

1                   BEFORE THE PUBLIC SERVICE COMMISSION

2                                 STATE OF MISSOURI

3   \_\_\_\_\_

4  
5                                 TRANSCRIPT OF PROCEEDINGS

6   Evidentiary Hearing

7   January 5, 2012

8   Jefferson City, Missouri

9   Volume 2

10  
11   \_\_\_\_\_

12  
13         In The Matter Of The Determination Of         )  
14         Carrying Costs For The Phase-In Tariffs ) File No.  
15         Of KCP&L Greater Missouri Operations         ) ER-2012-0024

16  
17  
18   RONALD D. PRIDGIN, Presiding  
19   SENIOR REGULATORY LAW JUDGE  
20   KEVIN D. GUNN, Chairman  
21   JEFF DAVIS  
22   TERRY M. JARRETT  
23   ROBERT S. KENNEY,  
24   STEVE STOLL,  
25   COMMISSIONERS

26  
27         REPORTED BY:  
28         Jennifer Leibach, CCR Number 1108  
29         TIGER COURT REPORTING, LLC

## A P P E A R A N C E S

1  
2  
3 STUART CONRAD, Attorney at Law  
Finnegan, Conrad & Peterson  
4 3100 Broadway, Suite 1209  
Jefferson City, Missouri 64111  
5 816.753.1122  
stucon@fcplaw.com

6 FOR: Ag Processing, Incorporated  
7

JAMES FISCHER, Attorney at Law  
8 Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
9 Jefferson City, Missouri 65101  
573.636.6758  
10 jfischerpc@aol.com

FOR: Kansas City Power & Light Company  
11

12 ROGER STEINER, Attorney at Law  
Kansas City Power & Light Company  
13 1200 Main Street  
Kansas City, Missouri 64105  
14 816.556.2314  
roger.steiner@kcpl.com

15 FOR: Kansas City Power & Light Company  
16

NATHAN WILLIAMS, Deputy Counsel  
17 Public Service Commission  
200 Madison Street  
18 P.O. Box 309  
Jefferson City, Missouri 65102  
19 573.751.6514

FOR: The Staff of the Missouri Public Service Commission  
20

21 LEWIS MILLS  
Office of Public Counsel  
22 200 Madison Street  
P.O. Box 2230  
23 Jefferson City, Missouri 65102

FOR: Office of Public Counsel  
24  
25

## 1 PROCEEDING

2 (EXHIBIT NUMBERS 1 THROUGH 7 WERE MARKED FOR  
3 IDENTIFICATION BY THE COURT REPORTER.)

4 JUDGE PRIDGIN: Good morning. We are on the  
5 record. This is the hearing in File Number EO-2012-0024 In  
6 The Matter Of The Determination Of Carrying Costs For The  
7 Phase-In Tariffs Of KCP&L Greater Missouri Operations  
8 Company.

9 I am Ron Pridgin. I am the regulatory law  
10 judge assigned to preside over this hearing. It is being  
11 held on January 5th, 2012. Happy New Year, Everyone. We are  
12 in the Governor Office Building in Jefferson City, Missouri,  
13 and the time is about 8:30 a.m.

14 I would like to get oral entries of appearance  
15 from Counsel, please, beginning with the company.

16 MR. FISCHER: Thank you, Judge. Let the  
17 record reflect the Roger W. Steiner and James M. Fischer on  
18 behalf of KCP&L Greater Missouri Operations Company. Our  
19 contact information is on the written form.

20 JUDGE PRIDGIN: Mr. Fischer, thank you.  
21 On behalf of the Staff of the Commission,  
22 please.

23 MR. WILLIAMS: Nathan Williams, P.O. Box 360,  
24 Jefferson City, Missouri 65102.

25 THE COURT: Thank you very much.

1                   On behalf of the office of the Public Counsel,  
2     please.

3                   MR. MILLS: On behalf of the Office of the  
4     Public Counsel and the public, my name is Lewis Mills. My  
5     address is Post Office Box 2230, Jefferson City, Missouri  
6     65102.

7                   JUDGE PRIDGIN: Mr. Mills, thank you.

8                   On behalf of Ag Processing, Inc., please.

9                   MR. CONRAD: Appearing specially for Ag  
10    Processing this morning, Stuart Conrad, law firm of Finnegan,  
11    Conrad & Peterson, and I also have provided the court  
12    reporter with our specific address and stuff.

13                  JUDGE PRIDGIN: Mr. Conrad, thank you.

14                  Have I missed anyone? Anything before we  
15    proceed to opening statements?

16                  MR. WILLIAMS: Yes, Judge.

17                  JUDGE PRIDGIN: Mr. Williams.

18                  MR. WILLIAMS: Staff would like to make a  
19    correction to its position statement. In response to Issue  
20    Number 4 regarding the tariff, Staff had indicated the  
21    tracking number involved for the tariff sheets that the  
22    Commission should reject is YE-2010-0610. That is incorrect.  
23    There are actually three tariff tracking numbers and those  
24    numbers are YE-2011-0608, YE-2011-0609, and YE-2011-0610.

25                  JUDGE PRIDGIN: Mr. Williams, thank you.

1                   Anything further before we proceed to opening  
2 statements? By hearing nothing, Mr. Steiner, Mr. Fischer?  
3 Mr. Fischer, when you are ready, sir.

4                   MR. FISCHER: Thank you, Judge. May it please  
5 the Commission.

6                   JUDGE PRIDGIN: Mr. Fischer.

7                   MR. FISCHER: On September 2nd, 2011, GMO, the  
8 company, and Staff filed a non-unanimous stipulation and  
9 agreement, which recommended that the Commission approve the  
10 use of a 3.25 percent carrying cost in GMO's phase-in  
11 tariffs. Public Counsel has also filed a position statement  
12 that indicates that a 3.25 percent carrying cost should be  
13 used in the company's phase-in tariffs as well.

14                   In addition, the non-unanimous stipulation and  
15 agreement recommended that the Commission should order that  
16 the tariff schedules for the second, the third, and the  
17 fourth year of the phase-in plan should become effective  
18 automatically in each subsequent year on June the 25th  
19 without further Order of the Commission unless the Commission  
20 for good cause shown decided to suspend them.

21                   Judge, we've marked that non-unanimous stip as  
22 Exhibit Number 1. I suppose I should ask that it be  
23 introduced into the record.

24                   JUDGE PRIDGIN: Is that being offered into  
25 evidence at this time?

1 MR. FISCHER: Yes, sir.

2 JUDGE PRIDGIN: Any objections? Hearing none,  
3 Exhibit Number 1 is admitted.

4 (EXHIBIT NUMBER 1 WAS RECEIVED INTO THE RECORD  
5 BY JUDGE PRIDGIN.)

6 MR. FISCHER: The Commission Staff has  
7 reviewed and approved the tariff sheets that are attached to  
8 the non-unanimous stipulation and agreement. And assuming  
9 that the Commission in this proceeding does approve that  
10 non-unanimous stipulation and agreement, the company would  
11 expect that we would be directed to file those tariff  
12 schedules attached to the stipulation to have it formally in  
13 the tariff.

14 As the Commission knows, in the company's last  
15 rate case, there was an issue related to the appropriate  
16 allocation of a new plant, Iatan 2, between two rate  
17 districts of the company. The L&P district, which was  
18 previously served by the St. Joseph Power & Light Company,  
19 and the MPS district, which was the rest of the company's  
20 service area. That is also known years ago as the Missouri  
21 Public Service company area.

22 In that case, the Commission Staff recommended  
23 that a larger portion of Iatan 2 be allocated to the L&P  
24 district than what the company had proposed. The Staff also  
25 recommended that the Commission roll the fuel costs

1 previously recovered from the fuel adjustment clause into the  
2 rates. And we've referred to that process as the fuel  
3 rebasing.

4           GMO opposed both Staff recommendations because  
5 of the adverse impact it could have upon the L&P customers.  
6 But over the objection of the company, the Commission decided  
7 to allocate a larger portion of Iatan 2 to the L&P district  
8 and adopted the Staff's recommendation to rebase fuel costs.

9           As a result of those decisions, the rate  
10 increase for the L&P district was higher than the \$22.1  
11 million that the company had originally proposed for the L&P  
12 district, although the overall rate increase to the company  
13 that was authorized by the Commission was substantially less  
14 than it had requested. The company had originally requested  
15 an increase of approximately \$97.9 million and the Commission  
16 granted an overall increase of approximately \$59.4 million in  
17 the report and order issued on May the 4th, 2011. Of that  
18 59.4 million, approximately 29 million was ordered to be  
19 recovered from the L&P district.

20           Motions for rehearing were filed by several  
21 parties following the issuance of the report and order. And  
22 as we've already pointed out in our September 6th pleading,  
23 during the oral argument held on May 26th, 2011, to consider  
24 some portions of those motions, AGP recommended that the rate  
25 increase for the L&P district should be phased-in over

1 several years to avoid rate shock on the customers in the L&P  
2 district. And if you look at the transcript page 4983, lines  
3 9 through 15, you will see that that's where that happened.

4           During this oral argument, Mr. David  
5 Woodsmall, counsel for AGP, specifically recommended that the  
6 Commission do the right thing and allocate more of Iatan 2 to  
7 the L&P district than the company had requested and rebase  
8 the fuel costs.

9           Commissioner Davis asked AGP's counsel the  
10 following question at page 4982 of the transcript: What  
11 would be your recommended resolution of this issue? In  
12 answer to Commissioner Davis, AGP's counsel stated, in part:  
13 I understand the Commission's logic saying that we believe  
14 Light & Power needed more base load than GMO initially wanted  
15 to give, so I understand that. Given that, I don't believe  
16 the Commission should back away from what it thinks is doing  
17 the right thing or the logical thing, based simply upon GMO  
18 filing tariffs at a certain amount. Do what's right, not  
19 based upon what that number is somewhere. And then at 4982,  
20 lines 18 -- beginning at line 18, Mr. Woodsmall stated, So if  
21 you believe that that's the right decision, stick with it,  
22 and phase-in the remaining amount.

23           In other words, AGP recommended that the  
24 Commission increase the rates for the L&P district by more  
25 than the \$22.1 million increase that the company had



1 originally requested for the L&P district, and phase-in the  
2 remaining amount for that increase. That would be found at  
3 transcript Page 4986, lines 11 through 24.

4 In addition, AGP's counsel argued at 4983,  
5 lines 18 through 20, that it was unnecessary for the  
6 Commission to take evidence on the amount of the carrying  
7 costs related to the phase-in plan at that time since the  
8 carrying costs of the phase-in plan will be calculated later.  
9 Mr. Woodsmall explained AGP's position as follows: We don't  
10 need evidence at this point in time as to what their carrying  
11 costs are. That will all be calculated later. That's at  
12 transcript page 4983, lines 18 through 20.

13 Judge, the Commission adopted both of AGP's  
14 recommendations. First, the Commission ordered a larger rate  
15 increase for the L&P district than what GMO had requested and  
16 phased-in the rate increase over a three-year period. The  
17 Commission ordered the first-year rate increase would be  
18 equal to 22.1 million, which is what we originally requested,  
19 and the remaining \$7.7 million increase plus carrying costs  
20 would be recovered over a subsequent two-year period. And  
21 you'll notice the tariffs do have a fourth year. That  
22 fourth-year tariff sheet is required to reduce the rates  
23 after the phase-in revenue's already recovered.

24 Now, second, the Commission did not determine  
25 the level of carrying costs to be applied in the phase-in

1 plan at that time but left that decision for later. And as I  
2 mentioned, that's the purpose of this case, to determine the  
3 appropriate carrying costs to be used in the phase-in plan  
4 tariffs.

5           When the company filed its phase-in tariffs,  
6 the company used the 8.414 percent overall rate of return  
7 found to be appropriate in GMO's last rate case as its  
8 carrying costs. The use of the overall rate of return was  
9 consistent with the approach that had been approved by the  
10 Commission for KCP&L's Wolf Creek phase-in plan and Union  
11 Electric's Callaway phase-in plan several years ago.

12           Several parties, including the Staff and the  
13 Public Counsel, initially objected to the use of the overall  
14 rate of return as the appropriate level of carrying costs.  
15 After discussion among the parties, the company has agreed to  
16 recommend the use of a 3.25 percent carrying cost in the  
17 phase-in plan tariffs. This recommended level of carrying  
18 costs is included in the phase-in tariffs that are attached  
19 to the non-unanimous stipulation and agreement.

20           Now, the company is willing to settle for this  
21 lower amount of carrying costs in order to minimize the  
22 litigation regarding this issue and get the phase-in tariffs  
23 approved by the Commission. No party, with the exception of  
24 AGP, has opposed the stipulation and agreement. AGP has not  
25 filed any testimony or identified any witnesses in this

1 proceeding. Instead, it's chosen to raise legal issues  
2 rather than factual issues related to the phase-in plan.

3 Now, contrary to its earlier recommendation at  
4 the oral argument on May the 26th, AGP is now arguing that  
5 this issue -- that the issue of the appropriate level of  
6 carrying costs is not properly before the Commission and that  
7 the Commission cannot approve the phase-in tariffs since AGP  
8 has appealed the Report and Order in Case Number ER-2010-0356  
9 to the Circuit Court of Cole County.

10 In that appeal, AGP is arguing that the  
11 Commission cannot lawfully approve a larger rate increase for  
12 the L&P district than the rate increase that GMO originally  
13 requested for the L&P district, even though that is exactly  
14 what AGP's counsel recommended in the oral argument held on  
15 May 26th.

16 AGP is also requesting that the Court hold  
17 this Commission in contempt of court for going forward to  
18 determine the appropriate level of carrying costs in this  
19 proceeding. Even though counsel for AGP has suggested during  
20 the May 26th oral argument that it was appropriate to decide  
21 the carrying costs issue later. AGP's arguments are  
22 misplaced on both points.

23 The adoption of the position of AGP in this  
24 proceeding would effectively keep the remaining years of the  
25 phase-in plan from being implemented. Under AGP's theory,

1 the Commission could not approve the pending phase-in tariffs  
2 for the remaining years of the phase-in plan. It would  
3 result in confiscation and be in direct contravention of  
4 Section 393.155.

5 Section 393.155 (1) requires the Commission  
6 authorize the company -- and I'm going to quote this -- to  
7 recover the revenues which would have been allowed in the  
8 absence of a phase-in and shall make a just and reasonable  
9 adjustment thereto to reflect the fact that recovery of a  
10 part of such revenue is deferred to future years. In order  
11 to implement the phase-in, the Commission may, in its  
12 discretion, approve tariff schedules which will take effect  
13 from time to time after the phase-in is initially approved.  
14 That's Section 393.155 (1). The adoption of AGP's position  
15 in this case would violate this statute and be very  
16 detrimental to the company.

17 Now, AGP has also argued its position  
18 statement that the Commission lacks jurisdiction to proceed  
19 in this case. AGP's wrong on this point, too. The  
20 Commission has expressed statutory authority under Section  
21 393.155 to direct a utility to file tariffs reflecting the  
22 phase-in of rates authorized in a rate case after the  
23 conclusion of the rate case hearing. AGP is arguing that the  
24 Commission cannot exercise its statutory authority to  
25 determine the appropriate carrying costs because AGP has

1 appealed the original Report and Order in Case Number  
2 ER-2010-0356 to the Cole County Circuit Court. And as I've  
3 already mentioned, AGP is wrong on that point.

4 Section 393 -- 386.270 states that all orders  
5 are prima facie lawful and reasonable until found otherwise  
6 in a suit brought for that purpose. 386.493 also indicates  
7 that all orders and decisions of the Commission shall  
8 continue to be in force. Similarly, the Commission's Order  
9 remain in effect despite a pending writ of review as provided  
10 under 386.520 (1). Now, in this case, the circuit court has  
11 not issued any stays or otherwise constrained the Commission  
12 from proceeding forward in this tariff case.

13 The Commission in this docket is not  
14 considering modifying the Report and Order being reviewed by  
15 the circuit court. It's attempting to follow the  
16 requirements of Section 393.155 (1) to determine the  
17 appropriate adjustment or carrying costs that will be used in  
18 future years of the phase-in tariffs to reflect the fact that  
19 GMO is not being allowed to recover the full amount of the  
20 rate increase in the first year.

21 Now, finally, AGP has inserted in the list of  
22 issues the following issue: Does the Commission decision  
23 consider all relevant factors? Frankly, GMO does not  
24 understand this issue, but apparently AGP is suggesting that  
25 the Commission must consider all relevant factors in this

1 case. Now, the issue in this case is simply the appropriate  
2 level of carrying costs to be used in the second, third, and  
3 fourth year of the phase-in plan tariffs.

4 The Commission's decision on that issue should  
5 be based upon the competent and substantial evidence in the  
6 record which includes the relevant factors required to make  
7 that determination. Contrary to the arguments of AGP, the  
8 Commission is not required to retry all the issues that were  
9 heard in GMO's last rate case. The Commission has already  
10 looked at all relevant factors as it determined the overall  
11 revenue requirement for the company in that case.

12 Now the only issue that's left in this tariff  
13 proceeding is the appropriate carrying costs to be used in  
14 the phase-in plan. Apparently AGP is relying upon an order  
15 issued by Judge Dippell which changed the case number from an  
16 ET number to an ER number. Now, from our perspective, the  
17 case number does not change the nature of the issue to be  
18 resolved in this case. It certainly does not convert this  
19 tariff proceeding into a full-blown rate case as seemed to be  
20 the implication of AGP's position.

21 In conclusion, the only factual issue to be  
22 decided related to the phase-in tariffs is the appropriate  
23 carrying costs as required by the statute. As explained in  
24 the testimony of company witnesses Kevin E. Bryant,  
25 Tim M. Rush, and the Staff witnesses David Murray,

1 Matthew J. Barnes, and Curt Wells, the adoption of a 3.25  
2 percent carrying cost in this case is reasonable and  
3 appropriate.

4           GMO respectively requests that the Commission  
5 approve the non-unanimous stipulation and agreement and find  
6 that the use of a 3.25 rate of return is reasonable and  
7 appropriate based upon the competent substantial evidence in  
8 the record. In addition, the Commission should order that  
9 the tariff schedules filed with the non-unanimous stipulation  
10 and agreement on September 2nd for the second, third, and  
11 fourth year of the phase-in plan be allowed to become  
12 effective automatically in each subsequent year on June 25th  
13 without further Order of the Commission unless they're  
14 suspended by the Commission. And as I stated earlier, we  
15 would file those tariffs and then they would become effective  
16 on that date in each year.

17           The Commission should also state that these  
18 phase-in increases for the L&P division will automatically  
19 occur each year as a separate and discrete change in rates  
20 without regard to any future changes in rates ordered by the  
21 Commission in other proceedings, like a fuel adjustment  
22 clause case or a subsequent general rate case. All other  
23 legal challenges raised by AGP should be dismissed in this  
24 case, and the Commission should move forward expeditiously to  
25 approve the proposed phase-in plan tariffs as recommended by

1 the Staff and GMO.

2 Thank you very much for your attention today.

3 I would be happy to try to answer any of your questions, as  
4 would my witnesses, Mr. Bryant and Mr. Rush.

5 THE COURT: Mr. Fischer, thank you very much.

6 Opening for Staff, Mr. Williams?

7 MR. WILLIAMS: Thank you, Judge. May it  
8 please the Commission.

9 JUDGE PRIDGIN: Mr. Williams.

10 MR. WILLIAMS: As GMO has stated, this case is  
11 a result of GMO's last general electric rate increase case.  
12 There the Commission, based on Section 393.155.1 RSMo 2000,  
13 found the rate increase it authorized for the company  
14 St. Joseph rate district should be phased in. The Commission  
15 ordered the rate increase to be phased in over two years.

16 Recognizing the first phase-in -- rate  
17 phase-in would not occur until June of this year, the  
18 Commission approved tariff sheets to implement GMO's general  
19 rate increase and established the parameters of the phase-in  
20 rates except what the parties and the Commission have called  
21 "carrying costs." Those carrying costs are the just and  
22 reasonable adjustments to reflect deferral to the future of  
23 the recovery of revenue which would have been allowed in the  
24 absence of the phase-in that is described in Section  
25 393.155.1 and in which Mr. Fischer quoted to you.



1           I would like to take issue with a couple of  
2 statements by Mr. Fischer. One, Staff never stated a  
3 position on the original phase-in tariff sheets that GMO  
4 filed until after the Commission had rejected them and  
5 ordered the parties -- the company to -- well, to order the  
6 parties to make a filing in which they were directed to state  
7 GMO's and/or Great Plains' energy short-term cost of debt and  
8 any arguments why the carrying costs for the phase-in rate  
9 should not be equal to lower GPE's short-term cost of debt.  
10 So the Staff operated, to an extent, under that directive  
11 from the Commission regarding short-term debt and no party  
12 came in and argued that some other rate should be utilized  
13 for determining what the, quote, carrying costs are for the  
14 phase-in.

15           Also, as to the effect of the non-unanimous  
16 stipulation and agreement in this case, since it has been  
17 objected to at this point, it merely reflects the position of  
18 Staff and the company as to what the Commission should do in  
19 this case. It is not something that the Commission can  
20 approve as a stipulation and agreement per se.

21           In this case, as supported by the testimony of  
22 Staff witness Murray and GMO witness Kevin E. Bryant, the  
23 Commission Staff and GMO agreed the rate phased-in carrying  
24 costs should be determined by using the rate of 3.25 percent  
25 per year.

1           Further, they agree the exemplar tariff sheets  
2 submitted with the nonunanimous stipulation and agreement  
3 that was filed in this case on September 2nd, 2011, reflect a  
4 proper application of that rate and phase-in of the rate  
5 increase for GMO's St. Joseph area rate district.

6           Therefore, in this case, the Commission Staff  
7 urges the Commission to find 3.25 percent per year as the  
8 appropriate rate to use to determine the, quote, just and  
9 reasonable adjustment, close quote, described in  
10 Section 393.155.1, reject the tariff sheets GMO filed under  
11 tracking numbers YE-2011-0608, YE-2011-0609, and  
12 YE-2011-0610, which were filed, I believe, May 31st of 2011,  
13 and order GMO to file compliance tariff sheets that conform  
14 to the exemplar tariff sheets submitted with the nonunanimous  
15 stipulation and agreement that was filed in this case on  
16 September 2nd, 2011.

17           Thank you.

18           JUDGE PRIDGIN: Mr. Williams, thank you.

19           Mr. Mills?

20           MR. MILLS: Judge, I'll waive an opening  
21 statement this morning.

22           JUDGE PRIDGIN: Mr. Mills, thank you.

23           Mr. Conrad?

24           MR. CONRAD: You know you're getting old when  
25 you have more hair inside your hat than you have on your

1 head. May it please the Commission.

2 JUDGE PRIDGIN: Mr. Conrad.

3 MR. CONRAD: Thank you, Judge. Well, we've  
4 heard a lot from Mr. Fischer. One thing I do agree with  
5 Staff counsel, and Mr. Fischer should well know this because  
6 the case goes by his name, is a -- a nonunanimous stipulation  
7 to which a timed objection has been made is nothing more than  
8 a change in positions of the parties that sponsored that.  
9 But I'm not going to spend much time arguing about that.

10 The essential point of where we are is that  
11 this Commission lost jurisdiction when writs of review were  
12 issued. There were two writs issued; one by the circuit  
13 court on a GMO filing on June 24, 2011, and then a second  
14 writ was issued on AGP's initiation on July the 5th. Cases  
15 are clear, Missouri law is not questioned, that when a writ  
16 of review is issued, the Commission loses jurisdiction.  
17 That's -- I don't think that GMO's even arguing that.

18 In addition, the writ in AGP's case which was  
19 issued on 7/5 also provided that the Commission should take  
20 no further action in this matter, save compliance with this  
21 writ. Now that's an Order of the court. It was not  
22 challenged by the Commission. The Commission did not ask  
23 that it be set aside or modified. However, in direct  
24 violation of that, the Commission continued to issue Orders  
25 in ER-2010-0356. And the record on EFIS will demonstrate

1       that.

2                       And in addition, the Commission initiated not  
3 one, but two, cases. Now, Mr. Fischer wants to seemingly  
4 argue that that was done by Judge Dippell. However, in other  
5 cases, it's been pretty well established that Your Honor's  
6 work by delegation from the Commission and your Orders are  
7 those of the Commission. The Commission issued not only one,  
8 but two new cases, including this one, and then sought to  
9 incorporate numerous orders, documents, testimony from the  
10 ER-2010-0356 case. And again, EFIS will make that clear.

11                      Now on our review, that is nothing more than a  
12 blatant attempt to avoid and evade the Court's directive and  
13 then run around that directive. Indeed just continuing to  
14 process this case while issuing a different case number is  
15 just a numbers game. Missouri law is well established that  
16 the substance of the pleading is to be determined by the  
17 content of that pleading, not by its caption. And the  
18 substantive content of the pleadings in this case are to  
19 continue actions in the ER-2010-0356 that we are  
20 prohibited -- we believe are prohibited by Missouri law.

21                      We do not believe, contrary to Mr. Fischer's  
22 assertion, that 393.155 (1) gives the Commission authority to  
23 order a phase-in that in the aggregate exceeds the amount  
24 that the originally -- was originally sought by the utility  
25 here in this case. Mr. Fischer acknowledges that that amount

1 exceeded what was published as the proposed increase for the  
2 Light & Power district. And indeed, it exceeded what the  
3 Commission's own directed notice said was going to be that  
4 maximum and what was put before the public in public  
5 hearings, local public hearings by the Commission. Here,  
6 because of this action, these actions of the Commission does  
7 not, we believe, have a matter -- as a matter of law have  
8 jurisdiction to proceed further in this proceeding.

9 Now, Your Honor's -- I've practiced before  
10 this Commission since, gosh, I think actually the first case  
11 I was in actually had to be a Kansas City Power & Light case,  
12 and I want to say it was in 1974. Over those years, I've  
13 seen some things and I've guessed wrong as to what was going  
14 to come down from the courts and I've made arguments that  
15 have been rejected. But every once in awhile, following the  
16 old blind squirrel that every once in a while the blind  
17 squirrel finds a nut -- I get one right.

18 And I have examined carefully the language of  
19 393.155. I do not find in there any authorization for the  
20 Commission to exceed through the artifice of a phase-in an  
21 amount that exceeds what the utility requested in this case  
22 from that Commission or district. And again, the law is well  
23 established, that the Commission is a creature of the  
24 statute -- of the legislature, and can do nothing that is not  
25 explicitly granted by the legislature as a power.

1           And in addition, things that are reasonably  
2 incident thereto. For example, you can order paperclips, you  
3 can get pencils, you can buy computers, but it does not mean  
4 that you can establish rates in a manner that has not been  
5 authorized by the Commission.

6           As to the relevant factors argument, which GMO  
7 contends they don't understand, the record in this proceeding  
8 demonstrates that GMO seeks to implement tariff increases,  
9 albeit pursuant to a misunderstanding on their part and a  
10 misapplication by the Commission of 393.155, on three dates:  
11 June 25, 2012, June 25, 2013, June 25, 2014.

12           Now, the Commission, acting through its  
13 delegate but on its own motion, determined that this matter  
14 was to proceed as a rate case. It's right there in black and  
15 white. And under well established Missouri law, the  
16 Commission cannot lawfully set rates for a utility without  
17 considering all the relevant factors. The case on that is  
18 UCCM, we found at 485 S.W. 2d 481.

19           That, by the way, is the case where the old  
20 fuel adjustment was invalidated because the Court found that  
21 the Commission did not have authority to implement that fuel  
22 adjustment. And under that case, all relevant factors must  
23 be considered and under Missouri's Constitution, they must be  
24 shown to have been considered by competent and substantial  
25 evidence of the whole record.

1           The testimony that has been submitted in this  
2 proceeding does not address all relevant factors and at this  
3 point cannot, accordingly, neither under the evidentiary  
4 support of ER-2010-0356, nor under evidentiary support in  
5 this proceeding, the Commission may not lawfully approve or  
6 even decide to allow to go into effect tariffs that would  
7 begin to apply that's vindicated.

8           Now, if the utility wishes to file a rate  
9 case, it can do so at any time. That also is established.  
10 Indeed, GMO has already filed a notice of intent to make such  
11 a filing a number of days ago. Now, there may be some  
12 considerations with respect to that filing that would impact  
13 on these proposed tariffs. And I suspect that is why GMO is  
14 so eager to have the Commission approve these tariffs in some  
15 manner that would have them automatically go into effect  
16 because it is equally well established in Missouri law that  
17 when tariffs are on file as proposed tariffs before the  
18 Commission and the utility makes another tariff filing, the  
19 previously proposed tariffs are moot. A rate case to  
20 implement new rates would have to consider all relevant  
21 factors and neither to, quote, convenience, expediency, or  
22 necessity are proper matters for consideration in  
23 determination of the lawfulness of the Commission action.

24           Unfortunately, the Commission cannot claim the  
25 benefit in our view or exoneration under Section 393.155.

1 And I have that text here, and I have examined it carefully,  
2 and I find therein no authority for going forward.

3 So those are -- those are really the two  
4 points, the positions that we have filed that address the  
5 carrying costs because in a certain sense, any carrying costs  
6 is moot under our view. The Commission simply cannot move  
7 forward. Thank you.

8 JUDGE PRIDGIN: Mr. Conrad, thank you.

9 Anything further before we proceed to  
10 evidence? On the witness list and order of witnesses, I show  
11 Mr. Bryant would be the first witness. Is that how the  
12 parties wish to proceed?

13 MR. FISCHER: Yes, Judge.

14 JUDGE PRIDGIN: All right. GMO, when you are  
15 ready.

16 MR. FISCHER: GMO would call Kevin Bryant to  
17 the stand.

18 MR. WILLIAMS: Judge, the Staff has no  
19 questions for this witness.

20 JUDGE PRIDGIN: Let me let Mr. Bryant come  
21 forward and be sworn, and I will provide an opportunity for  
22 cross-examination to address questions.

23 (The witness was sworn.)

24 JUDGE PRIDGIN: Mr. Steiner, Mr. Fischer.

25 MR. FISCHER: Thank you, Judge.



## 1 DIRECT EXAMINATION

2 QUESTIONS BY MR. FISCHER:

3 Q. Please state your name for the record.

4 A. My name is Kevin Bryant.

5 MR. FISCHER: Judge, we've agreed to waive the  
6 preliminary foundational questions. I think Mr. Bryant's  
7 testimony has been premarked as Exhibit Number 2. I believe  
8 there may be one typo that he'd like to correct. I'd like to  
9 do that on the record but then move for the admission of  
10 Exhibit Number 2 and tender the witness for cross.

11 JUDGE PRIDGIN: All right. Mr. Fischer, thank  
12 you. You can inquire about the correction.

13 MR. FISCHER: All right.

14 BY MR. FISCHER:

15 Q. Mr. Bryant, do you have any corrections or  
16 changes you need to make to your testimony?

17 A. I do. On page 5 of my direct testimony,  
18 there's a typo on page -- page 5, line 16. The sentence that  
19 begins: Until the company finally recovers the full amount  
20 of its authorized -- currently states rare increase, should  
21 be rate increase, R-A-T-E.

22 Q. Do you have any other changes that you need to  
23 make?

24 A. I do not.

25 MR. FISCHER: Judge, with that, I would move

1 for the admission of Exhibit Number 2 and tender the witness  
2 for cross.

3 JUDGE PRIDGIN: Thank you. Exhibit Number 2  
4 has been offered. Any objections?

5 MR. CONRAD: Judge, subject to our continuing  
6 objection to the proceeding, which has hopefully been  
7 registered, we do not have any objection to Mr. Bryant's  
8 testimony being included.

9 JUDGE PRIDGIN: If you would like, Mr. Conrad,  
10 I can just show that you have a standing objection to all the  
11 testimony for the same reason and the Commission can take up  
12 that objection in a subsequent written Order.

13 MR. CONRAD: That would be preferable.

14 JUDGE PRIDGIN: Thank you. We will just show  
15 a standing objection. Exhibit Number 2 will be admitted into  
16 evidence, subject to Mr. Conrad's standing objection on  
17 jurisdiction and the Commission will address that later.

18 (EXHIBIT NUMBER 2 WAS RECEIVED INTO EVIDENCE  
19 BY JUDGE PRIDGIN.)

20 JUDGE PRIDGIN: Anything further before he  
21 stands cross? Hearing nothing, any cross-examination, Mr.  
22 Williams?

23 MR. WILLIAMS: No, thank you.

24 JUDGE PRIDGIN: Mr. Mills?

25 MR. MILLS: No questions.

1 JUDGE PRIDGIN: Mr. Conrad?

2 MR. CONRAD: And we have no questions, Your  
3 Honor.

4 JUDGE PRIDGIN: All right. Thank you. Let me  
5 see if we have any bench questions. Commissioner Jarrett?

6 COMMISSIONER JARRETT: Good morning.

7 THE WITNESS: Good morning.

8 COMMISSIONER JARRETT: I don't have any  
9 questions, Judge. Thank you.

10 JUDGE PRIDGIN: Thank you, sir.  
11 Commissioner Kenney?

12 COMMISSIONER KENNEY: No, thank you.

13 JUDGE PRIDGIN: No questions? Mr. Bryant,  
14 thank you very much. You may step down.

15 THE WITNESS: Thank you.

16 JUDGE PRIDGIN: Your next witness, please.

17 MR. STEINER: Tim Rush.

18 JUDGE PRIDGIN: Mr. Rush, please come forward  
19 and be sworn, please.

20 (The witness was sworn.)

21 JUDGE PRIDGIN: Thank you very much, sir.  
22 Please have a seat.

23 And Mr. Fischer, when you're ready.

24 MR. STEINER: Thank you, Your Honor.

25

## DIRECT EXAMINATION

1  
2 QUESTIONS BY MR. STEINER:

3 Q. State your name for the record.

4 A. Tim Rush.

5 Q. Do you have any corrections to your testimony,  
6 which has been marked as Exhibit 3?

7 A. I do not.

8 MR. STEINER: Your Honor, at this time, we  
9 would offer the direct testimony of Tim Rush.

10 JUDGE PRIDGIN: Exhibit Number 3 has been  
11 offered, and I do show that same standing objection for that  
12 exhibit from AGP. Are there any other objections?

13 MR. CONRAD: No.

14 JUDGE PRIDGIN: All right. Hearing none,  
15 Exhibit Number 3 is also admitted into evidence subject to  
16 the standing objection which will be ruled upon later.

17 (EXHIBIT NUMBER 3 WAS RECEIVED INTO EVIDENCE  
18 BY JUDGE PRIDGIN.)

19 JUDGE PRIDGIN: Anything further before he  
20 stands cross? Hearing nothing, any cross-examination,  
21 Mr. Williams?

22 MR. WILLIAMS: No, thank you.

23 JUDGE PRIDGIN: Mr. Mills?

24 MR. MILLS: No questions.

25 JUDGE PRIDGIN: Mr. Conrad?

1 MR. CONRAD: No questions.

2 JUDGE PRIDGIN: Thank you. Any bench  
3 questions? Commissioner Jarrett?

4 COMMISSIONER JARRETT: Good morning, Mr. Rush.  
5 I have no questions. Thanks for being here.

6 COMMISSIONER KENNEY: No questions, thanks.

7 JUDGE PRIDGIN: Commissioner Kenney, thank you  
8 very much. I have no questions. You may step down.

9 Mr. Fischer, any further evidence?

10 MR. FISCHER: No, sir, that would be all from  
11 the company.

12 JUDGE PRIDGIN: All right. Thank you. Moving  
13 to Staff, would you like to have Mr. Murray?

14 MR. WILLIAMS: Mr. Murray, please.

15 JUDGE PRIDGIN: Thank you. Mr. Murray, if  
16 you'll come forward and be sworn, sir.

17 (The witness was sworn.)

18 JUDGE PRIDGIN: Thank you, sir. Please have a  
19 seat. Mr. Williams, when you're ready.

20 DIRECT EXAMINATION

21 QUESTIONS BY MR. WILLIAMS:

22 Q. Would you please state your name?

23 A. David Murray.

24 Q. Mr. Murray, did you prepare or cause to be  
25 prepared filed direct testimony that's been marked for

1 identification as Exhibit Number 4 and rebuttal testimony  
2 that's been marked as Exhibit Number 5 in this case?

3 A. Yes.

4 Q. Do you have any changes or corrections to that  
5 testimony?

6 A. No.

7 Q. And is that, in fact, your testimony before  
8 the Commission here today?

9 A. Yes.

10 MR. WILLIAMS: With that, I offer Exhibits 4  
11 and 5.

12 JUDGE PRIDGIN: All right. Exhibits 4 and 5  
13 have been offered, and again I show the same standing  
14 objection from AGP. Are there any other objections?

15 MR. CONRAD: No, sir.

16 JUDGE PRIDGIN: All right. Thank you.  
17 Exhibits 4 and 5 are admitted subject to the standing  
18 objection from AGP that will be ruled upon later.

19 (EXHIBIT NUMBERS 4 AND 5 WERE RECEIVED INTO  
20 EVIDENCE BY JUDGE PRIDGIN.)

21 JUDGE PRIDGIN: Anything further before  
22 Mr. Murray stands cross?

23 MR. WILLIAMS: No, Judge.

24 JUDGE PRIDGIN: Cross-examination, Mr. Mills?

25 MR. MILLS: No questions.

1 JUDGE PRIDGIN: Mr. Fischer, Mr. Steiner?

2 MR. FISCHER: No questions at this time,  
3 Judge.

4 JUDGE PRIDGIN: Mr. Conrad?

5 MR. CONRAD: Yes, Your Honor, I do have a  
6 couple.

7 CROSS-EXAMINATION

8 QUESTIONS BY MR. CONRAD:

9 Q. Mr. Murray, you'd indicated you didn't have  
10 any corrections. On page 1, answer at line 12, "I am  
11 currently the Acting Utility Regulatory Manager of the  
12 Financial Analysis." Did you mean to say "department?"

13 A. Actually, it's not department anymore. It's  
14 financial analysis unit.

15 Q. Unit?

16 A. I believe that's the correct terminology, but  
17 I appreciate you pointing that out.

18 Q. Mr. Murray, when did you do your financial  
19 analysis for the company in ER-2010-0356?

20 A. It would have been almost a year ago, I  
21 believe. I don't remember the exact time.

22 Q. When you study the rate of return; is that  
23 correct a time-sensitive issue?

24 A. Yes.

25 Q. Would you agree with me that the rate of

1 return on equity is a relevant factor for the Commission to  
2 consider?

3 A. Yes.

4 Q. What is the rate of return on common equity  
5 for this company on June 25, 2012?

6 A. I know the allowed ROE. Allowed ROE is ten  
7 percent.

8 Q. What is the rate of return on equity for this  
9 company on July -- June 25, 2012?

10 A. I have not examined the earned ROE.

11 Q. Do you know?

12 A. No, I do not.

13 Q. I want to make a comment to you, sir, if I  
14 may, that I do not know is a perfectly acceptable answer.

15 A. Yes, thank you.

16 Q. Do you -- well, let me ask you this: What is  
17 the rate of return for this company on its common equity on  
18 June 25, 2013?

19 A. I do not know.

20 Q. Would your answer be the same if I were to ask  
21 you that question with respect to June 25, 2014?

22 A. I don't know what it will be, of course.

23 Q. Is capital structure a relevant consideration  
24 for the Commission?

25 A. In the context of a rate case, yes.



1 Q. What is the capital structure of the utility  
2 that is before us on June 25, 2012?

3 A. I do not know that and will not know that  
4 until -- until June 25th.

5 Q. Would your answer be the same if I were to ask  
6 you with respect to June 25, 2013?

7 A. Yes.

8 Q. Would your answer be the same if I were to ask  
9 you that question with respect to June 25, 2014?

10 A. Yes.

11 Q. Now this may take you, Mr. Murray, into an  
12 area that you don't often get into, but do you deal with cash  
13 working capital?

14 A. Not directly responsible. I'm familiar with  
15 it, yes.

16 Q. Does it bear in any way on the analysis that  
17 you do?

18 A. Not directly, no.

19 Q. Would you agree or disagree that analysis of  
20 the company's cash working capital requirements is a relevant  
21 factor?

22 A. In what context?

23 Q. In the setting of rates.

24 A. In the setting of rates, yes.

25 Q. Do you know what the company's cash working

1 capital requirements are on June 25, 2012?

2 A. No.

3 Q. Would you know, if I were to ask you the same  
4 question, with respect to June 25, 2013 or June 25, 2014?

5 A. No. Once again, that's in the future, so I do  
6 not know.

7 Q. Now when you do your analysis, do you take  
8 into account the value of the company's installed rate base?

9 A. Not -- not directly. The rate of return is  
10 applied to the rate base.

11 Q. So that becomes a multiplication process?

12 A. That's correct.

13 Q. But would you agree with me that the value of  
14 the company's rate base is a relevant factor?

15 A. In rate settings, yes.

16 Q. How does, in your experience, depreciation,  
17 and I'm just going to ask you at a high level, does that have  
18 any effect on the value of the company's rate base?

19 A. Yes, there's an offset, accumulated  
20 depreciation, offsets for the plant service.

21 Q. Would you agree with me --

22 COURT REPORTER: Sir, I need to stop. Okay.

23 Go ahead. Thank you. Sorry.

24 BY MR. CONRAD:

25 Q. And I think I was starting -- just starting to

1 ask, when you say it's an offset, it's -- that reduces the  
2 value of the company's rate base?

3 A. That's correct.

4 Q. Now is the amount of depreciation that is an  
5 offset, is that a relevant factor for the Commission to  
6 consider in setting rates?

7 A. Yes.

8 Q. Do you know, sir -- again, let me remind you  
9 that I do not know is a good answer -- but do you know what  
10 the value of the company's rate base would be, net of  
11 depreciation, on June 25, 2012?

12 A. No, I would not know that at this point.

13 Q. And would your answer be the same if I were to  
14 ask you with respect to the -- the same question with respect  
15 to the dates June 25, 2013 and 2014?

16 A. Yes.

17 Q. Do you usually, Mr. Murray, get into any other  
18 issues than rate of return on equity? I see sometimes your  
19 testimony on bond returns. Do you do that?

20 A. Capital market issues, correct.

21 Q. Yeah, market issues. Do you have any  
22 information that you could share with us what the capital  
23 markets are going to look like on June 25, 2012?

24 A. By the yields in asset prices right now, I  
25 could tell you what I believe investors require for returns

1 over the next several years. Now obviously, that's a -- the  
2 capital markets are very dynamic and while bond investors may  
3 expect very low returns at this point in time, that could  
4 change a couple years down the road if there's inflation  
5 that's not expected right now.

6 Q. Things could happen even offshore, correct?

7 A. Yes.

8 Q. Things I hear that they call Euro dollars?

9 A. Yes, the Euro.

10 Q. Now, do you have any projection as to what the  
11 capital markets might be looking like in June 25 -- on June  
12 25, 2013?

13 A. I believe interest rates will -- it's  
14 projected to remain low and the Federal Reserve has given  
15 some assurance that the capital markets -- that it will keep  
16 short-term interest rates low to attempt to keep long-term  
17 interest rates low. But I do have my understanding of what I  
18 believe the monetary policy objectives are considering in  
19 this current slow growth state of the committee and high  
20 unemployment.

21 Q. You'd agree with me that, I take it, that  
22 monetary policy objectives are sometimes not achieved?

23 A. Of course.

24 Q. Do you have any information that you could  
25 share with us about what the capital markets are going to

1 look like June 25, 2014?

2 A. If I -- I cannot predict exactly what's going  
3 to happen on June 25, 2014.

4 Q. I really wish you could, Mr. Murray.

5 A. I wish I could, too. Thank you.

6 Q. Mr. Murray, are there any other -- we've  
7 talked about cash working capital, capital structure, and  
8 rate of return on equity. Are there any other issues that  
9 you get into in your usual testimony from a financial  
10 analysis perspective for -- on a rate case?

11 A. I've -- I've got into other issues during  
12 rate-making settings as far as in rate cases, but my primary  
13 objective is -- is sponsoring cost of capital testimony.

14 MR. CONRAD: Your Honor, I believe that's all  
15 at this point.

16 JUDGE PRIDGIN: Mr. Conrad, thank you. Let me  
17 see if we have any bench questions.

18 Commissioner Jarrett?

19 COMMISSIONER JARRETT: Mr. Murray, I don't  
20 have any questions, but thank you.

21 THE WITNESS: Thank you, sir.

22 JUDGE PRIDGIN: Commissioner Kenney?

23 COMMISSIONER KENNEY: No questions.

24 THE WITNESS: Thank you.

25 JUDGE PRIDGIN: Any redirect?

1 MR. WILLIAMS: No.

2 JUDGE PRIDGIN: Mr. Murray, thank you very  
3 much. You may step down. I believe Mr. Barnes is the next  
4 witness.

5 MR. WILLIAMS: Yes.

6 JUDGE PRIDGIN: Mr. Barnes, if you will come  
7 forward to be sworn, please.

8 (The witness was sworn.)

9 JUDGE PRIDGIN: Thank you, sir. Please have a  
10 seat.

11 Mr. Williams, when you're ready.

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. WILLIAMS:

14 Q. Please state your name.

15 A. Matthew J. Barnes.

16 Q. Mr. Barnes, did you prepare direct testimony  
17 that's been premarked as Exhibit Number 6, the direct  
18 testimony of Matthew J. Barnes?

19 A. Yes, I did.

20 Q. Do you have any changes to that testimony here  
21 today?

22 A. I do not.

23 Q. And is that -- is Exhibit 6, then, your  
24 testimony before the Commission here today?

25 A. Yes, it is.

1 MR. WILLIAMS: With that, I offer Exhibit 6.

2 JUDGE PRIDGIN: Exhibit 6 has been offered. I  
3 do show the same standing objection from AGP. Are there any  
4 other objections?

5 MR. CONRAD: No, sir.

6 JUDGE PRIDGIN: All right. Hearing none,  
7 Exhibit 6 is admitted subject to the standing objection that  
8 the Commission will rule upon later.

9 (EXHIBIT NUMBER 6 WAS RECEIVED INTO EVIDENCE  
10 BY JUDGE PRIDGIN.)

11 JUDGE PRIDGIN: Anything further before  
12 Mr. Barnes stands cross?

13 MR. WILLIAMS: No.

14 JUDGE PRIDGIN: All right. Thank you.  
15 Mr. Mills, any questions?

16 MR. MILLS: No questions.

17 JUDGE PRIDGIN: Mr. Steiner, Mr. Fischer?

18 MR. FISCHER: Just briefly, Judge.

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. FISCHER:

21 Q. Mr. Barnes, is it correct that you have  
22 participated in rate cases as a financial analyst in the  
23 past?

24 A. Yes, it is.

25 Q. Is it your understanding based upon that --

1 that participation as a witness that the Commission generally  
2 does look at ROE, capital structure, cash working capital,  
3 depreciation and capital markets as a part of the rate case  
4 analysis?

5 A. Yes.

6 Q. Is it your understanding that in Case Number  
7 ER-2010-0356, the Commission found a revenue requirement for  
8 GMO?

9 A. I was not a witness in that case, but yes,  
10 that's my understanding.

11 Q. Is it also your understanding that the company  
12 was not allowed to file tariffs to recover the full amount of  
13 the revenue requirement increase that the Commission found to  
14 be just and reasonable in that case?

15 A. I don't know. I did not participate with the  
16 tariff filings.

17 Q. Is it your understanding that the Commission  
18 ordered a phase-in of the rate increase that was found to be  
19 appropriate in that case?

20 A. Yes.

21 Q. And that first year phase-in would not have  
22 included the full amount of the revenue requirement increase  
23 under typical phase-in plan, right?

24 A. Again, I haven't looked at the tariffs that  
25 closely, so I'm not for sure. I think that's my



1 understanding of it.

2 Q. Okay.

3 MR. FISCHER: That's all I have. Thank you.

4 JUDGE PRIDGIN: Mr. Fischer, thank you.

5 Mr. Conrad?

6 MR. CONRAD: Just a few, Judge.

7 CROSS-EXAMINATION

8 QUESTIONS BY MR. CONRAD:

9 Q. Good morning, Mr. Barnes.

10 A. Good morning.

11 Q. I will direct your attention primarily to  
12 Exhibit 6, and let's cover a couple of things there. Page 3,  
13 line 19, you're referring to LIBOR.

14 A. Yes.

15 Q. That's the London InterBank Offered Rate  
16 change; is that correct?

17 A. That's correct.

18 Q. You indicate there it changes monthly?

19 A. Yes. It could actually change daily.

20 Q. Can you tell me what, insofar as daily, it's  
21 going to be on June 25, 2012?

22 A. I don't know what that rate's going to be.

23 Q. How about on June 25, 2013?

24 A. Same answer, I don't know.

25 Q. And on -- and June 25, 2014?

1           A.       Same answer, I don't know.

2           Q.       Now I notice at the top of page 4, there was a  
3 small table --

4           A.       Yes.

5           Q.       -- that seemed to end in August of 2011, am I  
6 right?

7           A.       Yes.

8           Q.       Do you have information that could extend that  
9 table out by month to 2014?

10          A.       No. I could go to December, 2011.

11          Q.       That's as far as you have right now?

12          A.       Right now, yes.

13          Q.       Now I notice, Mr. Barnes, I'm looking at your  
14 case participations, that's your schedule I?

15          A.       1-1, yes.

16          Q.       Yes, 1-1. You've been active here in this  
17 company, Missouri-American Water, Empire, right?

18          A.       Which schedule are you looking at, Mr. Conrad?

19          Q.       1-1, 1-2, 1-3, 1-4.

20          A.       Yes.

21          Q.       Now on a couple of those, here on 1-1, I see  
22 finance. That's way back in 2005. The rate of return, you  
23 seem to have done some level of specialization on there on  
24 1-1 and 1-2 for Algonquin, Atmos, Kansas City Power & Light.  
25 Do you see those?

1           A.     Yes.

2           Q.     Did you hear the questions that I asked Mr. --

3 going gone --

4           A.     Mr. Murray?

5           Q.     Murray, yeah. I'm sorry.

6           A.     Yes.

7           Q.     Do you have any different perception than he

8 does with respect to the significance of a rate of return

9 analysis for a regulated utility?

10          A.     No, I do not.

11          Q.     You'd agree with -- with him, and perhaps with

12 me, that's a relevant factor for the Commission to consider?

13          A.     Yes.

14          Q.     And as I did with him, do you know what the

15 rate of return for the Commission -- for this company,

16 rather, is going to be on June 25, 2012, 2013, 2014?

17          A.     No, I do not.

18          Q.     You'd have to do a study on that?

19          A.     That's correct.

20          Q.     And would you agree with me that the last

21 study that you did for this company was sometime mid-2011?

22          A.     As far as rate of return?

23          Q.     Yes.

24          A.     I believe Empire was the last rate of return I

25 did.

1 Q. No, for this company.

2 A. Oh, for this?

3 Q. For this company, yes.

4 A. In 2011?

5 Q. Yeah.

6 A. I did not do rate of return for this company  
7 in 2011.

8 Q. My mistake. Now, I do notice here on Schedule  
9 1-4 that you did some work on fuel adjustment clauses.

10 A. Yes.

11 Q. Why do we have a fuel adjustment clause in  
12 Missouri?

13 A. It's to adjust rates in between a rate case  
14 for the fuel and purchase power expenses that the company  
15 incurs.

16 Q. Do those fuel costs all get recorded in the  
17 FAC?

18 A. There's -- most of them. So there's some in  
19 rate base and whatever's above and below that base is flowed  
20 through the fuel adjustment clause.

21 Q. Is that fuel adjustment clause ever subject to  
22 a prudence audit or review in your understanding?

23 A. Yes, it is.

24 Q. Are you aware of any incidents, let's say, or  
25 examples in which someone has audited a fuel adjustment

1 clause and found the utility to be imprudent?

2 A. In the past for GMO, you mean, or just for  
3 any?

4 Q. Any utility right now.

5 A. Yes.

6 Q. And that would be?

7 A. Currently there's an issue the Staff has with  
8 GMO and there was one recently with Ameren.

9 Q. The one with GMO, that's the company that we  
10 have here today, right?

11 A. Yes.

12 Q. And that had to do with hedging expenses where  
13 they were trying to somehow tie the electric spot market to  
14 the gas market, am I right? High level?

15 A. High level, that's my understanding. I'm not  
16 a witness for that piece of it, but yes.

17 Q. And I don't -- my intention is not to get you  
18 involved in that, Mr. Barnes. Have you, in the course of  
19 your career for the Commission, dealt with other issues than  
20 rates of return and fuel adjustment and so on?

21 A. Those are the main issues that I have dealt  
22 with.

23 Q. And would you agree with me that the value of  
24 the company's physical plant that is devoted public service  
25 is a factor in the calculation of a rate of return and

1 ultimately into rates?

2 A. Yes.

3 Q. Is that a relevant factor?

4 A. Yes.

5 Q. Is depreciation and the calculation of  
6 depreciation a relevant factor?

7 A. Yes.

8 Q. Are you able to tell me what the value of the  
9 company's rate base would be on June 25, 2012, 2013, or 2014?

10 A. No, I couldn't tell you.

11 Q. Have you, in your course of employ by the  
12 Commission, ever worked as an auditor on any other rate case  
13 related issues? Your curriculum vitae does not indicate you  
14 submitted testimony.

15 A. Not -- I've done rate of return and fuel  
16 adjustment clause and some finance cases, but those are about  
17 it.

18 MR. CONRAD: Okay. Your Honor, I believe  
19 that's all. Thank you, Mr. Barnes.

20 THE WITNESS: Thank you.

21 JUDGE PRIDGIN: Mr. Conrad, thank you. Let me  
22 see if we have any bench questions.

23 Commissioner Jarrett?

24 COMMISSIONER JARRETT: Mr. Murray, good  
25 morning.

1 THE WITNESS: Mr. Barnes.

2 COMMISSIONER JARRETT: Mr. Barnes, I'm sorry.

3 I have no questions.

4 JUDGE PRIDGIN: Commissioner Kenney?

5 MR. CONRAD: I'm glad to know I'm not the only  
6 one.

7 COMMISSIONER KENNEY: No questions.

8 JUDGE PRIDGIN: Thank you. I have no  
9 questions. Any redirect?

10 MR. WILLIAMS: Yes, just a few.

11 JUDGE PRIDGIN: Mr. Williams.

12 REDIRECT EXAMINATION

13 QUESTIONS BY MR. WILLIAMS:

14 Q. Mr. Barnes, you -- during your testimony, you  
15 referred to Ameren. Did you intend to refer to Ameren or  
16 Union Electric Company doing business as Ameren Missouri?

17 A. Ameren Missouri.

18 Q. And then turning to Schedule 1 in your direct  
19 testimony.

20 A. Yes.

21 Q. Which company is it that's before the  
22 Commission here in this case?

23 A. It's GMO, G-M-O.

24 Q. And where in Schedule 1 do you have any  
25 reference to case participation involving GMO?

1           A.       I don't. I was mistaken on that answer. It's  
2 Kansas City Power & Light that I performed rate of return  
3 analysis for.

4           Q.       And what's the relationship between GMO and  
5 Kansas City Power & Light, if you know?

6           A.       They -- they merged a few years ago. They're  
7 technically separate companies.

8           Q.       Are they affiliates?

9           A.       Yes.

10          Q.       And do you know about when they became  
11 affiliates?

12          A.       I don't know the exact, 2005, 2006. I'm not  
13 for sure.

14                   MR. WILLIAMS: I have no further questions.

15                   JUDGE PRIDGIN: All right. Thank you.

16 Mr. Barnes, thank you very much. You may step down.

17 I show Mr. Wells is the next witness.

18                   MR. WILLIAMS: Yes.

19                   JUDGE PRIDGIN: All right. Mr. Wells, if  
20 you'll come forward and be sworn, please.

21                   (The witness was sworn.)

22                   JUDGE PRIDGIN: Thank you very much, sir.

23 Please have a seat. Mr. Williams.

24

25



## 1 DIRECT EXAMINATION

2 QUESTIONS BY MR. WILLIAMS:

3 Q. What is your name?

4 A. Curt Wells.

5 Q. Mr. Wells, is what's been premarked as Exhibit  
6 Number 7, the rebuttal testimony of Curt Wells, is that your  
7 testimony here today?

8 A. Yes, it is.

9 MR. WILLIAMS: I offer Exhibit 7.

10 JUDGE PRIDGIN: Okay. Exhibit 7 has been  
11 offered and I do show the same standing objection from AGP.  
12 Is there any other objection?

13 MR. CONRAD: No, sir.

14 JUDGE PRIDGIN: All right. Hearing none,  
15 Exhibit 7 is admitted subject to the standing objection,  
16 which the Commission will rule upon later.17 (EXHIBIT NUMBER 7 WAS RECEIVED INTO EVIDENCE  
18 BY JUDGE PRIDGIN.)19 JUDGE PRIDGIN: Anything further before  
20 Mr. Wells stands cross?

21 MR. WILLIAMS: No.

22 JUDGE PRIDGIN: All right. Thank you.  
23 Mr. Mills, any questions?

24 MR. MILLS: No questions.

25 JUDGE PRIDGIN: Mr. Fischer, Mr. Steiner?

1 MR. FISCHER: Just briefly.

2 CROSS-EXAMINATION

3 QUESTIONS BY MR. FISCHER:

4 Q. Mr. Wells, will you refer to page 1 of your  
5 testimony, line 25, where you're asked the question: Are  
6 those tariff -- what are those tariff sheets designed to do?  
7 Do you see that?

8 A. Yes, I do.

9 Q. You go on to answer that they are designed to  
10 allow KCP&L Greater Missouri Operations Company to recover  
11 the \$7,671,708 in rate revenue deferred from KCP&L Greater  
12 Missouri Operations Company's general electric rate increase  
13 the Commission ordered in Case Number ER-2010-0356. Do you  
14 see that?

15 A. Yes, sir.

16 Q. When you say "deferred," what do you mean?

17 A. As I recall, the Commission ruled that the  
18 amounts in addition to the original requested 22.1 million  
19 would be recovered over a two-year phase-in period and that's  
20 what I'm referring to as the amount beyond the 22.1 million.

21 Q. Is it correct that the Commission found that  
22 approximately 7.6 million should be recovered above what was  
23 actually authorized in the first year of the tariffs?

24 A. Yes.

25 Q. And if the company is not allowed to recover

1 that 7.6 million, will there be a shortfall from what the  
2 company was authorized by this Commission?

3 A. Yes.

4 MR. CONRAD: Objection, speculation.

5 JUDGE PRIDGIN: Mr. Fischer?

6 MR. FISCHER: I'm asking his understanding of  
7 how the mechanics of this deferral work.

8 JUDGE PRIDGIN: All right. I'll overrule.

9 BY MR. FISCHER:

10 Q. And then on the next page, you say: As well  
11 as the revenue that would have been allowed without the  
12 phase-in plus a 3.25 percent carrying cost rate for the delay  
13 in recovery of that revenue; is that right?

14 A. Yes.

15 Q. So there would be some additional amount of  
16 money that would be -- beyond that 7.6 million that the  
17 company would not recover if the phase-in doesn't go forward?

18 A. Yes.

19 MR. FISCHER: That's all I have. Thank you.

20 JUDGE PRIDGIN: Mr. Fischer, thank you.

21 Mr. Conrad?

22 MR. CONRAD: Yes, Your Honor. Good morning.

23 THE WITNESS: Good morning.

24

25

## CROSS-EXAMINATION

1  
2 QUESTIONS BY MR. CONRAD:

3 Q. Mr. Wells, I wanted to go through two or three  
4 areas with you. I notice you have an Attachment 102, I  
5 believe it is, where you have testified before --

6 A. Yes.

7 Q. -- on several issues. One of them includes  
8 the calculation of normal weather. Why is normal weather an  
9 important consideration?

10 A. Well, essentially, the weather in any given  
11 year varies substantially from any other given year. And  
12 this is an attempt to find an average year.

13 Q. To what end?

14 A. To better account for any spikes or any high  
15 exceptionally warm summers, cold summer, warm winters, cold  
16 winters, to normalize the revenue stream for the company.

17 Q. Okay. So it has some effect, then, I take it,  
18 on the company's revenues --

19 A. Yes.

20 Q. -- for that period? Would it also have some  
21 potential on expenses --

22 A. I imagine so.

23 Q. -- for the company also? Would the company's  
24 revenues and expenses be relevant factors in setting of  
25 rates?

1           A.       Yes.

2           Q.       So in that sense, normal -- normalization of  
3 weather, weather adjustments are relevant factors?

4           A.       Yes.

5           Q.       Can you tell me what the weather is going to  
6 be on June 25, 2012?

7           A.       No, sir.

8           Q.       How about June 25, 2013?

9           A.       No.

10          Q.       Or 2014?

11          A.       No, I can't.

12          Q.       So may I conclude from that that you would not  
13 know what the company's revenues were likely to be on  
14 June 25, 2012?

15          A.       That's correct.

16          Q.       Same on 2013?

17          A.       Yes, sir.

18          Q.       Same June, 25, 2014?

19          A.       Yes.

20          Q.       Now, is customer growth an issue sometimes?

21          A.       It's a factor that's considered.

22          Q.       Relevant factor?

23          A.       Yes.

24          Q.       And when we talk about customer growth, sir, I  
25 want to be clear with you that we're not talking about

1 customer measures that get more obese. We're talking about  
2 customers in their usage that grows?

3 A. Yes, sir.

4 Q. Right?

5 A. Right.

6 Q. And usage can also shrink?

7 A. Yes, it can.

8 Q. In dealing with revenues, do you frequently  
9 have occasion to look at jurisdictional allocations?

10 A. Not personally, but it is -- the revenues and  
11 usage I look at are based on Missouri jurisdiction.

12 Q. Do you frequently have occasion to look at  
13 off-system sales?

14 A. I do not.

15 Q. Now you frequently, I take it from your  
16 curriculum vitae here or your testimony reports filed,  
17 frequently look at rate design?

18 A. Not frequently. I have done some rate design,  
19 yes.

20 Q. You have done some. Did you enjoy it?

21 A. Always.

22 Q. What is rate design?

23 A. It's designing the rates to essentially  
24 reflect cost of service.

25 Q. Would revenues by class of customer have

1 anything to do with that?

2 A. Yes.

3 Q. Would revenues by class of customer be a  
4 relevant factor for the Commission to consider in setting  
5 rates for particular customer classes?

6 A. Yes, sir.

7 Q. Do you know what the relative revenue shares  
8 for customer classes are going to be in June of -- June 25 of  
9 2012?

10 A. No, sir.

11 Q. Same question, 2013?

12 A. Same answer, I don't know.

13 Q. How about 2014?

14 A. Same answer.

15 Q. Now, has it been your experience -- let me --  
16 strike that.

17 Mr. Wells, you're here testifying about --  
18 primarily about tariffs?

19 A. Yes, sir.

20 Q. That's what the body of your testimony --

21 A. Yes.

22 Q. -- concerns? Do you frequently, in your  
23 career with the Commission, have occasion to look at tariffs?

24 A. Yes, I do.

25 Q. Can you tell me, if you know, has the

1 Commission Staff ever proposed changes to tariffs?

2 A. You're speaking of tariffs proposed by the  
3 company?

4 Q. Or by Commission Staff.

5 A. I believe so.

6 Q. And those would be relevant factors for the  
7 Commission to consider in setting of tariff rates to charge  
8 customers, correct?

9 A. I'm sorry, can you repeat that?

10 Q. In the tariff changes that you indicated Staff  
11 was -- had suggested in -- in a number of other cases that  
12 you had experience with, would those be relevant factors for  
13 the Commission to consider?

14 A. Yes.

15 Q. If they had been recommended by Staff, they  
16 certainly wouldn't be irrelevant?

17 A. I would hope not.

18 Q. I mean, you-all would never propose an  
19 irrelevant --

20 A. Never.

21 Q. -- change? Now, do you -- are you prepared  
22 today to tell me that the Staff will have no relevant  
23 changes, no relevant factors in tariff changes by June 25,  
24 2012?

25 A. That would depend on whether the company



1 proposed the rate case or changes to the tariffs.

2 Q. So the answer really is you don't know?

3 A. I don't know.

4 Q. Would the answer be the same for 2013?

5 A. Yes.

6 Q. Same for 2014?

7 A. Same.

8 Q. Now let me take you back real quick, and I'm  
9 sorry if we may have covered this. When you deal with --  
10 with rate design, you also occasionally have to deal with  
11 class cost of service?

12 A. Yes.

13 Q. And that depends on revenues from particular  
14 classes of customers?

15 A. Yes. I'm not responsible for it, but I  
16 have -- I'm aware of it.

17 Q. But you have done weather normalization?

18 A. Yes.

19 Q. And does weather normalization have greater or  
20 lesser impact on certain classes of customers?

21 A. It will vary by class of customer.

22 Q. Now do you know how it was going to vary from  
23 when you had done whatever you had done in ER-2010-0356, if  
24 you did something there --

25 A. I did.

1 Q. -- to June 25, 2012?

2 A. Again, the question?

3 Q. I'll -- let's break it down. Did you do any  
4 weather normalization or work on weather normalization in  
5 ER-2010-0356?

6 A. Yes, I did.

7 Q. When was that done?

8 A. It was based on the test year as adjusted for  
9 true-up -- an update period and true-up.

10 Q. Now let's just get that into the record. Do  
11 you remember what the test year was?

12 A. No, sir, I don't.

13 Q. Do you remember what the true-up period was?

14 A. I don't.

15 Q. But whatever the record would show --

16 A. Yes.

17 Q. -- would be correct?

18 A. Yes.

19 Q. So June 25 of 2012 would be sometime after  
20 that, right?

21 A. Definitely.

22 Q. And that weather analysis or weather  
23 normalization could vary from what you had when you did the  
24 weather normalization or analysis in ER-2010-0356?

25 A. The actual weather would most likely be

1 different.

2 Q. Same would be true with respect to the date,  
3 June 25, 2013?

4 A. Yes.

5 Q. And 2014 also?

6 A. And 2014.

7 Q. Now, are there any other issues that you have  
8 worked on in rate cases for utilities over the years with  
9 your long and distinguished career with the Commission, sir?

10 A. What is on my list of experience covers it.

11 Q. Well what I'm seeing here is basically revenue  
12 calculation of normal weather. I think you had one -- no,  
13 actually two, one for Empire and one for TriGem, on rate  
14 design?

15 A. Yes.

16 Q. Probably remember that steam case well?

17 A. I will never forget it.

18 Q. And basically on revenues?

19 A. Yes, sir.

20 Q. And revenues for utility can vary?

21 A. Yes.

22 Q. And for electric utility, what's the primary  
23 driver for revenue?

24 A. Significant driver would be weather.

25 MR. CONRAD: Your Honor, I believe that's all.

1 Thank you.

2 JUDGE PRIDGIN: Mr. Conrad, thank you.

3 Let me see if we have any bench questions.

4 Commissioner Jarrett?

5 COMMISSIONER JARRETT: No questions, thank  
6 you.

7 JUDGE PRIDGIN: Commissioner Kenney?

8 COMMISSIONER KENNEY: No, thank you.

9 JUDGE PRIDGIN: Any redirect?

10 MR. WILLIAMS: No, thank you.

11 JUDGE PRIDGIN: All right. Mr. Wells, you may  
12 step down. Thank you.

13 According to the list of issues, order of  
14 witnesses, I don't see any more witnesses listed. Is there  
15 any further evidence or anything further from counsel?

16 MR. CONRAD: We have nothing, Your Honor.

17 Thank you.

18 COMMISSIONER KENNEY: I have a question.

19 JUDGE PRIDGIN: Commissioner Kenney.

20 COMMISSIONER KENNEY: I may have missed this  
21 during the opening so I apologize for being late to all the  
22 parties. So my question is from Mr. Conrad, and maybe you  
23 covered this, but I just want to make sure I'm clear.

24 The central focal point of Ag Processing's  
25 position is this Commission is without jurisdiction to

1 determine this, correct?

2 MR. CONRAD: That's correct, sir.

3 COMMISSIONER KENNEY: And the rest of your  
4 points flow from that central focal point, correct?

5 MR. CONRAD: Well, I have attempted to go  
6 forward with this hearing today and make the record that I  
7 had indicated subject to that -- that objection about  
8 jurisdiction.

9 COMMISSIONER KENNEY: So the jurisdictional  
10 issue is first, and then secondarily, is it -- is your  
11 argument that we can't determine rates into the future  
12 because we would not be taking into account all relevant  
13 factors, and therefore cannot allow the tariffs to go into  
14 effect automatically in the subsequent years? Is that the  
15 crux of your argument?

16 MR. CONRAD: Not precisely, if I may.

17 COMMISSIONER KENNEY: Well, help me out.

18 MR. CONRAD: The jurisdictional argument is  
19 based primarily, Your Honor, on the idea that the Commission  
20 loses jurisdiction when a writ of review is filed. Now, here  
21 there have been two; one filed by the company in late June,  
22 one that we filed in early July. Both those have been  
23 issued.

24 COMMISSIONER KENNEY: And those are purely  
25 legal arguments?

1                   MR. CONRAD: Yes, sir, those are purely legal  
2 arguments. I will grant you that.

3                   COMMISSIONER KENNEY: Okay.

4                   MR. CONRAD: That's the jurisdiction issue in  
5 a nutshell. But the other part of that is that we believe  
6 the Commission has misread and misinterpreted 393.155. There  
7 is no grant of authority in that statute to have a phase-in  
8 which in total exceeds the amount that the company requested.  
9 There is certainly authority in that statute if the total  
10 with the phase-in -- all the phase-ins aggregated is at or  
11 below what the company had requested.

12                   You were not here, Your Honor, but counsel for  
13 GMO noted two earlier cases, Wolf Creek and Callaway, and I  
14 think if you -- when you look at the record, the transcript,  
15 you'll see reference to those. And in both those cases, the  
16 award by the Commission was less in total than what the  
17 company had requested.

18                   Now, here, he acknowledged that the utility  
19 had received an award from the Commission that exceeded what  
20 they had asked for in the St. Joe district where my client  
21 is. That's the issue that we have. That at base, and you  
22 don't get around that, in our view, by doing a phase-in. And  
23 certainly a phase-in that exceeds in the -- in total what the  
24 utility's request was.

25                   COMMISSIONER KENNEY: What's the legal

1 authority for that assertion?

2 MR. CONRAD: That's what we dealt with here in  
3 the last few minutes, and I think you were here for most of  
4 this, is that if you look into the future, since I believe --  
5 we believe you have misinterpreted and I say "you," but the  
6 Commission --

7 COMMISSIONER KENNEY: Right.

8 MR. CONRAD: -- has misinterpreted 393.155 to  
9 find an authority that does not exist, then the only thing  
10 that you can do in setting rates is look at all relevant  
11 factors. And on that, the cases are pretty clear. Now, the  
12 witnesses here have -- have pretty much -- well, I'll leave  
13 the record alone and not argue from that, but I'm probably  
14 beyond what you had asked.

15 COMMISSIONER KENNEY: No, that's fine. Thank  
16 you. That helped. That's helpful, though. Thanks.

17 THE COURT: Commissioner Kenney, thank you.

18 Anything further from the bench?

19 COMMISSIONER JARRETT: Nope.

20 JUDGE PRIDGIN: Anything further from counsel?  
21 All right. Once the transcript is filed, I will issue a  
22 briefing schedule and if there's nothing further from  
23 counsel -- Mr. Fischer?

24 MR. FISCHER: Judge, given the very narrow  
25 nature of this issue, I'm not sure we need to file much of a

1 brief. We'd be willing to submit it on the record.

2 JUDGE PRIDGIN: I may require or would  
3 appreciate some briefs. And I think I have a pretty good  
4 grasp of what the issues are, but I certainly would like  
5 to -- to hear what -- what counsel would have to say after --  
6 after evidence has been submitted.

7 MR. WILLIAMS: Judge, the only other thing I'd  
8 point out is the June 4th effective date of the tariffs that  
9 are currently on file.

10 JUDGE PRIDGIN: Correct. And I did recall, we  
11 do have some time. But I do have an operational law date  
12 that is on the horizon.

13 MR. CONRAD: Judge, as far as we're concerned,  
14 to follow-up on Mr. Fischer's suggestion, once you get the  
15 transcript, I think we would only need a couple weeks, and I  
16 don't foresee multiple rounds of briefs. I think we can --  
17 we can say what we need to in one.

18 JUDGE PRIDGIN: Oh, I would agree. I don't  
19 think it's -- I don't think more than one round of briefs  
20 would be needed. And obviously, I mean, we have some time if  
21 you need more time, please feel free to let me know, but I  
22 certainly contemplated allowing two or three weeks after the  
23 transcript had been filed to -- to submit briefs.

24 So is there anything further from counsel?  
25 All right. Hearing nothing, that will conclude the hearing



1 in file number ER-2012-0024. Thank you very much. We're off  
2 the record.

3 (End of Proceedings.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

STATE OF MISSOURI )

) ss:

COUNTY OF GASCONADE )

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime 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

## I N D E X

1		
2	Opening Statement by Mr. Fischer	15
	Opening Statement by Mr. Williams	26
3	Opening Statement by Mr. Conrad	28
4		
5	GREATER MISSOURI OPERATION'S EVIDENCE	
6	KEVIN BRYANT:	
	Direct Examination by Mr. Fischer	35
7		
8	TIM RUSH:	
	Direct Examination by Mr. Steiner	38
9		
10		
	STAFF'S EVIDENCE	
11		
	DAVID MURRAY:	
12	Direct Examination by Mr. Williams	39
	Cross-Examination by Mr. Conrad	41
13		
14	MATTHEW BARNES:	
	Direct Examination by Mr. Williams	48
15	Cross-Examination by Mr. Fischer	49
	Cross-Examination by Mr. Conrad	51
16	Redirect Examination by Mr. Williams	57
17		
	CURT WELLS:	
18	Direct Examination by Mr. Williams	59
	Cross-Examination by Mr. Fischer	60
19		
20		
21		
22		
23		
24		
25		

## EXHIBIT INDEX

MARKED RCV'D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Exhibit Number 1		
Non-Unanimous Stipulation and Agreement	13	16
Exhibit Number 2		
Direct Testimony of Kevin Bryant	13	36
Exhibit Number 3		
Direct Testimony of Tim Rush	13	38
Exhibit Number 4		
Direct Testimony of David Murray	13	40
Exhibit Number 5		
Rebuttal Testimony of David Murray	13	40
Exhibit Number 6		
Direct Testimony of Matthew Barnes	13	49
Exhibit Number 7		
Direct Testimony of Curt Wells	13	59