders of the  
20 company, yes. And the employees of the company, for the  
21 matter.

22 Q. Sure. There's lots of stakeholders?

23 A. Right.

24 Q. Sometimes it's said that utility rate-making  
25 should balance the interests of ratepayers and shareholders.

1 **Do you agree with that?**

2 A. Well, and that's a difficult concept. I think  
3 that's more the role of the Commission. When they have a  
4 rate case, they've got all types of issues in front of them.  
5 And in balance, when they consider each of those issues that  
6 they want to balance the interest of the party to make sure  
7 that the rates are just and reasonable and fair to all  
8 parties.

9 Now, with the Staff, in my opinion, the Staff  
10 is more interested in auditing the Company, coming up with  
11 revenue requirement recommendations that are fair and  
12 reasonable, and providing that information to the Commission  
13 and then the Commission will consider that in its overall  
14 deliberation of all the parties to seek the balance you're  
15 talking about.

16 **Q. Is it the role of the Commission Staff to be a**  
17 **strong and aggressive advocate and protector of the**  
18 **ratepayer's interests?**

19 A. No.

20 **Q. From your perspective, is it the role of the**  
21 **Commission Staff to present a case that's intended to keep**  
22 **the rates of the consumers as low as absolutely possible?**

23 A. Well, it depends on your definition of  
24 "reasonable." I've seen definitions of reasonable to mean as  
25 low as possible, consistent with providing service, good

1 utility service.

2 Q. Well --

3 A. So in that sense, if you're talking about  
4 reasonable rates, the lowest possible, given the continuation  
5 of good utility service, then yes.

6 Q. So you think it is the role of the Commission  
7 Staff to present a case that's intended to keep the rates of  
8 consumers as absolutely low as possible?

9 A. Which is the definition of reasonable. If you  
10 add consistent with other components of continuation to  
11 provide good utility services, which would be earning a fair  
12 rate of return and otherwise.

13 Q. And that, with those caveats or with those  
14 qualifications, isn't it true that you can't keep rates as  
15 low as absolutely possible if you're still expected to  
16 provide reliable service and good quality service?

17 A. When you're talking about rates, I mean costs  
18 as low as possible.

19 Q. Well, my question is: Is it the role of the  
20 Commission Staff to present a case that's intended to keep  
21 the rates of the consumers as low as absolutely possible?

22 A. Consistent with those caveats that I added,  
23 yes.

24 Q. Okay.

25 A. With sufficient to earn a fair and reasonable

1 return, to continue to provide good utility service.

2 **Q. Okay. So you're saying the Staff's case**  
3 **should give the Company an opportunity to earn a fair and**  
4 **reasonable rate of return?**

5 A. I'm saying the Company is entitled with an  
6 opportunity to earn a fair return. Now, I don't know if  
7 Staff designs its case specifically to create that. I think  
8 the Commission in its Order in determining its ROE decisions  
9 will keep that in mind.

10 **Q. Are you saying that the Commission Staff does**  
11 **not attempt to create a case that would provide the Company**  
12 **an opportunity to earn a reasonable rate of return?**

13 A. Absolutely not. I mean, that's one of the  
14 reasons we do our rate case annualization and normalization.  
15 If we see you have a continuing high level of cost, we're  
16 going to recommend that that increase is reflected in current  
17 rates.

18 **Q. So it is -- if I understand your testimony, it**  
19 **is the role of the Staff to present a case that allows the**  
20 **Company to earn a reasonable rate of return as determined by**  
21 **the Commissioners; right?**

22 A. That's -- yes.

23 **Q. Is it the role of the Commission Staff to make**  
24 **recommendations in a rate case that are designed to keep the**  
25 **public utility financially healthy?**

1           A.       I think that's part of our cost of capital  
2 witnesses. They make those determinations and  
3 recommendation, yes.

4           **Q.       So the answer is yes, that would be a part of**  
5 **what Staff believes it should be doing?**

6           A.       Yes.

7           **Q.       And how would you define "financial health?"**

8           A.       I would think the financial health would be  
9 the return on utility's investment sufficient to recover its  
10 -- all of its cost of service expenses and earn a reasonable  
11 return that would allow it to attract capital and reasonable  
12 rates.

13          **Q.       That reasonable return would be comparable to**  
14 **what other utilities in similar situations are earning?**

15          A.       I think that's one way that's done, yes.

16          **Q.       Do you believe it's important for the Company**  
17 **to be able to attract capital at reasonable rates?**

18          A.       Yes.

19                MS. MERS: Objection. I think this line of  
20 questioning is more important to Staff's earlier witnesses  
21 that were testifying on cost of equity and capital structure,  
22 which is primarily policy-based.

23                MR. FISCHER: Judge, I'm not trying to get  
24 into specifics of establishing rate of return with  
25 Mr. Hyneman. I'm just trying to understand how the Staff

1 approaches their case in light of how he testifies to about  
2 regulatory lag.

3 JUDGE BUSHMANN: All right. I'll give you  
4 some leeway. I'll overrule the objection.

5 BY MR. FISCHER:

6 Q. Do you believe it's important for utilities  
7 like KCP&L to be investment grade rated?

8 A. Again, I'm not an expert in this area. I  
9 think it's important to have a reasonable investment rating,  
10 not gold-plated high or, you know, too low. I think it's  
11 important to have a reasonable investment rating.

12 Q. Well, let's turn to your rebuttal testimony on  
13 page 3. At line 7 and 8, you state, in stark contrast to  
14 Mr. Ives, I explain why the current ROEs recently experienced  
15 by KCP&L are not unreasonable. Do you see that reference?

16 A. Yes.

17 Q. Staff receives their earnings surveillance  
18 reports from KCP&L that identify the return on equity; is  
19 that right?

20 A. It has in past, yes.

21 Q. And I believe those returns report ROEs on a  
22 Missouri jurisdictional basis, is that true?

23 A. It reports what KCP&L calculates its ROEs to  
24 be.

25 Q. And that's done on a Missouri jurisdictional

1 **basis?**

2 A. It's what KCP&L considers to be a Missouri  
3 jurisdictional basis.

4 **Q. Yes, I know there can be allocation issues;**  
5 **right?**

6 A. There are many allocation issues.

7 **Q. Okay. And do you occasionally review KCP&L**  
8 **surveillance reports submitted to the Commission Staff?**

9 A. Rarely.

10 **Q. But occasionally you would do that?**

11 A. In this case, I have.

12 **Q. Those surveillance reports in 2013 showed an**  
13 **earned ROE of 6.9 percent; is that your memory?**

14 A. That's KCP&L's calculation, yes.

15 **Q. That's 2013?**

16 A. Yeah.

17 **Q. And in 2014, there was a MEEIA report that had**  
18 **a 5.69 percent?**

19 A. The one you're talking about, there's no way  
20 that I could calculate an ROE from that report that KCP&L  
21 submitted under that format.

22 **Q. They also submitted a quarterly surveillance**  
23 **report recently that showed 6.1 or 6.09575, I believe?**

24 A. I think after all the testimony was filed in  
25 this case, I think Staff witness Featherstone sought the 2014

1 report and I think KCP&L did provide it, yes.

2 Q. Okay. And you've heard the testimony, or  
3 perhaps you've read the testimony of Mr. Ives, where he  
4 testified about those Missouri jurisdictional ROEs at 6.9 and  
5 5.69 or so?

6 A. I believe he may think they're accurate, yes.

7 Q. On page 3 of your rebuttal, you state that you  
8 believe that the current ROEs recently experienced by KCP&L  
9 are not unreasonable; is that right?

10 A. That is correct.

11 Q. Is it correct to conclude that you believe  
12 that the ROEs experienced by KCP&L in 2013 is not  
13 unreasonable?

14 A. In my analysis, I think on page 15, explains  
15 --

16 Q. Okay.

17 A. -- why that -- why that is true.

18 Q. But the answer is yes, you think that 6.9  
19 percent was reasonable?

20 A. I think given the current economic conditions  
21 that KCP&L has experienced, and this Commission has  
22 recognized, I think other past problems that KCP&L has had,  
23 that at this current point, it's not unreasonable.

24 Q. And is it correct to conclude you believe the  
25 ROE experienced by KCP&L in 2014, whether it's 6.1 or 5.69,



1 **depending on what report you look at, that's not unreasonable**  
2 **either?**

3 A. It's not unreasonable when you look at the big  
4 picture. Is it reasonable that KCP&L could have had a higher  
5 one? Yes. I don't know. I can't glean accurate ROE  
6 information from KCP&L surveillance reports.

7 **Q. Well, let's just assume that they earned less**  
8 **than 6 percent or around 6 percent. You would consider that**  
9 **to be a reasonable return?**

10 A. If that type of return is earned on a  
11 short-term basis and doesn't improve. Now over long-term, if  
12 KCP&L is authorized at 10 percent ROE and it consistently  
13 earns those lower, then it is an issue.

14 **Q. And you have read testimony of Mr. Ives where**  
15 **he presented that chart and I've used it in the opening where**  
16 **it shows that they've had earning shortfalls of \$220 million**  
17 **over the last seven years or so; right?**

18 A. Well, and I found that interesting. I know  
19 KCP&L --

20 **Q. My question was: Have you looked at that?**

21 A. Could you repeat the question?

22 **Q. Yeah, have you seen that chart that shows that**  
23 **\$220 million shortfall?**

24 A. I've glanced at it, yes. I haven't analyzed  
25 the calculations that are embedded in the chart.

1           **Q.       Well, when you say it's not unreasonable for**  
2 **KCP&L to have earned 6.9 percent or 6.1 percent in 2014, are**  
3 **you testifying on behalf of the Staff when you come to that**  
4 **conclusion or is that just Chuck Hyneman's position?**

5           A.       Well, again, if you don't take it out of  
6 context and you put it into context, the reason I say that  
7 those returns are reasonable, the Staff would support that,  
8 yes.

9           **Q.       You're speaking on behalf of Staff when you**  
10 **say it's not unreasonable for KCP&L in 2013 to have earned**  
11 **6.9 percent in 2013 and 6.1 percent in 2014?**

12          A.       That's given in the year 2000 when KCP&L  
13 earned 18 percent ROE, or you know --

14          **Q.       I just want to make sure I understand Staff's**  
15 **position.**

16          A.       Yeah, it's probably not too out of line with  
17 KCP&L's. When the average ROE in 2000 was 11 percent and  
18 KCP&L earns 18 percent and it doesn't come into the  
19 Commission and say, hey, look, our ROEs are unreasonable,  
20 we're way too high. Then they, in effect, make a  
21 determination that that 700 basis points above what the  
22 average ROE granted is reasonable. And I'm saying if you go  
23 below that, then, you know, equality of the treatment there,  
24 you could assume it's reasonable. If it's not unreasonable  
25 if it's much higher, is it unreasonable if it's much lower.

1           **Q.       Well, just let me ask you this question then:**  
2 **Is it correct to conclude that the Staff of the Missouri**  
3 **Public Service Commission believes that KCP&L's recently**  
4 **earned returns of 6.9 percent and 5.69 percent are reasonable**  
5 **returns on equity?**

6           A.       Again --

7           **Q.       Yes or no.**

8           MS. MERS: I believe this has been asked and  
9 answered.

10          MR. FISCHER: I don't think I've got a clear  
11 answer yet.

12          JUDGE BUSHMANN: I don't think he has either.  
13 Can you respond to the question, please?

14          THE WITNESS: I don't think it is not only the  
15 position of the Staff but also of the Commission. I can  
16 quote you a recent Ameren Order. It's the Report and Order  
17 in Case Number ER-2012-0166. And if you look at paragraph 13  
18 of that Order, and if you allow me, it says: Finally, this  
19 rate-making mechanism that Ameren was seeking referred to as  
20 a plant and service adjustment, or a PISA, seemed to be a  
21 solution in search of a problem.

22          Ameren Missouri had difficulty earning its ROE  
23 in the past several years. The Company likes to blame that  
24 failure on systemic problems in Missouri's regulatory scheme  
25 that lead to excessive regulatory lag. However, many

1 businesses and individuals have been unable to earn as much  
2 as they'd like in the economic conditions prevailing in the  
3 recent years.

4 So the Commission recognizes that in bad  
5 economic times, utilities' earnings aren't going to be what  
6 they want to be. In good economic times, which you can see  
7 on the chart on page 11 of my testimony, the earnings are  
8 very, very good. So if you can have lower earnings in bad  
9 times and higher earnings in good times, I think you could  
10 look at and fairly objectively say that as long as they don't  
11 stay in effect for extreme periods of time and the utility's  
12 cash flow problems are not bad and the utility is not having  
13 problem attracting capital, then I say yes, it would be  
14 reasonable. And I think the Commission indicated that in its  
15 Order and I think the Staff supports that position as well.

16 **Q. So as long as it doesn't stay in effect for**  
17 **extreme amount of time, it's okay to earn 6.1 percent?**

18 A. It would be hard to, if KCP&L's continuing to  
19 earn low what it considers to be unreasonable ROEs, it can  
20 file a rate case at any time. It has that ability and that's  
21 why it's filed a rate case in this case. So if you file your  
22 rate case periodically, then hopefully these ROEs won't be in  
23 effect for a long period of time. And I find that KCP&L is  
24 interesting because --

25 MR. FISCHER: Judge, I don't think there's a

1 question anymore pending.

2 JUDGE BUSHMANN: Go ahead.

3 BY MR. FISCHER:

4 Q. That's one of your fundamental points, isn't  
5 it, that you believe the recently experienced ROE's of KCP&L  
6 are reasonable?

7 A. Well, that's part of it. I mean, when you  
8 look at KCP&L's other operating division, which is a Missouri  
9 division, and it's earning slightly over I think in 2013,  
10 it's authorized ROE. I think it was authorized 9.7, it's  
11 earning above that. And if you look at St. Joe Light &  
12 Power, another division of KCP&L, it's earning even  
13 significantly above that.

14 So KCP&L's utility companies, the ones that  
15 operate in Missouri alone are doing very well in an  
16 environment. It just so happens that the one that's  
17 operating in both Missouri and Kansas is having difficulties.  
18 And I think that may be a part of the problem as well.

19 Q. Is it correct that 9.7 is the authorized rate  
20 of return for KCP&L for both the year 2013 and 2014?

21 A. That was the authorized ROE in KCP&L's 2012  
22 rate case, I believe.

23 Q. What is the significance of the Commission's  
24 finding of an authorized rate of return on equity in a rate  
25 case, in your opinion?

1           A.       I think the Commission, based on expert  
2 testimony in the case, determines what a range of  
3 reasonableness is for its cost of equity and it makes its  
4 Order authorizing rates to be set on a certain return on  
5 equity on the rate base in that case.

6           **Q.       Is it your understanding that the Commission**  
7 **attempts to determine the current cost of equity for the**  
8 **public utility under existing market conditions?**

9           A.       Yes.

10          **Q.       As a long time auditor here at the Commission,**  
11 **is it your understanding that a public utility has a right to**  
12 **the opportunity to earn a reasonable return on its**  
13 **investments dedicated to public use?**

14          A.       And I think that goes back to a Supreme Court  
15 decision that I won't quote, but I think it has a right to  
16 have a reasonable, and again, that's the important word. The  
17 reasonable opportunity.

18          **Q.       And that's a yes?**

19          A.       Could you repeat the question?

20          **Q.       Yes. Is it your understanding that a public**  
21 **utility has a right to the opportunity to earn a reasonable**  
22 **return on its investment dedicated to public use?**

23          A.       Yes.

24          **Q.       Is it also your understanding that a public**  
25 **utility's entitled to an opportunity to earn a return**

1 commensurate with the returns of other companies with similar  
2 risk?

3 A. In the same time period, same economic  
4 condition, same region of the country, similar risk, I think  
5 a lot of factors may go into that.

6 Q. But that's a yes?

7 A. With those caveats, yes.

8 Q. And in the last KCP&L rate case, the  
9 Commission determined that 9.7 was a return that KCP&L was  
10 entitled to earn under the market conditions that existed at  
11 that time. Is that your understanding?

12 A. I don't know about the phrase "entitled to  
13 earn." I don't know if I could agree with that. I think  
14 that was the authorized ROE the Commission granted in that  
15 rate case.

16 Q. Okay. On page 3, line 10, you state, I will  
17 explain why the lower ROEs experienced from KCP&L for 2008 to  
18 2014 were not unreasonable simply because they were lower  
19 than Commission-authorized ROEs; is that correct?

20 A. That's correct, because the higher ROEs that  
21 KCP&L earned in the period before were on average higher than  
22 the lower ROEs that KCP&L earned in the most recent period.

23 Q. And you agree that KCP&L experienced earned  
24 returns in Missouri from 2008 through 2014 that were lower  
25 than authorized ROEs found reasonable by the Commission in

1 **those years; right?**

2 A. In the rates that I used in my rebuttal  
3 testimony where KCP&L told the Company as reported in its SEC  
4 reports.

5 Q. **Yeah, and those were total company numbers**  
6 **that you used; right?**

7 A. Yes.

8 Q. **And the Missouri jurisdictional numbers that**  
9 **you reviewed are even lower?**

10 A. I don't consider them reliable.

11 Q. **Okay. But those -- but if you just look at**  
12 **what is filed on a Missouri jurisdictional basis, those were**  
13 **lower numbers; right?**

14 A. KCP&L's calculations were, yes.

15 Q. **And going back to that chart that Mr. Ives has**  
16 **in his surrebuttal where he showed the returns from 2007 to**  
17 **2013 compared to the authorized. Do you remember that chart?**

18 A. Vaguely. Do you have a copy of it?

19 Q. **Yeah, I can show it to you.**

20 A. If you can give me a page from his  
21 surrebuttal.

22 Q. **It's on page 32 of his surrebuttal, if you**  
23 **have that.**

24 A. Yes.

25 Q. **That chart shows, doesn't it, that KCP&L did**



1 **not earn its authorized ROE in any of the years 2007, 2008,**  
2 **2009, 2010, 2011, 2012, or 2013; is that right?**

3 A. According to Mr. Ives' calculations, which he  
4 used calculations based on KCP&L's Missouri jurisdictional  
5 surveillance reports, then that's what his calculations show.

6 **Q. And did you read his testimony where he**  
7 **testified that the gap between earned returns and authorized**  
8 **returns from 2007 through 2013 has resulted in aggregate**  
9 **earnings shortfall to our shareholders over the period in**  
10 **excess of \$220 million?**

11 A. Again, he purports to show earned ROE for  
12 KCP&L Missouri operations, which I don't believe are  
13 accurate, but that's what he attempts to show.

14 **Q. Even your total company numbers would show**  
15 **they're earning less than was authorized by the Commission;**  
16 **right?**

17 A. Yes.

18 **Q. Is it correct that you believe it's not**  
19 **unreasonable for KCP&L's shareholders to have earnings**  
20 **shortfall over that period in excess of \$220 million?**

21 A. I have no basis, I haven't done any  
22 calculations or any analysis to show those dollar amounts.

23 **Q. But you don't think it's unreasonable? That's**  
24 **fine.**

25 A. I have no basis to say if it is reasonable or

1 unreasonable.

2 **Q. But didn't you testify that you -- your**  
3 **fundamental point was that the earnings in recent years of**  
4 **KCP&L was not unreasonable?**

5 A. In comparison to the earnings that they had in  
6 a previous time period. If those weren't, if KCP&L  
7 determined that our significantly higher ROEs are not  
8 unreasonable, then ones that are lower to a lesser extent  
9 over the median, then they would also -- I think common sense  
10 would say no, they're not unreasonable either.

11 **Q. So you're looking that over a 20- or 30-year**  
12 **period that because times were better, that these returns of**  
13 **6.9 percent are reasonable because in years gone by at some**  
14 **point there was a higher return? Is that what you're saying?**

15 A. Yes, that's what my testimony shows. That's  
16 the whole analysis done in the testimony. During good  
17 economic times, KCP&L's earnings were, on average,  
18 significantly higher than the more recent period when they  
19 were lower.

20 **Q. So you believe that it's not unreasonable for**  
21 **KCP&L's shareholders during the last seven years to have had**  
22 **substantial earnings shortfall?**

23 A. Again, is it unreasonable, no. And then you  
24 go to the cause, what is the cause of those ROEs. It's  
25 curious when you have KCP&L -- a part of KCP&L operations

1 which has, you know, the same employees and a lot of the same  
2 plant, a lot of the same costs is meeting its ROE. Why can't  
3 KCP&L?

4 **Q. And that's Staff's position, that it's not**  
5 **unreasonable for KCP&L to have \$220 million of shortfalls in**  
6 **the last seven years?**

7 A. I don't know anything about the \$220 million.  
8 I told you I don't have any basis to calculate that.

9 **Q. Okay. Let me revise it. Substantial earnings**  
10 **shortfall.**

11 A. I don't even know if they would be  
12 substantial. I can't tell you that. I can tell you when you  
13 look at what KCP&L's done over the last 20 years, in a level  
14 that exceeded a level granted in the United States --

15 **Q. And during those years, KCP&L had five rate**  
16 **case; right?**

17 A. I believe that's correct.

18 **Q. And in each of those case, the Commission**  
19 **found that the Company's revenue requirements supported the**  
20 **need to raise rates; is that right?**

21 A. Yes.

22 **Q. And notwithstanding five rate increases**  
23 **during those years, is it correct that KCP&L continued to**  
24 **earn less than its authorized rate of return?**

25 A. Again, my analysis was done on a KCP&L total

1 company basis and I think I give reasons in my testimony.  
2 One of the -- probably a significant contributor to that is  
3 KCP&L's construction of the Iatan 2 plant. That was a big  
4 drain. A big problem KCP&L had in dealing with was the  
5 acquisition of GMO, where even its analysts said that that  
6 was -- created a lot of financial problems for the Company  
7 and caused dividend cuts. There's a lot of things that go  
8 into why KCP&L --

9 **Q. But didn't you testify earlier that KCP&L**  
10 **earned less than its authorized return in each of those seven**  
11 **years?**

12 A. According to the total company ROE numbers,  
13 that's correct.

14 **Q. And those total company numbers would include**  
15 **the operations of Kansas; right?**

16 A. Yes.

17 **Q. It would also include on unregulated**  
18 **investments?**

19 A. Yes, I think that's a point Mr. Ives made,  
20 although Mr. Ives and Mr. Cloat [phonetic] have also made  
21 that KCP&L's non-regulated operations were insignificant to  
22 KCP&L's overall operations, but they would have some impact.  
23 Likely to even drag the ROE lower than it would have been if  
24 it had no --

25 **Q. Did you include in any of your rebuttal the**

1 **ROEs on a Missouri jurisdictional basis?**

2 A. No. I asked KCP&L in a data request --

3 MR. FISCHER: That's okay, Judge. I got an  
4 answer to the question.

5 BY MR. FISCHER:

6 **Q. But you had available earnings data on the**  
7 **annual surveillance reports; is that right?**

8 A. I didn't give them any credibility at all.  
9 And I can go into specific reasons, if you'd like.

10 **Q. On page 9 of your rebuttal at lines 10 through**  
11 **12, you state utilities like KCP&L do experience some**  
12 **short-term negative consequences of regulatory lag when**  
13 **expenses grow faster than normal and revenue or other**  
14 **technological advances are not at that time sufficient to**  
15 **compensate for these changes. Is that right, on page 9 at**  
16 **lines 10 through 12?**

17 A. That's correct, yes.

18 **Q. Mr. Hyneman, would you agree that KCP&L's**  
19 **currently in one of those periods where expenses are growing**  
20 **faster than normal and revenues are flat or declining?**

21 A. Yes.

22 **Q. Staff agrees that transmission expenses are**  
23 **rising faster than in the recent past; is that right?**

24 A. Well, what -- you know, what type of -- are  
25 you talking about the SPP administrative fees?

1           **Q.       I'm talking about transmission costs overall.**

2           A.       I haven't looked at that. I know the SPP  
3 administrative fees, which is a significant part of KCP&L's  
4 transmission costs, are scheduled to decrease. In fact, I  
5 would assume they are decreasing. That's the analysis that I  
6 saw. And I also did analysis where KCP&L had an opportunity,  
7 which I decided not to take advantage of, to increase its  
8 transmission revenues to a significant extent, but it decided  
9 to transfer that opportunity to its non-regulated operations.

10           **Q.       So Staff doesn't agree that transmission**  
11 **expenses are rising?**

12           A.       They may be rising, but KCP&L had a lot of  
13 opportunities to mitigate that which they decided not to take  
14 advantage of.

15           **Q.       And Staff agrees that property taxes are going**  
16 **up year after year as KCP&L constructs new plants; right?**

17           A.       Yes.

18           **Q.       And Staff agrees that cyber security costs are**  
19 **increasing and are expected to be higher in the year**  
20 **following the new rates than what was accrued in the test**  
21 **year; right?**

22           A.       I understand that's true. I haven't done any  
23 specific analysis on it.

24           **Q.       And you've also read the testimony of KCP&L's**  
25 **witnesses that have suggested the revenues have been flat for**

1 **the last couple of years?**

2 A. And that has been my observation as well.  
3 Flat to 1 percent growth in that area.

4 **Q. So wouldn't you agree that KCP&L is in a**  
5 **period where expenses are growing faster than revenues and**  
6 **other technological advances are not sufficient to compensate**  
7 **for those changes?**

8 A. I know in the recent past, that has been the  
9 case. I don't know currently if that is also the case. I  
10 know KCP&L has projections of increased revenues, especially  
11 in the Kansas City area.

12 **Q. On the Missouri side?**

13 A. Well, that's -- I can refer that to you.

14 **Q. Well, that's okay. I just wanted to make sure**  
15 **I understood where you were --**

16 A. Yeah, from its most recent analyst report.

17 **Q. Was that the one with .4 percent?**

18 A. It talks about the total shareholder return in  
19 2014 is at 21 percent.

20 **Q. I'm talking about not return. I'm talking**  
21 **about the growth in revenue.**

22 A. Kansas City -- well, economic conditions,  
23 Kansas City unemployment rate of 5.2 percent April 15  
24 compared to national average of 5.1 percent. It has Kansas  
25 City area has 46 consecutive months of job growth, which is a

1 positive indicator. April 2015, year-to-date sales of new  
2 and existing homes are up over 11 percent compared to 2014.  
3 So I know the point you're making is true and my analysis in  
4 the recent past. Whether it exists today, there are  
5 indications that it's changing. But I can't speak to what's  
6 going on in 2014 and 2015.

7 **Q. The Staff is opposed to a transmission cost**  
8 **tracker; right?**

9 A. That is my understanding.

10 **Q. That's true even though Staff recognizes that**  
11 **there are increasing transmission costs coming around --**  
12 **around the road here?**

13 A. I don't know anything about transmission costs  
14 coming around the road.

15 **Q. Are you aware that other jurisdictions do**  
16 **recover transmission expenses, even through a fuel adjustment**  
17 **clause or other tracker?**

18 MS. MERS: Objection, this is outside the  
19 scope of Mr. Hyneman's testimony. He didn't testify to the  
20 transmission costs and it's not been an issue brought up in  
21 previous cross to make it acceptable to talk about now.

22 JUDGE BUSHMANN: Well, we have open cross so  
23 he can testify to what he knows. If he doesn't, he can say  
24 so.

25 THE WITNESS: Could you repeat?



1 BY MR. FISCHER:

2 Q. Yes. Are you aware that other jurisdictions  
3 recover transmission expenses through the fuel adjustment  
4 clause or other transmission trackers?

5 A. I believe Kansas has a transmission-type  
6 tracker.

7 Q. Are you also opposed to a property tax  
8 tracker?

9 A. I'm not opposed to any specific tracker that  
10 KCP&L requested in this case. I haven't addressed any of the  
11 trackers.

12 Q. Okay. So you're not the right witness?

13 A. No. I haven't addressed trackers in any  
14 specific sense, other than I recognize that Staff has  
15 supported trackers in the past under certain conditions.

16 Q. Yeah, I think I'll visit with Mr.  
17 Oligschlaeger about that.

18 Okay. Well just in summary, you believe that  
19 the current ROEs recently earned by KCP&L are not  
20 unreasonable; right?

21 A. If, you know, we can go over the whole big  
22 picture. When you consider the earnings it had in the --  
23 over the 20-year period and when you give the current  
24 economic conditions, the conditions, you know, that KCP&L  
25 experienced when it acquired GMO and the earnings, the

1 difficulties it had at that point, the current economic  
2 condition, when you give all those, and I think I explained  
3 the Commission recognized that companies aren't going earn  
4 that great in an economically challenging environment.

5 **Q. And this is an important point supporting your**  
6 **position or Staff's position on the fuel adjustment clause**  
7 **and the other regulatory mechanism's that KCP&L's requesting;**  
8 **right?**

9 A. My only involvement with the fuel adjustment  
10 clause or the mechanisms are addressing regulatory lag to the  
11 extent that the benefits of regulatory lag are at best  
12 diminished and at worst eliminated through the implementation  
13 of a fuel adjustment clause and trackers.

14 **Q. Well, just from your perspective, given the**  
15 **fact that Staff believes that returns as low as 5.69 or 6.1**  
16 **percent are reasonable, there is no need for the Commission**  
17 **to implement regulatory mechanisms that might be expected to**  
18 **change those returns to something closer to the authorized**  
19 **return; right?**

20 A. And I would say if KCP&L continued to  
21 experience a 5.9 percent ROE and it was -- that was the  
22 actual ROE it earned, given -- if you want to do a Missouri  
23 jurisdictional basis, you have to do an analysis and not just  
24 look at a report, and you got to look at while -- why is GMO  
25 earning the close to 10 percent and why is KCP&L earning at

1 this low level. You've got to do that analysis to find out  
2 the real reasons why. It could be that KCP&L's operations in  
3 Kansas could be effecting it as well. But if you're  
4 continuing to earn substandard ROEs, then I think there are  
5 some mechanism and I think Mr. Oligschlaeger has it in his  
6 testimony that could be in place to help that during a  
7 short-term horizon.

8 **Q. So is it correct you're saying that if the**  
9 **Company's earning low returns for a substantial period of**  
10 **time, there is a need to implement some changes?**

11 A. If you look at the cause. What are the causes  
12 for the low ROE? Is it, you know, totally beyond KCP&L's  
13 control? Does it it have anything to do with KCP&L's  
14 acquisition of the Aquila properties and the burden that that  
15 created on it? I don't think you could implement trackers  
16 and fuel adjustment clauses due to a poor economic  
17 performance that was caused by an acquisition. I don't think  
18 that would be a reasonable --

19 **Q. So you're not saying that -- well, let me ask**  
20 **you this: If the Commission disagrees with your position**  
21 **that returns of 6.9 percent in 2013 and 6.1 percent in 2014**  
22 **are reasonable, if they disagree that those really aren't**  
23 **reasonable, would you recommend that the Commission stay the**  
24 **course and continue to utilize the regulatory policies that**  
25 **have existed for KCP&L over the past couple decades?**

1           A.       Can I get a -- are you saying the Commission  
2 determines that --

3           **Q.       It's not reasonable --**

4           A.       KCP&L's high ROEs were reasonable but the  
5 lower ones were not, if they made that determination, then I  
6 could possibly agree with you.

7           **Q.       Okay.**

8           A.       But I don't know if they would make that  
9 determination.

10          **Q.       So you're saying that if they decided that --**  
11 **that the recent low ROEs, we need to do something about that,**  
12 **and that we'll ignore previous years that you're talking**  
13 **about where they earn pretty well, you wouldn't recommend the**  
14 **Commission just stay the course, we would try to find some**  
15 **solution for that problem; right?**

16          A.       You do have me lost on that question.

17          **Q.       Okay. Well, let me -- let me ask it again.**

18 **If the Commission disagrees with your position that the**  
19 **earned returns of 6.9 percent in 2013 and 6.1 percent in 2014**  
20 **are reasonable, if they disagree with your position on that,**  
21 **would you recommend --**

22          A.       I hate to cut you off, but my position doesn't  
23 include those ROE levels, I don't believe that they're  
24 accurate. I can't give them any credibility.

25          **Q.       Well, let's assume even your Company returns**

1 **that you have in your testimony. If the Company disagrees --**  
2 **I'm sorry, if the Commission disagrees with your position**  
3 **that those earned returns are reasonable?**

4 A. And in 2014, 7.5, which is related to a 9.7,  
5 given very tough economic times, I think the Commission could  
6 reasonably conclude that that's not an unreasonable level;  
7 8.1 in 2013 as opposed to 9.7, I think most people would  
8 conclude that that's a reasonable level. 2011, 2010, 6.9,  
9 now you're going down further where you have to look what are  
10 the causes of those low ROEs.

11 **Q. Stay the course; right?**

12 A. As I said earlier, if these low ROEs are  
13 determined to be beyond the control of KCP&L and not related  
14 to KCP&L's management actions and they're sustained, I think  
15 the Commission has in the past and Staff has recommended  
16 short-term rate-making mitigation measures to help get it  
17 over the hard times. We've done it consistently in the past  
18 and I'm sure we'll continue to do it.

19 **Q. So you're open to having regulatory mechanisms**  
20 **to solve that problem; right? That's what you're saying?**

21 A. I'm saying the Staff has always been open.

22 **Q. Okay.**

23 A. And I think Mr. Oligschlaeger explains that  
24 true and the conditions that Staff looks at when it  
25 recommends these measures.

1 Q. Okay. That sounds good. On page 9 of your  
2 rebuttal at lines 15 through 16, you state, while it may be  
3 time-consuming and require the occurrence of additional  
4 costs, utilities have total control over when they file for  
5 rate increases to offset any negative effects of regulatory  
6 lag; is that right?

7 A. That's correct.

8 Q. Is the filing of rate cases the Staff's  
9 recommendation for KCP&L to offset any negative effects of  
10 regulatory lag?

11 A. I don't think the Staff made any  
12 recommendations. The Staff notes that it's an option for  
13 KCP&L, but I don't believe it made any recommendations.

14 Q. Well, rather than implementing a fuel clause  
15 or trackers that are used in other jurisdictions, is Staff  
16 recommending the Company just file these time-consuming and  
17 expensive rate cases to offset the effects of regulatory lag?

18 A. You'll have to ask the appropriate witnesses  
19 on the fuel clause and the tracker mechanisms, but I don't  
20 know that Staff is recommending that KCP&L file increased  
21 rate cases to deal with regulatory lag.

22 Q. Well, isn't that the Company's best option if  
23 they don't get a fuel clause or any kind of trackers?

24 A. I think one option is KCP&L needs to take  
25 advantages of the -- of cost reductions, and I think

1 Mr. Woodsmall went through a long laundry list that KCP&L did  
2 not do. I think KCP&L should have taken an opportunity when  
3 it received the Notice of Construction for those two regional  
4 transmission projects to put it in rate base and that would  
5 go a long way in increasing its transmission revenues. It  
6 could have done that. It chose not to. So its ROE, you  
7 know, will be impacted by that. And that's a decision that  
8 management made.

9 **Q. So the Company could continue to file rate**  
10 **cases to try to catch up with the increasing costs while the**  
11 **revenues remain flat?**

12 A. In the current economic environment, that is  
13 one option the Company has, yes.

14 **Q. And isn't that the one you'd expect they'd**  
15 **have to chose?**

16 A. I don't, I mean, is KCP&L doing all it can to  
17 keep its costs low? Has KCP&L looked at why GMO, GMO is  
18 operating under the same parameters that KCP&L is, with  
19 exception of a fuel adjustment clause. Why is GMO earning  
20 slightly above its authorized level during these tough  
21 economic times? I think if it looks at that and it still,  
22 despite everything, can't meet a reasonable ROE, then yeah,  
23 it needs to come in and file rate cases as much as possible  
24 and propose the mechanisms that you're proposing in this  
25 case.

1           **Q.       And they filed six in the last seven or eight**  
2 **years; right?**

3           A.       Those were dealing with KCP&L's construction  
4 programs; correct.

5                   MR. FISCHER:   Okay.   Thank you.   I think  
6 that's all I have.

7                   THE WITNESS:   Okay.

8                   JUDGE BUSHMANN:   Questions by Commissioners?  
9 Mr. Chairman.

10                   CHAIRMAN KENNEY:   No questions, thank you.

11                   COMMISSIONER STOLL:   I have no questions.  
12 Thank you for your testimony.

13                   COMMISSIONER RUPP:   No, thank you.

14                   JUDGE BUSHMANN:   No need for recross.  
15 Redirect.

16                   MS. MERS:   Yes.

17                               REDIRECT EXAMINATION

18                   QUESTIONS BY MS. MERS:

19                   **Q.       There was a lot of talk about the ability to**  
20 **earn an ROE.   An authorized ROE is not guaranteed; correct?**

21                   A.       That's correct.

22                   **Q.       Can you explain what you mean by "reasonable"**  
23 **and "unreasonable" in this context?**

24                   A.       Yes.   In the context I'm using that into my  
25 testimony was based on the chart.   If you look at the chart



1 on page 11 of my rebuttal testimony, and it includes a time  
2 period starting the year 1993 through 2014. And it shows  
3 that KCP&L's actual earned, and these are audited results in  
4 their 10-K, the average that they actually earn during this  
5 period was 11.2 percent. The average ROE granted by  
6 Commissions throughout the United States as reported in the  
7 ROE publication was 10.8. So KCP&L has done better than the  
8 average utilities granted authorized ROE during this time  
9 period.

10 Now, if you look at the individual years from  
11 1993 until about 2007, and that's right about the year of the  
12 economic crash and the same year where KCP&L acquired GMO in  
13 a major, major acquisition for the company, its earnings were  
14 above the authorized ROE throughout the nation. It had very,  
15 very good earnings. As high as 18.2 percent just in 2000.

16 But it wasn't since 2008, and those two major  
17 economic events, the acquisition and the crash in the  
18 economy, that KCP&L's earnings have decreased relative to the  
19 authorized ROEs. Now, I think you need to look at the  
20 reasons for that. I mean, there are KCP&L's investment  
21 analyst who said a big part of the financial conditions that  
22 KCP&L ran into were as a result of the Aquila acquisition.

23 They didn't -- at least one of them didn't  
24 think that was a smart move. That was a problem. And with  
25 the economy, you know, as the Commission noted, you're not

1 going to earn what you want to earn when you have severe  
2 economic conditions.

3 So when you look at the high earnings in good  
4 economic up times and the lower earnings in the bad economic  
5 times, overall, they're symmetrical. And even the higher  
6 earnings on average were higher. So when you look at from  
7 that perspective, and not just from the recent one, two,  
8 three years, that's the basis of my determination that  
9 they're reasonable.

10 And I think I point out if 18 percent in '13  
11 or 15 percent and 17 percent that KCP&L was earning, if that  
12 was not reasonable, if they felt their returns weren't  
13 reasonable, I would assume they would come in and say, hey,  
14 Commission, our returns are way too high, they're  
15 unreasonable compared what the average ROE is and we need to  
16 lower them. They didn't do that. And since they didn't do  
17 that, I think you can conclude that they felt that those were  
18 reasonable. So that big picture is -- is why I believe those  
19 returns are reasonable.

20 **Q. You've used the 10-Kforms. Is that's what the**  
21 **investors look at; right?**

22 A. Yeah, and I asked KCP&L in a DR, I asked what  
23 are your return on equities for this period. And they say,  
24 well, we don't calculate them, you know. We do this  
25 surveillance report calculation and that's what they propose

1 to use. And there are a lot of issues with that. I think  
2 Mr. Featherstone goes into them.

3 There are a lot of costs that are embedded in  
4 that. For example, in 2014, there's a \$7 million charge for  
5 stock compensation that's embedded in their surveillance  
6 report. That compensation's not considered for cost of  
7 service regulation. So that's just one account that's \$7  
8 million that should not be in there. And that's a total  
9 company number as well.

10 So I don't consider those surveillance reports  
11 reliable in any manner to measure KCP&L's ROE and it's not  
12 just me. KCP&L's former vice-president of regulatory  
13 operations, Mr. Giles, who proceeded Mr. Ives, said the very  
14 same thing. He wrote rebuttal testimony in a case and he  
15 says that, you know, contrary to popular opinion, and I'm  
16 going to paraphrase, our surveillance boards cannot be used  
17 to determine what our earnings are. And I -- and I agree  
18 with Mr. Giles.

19 **Q. Can you also explain, it's my understanding,**  
20 **and you can explain more on this, that those ROEs also**  
21 **haven't gone through what we would typically see done in a**  
22 **rate case to make adjustments for non-recurring events any**  
23 **things that could effect that. Could you explain more than**  
24 **that?**

25 A. Yeah, and my analysis, again, is a 20-year

1 period from 1993 to 2014, and that's a long period of time.  
2 Just to do analysis of the 10-Ks for that, that's an  
3 intensive work project. What KCP&L would suggest for this  
4 analysis would go back to its 1993 earnings surveillance  
5 reports and gather all those, I would have to make all kind  
6 of rate case adjustments on those and that would take months  
7 and I don't think I could even get anywhere close to the  
8 accuracy that's reflected in the 10. So that would be a  
9 burdensome project and I don't think would even produce any  
10 -- any good results.

11 **Q. Referring to page 20 of your testimony, you**  
12 **were asked by KCP&L's counsel about stagnant growth. Can you**  
13 **explain some of the figures that you have here that would --**  
14 **that show that maybe growth isn't as stagnant as we're being**  
15 **led to believe?**

16 A. Yeah, these are some of the statistics that I  
17 read.

18 **Q. They were in an earnings call; is that**  
19 **correct, reported by KCP&L themselves?**

20 A. Yeah, it's very recent earnings call. I think  
21 it was in February of this year, these data was provided by  
22 Mr. Shay [phonetic], KCP&L's chief financial officer, and the  
23 listing there what the economic conditions are that KCP&L's  
24 experiencing now, they're optimistic that they'll get better.  
25 There's no guarantee, but there is promise that KCP&L's

1 growth and revenues will increase.

2 **Q. Based on your knowledge and experience, would**  
3 **the Commission have found a 15 percent return to be a**  
4 **reasonable one in the period of 1993 to 2005?**

5 MR. FISCHER: Objection, he's not an expert on  
6 ROE and he's already indicated that and that goes directly to  
7 the question of what is a reasonable ROE under those  
8 circumstances.

9 JUDGE BUSHMANN: Your response?

10 MS. MERS: It seems like you were asking  
11 questions that were along similar lines about what he found  
12 to be a reasonable ROE in the beginning of the testimony, how  
13 the cost of capital and things of that matter even after it  
14 was pointed out that he was not an expert in ROE.

15 JUDGE BUSHMANN: I think KCP&L did ask about  
16 his opinion on that, whether it's reasonable, so I'll  
17 overrule the objection.

18 THE WITNESS: Could you repeat the question?

19 BY MS. MERS:

20 **Q. Based on your knowledge and experience, would**  
21 **the Commission have found a 15 percent return to be a**  
22 **reasonable one from the period of 1993 to 2005?**

23 A. Looking over the average ROEs granted during  
24 that time frame, I'd rough guess it's right around 11 to 11.5  
25 percent, so you're looking at 400 basis points higher than

1 that. I don't think that -- this Commission would have said  
2 that that's reasonable.

3 **Q. And when was the 15 percent ROE referred to in**  
4 **Mr. Ives' testimony authorized?**

5 A. I can't recall that year.

6 **Q. Okay. We can put it in a brief. Thank you.**  
7 **No further questions.**

8 JUDGE BUSHMANN: Thank you, Mr. Hyneman. You  
9 may step down.

10 Why don't we take a break. We'll be in recess  
11 until ten minutes after 3:00.

12 (A break was held.)

13 JUDGE BUSHMANN: Back on the record. Ready  
14 for last Staff witness.

15 MS. MERS: Staff calls Mark Oligschlaeger.

16 JUDGE BUSHMANN: Mr. Oligschlaeger, you're  
17 still under oath.

18 DIRECT EXAMINATION

19 QUESTIONS BY MS. MERS:

20 **Q. This will be the last time he'll be**  
21 **testifying, so I wanted to offer Staff Exhibit Number 234,**  
22 **235, and 236 into testimony -- or enter as an exhibit.**

23 JUDGE BUSHMANN: Any objections to the receipt  
24 of those exhibits? Hearing none, those are received into the  
25 record.

1 (Staff Exhibit Numbers 234 through 236 were  
2 received into evidence by Judge Bushmann.)

3 MS. MERS: I would tender the witness for  
4 cross, then.

5 JUDGE BUSHMANN: First cross will be by Public  
6 Counsel.

7 MR. POSTON: No questions.

8 JUDGE BUSHMANN: MEGG.

9 MR. WOODSMALL: No questions, thank you.

10 JUDGE BUSHMANN: Kansas City Power & Light.

11 MR. FISCHER: Yes.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. FISCHER:

14 Q. Good afternoon, Mr. Oligschlaeger.

15 A. Good afternoon.

16 Q. I understand from your rebuttal testimony,  
17 you're the Staff's policy witness on the subject of trackers?

18 A. Yes.

19 Q. Staff is not opposed to the use of trackers  
20 under appropriate circumstances; is that right?

21 A. That is correct.

22 Q. In fact, over the years, Staff has supported a  
23 number of trackers; right?

24 A. Yes.

25 Q. You mention on page 4 that all major utilities

1 operate in Missouri, including KCP&L, have tracker mechanisms  
2 in place for their pensions and other postemployment  
3 benefits; is that true?

4 A. Yes, it is.

5 Q. And Staff has supported other types of  
6 trackers, too; right?

7 A. It has.

8 Q. You mentioned that Staff has agreed to use a  
9 tracker for the Iatan 2 O & M expenses; is that right?

10 A. Yes.

11 Q. Why did Staff support the use of a tracker for  
12 Iatan 2 expenses?

13 A. Well, it was a new power plant, there was no  
14 prior operating history, and we believed it reasonable in  
15 that circumstance instead of just relying solely upon the  
16 budget or forecast for those costs, to also include a tracker  
17 mechanism so both the Company and the customers could be  
18 protected in that unique circumstance.

19 Q. Would you agree that there was uncertainty  
20 related to the level of O & M expenses related to that new  
21 plant?

22 A. Yes.

23 Q. And that was one of the major reasons why a  
24 tracker seemed appropriate?

25 A. Yes.



1           **Q.       And that was also part of the rationale for**  
2 **supporting the veg management and inspection costs for Ameren**  
3 **and Empire whenever the rule was new?**

4           A.       I wouldn't call that a primary rationale, no.

5           **Q.       No?**

6           A.       The primary rationale was simply the  
7 Commission had implemented new rules which had cost impacts  
8 on utilities. Because they were mandated costs, we believed  
9 it appropriate policy to allow tracking to enable the Company  
10 an opportunity to recover those costs, even outside the  
11 context of an immediately filed rate case. And as well, the  
12 text of the rule itself seemed to support a tracking  
13 mechanism for that purpose.

14           **Q.       And wasn't there uncertainty related to the**  
15 **level of costs that would be generated by complying with that**  
16 **rule?**

17           A.       There would have been some uncertainty, yes.

18           **Q.       And the Commission has approved demand-side**  
19 **management trackers over the years, too; right?**

20           A.       They have.

21           **Q.       On page 7 of your rebuttal at line 6 through**  
22 **11, you explain the major difference and how AAOs and**  
23 **trackers have been used in Missouri; is that right?**

24           A.       Yes.

25           **Q.       And as I understand your testimony, AAOs have**

1 **been typically used to allow utilities to capture certain**  
2 **unanticipated and extraordinary costs that are not included**  
3 **in ongoing rate levels; is that right?**

4 A. That's correct.

5 **Q. And a classic example of that might be ice**  
6 **storms or flood costs; is that right?**

7 A. Major catastrophic events which we don't  
8 attempt to anticipate and include in customer rates on an  
9 ongoing level.

10 **Q. Would you agree with me, though, that the**  
11 **Commission has on occasion granted AAOs for a wider variety**  
12 **of costs, including gas line replacement costs or Y2K costs,**  
13 **something like that?**

14 A. For other types of events other than acts of  
15 God, yes, I would agree.

16 **Q. And other than extraordinary events, too?**

17 A. Well, I think in general, the Commission's  
18 policy has been the use of AAOs should be limited to  
19 extraordinary events. We've certainly recommended that they  
20 do so. So I think in almost all circumstances, the  
21 Commission has granted AAOs on that basis.

22 **Q. Well turning back to trackers, would you agree**  
23 **with me that trackers have often been related to ongoing**  
24 **expenses that are expected to be recurring in the future?**

25 A. I would agree with that.

1           **Q.       And trackers have usually been granted in the**  
2 **context of a rate case; right?**

3           A.       Yes.

4           **Q.       And these trackers are not necessarily what**  
5 **would be called these extraordinary events like a flood or an**  
6 **ice storm?**

7           A.       I would say they may share some aspects of the  
8 concept of extraordinary, but not all of them, the most  
9 notable one being the non-recurring aspect of the acts of God  
10 criteria. I don't believe trackers -- trackers sometimes  
11 have been applied to recurring type costs.

12           **Q.       Well, that was my next question. So they have**  
13 **been applied to recurring costs on occasion?**

14           A.       Yes.

15           **Q.       Okay. Was one of the reasons Staff supported**  
16 **granting these trackers that these type of expenses are**  
17 **likely to be uncertain and historical data may not be**  
18 **representative of the levels of expenses in the near future?**

19           A.       I'd say that's stated too broadly for what we  
20 were looking for or what we were -- the criteria we were  
21 looking at. It was more a perceived level of volatility in  
22 the costs as well as uncertainty due to the fact that the  
23 costs in some cases might be new, have effectively no prior  
24 operating experience.

25           **Q.       On the bottom of page 3 of your rebuttal, you**

1 **list the criteria or circumstances that may justify the use**  
2 **of a tracker; is that right?**

3 A. I do.

4 Q. **The first criteria is that the applicable cost**  
5 **demonstrates significant fluctuation and up and down**  
6 **volatility over time for which an accurate estimation is**  
7 **difficult, correct?**

8 A. That's correct.

9 Q. **And then you have little or no historical**  
10 **experience and for which accurate estimates is accordingly**  
11 **difficult; right?**

12 A. That's correct.

13 Q. **And finally, the third, the costs are imposed**  
14 **by utilities by Commission rule; correct?**

15 A. Yes.

16 Q. **Would you agree with me that that third**  
17 **factor, costs imposed upon utilities by Commission rule, that**  
18 **hasn't always been a hard-and-fast criteria; right?**

19 A. Are costs that haven't been imposed by  
20 Commission rule sometimes subject to trackers, I would agree  
21 with that.

22 Q. **Okay. For example, pensions and OPEBs, they**  
23 **don't involve costs imposed by the Commission by rule?**

24 A. They do not.

25 Q. **But for the most part, they have involved**

1 **costs that were imposed by either a rule or some government**  
2 **action or something outside the control of the utility;**  
3 **right?**

4 A. Well, I think the third criteria has to do  
5 with costs imposed by Commission rule, which I think can  
6 largely be considered outside the direct control of the  
7 utility. The first two categories that I list, the  
8 volatility and the new costs, may or may not be tied -- may  
9 or may not be totally outside the control of the utility.

10 Q. **Well, like in the case of pensions and OPEBs,**  
11 **the performance of the stock market is outside the control of**  
12 **the utility, but it effects substantially the pensions and**  
13 **OPEBs expenses; right?**

14 A. Well, sure. I mean, there are factors  
15 involving pensions and OPEBs, expense levels that are both  
16 within and outside the utility's direct control.

17 Q. **And that factor helps justify from your**  
18 **perspective the need for a tracker that would protect both**  
19 **customers and shareholders from expense levels that are**  
20 **different from the base levels that are established in rate**  
21 **base?**

22 A. Are you talking about pension and OPEBs?

23 Q. **Well, any of the other trackers. That's kind**  
24 **of the purpose of a tracker, isn't it?**

25 A. Yeah, the purpose of the tracker is that

1 there's some unusual level of risk associated with a value of  
2 an item placed in rates being significantly different in  
3 reality, but due to just inherent unpredictability or, again,  
4 it being a new cost.

5 **Q. Would you agree that trackers can protect**  
6 **customers as well as the Company's shareholders?**

7 A. I would agree.

8 **Q. And I think for that reason, Staff believes**  
9 **that the continued authorization of pensions and OPEB's**  
10 **trackers remain appropriate for KCP&L and other utilities?**

11 A. Well, yes, that's a balanced mechanism and  
12 that's one of the reasons we are okay with that continuing.

13 **Q. Would you agree that there are times when**  
14 **utilities incur significant new expenses for which they have**  
15 **little or no past history to aide in determining the**  
16 **appropriate level of expenses for setting rates?**

17 A. At times.

18 **Q. And you state on page 5 at lines 18 through**  
19 **20, in those circumstances, it may be appropriate to**  
20 **authorize a tracker to protect both utility and its customers**  
21 **from over and under recovery in rates and rates of these**  
22 **expenses due to erroneous estimates; is that right?**

23 A. That's what it states, yes.

24 **Q. Let's talk for a minute about the sip cyber**  
25 **security cost that is KCP&L are expected to be experiencing**

1 in the next year. On page 12 on line 14, you testify there's  
2 no final estimate of what the financial impact of the  
3 incremental cost on KCP&L will be to comply with the National  
4 Electric Reliability Counsel Proposed Version 5 rules; is  
5 that right?

6 A. Yes.

7 Q. Can you just briefly explain to the Commission  
8 what this National Electric Reliability Counsel is?

9 A. My understanding, it's kind of the body  
10 designated to determine what the appropriate standards should  
11 be for utilities in particular to protect their assets from  
12 cyber terrorism. I may not be getting the buzz word right.

13 Q. I think we know what you mean.

14 A. Yes.

15 Q. Is the network operating under the auspices of  
16 the Federal Energy Regulatory Commission in severance to  
17 adopt cyber security rules and requirements?

18 A. I think I recall something to that effect in  
19 Mr. Gross's testimony. He would know the background much  
20 better than I.

21 Q. Okay. And does the Missouri Commission have  
22 an ongoing workshop on establishing cyber security practices  
23 and rules?

24 A. I believe it does.

25 Q. Is Natelle Dietrich, the head of utility

1 **operations group, is she in charge of that workshop?**

2 A. I would expect she would be.

3 **Q. Staff is taking this effort quite seriously;**  
4 **isn't it?**

5 A. I would hope they are, yes.

6 **Q. In fact, hasn't Staff been concerned about**  
7 **having highly sensitive information about cyber security**  
8 **included in the computer files of the Commission?**

9 A. I couldn't comment on that.

10 **Q. Okay. But this is pretty serious stuff,**  
11 **wouldn't you agree, that we're dealing with in this docket?**

12 A. I can certainly generally agree with that.

13 **Q. Staff would consider cyber security to be a**  
14 **high priority for regulated utilities in today's environment,**  
15 **true?**

16 A. I think that's safe to say.

17 **Q. Is it your understanding that electric**  
18 **utilities in Missouri have been the object of cyber attacks**  
19 **on their existing computer systems?**

20 A. I'm not aware of any such instances.

21 **Q. Okay. Is Staff concerned that a cyber attack**  
22 **on electric company's computer systems could jeopardize the**  
23 **reliability of the state's electric system?**

24 A. Again, I'm not the specific subject matter  
25 expert. I would think broadly speaking, we certainly would



1 be concerned.

2 **Q. Would it be correct to conclude that Staff**  
3 **believes that KCP&L needs to be vigilant in its effort to**  
4 **protect the cyber security of its computers and electric**  
5 **system?**

6 A. Reasonably vigilant, yes.

7 **Q. And could you agree that KCP&L needs to be**  
8 **vigilant in complying with the NERC rules related to cyber**  
9 **security?**

10 A. I would agree.

11 **Q. Is it your understanding those rules will be**  
12 **effective in early 2016?**

13 A. I believe the date I have cited in my  
14 testimony is April 1st, 2016, so yes, I would agree.

15 **Q. Would you agree based upon what you know today**  
16 **that these Version 5 rules will result in significant**  
17 **expenses, new expenses for the company?**

18 A. That's generally what I've seen reflected in  
19 the company's testimony on this issue. I don't think we  
20 disagree with that.

21 **Q. I believe you filed testimony in the KCP&L**  
22 **case in 2010 which was ER-2010-0355. Do you recall that?**

23 A. Actually, I don't.

24 **Q. Okay. Could you look and see if you're listed**  
25 **there? I think you're on that case.**

1 A. Oh, my.

2 Q. **You've been on a lot of cases, Mark.**

3 A. Oh, no, my schedule was inadvertently omitted  
4 and it was separately filed and I don't have it with me, so.  
5 If you could maybe cite to an issue.

6 Q. **Yeah, let me talk about an issue, that would  
7 be easier. Isn't it true that Staff recommended a  
8 transmission tracker be adopted in the prefiled Staff report  
9 in that case?**

10 A. Okay. I know the confusion. I filed  
11 testimony in the 2012 rate case and part of my subject matter  
12 did concern some recommendations made in the 2010 rate case I  
13 believe by Mr. Daniel Beck.

14 Q. **Yeah, that's correct. He was listed as the  
15 author, but are you aware that the Staff did support a  
16 transmission tracker in the 2010 rate case?**

17 A. Under certain conditions, yes.

18 Q. **I think Staff proposed that KCP&L should track  
19 its actual transmission expenses on an annual basis. Is that  
20 your memory?**

21 A. That sounds reasonable.

22 Q. **And in that case, Staff recommended the  
23 regulatory asset or regulatory liability be amortized over  
24 five years in the company's next rate proceeding with the  
25 unamortized balance included in rate base?**

1           A.       That sounds like a typical recommendation that  
2 would be made in that context.

3           **Q.       So is it correct that Staff recommended the**  
4 **transmission tracker as an appropriate regulatory mechanism,**  
5 **at least in 2010?**

6           A.       In 2010. We had a different recommendation  
7 than 2012.

8           **Q.       And in the 2012 rate case, Staff opposed the**  
9 **adoption of a transmission tracker; is that right?**

10          A.       We did.

11          **Q.       In the 2012 rate case, the Commission's Report**  
12 **and Order found that KCP&L can track and defer transmission**  
13 **costs without obtaining the prior approval from the**  
14 **Commission. Is that your memory?**

15          A.       I generally recall some statements in the  
16 Order to that effect.

17          **Q.       Did Staff agree that the regulatory approval**  
18 **for the transmission tracker was not required from the**  
19 **Commission?**

20          A.       I don't believe that was something we -- a  
21 claim we made in that case and we didn't necessarily agree  
22 that KCP&L had total carte blanche, as it were, to book a  
23 regulatory asset in the manner suggested in that Order.

24          **Q.       So you agree that KCP&L needed to get prior**  
25 **approval to defer costs under that tracker?**

1           A.       Possibly. That might have been a condition of  
2 your external auditors, for example, to allow you to reflect  
3 that on your published financial statements.

4           **Q.       And then the Commission denied the request for**  
5 **a rehearing on that issue; right?**

6           A.       As I recall.

7           **Q.       And after the Commission issued its Order**  
8 **denying rehearing in the 2012 rate case, KCP&L later filed a**  
9 **request for an accounting authority order related to the**  
10 **deferral of transmission expenses ; is that right?**

11          A.       That is correct.

12          **Q.       I believe that case was EU-2012-0071?**

13          A.       No, it was EU-2014-0077, I believe.

14          **Q.       Okay. Thank you for correcting that.**  
15                   **I'd like to show you a copy of the order in**  
16 **that case and ask you to read into the record paragraph 12.**

17          A.       Okay. I have been asked to read into the  
18 record paragraph 12 from the Commission's Report and Order in  
19 File Number EU-2014-0077. It reads: The transmission  
20 expenses for which Company seek an AAO are the type of  
21 expenses which may be collected through a Commission-approved  
22 fuel adjustment clause (FAC), authorized during a general  
23 rate proceeding. GMO currently has an FAC; however, it does  
24 not include the transmission costs requested in the  
25 application.

1           Q.       Thank you, sir. Would you agree with me that  
2 the Commission -- that the Company's pre-filed testimony was  
3 trying to follow that -- that suggestion that we request  
4 transmission expenses be recorded through the FAC?

5           A.       That's my understanding, yes.

6           Q.       Since KCP&L filed this case, however, the  
7 Commission decided the Ameren rate case, 2000 --  
8 ER-2014-0258; is that right?

9           A.       That's correct.

10          Q.       In that Ameren Missouri case, the Commission  
11 decided to take most of the transmission costs out of  
12 Ameren's FAC; is that right?

13          A.       That's my understanding of the effect what  
14 have they ordered.

15          Q.       Is it correct, then, that the Commission's  
16 Ameren Missouri decision is not consistent with the approach  
17 that had been suggested in that EU-2014-0077 decision?

18          A.       I can't necessarily read into what the  
19 Commission intended. To the extent the Commission was  
20 suggesting a possibility of total recovery of  
21 transmission-type expenses through an FAC mechanism, that is  
22 not consistent with the recent Ameren Missouri Rate Order.

23          Q.       Are you aware that other states in the SPP  
24 region have authorized riders or other mechanisms to include  
25 the recovery of transmission costs from SPP?

1           A.       I know for sure that Kansas has done so. I'm  
2 not sure about other states.

3           **Q.       Well, would you agree that if the Commission**  
4 **wanted to follow the practices of other states, maybe Kansas,**  
5 **it could authorize KCP&L to utilize a transmission cost**  
6 **tracker instead of flowing the SPP transmission costs through**  
7 **the FAC?**

8           A.       In some instances, that would have generally  
9 the same impact.

10          **Q.       This would be a policy alternative to**  
11 **including the transmission costs in the FAC; right?**

12          A.       Sure. And we're opposed to that, but yes,  
13 that would be an alternative the Commission could consider,  
14 if it wished.

15          **Q.       And that's the type of policy alternative**  
16 **Staff supported in the 2010 KCP&L case when it recommended**  
17 **the transmission tracker in the Staff report; right?**

18          A.       Again, I'm sure there were differences in the  
19 facts and circumstances at that time. At that time, we were  
20 willing to recommend a transmission tracker be implemented  
21 for KCP&L.

22          **Q.       And you've been employed here at the**  
23 **Commission for a number of years. I think I counted almost**  
24 **30?**

25          A.       It's more than 30, unfortunately. Since 1981.

1 Q. Okay. And your schedule, MLO-RL, page 4 of 5  
2 lists the cases that go back to 1982, KCP&L cases that go  
3 back to 1982?

4 A. That's accurate.

5 Q. The '82 case had a Case Number ER-82-66. And  
6 then there was an '83 case that you listed at ER-83-49. Do  
7 you recall that in those cases, the Commission and Staff  
8 entered into stipulations on the issue of the use of  
9 forecasted fuel expenses?

10 A. I don't know that the Commission entered into  
11 a stipulation.

12 Q. I'm sorry?

13 A. They probably approved one.

14 Q. Okay.

15 A. My general recollection is at that time, that  
16 was a mechanism in place for the state's electric utilities  
17 as a way to recover fuel costs.

18 MR. FISCHER: Judge, I would ask the  
19 Commission to take official or administrative notice of their  
20 Report and Orders in those two cases, ER-82-66 and ER-83-49,  
21 on the issues of forecasted fuel expenses.

22 JUDGE BUSHMANN: I would be willing to do  
23 that, but I would also like for you to submit an exhibit so  
24 that we would have one in the record.

25 MR. FISCHER: Can I do that at the end of

1 cross?

2 JUDGE BUSHMANN: That would be fine.

3 BY MR. FISCHER:

4 Q. Is it correct the Company and Staff entered  
5 into stipulations that recommended the Company be allowed to  
6 collect revenues subject to refund with interest based upon  
7 those forecasted fuel and prices?

8 A. That is my recollection of how the mechanism  
9 worked in general terms. I wasn't specifically involved in  
10 them.

11 Q. And that was done during a period after the  
12 Supreme Court invalidated the use of the old fuel adjustor  
13 clause; right?

14 A. That is correct.

15 Q. And for some time following the Supreme  
16 Court's decision that we sometimes refer to as that UCCM  
17 decision, the Commission allowed the electric companies to  
18 include in their revenue requirements fuel costs based on the  
19 use of their forecasted expenses. Is that your recollection?

20 A. Again, without going to the details of how the  
21 mechanism worked, yes, we thought of them as forecasted fuel  
22 procedures.

23 Q. If the Company's forecasted fuel costs were  
24 higher than the actual fuel costs, a refund was ordered or  
25 credited; correct?



1 A. Could you restate that?

2 Q. Yeah. If the Company's forecasted fuel costs  
3 that we included in the rates, if those turned out to be  
4 higher than the actual during the period, there was a refund  
5 back to customers; right?

6 A. With interest, as I recall.

7 Q. But if the Company's actual fuel expenses were  
8 higher than the forecasted fuel, then the Company would  
9 absorb that difference; right?

10 A. Again, that's my recollection.

11 Q. It would be possible for the Commission to  
12 order a similar approach for transmission expenses in this  
13 case, wouldn't you agree?

14 A. Lots of things are possible, so I would agree.

15 Q. The Company could -- excuse me, the Commission  
16 could take a similar approach for the CIP cyber security cost  
17 if the Commission didn't wish to adopt the Company's proposal  
18 for a CIP cyber security tracker; right?

19 A. Again, if you're asking me is there any legal  
20 impediment to the Commission doing it, well, number one, I'm  
21 not an attorney so I really can't comment. I'm not aware of  
22 anything that specifically would tell the Commission no, that  
23 that is impermissible or unlawful.

24 Q. And they could consider a similar approach for  
25 property taxes, too, couldn't they?

1           A.       With the same comments, yes.

2           **Q.       If the Commission ordered the use of**  
3 **forecasted transmission costs, forecasted cyber security**  
4 **costs, and/or forecasted property taxes in the next -- in**  
5 **this case, assume that was the policy decision that was made**  
6 **by the Commission, do you think the Staff would be willing to**  
7 **review the Company's cost items in that regard in the next**  
8 **rate case to determine whether they exceeded the forecasted**  
9 **levels?**

10           A.       I assume that would be part of our charge, and  
11 of course we would do whatever would need to be done to be  
12 consistent with the intent of the Commission Order.

13                   MR. FISCHER: That's all I have, Judge. Thank  
14 you.

15                   JUDGE BUSHMANN: Do you want to bring those  
16 two orders up?

17                   MR. FISCHER: Yes.

18                   (KCPL Exhibit Numbers 150 and 151 were marked  
19 for identification by the court reporter.)

20                   JUDGE BUSHMANN: Any objections to those two  
21 orders being received into the record? Hearing none, they're  
22 received.

23                   (KCPL Exhibit Numbers 150 and 151 were  
24 received into evidence by Judge Bushmann.)

25                   JUDGE BUSHMANN: Next would be questions by

1 the Commissioners. Mr. Chairman.

2 CHAIRMAN KENNEY: Mr. Oligschlaeger, no, thank  
3 you. Thanks for being here.

4 THE WITNESS: You're welcome.

5 COMMISSIONER STOLL: I will ask one.

6 QUESTIONS BY COMMISSIONER STOLL:

7 Q. Thank you and good afternoon.

8 A. Good afternoon.

9 Q. I just wanted to ask you a question regarding  
10 the Staff's opposition to Kansas City Power & Light seeking  
11 the FAC prior to June 1st, 2015. Is -- would you just kind  
12 of review the main objection and how Staff views that? Is it  
13 -- I'll start with that. What are Staff's -- what are the  
14 main objections that Staff has to Kansas City Power & Light  
15 being granted an FAC?

16 A. If you're referring to the issue that has  
17 arisen over the interpretation of the stipulation agreement  
18 --

19 Q. Right.

20 A. -- dating back to 2005, other members of Staff  
21 are certainly much more involved in that process than I was,  
22 so all I can do is tell you my understanding based upon my  
23 own reading of the language as well as discussions with other  
24 Staff members.

25 Q. That would be good.

1           A.       And that is that the intent of the language,  
2 part of the give-and-take of the entire process in agreeing  
3 to the regulatory plan was that KCP&L would be prohibited  
4 from seeking or filing a request for a fuel adjustment clause  
5 or actually any other single-issue-type mechanism prior to  
6 June 1st or July 1st, 2015, that that was the understanding  
7 of what we thought had been agreed to and that's not  
8 consistent, obviously, with what KCP&L is seeking in this  
9 proceeding.

10           **Q.       So even though they're seeking this in the**  
11 **context of a full rate case where all relevant issues are**  
12 **considered, is that still believed to be single-issue**  
13 **rate-making?**

14           A.       Well, there certainly may be legal  
15 distinctions there. The FAC is a single -- or I would think  
16 of it as a single-issue rate-making sense in the sense that  
17 it isolates changes to one element of the company's cost of  
18 service for recovery, either additional monies going to the  
19 company or additional monies being refunded back to the  
20 customer based on the difference between actual amounts of  
21 fuel and purchase power expense incurred by the Company  
22 compared to the level included in their rates, and that is by  
23 and large not a consistent treatment with the other elements  
24 of the company's other costs of service. So in my mind, that  
25 makes it a single-issue rate-making mechanism.

1           **Q.       Okay. Are there any other agreements or any**  
2 **other provisions that were part of that 2005 agreement that**  
3 **you are aware of or you've heard violate that agreement that**  
4 **--**

5           A.       That the company -- in this rate proceeding?

6           **Q.       Yeah, by requesting the FAC prior to June 1st,**  
7 **2015, are there other provisions of that 2005 agreement that**  
8 **would be violated by doing that?**

9           A.       Again, I may not be the best person to ask.

10          **Q.       Okay.**

11          A.       But I'm not aware of any.

12          **Q.       Okay. I'll seek that from someone else.**

13 **Okay. Thank you.**

14                   COMMISSIONER KENNEY: I have no questions.

15 Thank you, sir.

16 QUESTIONS BY COMMISSIONER HALL:

17          **Q.       Good afternoon.**

18          A.       Good afternoon.

19          **Q.       On page 7 of your rebuttal testimony, lines 19**  
20 **and 20, you say that excessive use of trackers would tend to**  
21 **unreasonably skew rate-making results either in favor of the**  
22 **utility or in favor of its customers?**

23          A.       Yes.

24          **Q.       Could you explain that to me?**

25          A.       Sure. And I think in a way, the Company's

1 specific request in this case kind of bring that up. There  
2 are, no matter what the general direction of a company's  
3 earnings trends are at any point in time, there are elements  
4 changing in the favorable way to it and elements changing in  
5 an unfavorable way to it.

6 And I think if you put in a policy in which  
7 trackers were to be implemented, for example, just because of  
8 a perception of lower earnings than reasonable or authorized,  
9 you're likely to only take into account those elements of  
10 cost of service that are increasing in amount over time while  
11 ignoring those elements that may be offsetting that to some  
12 extent or maybe in some instances completely offsetting the  
13 negative --.

14 **Q. And that would be in benefit to the Company?**

15 A. In that instance.

16 **Q. Okay.**

17 A. There would be hypothetical. You could put in  
18 a tracker which, for example, captured the impact of customer  
19 growth or revenue growth over time, and if that was the only  
20 tracker you were -- put into place for a company, that would  
21 be negative from the Company perspective.

22 **Q. But in your experience, utilities have not**  
23 **sought trackers of that nature?**

24 A. No, they have not.

25 **Q. So utilities have consistently sought trackers**

1 **that try to capture increasing costs, not decreasing costs or**  
2 **increasing revenues?**

3 A. In general. I mean, there are some items I  
4 would argue, pensions and OPEBs, for example.

5 **Q. Okay. With that one exception --**

6 A. In general.

7 **Q. -- is my statement accurate?**

8 A. Particularly if the company is advocating, it  
9 usually is a perception or they believe it to be an increase  
10 in costs.

11 **Q. Would Staff be more open to trackers if -- if**  
12 **while -- while the Company was seeking trackers that inurred**  
13 **to the benefit of the Company, it was also open to trackers**  
14 **that inurred to the benefit of the customers?**

15 A. Well, I think that would remove one of the  
16 objectionable aspects to excessive use of trackers, as I put  
17 it. I think you still have the problem of that in theory,  
18 that's just not how the system should work, all relevant  
19 factors to the degree possible should be taken into account  
20 when determining the amount of rate changes.

21 **Q. When determining whether -- whether it's**  
22 **appropriate to establish an FAC for KCP&L, to what extent do**  
23 **you believe the Commission should take into account that**  
24 **every other electric utility in the state has one? Is that a**  
25 **relevant factor?**

1           A.       I mean, I think to some degree, yes. The way  
2 I would look at it is I think there's specific criteria set  
3 out for under which FACs may be granted to electric  
4 utilities, and apparently the other three electric utilities  
5 have met that criteria at some point in the past. I think  
6 the relevant question is: Right now, does KCP&L meet that  
7 criteria? And of course we're putting aside the entire  
8 stipulation argument for that purpose.

9           **Q.       Yes.**

10          A.       And it's possible. I mean, and I'm not the  
11 right subject matter expert on this. I mean, for example, if  
12 there were expectations that their fuel and purchase power  
13 expense was fairly stable, it may be reasonable not to grant  
14 that mechanism to them at this time, even if it may be in  
15 place for the other three electric utilities.

16          **Q.       So is there -- is there value in consistency,  
17 is there value in fairness? Is that -- are those things that  
18 we should take into account when we're -- when we're  
19 determining whether or not KCP&L should have an FAC and we  
20 look at the other electric utilities and they have one? Are  
21 those factors we should take into account?**

22          A.       The way I would answer that is, I think that  
23 that -- consistency has a value. I think it would be a  
24 secondary one.

25          **Q.       What about the fact that a company has -- that**



1 **KCP&L has to compete with the other electric utilities in the**  
2 **state for capital?**

3 A. Well, again, that argument, I think, might be  
4 stronger if they could point to a specific problem or concern  
5 in that relation. I don't think they have to date.

6 **Q. And then turning that argument, looking at --**  
7 **looking at the other way, KCP&L is seeking trackers that no**  
8 **other utility in the state has, or at least for two of them,**  
9 **one company has them at least temporarily. Should we take**  
10 **into into account when determinating whether or not it's**  
11 **appropriate to institute a tracker?**

12 A. Well, and I think it is a little bit of the  
13 reverse of the situation you're suggesting. KCP&L's implicit  
14 position is our earnings are poor for whatever reason and the  
15 way you can help us, Commission, is to give us the vantage or  
16 benefit of these regulatory mechanisms. That suggests -- I  
17 mean, they don't say this, but that suggests that more  
18 healthy earning utilities might not be -- might not be  
19 appropriate to allow them the same benefits of these  
20 particular trackers.

21 We don't view it that way. We think trackers  
22 should be granted largely based upon the characteristics of  
23 the costs it's being applied to. And for the most part, for  
24 example, of a pension in OPEB's tracker is reasonable for  
25 KCP&L, that suggests it probably would be reasonable for the

1 other three utilities as well.

2 **Q. Of the four trackers that are being sought, is**  
3 **there -- is there one or two that you believe are**  
4 **particularly inappropriate or are they all equally**  
5 **inappropriate, if you can answer that?**

6 A. Sure. I would put -- well, first, let me ask,  
7 do you include the FAC, for example, or are you meaning to  
8 exclude that?

9 **Q. In this question, no.**

10 A. Okay. All right. I think in some  
11 circumstances, we might be willing to consider a tracker or  
12 other appropriate mechanism for, say, cyber security costs  
13 because it does appear to be an increase in costs related to  
14 mandates or requirements fairly new from a governmental body.  
15 I think the main problem we have at this point is we believe  
16 this is a premature request, we don't have a hard-and-fast  
17 dollar value expectation, or I think even complete plans in  
18 terms of how whatever comes down from NERC will be applied by  
19 KCP&L, so...

20 **Q. Well, but the fact that there's not a**  
21 **hard-and-fast dollar value, isn't that exactly one reason why**  
22 **we possibly should --**

23 A. Could be. But I think -- I mean, even in  
24 advance of having kind of a working budget. Again, I think  
25 you have the incentive concern there as well that when KCP&L

1 or any utility is planning to meet these guidelines,  
2 certainly they want to be vigilant in obtaining the goals and  
3 the intent of whatever is implicit there, but they also  
4 should be trying to do it at the reasonable least cost impact  
5 to the customers. And I think if you just were to provide  
6 utilities with tracker mechanisms in advance, that side of  
7 the equation is inevitably weakened because whatever those  
8 decisions, how can we comply with this and at what cost will  
9 be impacted by the fact that whether they have the ability to  
10 track those costs from day one or as an alternative to  
11 recovering them in a future rate proceeding.

12 **Q. Thank you.**

13 JUDGE BUSHMANN: Recross based on Commission  
14 questions. Public Counsel.

15 MR. POSTON: No questions.

16 JUDGE BUSHMANN: MCG.

17 MR. WOODSMALL: Yes, real briefly.

18 RECROSS-EXAMINATION

19 QUESTIONS BY MR. WOODSMALL:

20 **Q. I think you were asked a question by**  
21 **Commissioner Hall and you answered the opposite question. As**  
22 **I heard his question, was there a tracker -- and I don't**  
23 **remember the word he used, that is the most egregious, the**  
24 **one that is less appetizing. And you said that the cyber**  
25 **security one was the one that you could probably stomach**

1 **easiest. Did you answer his question or?**

2 A. I answered it, I think, kind of in a -- what's  
3 the word I want to use -- back-handed way. Instead of saying  
4 what's most egregious, I think I answered potentially what  
5 might be more acceptable than the others.

6 **Q. Okay. Would you answer the other question,**  
7 **whichever one is the most egregious, or whatever adjective**  
8 **you want to use for that.**

9 A. Property taxes, I think. And that's simply  
10 because that is a standard, normal operating cost of a  
11 utility. I don't think -- KCP&L hasn't alleged any kind of  
12 unusual, extraordinary, unique circumstances to the property  
13 tax expense that is either incurring presently or will incur  
14 in the near future, so I don't believe it meets the criteria  
15 at all.

16 MR. WOODSMALL: Okay. No further questions.  
17 Thank you.

18 JUDGE BUSHMANN: KCP&L, any recross?

19 MR. FISCHER: No, thank you, Judge.

20 JUDGE BUSHMANN: Redirect.

21 MS. MERS: Yes.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MS. MERS:

24 **Q. You were talking about imposed rules, that**  
25 **there was uncertainty in that. Would you say that that**

1 **uncertainty is more because there is no historical costs?**

2 A. Are you talking about the cyber security  
3 rules?

4 Q. **Like for vegetation management, for instance.**  
5 **When the Commission imposes a rule upon utility, it's not**  
6 **necessarily just because it's imposed, but is it also -- is**  
7 **it because there's no data involved? Would you agree with**  
8 **that assessment or could you explain more?**

9 A. Well, again, I can't speak to the mind-set of  
10 the Commission at the time who approved the rules. I don't  
11 know whether it was so much the uncertainty as the fact that  
12 it was known that those new requirements would force the  
13 utilities to accelerate their vegetation management and  
14 infrastructure inspection efforts almost certainly at a cost  
15 greater than what was currently included in their rate  
16 levels, and that the Commission believed that it would not  
17 necessarily be fair or appropriate to expect the companies to  
18 eat those costs in its entirety until such time as they filed  
19 for rate rehearing.

20 Q. **And would you agree that even though those are**  
21 **recurring costs, the fact that there was little to no**  
22 **historical data played a big role in the fact that Staff**  
23 **supported a tracker?**

24 A. You mean for the vegetation management?

25 Q. **Sure.**

1           A.       Well, again, the Commission's rules to some  
2 degree, I think, authorize the companies to book the  
3 deferrals. I'm not sure if they needed to get by from us  
4 anyway. We certainly weren't opposed to that. I'm not sure  
5 that answered my question.

6           **Q.       That's okay. Would you agree that even though**  
7 **a cost might be imposed by a Commission rule or FERC rule,**  
8 **that they can be discontinued once historical data has been**  
9 **accomplished?**

10          A.       Yes, and we believe that was actually the  
11 intent within the vegetation management and infrastructure  
12 inspection rules.

13          **Q.       Counsel for KCP&L was asking you about**  
14 **extraordinary and how it applied to trackers. If trackers**  
15 **are not a deferral mechanism for -- what would be the three**  
16 **or four prongs of how would you judge when a tracker is**  
17 **appropriate in a situation?**

18          A.       Okay. I think in somebody's testimony, I  
19 think it's quoted from a court decision that the word  
20 extraordinary implies unusual, unique and non-recurring. I  
21 would argue that those items subject to trackers certainly  
22 should be unusual and unique, not necessarily non-recurring.

23                 So at a broad level, I'd certainly say  
24 something very unusual, rare, would be -- the rare situation  
25 would be the criteria for application of a tracker. And I

1 think in my testimony, I go into a little more detail in  
2 terms of the volatility, the newness of the cost, as well as  
3 perhaps being incurred pursuant to a Commission regulation or  
4 mandate.

5 **Q. In regards to volatility, it has to be**  
6 **significant; would you agree?**

7 A. Significant, material, yes.

8 **Q. And would you agree that that means it needs**  
9 **to have an impact on the ROE?**

10 A. Material impact on the ROE? Yes, I would.

11 **Q. Do you have any information you can share with**  
12 **the Commission on fuel adjustment clauses and volatility and**  
13 **the relationship with ROE?**

14 A. Volatility, fuel adjustment clause, and ROE.  
15 Let me take a stab at that. I know that at the time, the FAC  
16 was authorized for Missouri -- some Missouri electric  
17 utilities, fuel expenses tended to be -- for some of them at  
18 least, quite volatile, largely due to transnatural gas  
19 prices. We saw spikes in some years, they would come back  
20 down the next year and in particular, I think the FACs were a  
21 response to that specific phenomenon. I don't think that  
22 necessarily, as it relates to natural gas prices, that's not  
23 necessarily the case anymore.

24 In terms of the ROE impact, in general, use of  
25 FACs, use of trackers, even use of AAOs, I think can only be

1 thought of as generally reducing the level of risk faced by  
2 utility companies. And obviously I'm not a financial analyst  
3 and I would just say at least in my opinion, that that is one  
4 factor that could be considered by the Commission in  
5 determining what an appropriate ROE is for a particular  
6 utility.

7 **Q. All right. I'll turn to a question that both**  
8 **Commissioner Hall and Counsel for KCP&L got with the**  
9 **possibility that the tracker could go both ways. Is the**  
10 **protection from the consumer, is it hampered or weakened by**  
11 **any disincentives? Could you explain how trackers in general**  
12 **can disin -- can work to lessen the utility's ability or**  
13 **desire to control costs?**

14 A. Well, I think there's a couple practical  
15 examples of that. And I cited one in my testimony related to  
16 property taxes where a company has the ability to appeal what  
17 they believe to be negative, unfair, unlawful decisions by  
18 those taxing authorities. We have seen some utilities take  
19 actions to do that, succeed, and thus be in the position to  
20 obtain refunds. And in fact, we had issues in rate cases on  
21 how best to treat those refunds, should they go back to  
22 customers and so on.

23 The point I made in testimony was simply it's  
24 hard to imagine a utility undergoing the time, expense, and  
25 effort to do those -- take those kinds of actions if they are



1 protected from the financial impact of increasing property  
2 taxes in the first place.

3 Now, another example is in the transmission  
4 realm where -- and Karen Lyons, who I believe is testifying  
5 on the transmission tracker, would be more able to address  
6 the issues here where KCP&L has taken some actions recently  
7 in filings with FERC to try to limit somewhat what it  
8 perceives negative financial impacts of recent actions  
9 related to member companies, other member company filings  
10 within SPP, and which would have directly impact on KCP&L's  
11 transmission expenses.

12 Now, obviously if ultimately those actions  
13 increase KCP&L's expenses, in the long-term, those may be  
14 passed on to customers in rates and customers will also lose  
15 from that. Again, the incentive to vigilantly protect both  
16 its own and its customer's interests in forum's like that,  
17 may be weakened. The Company may have less incentive to take  
18 those actions when the costs involved are covered through a  
19 tracker mechanism.

20 MS. MERS: Thank you. No further questions.

21 JUDGE BUSHMANN: Thank you, Mr. Oligschlaeger.  
22 You may step down now. Ready for the first office of Public  
23 Counsel witness.

24 MR. POSTON: Call Lena Mantle.  
25

1 (LENA MANTLE, having been first sworn by the  
2 COURT/CLERK, testified as follows:)

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. POSTON:

5 Q. Thank you. Will you please state and spell  
6 your name for the record?

7 A. Lena M. Mantle, first name is L-e-n-a, last  
8 name is M-a-n-t-l-e.

9 Q. And where are you employed?

10 A. I'm employed by the Office of the Public  
11 Counsel.

12 Q. What's your position with Office of Public  
13 Counsel?

14 A. I'm senior analyst with Office of Public  
15 Counsel.

16 Q. Are you the same Lena Mantle that caused to be  
17 prepared and filed direct, rebuttal, and surrebuttal  
18 testimony that has been premarked as Exhibits 309, 310, and  
19 311?

20 A. Yes.

21 Q. Do you have any changes or corrections to this  
22 testimony?

23 A. No, I do not.

24 Q. If I were to ask you the same questions that  
25 appear in your testimony today, would your answers be the

1 **same or substantially the same?**

2 A. Yes.

3 MR. POSTON: Your Honor, she will come back up  
4 again on -- tomorrow. Yeah, she'll be back up here tomorrow,  
5 so I'll tender her for cross-examination.

6 JUDGE BUSHMANN: First cross-examination will  
7 be by Staff.

8 MS. MERS: No questions.

9 JUDGE BUSHMANN: MCG .

10 MR. WOODSMALL: No questions.

11 JUDGE BUSHMANN: Kansas City Power & Light.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. ZOBRI ST:

14 Q. **Good afternoon.**

15 A. Good afternoon.

16 Q. **Now, Ms. Mantle, as I read your testimony**  
17 **beginning around page 7, you're generally opposed to fuel**  
18 **adjustment clauses. Is that fair to say?**

19 A. Yes.

20 Q. **And is it fair to say that that opposition**  
21 **that you have is contrary to a variety of regulatory**  
22 **commissions in the US that have granted fuel adjustment**  
23 **clauses to public utilities?**

24 A. There are a lot of commissions that have  
25 granted fuel adjustment clause, yes.

1 Q. And in Missouri, this Commission, once  
2 authorized by statute, has granted fuel adjustment clauses to  
3 Empire District Electric, to Ameren Missouri, and to Aquila  
4 now doing business as KCP&L Greater Missouri Operations;  
5 correct?

6 A. Correct.

7 Q. So is it fair that if you were in the Missouri  
8 Senate in what would have been 2005, you would have voted  
9 against Senate Bill 179?

10 A. If I was in the Missouri Senate and I knew  
11 what I -- and I knew utility regulation in Missouri, yes,  
12 that is correct.

13 Q. And if you had been elected our first woman  
14 governor, you would have vetoed Senate Bill 179; correct?

15 A. Most likely, yes.

16 Q. Now, you state, and I think it's at page 7 of  
17 your testimony, that you're also not a fan of the prudence  
18 review because, and this is around pages -- I'm sorry, lines  
19 16 and 17 of page 7. You state that other parties in the  
20 after-the-fact prudence review have to prove that the utility  
21 acted imprudently; correct?

22 A. Yes.

23 Q. Okay. Now, now that isn't quite the standard  
24 in Missouri, is it? The standard in Missouri that the  
25 utility's expenditures are presumed prudent but if another

1 **side raises a serious question, then the burden shifts back**  
2 **to utility to prove prudence?**

3 A. Can you say that again?

4 **Q. Sure. And I know you're not a lawyer.**

5 MR. POSTON: Your Honor, I'm going to object  
6 to this line of questioning. She's not a lawyer. He's  
7 asking her to weigh in on a legal interpretation of the  
8 burden of proof standard in Missouri.

9 MR. ZOBRI ST: And Judge, the reason I'm asking  
10 about it is that she criticized the prudence review process  
11 in the state at page 7, line 16 and 17, and I want to try to  
12 probe her understanding of what she's saying there.

13 MR. POSTON: See, that's different than burden  
14 of proof standard, than talking about prudency evaluation.

15 JUDGE BUSHMANN: It does sound like you're  
16 asking for a legal conclusion on burden of proof standard.

17 MR. ZOBRI ST: Judge, respectfully, she used  
18 the word "prove" in her statement. She said that the other  
19 parties have to prove the utility acted imprudently. And I'm  
20 willing to put this in the brief, Judge, but she used the  
21 word "prove" and I think I'm entitled for someone who's been  
22 an employee of the Commission for a number of the years, is  
23 well respected now working for Office of Public Counsel, she  
24 should understand how that works.

25 JUDGE BUSHMANN: What's your response to

1 having -- since she used the word "prove."

2 MR. POSTON: That's certainly different than  
3 her weighing in on what the burden of proof standard is in  
4 Missouri. But who has the burden to do what, she was just  
5 referring to what needs to be proved and I don't think that's  
6 the same line at all.

7 JUDGE BUSHMANN: I'll permit you to ask  
8 questions as long as you're not asking for a legal  
9 conclusion.

10 MR. ZOBRI ST: That's fine, Judge.

11 BY MR. ZOBRI ST:

12 Q. **Isn't it true that the utility has to show**  
13 **that it acted properly and prudently if someone else raises a**  
14 **serious doubt?**

15 A. It's been my experience working as energy  
16 department manager that the Staff would have to ask for  
17 information, some was provided. The Staff has to find where  
18 it believes it's imprudent and then it has to go to hearing  
19 to prove that imprudency. And that has been my experience  
20 and that is what I'm referring to.

21 Q. **So are you referring to the legal standard**  
22 **that you believe is upon Staff when it raises a serious**  
23 **doubt?**

24 A. No, I'm referring to just what my experience  
25 has been.

1 Q. Go ahead.

2 A. Specifically there were two cases with Ameren  
3 Missouri where it did go to hearing and we had a hearing  
4 about whether or not the Company acted imprudently.

5 Q. So is it fair to say you're not familiar with  
6 the actual legal standard that applies on prudence reviews?

7 A. That is correct.

8 Q. Okay. That's fine. Now, let me ask you a  
9 couple of questions about the GMO fuel adjustment clause. Do  
10 you remember that being discussed in Mr. Rush's rebuttal  
11 around pages 28 and 29 where he indicated there had been  
12 increases and decreases?

13 A. It's my reading -- remembrance of his  
14 testimony that, yes, he showed the difference whether it  
15 increased or decreased from the previous FAC rate.

16 Q. And I think what you -- or what Mr. Rush said  
17 is that within GMO's, Missouri's Public Service Division,  
18 there have been seven increases and seven decreases; correct?

19 A. I don't have his testimony in front of me, so  
20 I cannot be -- I do not know specifically what he said.

21 Q. Well, without regard to the specific numbers,  
22 do you recall that Mr. Rush said that there were increases  
23 and decreases in both the Missouri Public Service division as  
24 well as the L&P division?

25 A. I don't know. There were increases and

1 decreases to the FAC rate. It could also have been the way I  
2 read it. It could have also been meant that the FAC rate  
3 went below zero or up above zero.

4 **Q. Well, let me ask you to turn to page 35 of**  
5 **your surrebuttal, if you would, please. At the bottom of**  
6 **that page, you're referring to Mr. Rush's testimony about**  
7 **increases and decreases in GMO's fuel adjustment clause;**  
8 **correct?**

9 A. I state that Mr. Rush provided a table that  
10 purportedly shows how the FAC of KCP&L's affiliate GMO has  
11 worked, and worked is in parentheses.

12 **Q. Right, and in fact, what you said at the**  
13 **bottom is that although it has gone up and down, actually**  
14 **there have been 15 times in the accumulation period where it**  
15 **went up and it only went below the FAC initial rate once; is**  
16 **that correct?**

17 A. It only went below the fuel adjustment base  
18 set in the rate case for Light & Power for one accumulation.

19 **Q. So it had gone up and down and up and down**  
20 **above the base, but it had only gone down once below the base**  
21 **on one occasion for the one division; right?**

22 A. Yes.

23 **Q. And would you agree that that is an indication**  
24 **of a rising cost environment for that utility with regard to**  
25 **fuel prices?**



1 A. It could be. It could be other things also.

2 Q. **Well, there was evidence of the rising cost**  
3 **environment for the fuel expenses being considered in fuel**  
4 **adjustment clause; correct?**

5 A. Not necessarily. It could be other things  
6 also.

7 Q. **Well, Staff reviewed each of those increases**  
8 **and the decreases in those cases; correct?**

9 A. In each of the fuel adjustment rate filings,  
10 they reviewed is the math correct.

11 Q. **Okay. Is it fair to say that Staff did not**  
12 **bring a prudence challenge in any of those adjustments?**

13 A. The prudence -- it would not have in the fuel  
14 adjustment rate change cases. Those would be done in  
15 prudence audit cases.

16 Q. **And are you aware of any prudence audit cases**  
17 **that brought challenges to any of those increases?**

18 A. I'm not aware of any, no.

19 Q. **Now, let me ask you about the 2005 stipulation**  
20 **and agreement. You state, and this is around page 10 of your**  
21 **direct.**

22 A. Yes.

23 Q. **That Senate Bill 179 was not the law at the**  
24 **time of the negotiations in the spring of 2005 and, quote, no**  
25 **one new if an FAC would become a legal possibility; correct?**

1 **That's what your testimony says?**

2 A. I believe that's correct. I'm sorry, I did  
3 not open it.

4 **Q. You generally agree --**

5 A. Yes.

6 **Q. -- that that's what you testified to? Now the**  
7 **-- I think we heard from one of the other witnesses, it may**  
8 **have been Mr. Oligschlaeger or Mr. Featherstone that the**  
9 **Stipulation and Agreement was filed here at the Commission on**  
10 **March 28th, 2005. Is that your recollection?**

11 A. That's what the document says.

12 **Q. Okay. And Senate Bill 179 had already been**  
13 **passed by the Missouri Senate, had it not, in early March of**  
14 **2005?**

15 A. I do not know whether it had been passed by  
16 the Senate. I do know it was still in committee. It had not  
17 been passed by both the Senate and the House.

18 **Q. Let me hand you an exhibit, please. Judge, I**  
19 **think this will be KCP&L 152.**

20 **(KCPL Exhibit Number 152 was marked for**  
21 **identification by the court reporter.)**

22 BY MR. ZOBRI ST:

23 **Q. Do you have Exhibit 152 before you,**  
24 **Ms. Mantle?**

25 A. Yes, I do.

1           **Q.       Now, I've handed you what I got off of the**  
2 **Missouri House of Representative's Web site a week or so ago.**  
3 **Are you generally familiar with the formats of the Senate and**  
4 **the House that track legislation in this state?**

5           A.       No, I am not.

6           **Q.       Okay. Have you ever seen this report**  
7 **regarding Senate Bill 179?**

8           A.       No, I have not.

9           MR. ZOBRI ST: Judge, I might be able to get  
10 this in through another witness, but I think the Commission  
11 can take official notice of the House of Representative's  
12 Summary of Senate Bill 179 and the timeline on pages 3 and 4.

13           JUDGE BUSHMANN: Objections?

14           MR. POSTON: Judge, I will object. She wasn't  
15 able to authenticate this and for the same reasons my  
16 documents earlier were not authenticated, you kept those out,  
17 so...

18           JUDGE BUSHMANN: What about the issue of  
19 taking administrative notice? Are you objecting to that as  
20 well?

21           MR. POSTON: I don't understand what the  
22 difference would be.

23           JUDGE BUSHMANN: Yeah, that was the request.

24           MR. POSTON: Correct.

25           MR. ZOBRI ST: Yeah, this is a government

1 publication by the Missouri House of Representatives. It's  
2 an official government document of which the Commission may  
3 take either administrative or official notice.

4 MR. POSTON: There's been no authentication  
5 for it, so...

6 MR. ZOBRI ST: It's self-authenticating under  
7 the Rules of Evidence, Judge.

8 JUDGE BUSHMANN: How so?

9 MR. ZOBRI ST: Because it is what it purports  
10 to be. It says at the top, you know, www.mo. -- pardon me --  
11 house.mo.gov/print.

12 JUDGE BUSHMANN: Well, the Commission can take  
13 official notice of its own records, I'm not sure if it can  
14 take official notice of records of another section of the  
15 government, so I'm going to sustain the objection.

16 MR. ZOBRI ST: Okay. May I offer a memorandum,  
17 perhaps in a day or two on that issue, Judge, because I do  
18 believe that it is within the purview of the Commission to  
19 take notice by other branches of the government.

20 JUDGE BUSHMANN: You can submit something.

21 MR. ZOBRI ST: Okay. Thank you, Judge.

22 BY MR. ZOBRI ST:

23 **Q. Well, let me ask you this, Ms. Mantle: Were**  
24 **you aware or do you know whether the Missouri Senate passed**  
25 **this bill on March 8th, 2005?**

1 A. No, I do not know that.

2 Q. Okay. Were you aware that the House of  
3 Representatives passed this bill on April 27th, 2005?

4 A. Did you --

5 MR. POSTON: Judge, I'm going to object to the  
6 form of this question. He's assuming this is a fact in his  
7 question posed to her. Not asking her if that was the fact.

8 JUDGE BUSHMANN: Do you want to restate your  
9 question?

10 BY MR. ZOBRI ST:

11 Q. Do you know whether the Missouri House of  
12 Representatives passed Senate Bill 179 on April 27th, 2005?

13 A. No.

14 Q. Do you know whether the Missouri Senate passed  
15 Senate Bill 179 on March 8th, 2005?

16 A. No.

17 Q. Okay. Do you know that they passed both of  
18 those -- or that both the House and the Senate passed Senate  
19 Bill 179 during the legislative session of the spring of  
20 2005?

21 A. I do know that it was passed.

22 Q. And you know that the governor did sign it  
23 after the session concluded?

24 A. I know that it went into law. I didn't know  
25 whether the government signed it or it just went into law.

1 Q. Are you aware that it became law January 1st,  
2 2006?

3 A. Yes.

4 Q. Well, you know, we were all here down at the  
5 Commission negotiating this document, and isn't it fair to  
6 say that all the parties, including yourself, to the  
7 negotiation, knew, pretty much, that Senate Bill 179 was  
8 going to become law?

9 A. I don't agree with that.

10 Q. Well, then, why is it contained in the  
11 stipulation and agreement specifically naming this particular  
12 piece of legislation?

13 A. I think the parties thought it was a  
14 possibility. It was not a certainty. I don't think anything  
15 is a certainty in the House and the Senate until it gets  
16 signed by the governor. So to say at any point in time  
17 anybody knew that -- before the governor signed it that it  
18 was going to go into law, and what it would look like because  
19 things do change.

20 From my experience with working with fiscal  
21 notes with the Commission Staff prior to my retirement, those  
22 last few weeks, there's a flurry of stuff that comes through  
23 changes. So to say that the parties knew there was going to  
24 be legislation passed or believe there was a great  
25 possibility of that and that they had an idea of what it

1 would look like, I do not agree with that.

2 **Q. Well, they certainly felt it was clear enough**  
3 **of a possibility that they put this explicit legislation into**  
4 **the stimulation and agreement; correct?**

5 A. They knew it was a possibility, yes.

6 **Q. And as I think Mr. Featherstone testified,**  
7 **there were parties that wanted to manage the fact that a fuel**  
8 **adjustment clause might become the law of Missouri in 2005;**  
9 **correct?**

10 A. I'm not for sure what you mean by "manage"  
11 that.

12 **Q. You wanted to deal with the eventuality, the**  
13 **very real possibility that it might become law, so it was put**  
14 **into this document; correct?**

15 A. They wanted to deal with the possibility that  
16 it become law, yes, and they wanted to deal with that.

17 **Q. And when the stipulation and agreement was**  
18 **signed and submitted to the Commission in March of 2000 -- of**  
19 **2005, the parties asked for the Commission to act by**  
20 **May 15th, 2005; isn't that correct?**

21 A. Yes.

22 **Q. I'm going to hand you a copy of two sections**  
23 **that we've been talking about here with the Commission with**  
24 **regard to the Senate Bill 179 and then the Section III(B)(12)**  
25 **that Mr. Fischer asked I think Mr. Featherstone some**

1 **questions about with regard to the term of the agreement.**

2 **(KCPL Exhibit Number 153 was marked for**  
3 **identification by the court reporter.)**

4 BY MR. ZOBRI ST:

5 **Q. Now Ms. Mantle, I've just taken from the**  
6 **stipulation and agreement these two sections and marked it as**  
7 **Exhibit 153. I think these are exact replications of the**  
8 **single-issue rate mechanism as we've been talking about in**  
9 **Section III(B)(1) and then Section III(B)(12) regarding the**  
10 **expiration and agreement. Does that appear to be the case?**

11 **A. Without checking word for word, yes, it does**  
12 **appear to be the case.**

13 MR. ZOBRI ST: Judge, I offer Exhibit 153.

14 JUDGE BUSHMANN: Objections?

15 MR. POSTON: I do have a question where it  
16 says effective date on the agreement, it is my understanding  
17 the agreement was signed on -- in March.

18 MR. ZOBRI ST: This is actually when the  
19 Commission approved it. It relates to the Report and Order.

20 MR. POSTON: Okay. No objection.

21 JUDGE BUSHMANN: That's received in the  
22 record.

23 (KCPL Exhibit Number 153 was received into  
24 evidence by Judge Bushmann.)

25



1 BY MR. ZOBRI ST:

2 Q. Now is it fair to say, Ms. Mantle, that June 1  
3 is a key date throughout this, that it's mentioned several  
4 times?

5 A. Yes.

6 Q. And you -- did you keep that in front of you?  
7 Now, the agreement was to expire and did expire by its own  
8 terms with certain exceptions we've talked about on June 1st,  
9 2010; is that correct?

10 A. It was approved by the Commission and that is  
11 what the document says that most of the terms expire. There  
12 are exceptions to that.

13 Q. Okay. And then the critical language that  
14 we've been talking about here today is these two sentences in  
15 subpart C about the KCP&L will not seek to utilize any  
16 mechanism authorized in current legislation prior to June 1,  
17 2015. Then the second sentence that says but before June 1,  
18 2015, you can file for an interim energy charge; correct?

19 A. It says that an IEC can be requested before  
20 June 1st, '15, yes.

21 Q. So is it fair to say that for ten years, it  
22 was okay for KCP&L to use an IEC if the Commission approved  
23 it but not an FAC?

24 A. That is what KCP&L and the parties agreed to.

25 Q. And the word "file" is not used in the first

1 sentence, but the word "file" is used in the second sentence?

2 A. That is correct.

3 Q. Okay. So is it a fair reading to say with  
4 regard to June 1st, 2005 -- pardon me, with regard to  
5 June 1st, 2015, as the demarcation line, for ten years, KCP&L  
6 doesn't have access to an FAC and on or after that period of  
7 time, it does have access to a fuel adjustment clause?

8 A. It can seek to have an FAC June 2nd, 2015.

9 Q. So your interpretation is that for ten years,  
10 all KCP&L could seek was an interim energy charge and use an  
11 interim energy charge if it was approved by the Commission;  
12 is that correct?

13 A. That is correct.

14 Q. But then there's this period of time that's  
15 just floating out there that you could -- you couldn't use a  
16 fuel adjustment clause if approved by the Commission as of  
17 June 1st, 2015, but sometime thereafter you could ask for one  
18 in a general rate case and the Company would have to wait 10,  
19 11, 12, 13 months until that rate case was done and  
20 presumably an FAC was approved?

21 A. I don't believe that there was a time when the  
22 Commission -- I mean, you said something about an FAC  
23 floating around there for ten years.

24 Q. I'm sorry, what I meant to say is ten or  
25 eleven months because we're all in agreement that up until

1 **June 1st, the Commission can authorize the Company to use an**  
2 **interim energy charge but not a fuel adjustment clause;**  
3 **correct?**

4 A. Yes.

5 Q. Okay. And what you're saying is that that  
6 period is set, the second ten-year period isn't going to  
7 start until sometime afterward because you say that KCP&L can  
8 only file to seek to utilize an FAC on June 1st. It can't  
9 have one utilized or go into effect on June 1, 2015. Is that  
10 your interpretation?

11 A. At the time this was written, the legislation  
12 was not final. There was not -- we didn't know whether the  
13 utility was going to have to file for an FAC, what the  
14 legislation was going to say. We did not know the final  
15 terms. So when it says will not seek, if the legislature had  
16 said that the utilities could have it, I mean, we didn't know  
17 if it was going to be a rate case, we didn't know how it was  
18 going to be granted, we didn't know anything.

19 We might have had the latest version of Senate  
20 Bill that was floating around. So by putting file in there,  
21 if the legislation had been different, that was -- would  
22 cause problems here. So when it says "to seek," that left  
23 that open for whatever type of -- however the legislation  
24 came down.

25 Q. So you agree with me that, you know, the more

1 **precise term "file" is not in that first sentence, the more**  
2 **vague term "seek" is in there?**

3 A. That's correct.

4 **Q. So the filing of the interim energy charge can**  
5 **occur up for ten years and then at 2015, it's seek to**  
6 **utilize?**

7 A. That is correct.

8 **Q. So there's no ban on filing something before**  
9 **June 1st, 2015, to utilize it after June 1st?**

10 A. There is once the legislation was passed and  
11 the legislation says it has to be requested in a general rate  
12 case. It takes into account all costs in revenues of the  
13 utility. So therefore, that's what the utility has to do to  
14 seek it is it has to file a rate case. So -- and that's what  
15 -- now with 20/20 hindsight, we know that the utility has to  
16 file a rate case to get an FAC. So that is what to seek  
17 means now with certainty. At the time this was written,  
18 there was not certainty as to how a utility would obtain an  
19 FAC.

20 **Q. Okay. And this document, the stipulation and**  
21 **agreement that was approved in 2005 and signed in March of**  
22 **2005 is not linked to when Senate Bill 179 ultimately became**  
23 **law or took effect. It stands on its own; correct?**

24 A. It's not -- it is not linked to when a  
25 mechanism for -- that would allow riders or surcharges or

1 changes in rates outside a general rate case, it's not linked  
2 to when the one for fuel or one for any other type of  
3 adjustment mechanism may become final.

4 **Q. And it's not linked to the final language in**  
5 **the statute and it's not linked to regulations promulgated by**  
6 **the Public Service Commission either?**

7 A. No, it is not.

8 **Q. Okay. Let me ask you some questions about**  
9 **criteria for a fuel adjustment clause, starting with page 17**  
10 **of your direct. You state that a fuel adjustment clause**  
11 **should only be granted, and I'm quoting you now, this is page**  
12 **17 of your direct, quote, only if it is necessary to provide,**  
13 **close quote, the utility with a sufficient opportunity to**  
14 **earn a fair return on equity; correct?**

15 A. I'm sorry, could you give me a line number on  
16 page 17?

17 **Q. It's line 4. Only if it is necessary. Do you**  
18 **see that?**

19 A. Yes.

20 **Q. Now, none of this Commission's Orders where it**  
21 **has granted fuel adjustment clauses state that it is to be**  
22 **granted only if it is necessary; correct?**

23 A. I believe that's correct.

24 **Q. Okay. So this is Public Counsel's**  
25 **recommendation to the Commission as far as establishing some**

1 **additional criteria?**

2 A. Yes.

3 **Q. And that language about only if it is**  
4 **necessary is not in the statute; correct?**

5 A. The statute says, and that's on page 15 in my  
6 direct testimony, that it requires that any fuel adjustment  
7 charge approved by the Commission must be reasonably designed  
8 to provide the utility with a sufficient opportunity to earn  
9 a fair return on equity.

10 **Q. Okay. And so the recommendation about only if**  
11 **it is necessary to earn a fair return on equity is also not**  
12 **in the Commission's regulations; is that true?**

13 A. I don't have the rules in front of me, so I  
14 don't know for sure. I don't think so, but I don't have  
15 those rules in front of me.

16 **Q. Okay. Now, the second criteria that you**  
17 **mention is that it not be harmful to ratepayers and that**  
18 **there is not an inappropriate amount of risk shifted to**  
19 **ratepayers and there are not significant swings in the bills**  
20 **of customers; correct?**

21 A. Yes.

22 **Q. And that language is also not in Section**  
23 **386.266 or in the Commission's regulations or any of its**  
24 **decisions. Is that fair to say?**

25 A. That is correct.

1           **Q.       This is a recommendation that Public Counsel**  
2 **has come up with?**

3           A.       Yes.

4           **Q.       Do you think that the Commission has committed**  
5 **error in the past when it granted fuel adjustment clauses to**  
6 **Ameren Missouri and Empire and Aquila?**

7           A.       I believe they acted on the information that  
8 was provided to them at the time and the criteria presented  
9 to them in testimony. We've learned a lot since the first  
10 request for a fuel adjustment clause and this was the first  
11 time -- you know, KCP&L's requesting a fuel adjustment  
12 clause, then it's a time to look at the criteria again and to  
13 see if that criteria really fits or should be modified.

14           **Q.       Well, I understand your position, but my**  
15 **question is: Do you think that the Commission committed**  
16 **error in the cases that it granted fuel adjustment clauses to**  
17 **the other three of those investor-owned utilities in**  
18 **Missouri?**

19           A.       No.

20           **Q.       Now, am I correct in that the accumulation**  
21 **periods proposed by KCP&L, the six-month accumulation**  
22 **periods, and then the 12-month billing periods will serve to**  
23 **avoid significant swings in consumer bills?**

24           A.       That will help mitigate the swings in  
25 customer's bills, yes.

1           Q.       Now, you quoted some cases that I presume  
2 **Mr. Poston gave you about protecting ratepayers of the state;**  
3 **correct?**

4           A.       I do state in my testimony that that was a --  
5 from my legal counsel, yes.

6           Q.       Now, the Commission has responsibilities in  
7 **other portions of the Public Service Commission chapters such**  
8 **as it is to assure that a utility's service and facilities**  
9 **are safe and adequate. Would you agree with that?**

10          A.       Yes.

11          Q.       And it is to assure that rates are just and  
12 **reasonable?**

13          A.       Yes.

14          Q.       And do you believe that the Commission has  
15 **carried out those duties when it has reviewed fuel adjustment**  
16 **clause cases in the past?**

17          A.       Yes.

18          Q.       And are you also aware that there's a  
19 **provision in the Public Service Commission law that states**  
20 **that the provisions of the law shall be liberally construed**  
21 **within view to the public welfare, efficient facilities, and**  
22 **substantial justice between patrons and public utilities?**

23          A.       I don't know that for sure.

24          Q.       Okay.

25          A.       I haven't read the law lately.



1           **Q.       Okay. Do you believe in the past that when**  
2 **the Commission has considered fuel adjustment clause**  
3 **requests, that it has considered the public interest?**

4           A.       I believe it's considered the public interests  
5 some, yes.

6           **Q.       Okay. You don't think sufficiently?**

7           A.       No.

8           **Q.       Okay. Let me ask you, just finally a couple**  
9 **of questions about trackers and accounting authority orders.**  
10 **Am I correct that trackers have been used in the past for**  
11 **things like pensions and other postemployment benefits?**

12          A.       I've not had experience with trackers at all.  
13 Those would be questions you would need to ask Ted Robertson  
14 of Office of Public Counsel.

15          **Q.       So you're not presenting any testimony on**  
16 **trackers and accounting authority orders from a policy**  
17 **standpoint?**

18          A.       That is correct.

19                   MR. ZOBRI ST: Then I have no further  
20 questions, Judge.

21                   JUDGE BUSHMANN: Questions from Commissioners?

22                   COMMISSIONER STOLL: I have no questions,  
23 thank you.

24                   COMMISSIONER KENNEY: I have no questions,  
25 thank you.

1 COMMISSIONER HALL: Is she coming back  
2 tomorrow?

3 JUDGE BUSHMANN: Yes.

4 COMMISSIONER HALL: I'll save it for then.

5 JUDGE BUSHMANN: No need for recross.  
6 Redirect?

7 REDI RECT EXMAINATION

8 QUESTIONS BY MR. POSTON:

9 Q. One of the first questions you were asked was  
10 about prudence reviews that the Staff conducts. Do you have  
11 any concerns with that FAC prudence review process conducted  
12 by the Commission Staff?

13 A. Yes.

14 Q. What are those?

15 A. While that is a very capable, expert group of  
16 people, they have a lot of projects on their plates that they  
17 are responsible for. They all -- they have to do review of  
18 resource plan filings, there's prudence audits, the FAC for  
19 all the utilities. I believe they do the MEEIA prudence  
20 audits, and even in addition to all of their workload or FAC,  
21 whether purposely or not, is very complicated and many times  
22 the wording used in the tariffs and Commissioner's Orders are  
23 very vague. So to do the prudence audit is difficult.

24 And again, I admire the people that do these  
25 and they do the best that they can, given the resources. But

1 it is -- they're limited on time and they're limited on  
2 resources and -- and they have to request that information --  
3 a lot of information from companies to really be able to see  
4 whether the prudence -- if there was any imprudence or not.

5 **Q. You were asked questions about the language**  
6 **from the regulatory plan agreement. Do you still have that**  
7 **exhibit in front of you?**

8 A. Yes.

9 **Q. And would you agree that that first sentence**  
10 **applies -- strike that.**

11 **Does that first sentence apply to just FACs or**  
12 **does it apply to any mechanism authorized by a Senate Bill**  
13 **179?**

14 A. It applies to what was in -- it says current  
15 legislation, so I don't know exactly what was in the current  
16 at that time. I mean, 179 ended up being -- they could ask  
17 for fuel adjustment clause, an interim energy charge, a -- an  
18 environmental adjustment between rate cases for environmental  
19 costs, and I believe there was something even for water. So  
20 there were those adjustments, but it also says changes in  
21 state law other than just 179 -- Senate Bill 179.

22 **Q. And you were asked questions about page 17 of**  
23 **your direct testimony where you recommend criteria. Do you**  
24 **recall those questions?**

25 A. Yes.

1           **Q.       And there was a distinction drawn between --**  
2 **or your language says only if it is necessary to provide the**  
3 **utilities sufficient opportunity. Why do you think that**  
4 **should be a criteria?**

5           A.       Because a fuel adjustment clause is moving the  
6 risk of fluctuating fuel costs to customers. It is putting a  
7 burden on customers, so it's not something that should be  
8 taken lightly, it's not something that should be given  
9 easily. And therefore, if it's -- if the utility can earn  
10 its fair return without the fuel adjustment charge, then it's  
11 -- it's a risk that should not be pushed through to the  
12 customers.

13           **Q.       And then you were also asked a question about**  
14 **your criteria starting on page 2, that I believe you answered**  
15 **and said this is a criteria that Public Counsel has proposed;**  
16 **is that correct?**

17           A.       I'm sorry, on page?

18           **Q.       I'm sorry, page 7. It's criteria number two.**

19           A.       Yes.

20           **Q.       Sorry about that.**

21           A.       Yes. This is criteria -- this is new criteria  
22 in this case proposed.

23           **Q.       And why is Public Counsel proposing this or**  
24 **why are you proposing this?**

25           A.       The fuel adjustment clauses that have been

1 passed or been approved in the past for utilities do not seem  
2 to be taking into account, while it may be implicitly taking  
3 into account the customers, there's no explicit taking into  
4 account the customers and the impact on those customers. So  
5 it was Public Counsel's desire to put forth criteria that the  
6 Commission actually explicitly considered the customers when  
7 determining whether or not a fuel adjustment clause should be  
8 granted.

9 **Q. And that would be as opposed to just**  
10 **considering the impact to the company of not granting an FAC?**

11 A. Yes.

12 **Q. And you were asked if the Commission committed**  
13 **errors in granting FACs to other utilities. Do you recall**  
14 **that question?**

15 A. Yes.

16 **Q. Is it your belief that the FAC for Ameren**  
17 **contributed to Ameren over-earning?**

18 A. Yes.

19 MR. POSTON: That's all I have.

20 JUDGE BUSHMANN: Thank you, Ms. Mantle.

21 Ms. Mantle, you may step down and then come back. We have to  
22 finish our two witnesses for today. But we also need to give  
23 a little break for the court reporter, so why don't we just  
24 take a real brief break.

25 (A break was held.)

1 JUDGE BUSHMANN: We're back on the record and  
2 ready for our next witness. Mr. Robertson.

3 (TED ROBERTSON, having been first sworn by the  
4 Judge Bushmann, testified as follows:)

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. POSTON:

7 Q. Please state your name.

8 A. Ted Robertson, R-o-b-e-r-t-s-o-n.

9 Q. And by whom are you employed?

10 A. I'm the chief accountant for the Missouri  
11 Office of the Public Counsel.

12 Q. Are you the same Ted Robertson that caused to  
13 be prepared and filed surrebuttal testimony that's been  
14 marked as 312?

15 A. Yes.

16 Q. Do you have any corrections to your testimony?

17 A. No.

18 Q. If I were to ask you the questions that appear  
19 in your testimony today, would your answers be the same or  
20 substantially the same?

21 A. They would.

22 MR. POSTON: Your Honor, I offer Exhibit 312.  
23 He will not be coming back. And I tender him for  
24 cross-examination.

25 JUDGE BUSHMANN: Any objections to receipt of

1 that exhibit? Hearing none, first cross-examination will be  
2 by Staff.

3 (OPC Exhibit Number 312 was received into  
4 evidence by Judge Bushmann.)

5 MS. MERS: No questions, Your Honor.

6 JUDGE BUSHMANN: MCG.

7 MR. WOODSMALL: No questions.

8 JUDGE BUSHMANN: Kansas City Power & Light.

9 MR. FISCHER: Just briefly, Judge.

10 CROSS-EXAMINATION

11 QUESTIONS BY MR. FISCHER:

12 Q. Good afternoon, Mr. Robertson. Evening  
13 almost.

14 A. Hello, Mr. Fischer.

15 Q. I notice on page 2 of your surrebuttal  
16 testimony you say you've been employed with the Office of  
17 Public Counsel since July of 1990?

18 A. Approximately eleven more days it will be 25  
19 years.

20 Q. Congratulations.

21 A. I'm surprised I made it this far.

22 Q. And you're now the chief public accountant for  
23 the office; is that correct?

24 A. That's correct.

25 Q. And your predecessor was Russell Trippensee?

1 A. It was.

2 Q. You worked with Russ back in those days when  
3 the stipulation on the regulatory plan was being negotiated  
4 and hearings were being held?

5 A. That's correct.

6 MR. FISCHER: Judge, I'd like to have an  
7 exhibit marked.

8 JUDGE BUSHMANN: Next number is 154.

9 (KCPL Exhibit Number 154 was marked for  
10 identification by the court reporter.)

11 BY MR. FISCHER:

12 Q. I have handed you a portion of the exhibit of  
13 the transcript of E0-2005-0329. Do you have that in front of  
14 you?

15 A. Yes.

16 Q. That is in the matter of proposed experimental  
17 regulatory plan of Kansas City Power & Light Company, and  
18 this is a transcript of the hearings on June 27, 2005. The  
19 portion I'd like to ask you about is where Mr. Trippensee is  
20 cross-examined by Ms. Henry, and particularly I'd like to  
21 refer you to page 766 at line 6 where she asks could you  
22 explain what Senate Bill 179 now is how that issue is treated  
23 in this agreement. Do you see that?

24 A. Yes.

25 Q. Would that appear to be a reference to the



1 **stipulation and -- stipulation and agreement in that case?**

2 A. I'm going to say yes, but actually, all the  
3 details of the case, I'm not familiar with. I was only there  
4 in kind of the outside edges.

5 Q. Okay. I'd just like for you to read into the  
6 record line 15 through 17 where Mr. -- well, I can do it.  
7 You see that he says this agreement provides that Kansas City  
8 Power & Light and all other parties avail themselves to any  
9 single-rate issue mechanism for approximately ten years?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 MR. FISCHER: Judge, I'd ask for the  
14 Commission to take administrative notice or take this into  
15 the record as an exhibit.

16 JUDGE BUSHMANN: Any objections?

17 MR. POSTON: I would only ask the entire  
18 transcript be taken into the record, not just these select  
19 pages.

20 JUDGE BUSHMANN: Well, I'll take official  
21 notice of the entire transcript, but I'm also going to admit  
22 Exhibit 154.

23 (KCPL Exhibit Number 154 was received into  
24 evidence by Judge Bushmann.)

25 MR. FISCHER: Thank you, Judge. That's all I

1 have.

2 JUDGE BUSHMANN: Questions by Commissioners?

3 COMMISSIONER STOLL: No questions, thank you.

4 COMMISSIONER HALL: No questions, thank you.

5 JUDGE BUSHMANN: No need for recross. So  
6 redirect.

7 MR. POSTON: No questions.

8 JUDGE BUSHMANN: Thank you, Mr. Robertson.  
9 You may step down, sir.

10 THE WITNESS: Thank you.

11 JUDGE BUSHMANN: Ready for our last witness of  
12 the day.

13 MR. WOODSMALL: Thank you, your Honor.  
14 MECG calls Mike Brosch.

15 (MIKE BROSCH, having been first sworn by Judge  
16 Bushmann, testified as follows:)

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. WOODSMALL:

19 Q. **Would you state your name for the record, sir?**

20 A. Michael L. Brosch.

21 Q. **And by whom are you employment?**

22 A. By Utilitech, Inc. as its resident.

23 Q. **Were you retained for purposes of presenting  
24 testimony in this case by Midwest Energy Consumer's Group?**

25 A. I was.

1           **Q.       And did you cause to be filed in that capacity**  
2 **what has been marked as Exhibit 502, direct testimony on**  
3 **revenue requirements; 503, direct testimony on rate design,**  
4 **and 504, surrebuttal testimony?**

5           A.       I did, yes.

6           **Q.       Do you have any corrections to make?**

7           A.       Yes, I have three. With regard to Exhibit  
8 502, the direct testimony on revenue requirement at page 20,  
9 line 3, I would like to delete the sentence fragment there,  
10 are relatively unchanged in each of the last three years 2012  
11 through 2014.

12           **Q.       So that sentence would say, These**  
13 **relationships illustrate the limited contribution of property**  
14 **taxes to the Company's overall cost of revenue, period?**

15           A.       Yes.

16           **Q.       Okay.**

17           A.       Next change in the same exhibit at page 36,  
18 line 23, the word "company's" a possessive. I would strike  
19 the apostrophe S.

20                       And finally in the rate design testimony  
21 exhibit, 503, at page 39, line 10, the word even, e-v-e-n,  
22 should have a T on the end and be "event." Those are my  
23 changes.

24           **Q.       If I were to ask you the questions contained**  
25 **therein, would your answers today, accounting for those**

1 **changes, be the same?**

2 A. They would.

3 **Q. And are those answers true and correct to the**  
4 **best of your knowledge, information, and belief?**

5 A. Yes.

6 MR. FISCHER: Your Honor, Mr. Brosch will not  
7 be appearing again on FAC tracker issues. He applies his  
8 criteria to the individual trackers, so he's here to testify  
9 on those today, not tomorrow. However, he will be back on  
10 Thursday on his income tax issues. So I will offer his  
11 testimony on Thursday.

12 JUDGE BUSHMANN: Very good. First  
13 cross-examination would be Public Counsel.

14 MR. POSTON: No questions.

15 JUDGE BUSHMANN: Commission Staff.

16 MS. MERS: No questions, Your Honor.

17 JUDGE BUSHMANN: KCP&L.

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. FISCHER:

20 **Q. Welcome back to Missouri, Mr. Brosch.**

21 A. Thank you, Mr. Fischer.

22 **Q. I just had a question. You deleted the**  
23 **phrase, are relatively unchanged in each of the last three**  
24 **years, and you're referring to property taxes?**

25 A. Yes.

1           **Q.       Is that because property taxes have been**  
2 **increasing?**

3           A.       No, that's because it was a sentence fragment  
4 that never should have been there.

5                   MR. FISCHER:   Okay.  That's all I have.  Thank  
6 you.

7                   JUDGE BUSHMANN:   Questions by Commissioners?

8                   COMMISSIONER STOLL:   I have no questions.  
9 Thanks for your testimony.

10                   COMMISSIONER KENNEY:   I have no questions.

11                   JUDGE BUSHMANN:   No need for recross.  
12 Redirect.

13                   MR. WOODSMALL:   No, thank you.

14                   JUDGE BUSHMANN:   You may step down.

15                   JUDGE BUSHMANN:   Thank you.  Well, that  
16 concludes today's testimony.  We will start tomorrow  
17 beginning at 830 a.m.  We're off the record.

18                           (WHEREUPON, the hearing was, adjourned until  
19 June 30, 2015 at 8:30 a.m.

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CERTIFICATE OF REPORTER

STATE OF MISSOURI     )  
                                  ) ss:  
COUNTY OF GASCONADE )

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR No. 1108, and Certified Real time Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

\_\_\_\_\_  
Court Reporter

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