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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
September 9, 2014
Jefferson City, Missouri
Volume 13

In the Matter of Liberty)
Utilities (Midstates Natural)
Gas) Corp. d/b/a Liberty)
Utilities' Tariff Revisions) Case No.
Designed to Implement a General) GR-2014-0152
Rate Increase for Natural Gas)
Service in the Missouri Service)
Areas of the Company.)

RONALD D. PRIDGIN, Presiding,
SENIOR REGULATORY LAW JUDGE.
ROBERT S. KENNEY, Chairman
STEPHEN M. STOLL,
WILLIAM KENNEY,
DANIEL Y. HALL,
SCOTT T. RUPP,
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838
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1 P R O C E E D I N G S

2 (WHEREUPON, the hearing began at
3 8:30 a.m.)

4 JUDGE PRIDGIN: Good morning. We are
5 on the record, and when we adjourned last night, I
6 understood when we left off that Kim Cox would be
7 the next witness for Staff on contract issues. And
8 counsel, if you'll correct me if I'm mistaken.
9 Please let me know if there's anything else we need
10 to take up before she takes the stand.

11 MR. KEEVIL: Judge, it occurred to us
12 or occurred to me last night after we recessed that
13 a couple of the exhibits that I offered during the
14 in-camera portion of yesterday's session were
15 highly confidential. So since we were in camera
16 when they were introduced, we're okay so far.

17 But the reporter from yesterday,
18 since we have a different reporter, somebody will
19 need to make sure that those -- I think it was
20 Exhibit No. 54 and Exhibit No. 55, which were
21 Liberty responses to DRs 278 and 276, those are
22 highly confidential and need to be so designated so
23 when the reporter files the exhibits along with the
24 transcript, that they are properly protected.

25 JUDGE PRIDGIN: Very good. Thank

1 you, Mr. Keevil. Anything else from counsel?

2 All right. Hearing nothing.

3 Ms. Cox, if you'll come forward to be sworn,
4 please.

5 (Witness sworn.)

6 JUDGE PRIDGIN: Thank you very much.
7 Please have a seat. And, Mr. Keevil, when you're
8 ready.

9 MR. KEEVIL: Thank you, Judge.

10 KIM COX testified as follows:

11 DIRECT EXAMINATION BY MR. KEEVIL:

12 Q. Would you state your name for the
13 record, please.

14 A. Kim Cox.

15 Q. And spell your last name.

16 A. C-o-x.

17 Q. By whom are you employed and in what
18 capacity?

19 A. I'm employed by the Missouri Public
20 Service Commission as a Quality Analyst 2.

21 Q. Ms. Cox, did you contribute to the
22 Staff's revenue requirement cost of service report,
23 which I believe has been marked as Exhibit 13 in
24 this case?

25 A. Yes, I did.

1 **Q. And do you have any additions or**
2 **corrections to your section of that report?**

3 A. Yes, I do, and they're actually HC.

4 **Q. Oh, they're HC. Do you have any --**

5 A. Non-HC? No.

6 **Q. -- non-HC?**

7 MR. KEEVIL: Okay. I guess, Judge,
8 we need to go in camera, then.

9 JUDGE PRIDGIN: All right. Just a
10 moment, please.

11 (REPORTER'S NOTE: At this point, an
12 in-camera session was held, which is contained in
13 Volume 14, pages 301 through 304 of the
14 transcript.)

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1 JUDGE PRIDGIN: We are back in public
2 forum.

3 BY MR. KEEVIL:

4 Q. Ms. Cox, did you also cause to be
5 prepared and filed in this case rebuttal testimony
6 which has been marked as Exhibit 22 and surrebuttal
7 testimony which has been marked as Exhibit 23?

8 A. Yes.

9 Q. And do you have any additions or
10 corrections you need to make to either of those
11 pieces of testimony?

12 A. No, I do not.

13 Q. If I were to ask you the questions
14 contained in those pieces of testimony and in that
15 cost of service study, would your answers today be
16 the same as contained therein as you have corrected
17 this morning on the stand?

18 A. Yes.

19 MR. KEEVIL: Judge, I would offer
20 Exhibits 22 and 23 and tender the witness for
21 cross-examination.

22 JUDGE PRIDGIN: Mr. Keevil, thank
23 you. Any objections?

24 (No response.)

25 JUDGE PRIDGIN: Hearing none, I will

1 show Exhibit 22, both HC and NP, as admitted and
2 Exhibit 23HC and NP admitted.

3 (STAFF EXHIBIT NOS. 22NP, 22HC, 23NP
4 AND 23HC WERE RECEIVED INTO EVIDENCE.)

5 JUDGE PRIDGIN: And
6 cross-examination, Mr. Poston?

7 MR. POSTON: No questions.

8 JUDGE PRIDGIN: I don't see Mr. Knee.
9 Mr. Downey?

10 MR. DOWNEY: Yes, Judge.

11 CROSS-EXAMINATION BY MR. DOWNEY:

12 Q. Good morning.

13 A. Good morning.

14 Q. Is this your first time testifying?

15 A. Yes, it is.

16 Q. I hope you enjoy it.

17 Now, you claim in your testimony that
18 Noranda did not provide adequate support -- or I'm
19 sorry -- Liberty did not provide adequate support
20 for the special contract with Noranda.

21 A. Yes.

22 Q. Do you recall that testimony?

23 A. Yes.

24 Q. And you also referenced a DR response
25 from Liberty, I think it was No. 0267.

1 A. Okay.

2 Q. And, in fact, you attach that DR
3 response to your surrebuttal, do you not?

4 A. Yes, I did.

5 Q. And in that response from Liberty,
6 Liberty references testimonies of Mr. Swogger and
7 Mr. Johnstone, correct?

8 A. Correct.

9 Q. And you, in fact, cite or quote from
10 Mr. Swogger's testimony in your surrebuttal, do you
11 not?

12 A. I do.

13 Q. On page -- pages 3 or 4?

14 A. Just a moment. Yes, it was on
15 page 4.

16 Q. Okay. And did you read all of his
17 testimony?

18 A. I did review it.

19 Q. Okay. And this is his -- I guess
20 it's his direct testimony in Case No. GR-206 --
21 excuse me -- 2006-0387?

22 A. Yes.

23 Q. All right. And you quoted some of it
24 but not all of his testimony, correct?

25 A. That is correct.

1 **Q. All right. Did you also read**
2 **Mr. Johnstone's testimony?**

3 A. No, I did not.

4 **Q. Okay. It was referenced in that DR**
5 **response, though, right?**

6 A. Yes, it was.

7 MR. DOWNEY: Your Honor, at this
8 point I would -- I don't think I've had it marked,
9 but I know everybody has a copy of it, and it's up
10 at the witness stand. I'd like to have the Swogger
11 testimony marked as an exhibit, and I want to offer
12 it.

13 JUDGE PRIDGIN: And I show that would
14 be Exhibit No. 57. So that is Swogger testimony
15 from -- I'm sorry, Mr. Downey. Could you give me
16 the case number again?

17 MR. DOWNEY: Sure. It is
18 GR-2006-0387.

19 (NORANDA EXHIBIT NO. 57 WAS MARKED
20 FOR IDENTIFICATION BY THE REPORTER.)

21 BY MR. DOWNEY:

22 **Q. I've handed you Exhibit 57. Is that**
23 **the testimony that you reviewed after you had**
24 **reviewed the DR response from Liberty?**

25 A. It appears so.

1 MR. DOWNEY: Your Honor, I offer
2 Exhibit 57.

3 JUDGE PRIDGIN: Any objections?

4 MR. KEEVIL: Yes, Judge, I think I --
5 I think I should object to this. The testimony of
6 Mr. Swogger, there's no indication that it was
7 actually received into evidence in the case that
8 Mr. Downey referred to.

9 I would also say that that case, this
10 particular issue stipulated out or settled out,
11 however you want to refer to it. So there was
12 obviously no cross-examination of the testimony
13 regarding the testimony in that case. So I don't
14 think it's passed the test of veracity that would
15 otherwise apply to testimony which has been subject
16 to cross.

17 It's also -- I mean, it's hearsay for
18 one thing. Depending on whether it's being offered
19 for the truth of the matter contained therein,
20 Mr. Downey hasn't indicated exactly what it's being
21 offered for, but I would raise a hearsay objection.

22 And the other thing I would say is
23 that, unfortunately, Mr. Swogger's -- it's my
24 understanding that Mr. Swogger is deceased, so
25 there's no way that he could be examined concerning

1 the testimony now. So I don't think it's proper
2 for Noranda to attempt to use a data response of
3 Liberty to bootstrap a piece of testimony from an
4 old case into the record in this case.

5 If they wanted it in, they could
6 have -- they could have attached it as an exhibit
7 to one of their pieces of testimony and given the
8 parties an opportunity to respond to it in this
9 case and to conduct discovery regarding it in this
10 case, but they chose not to do so.

11 MR. DOWNEY: Judge, may I respond?

12 JUDGE PRIDGIN: Mr. Downey. Yes,
13 please.

14 MR. DOWNEY: First of all, it's not
15 offered for the truth. Secondly, I think the
16 Commission should have the complete picture. The
17 witness is selectively quoting from the testimony
18 and leaving out important other aspects of the
19 testimony.

20 This goes to the issue of, you know,
21 whether there's adequate justification presented to
22 Staff for the rate, contract rate. So I think it's
23 proper.

24 JUDGE PRIDGIN: Objection's
25 overruled. Exhibit 57 is admitted.

1 (NORANDA EXHIBIT NO. 57 WAS RECEIVED
2 INTO EVIDENCE.)

3 MR. DOWNEY: Ms. Cox -- Judge, I was
4 going to ask some other questions, but I think it
5 all goes into HC, and it's probably not that
6 necessary, so I'll end my cross right there. Thank
7 you.

8 JUDGE PRIDGIN: Mr. Downey, thank
9 you. Mr. Fischer or Mr. Dority?

10 CROSS-EXAMINATION BY MR. FISCHER:

11 Q. Good morning, Ms. Cox.

12 A. Good morning.

13 Q. I think I'll do it from up here so we
14 can hopefully connect. If you don't understand my
15 question, please ask and I'll try to clarify it.

16 As I understand the Staff's Cost of
17 Service Report, you're the expert who sponsors the
18 Staff's proposed adjustments related to Noranda and
19 General Mills; is that right?

20 A. That's correct.

21 Q. And whenever I reviewed the Staff's
22 position statement in this case on those issues --
23 have you seen that?

24 A. Yes, I have.

25 Q. I noticed that at the bottom of

1 page 3, Staff indicated that Staff believes that
2 whether or not Liberty should be authorized to
3 continue providing service to select customers
4 pursuant to special contracts is a policy decision
5 for the Commission. Do you see that?

6 A. Yes.

7 Q. Does that mean to you that Staff
8 should not attempt to resolve this issue because
9 it's an important decision for the Commissioners to
10 resolve?

11 MR. KEEVIL: I'm going to object to
12 this. As Mr. Fischer already indicated, Ms. Cox is
13 here sponsoring the adjustment, which is actually
14 Part C of that issue on page 4 of Staff's Statement
15 of Position.

16 The whether or not they should be
17 authorized to enter into special contracts issue
18 was the testimony of David Sommerer, who has
19 already been up and Liberty waived, and I think
20 everyone waived cross with Mr. Sommerer. So this
21 particular question is, I believe, beyond the scope
22 of Ms. Cox's filed testimony.

23 JUDGE PRIDGIN: Mr. Fischer?

24 MR. FISCHER: Judge, I'm just asking
25 what -- what the Staff's position is on the whole

1 gamut of the special contracts and whether this is
2 such an important issue it needs to be decided by
3 the Commissioners.

4 JUDGE PRIDGIN: I'll overrule. If
5 she doesn't know the answer, she can say so.

6 THE WITNESS: Can you ask it again,
7 please?

8 BY MR. FISCHER:

9 Q. Sure. Does that mean that Staff
10 should not attempt to resolve this issue because
11 it's such an important policy decision that should
12 be decided by the Commission?

13 A. I believe Staff's recommendation was
14 that Noranda should pay the full tariffed rate.

15 Q. I understand that. And the position
16 statement just suggests that it's such an important
17 policy decision, whether they should be authorized
18 to pursue special contracts in the future, that it
19 ought to be a policy decision for the Commission.

20 A. We do believe it should be a policy
21 decision for the Commission. Therefore, that's why
22 we are here, I'd say.

23 Q. And when did Staff decide that the
24 special contract issue was a policy decision that
25 needed to be decided by the folks at the Bench?

1 A. I would say after I was given the
2 issue and I read Mr. Krygier's testimony, that it
3 was brought up to Staff that it needed to be
4 addressed.

5 **Q. So were you the person that made the**
6 **decision it was a policy decision that should be**
7 **addressed by the Commission?**

8 A. It was the Staff's position.

9 **Q. Did someone else on Staff suggest**
10 **that that's the position you should take?**

11 A. No.

12 **Q. So it was your decision?**

13 A. After reading Mr. Krygier's
14 testimony, I brought it to the Staff because I was
15 assigned the issue, and Staff then decided at that
16 point.

17 **Q. Well, as I understand the statement**
18 **that I heard from Staff counsel yesterday, the**
19 **policy issue, if we really try to focus on it, is**
20 **whether the company, whether Liberty should be**
21 **allowed to enter into special contracts at all. Is**
22 **that your understanding?**

23 A. Yes.

24 **Q. Now, special contracts have been used**
25 **by Atmos Energy Corporation for many years;**

1 wouldn't you agree?

2 A. I would agree that they've had
3 contracts that they've had with certain special
4 people, that being Noranda, General Mills.

5 Q. And, in fact, the predecessor company
6 to Atmos Energy, Associated Natural Gas, had a
7 special contract with Noranda even before Atmos was
8 authorized to provide service in southeast
9 Missouri; is that your understanding?

10 A. Yes.

11 Q. And Atmos stepped into the shoes of
12 Associated Natural Gas when it purchased the
13 southeast Missouri service territory back in 2000;
14 is that your understanding?

15 A. Yes.

16 Q. Now, special contracts with Noranda
17 date back to at least the 1990s; is that right?

18 A. I believe so.

19 Q. And Liberty stepped into the shoes of
20 Atmos when it purchased the Missouri property from
21 Atmos in 2012; is that true?

22 A. Yes.

23 Q. And as a result, Liberty effectively
24 inherited the existing contract with Noranda and,
25 for that matter, General Mills when it took over

1 the operations of Atmos; is that your
2 understanding, too?

3 A. That they inherited it?

4 Q. They stepped into the shoes of,
5 they --

6 A. I believe they were given room to
7 negotiate.

8 Q. They didn't have to accept the
9 Noranda contract and General Mills contract
10 whenever they took over the operations of the
11 company?

12 A. From my understanding, in the
13 Stipulation & Agreement it stated that they had the
14 ability to negotiate new contracts.

15 Q. At the expiration of the term; isn't
16 that the way that stipulation reads?

17 A. Just a moment. I don't believe that
18 it does state that.

19 Q. Okay. Well, we'll get to that
20 stipulation here in a minute. But special
21 contracts are not unique to Liberty, are they?

22 A. No, I wouldn't say so.

23 Q. Other public utilities in Missouri
24 also enter into contracts with their customers
25 under negotiated rates; is that true?

1 A. If they have a tariff to do so.

2 Q. And some public utilities have
3 specific tariffs that discuss the terms of special
4 contracts; is that right?

5 A. I believe so, yes.

6 Q. I believe you mentioned in your Staff
7 Report at page 53 that Missouri Gas Energy and
8 Ameren Missouri have special contract tariffs;
9 isn't that true?

10 A. In my testimony?

11 Q. In your -- the Staff Report at
12 page 53, I think you mentioned MGE and Ameren.

13 MR. KEEVIL: Again, Judge, he's --

14 THE WITNESS: No, I did not.

15 MR. KEEVIL: I'm going to object.

16 He's crossing her on Mr. Sommerer's testimony.

17 Mr. Sommerer was a witness here yesterday and they

18 waived cross. This entire line of questioning is

19 Mr. Sommerer-type testimony that they chose not to

20 ask for some reason of Mr. Sommerer. He's now

21 attempting to cross Ms. Cox on it. If you look at

22 page 53, it clearly says Staff witness Dave

23 Sommerer.

24 JUDGE PRIDGIN: I understand. I'm

25 going to overrule. The witness already answered

1 no, I did not. So move on. She already answered
2 the question.

3 BY MR. FISCHER:

4 **Q. Are you aware that Missouri Gas**
5 **Energy and Ameren Missouri have special contract**
6 **tariffs?**

7 A. I believe that would be a question
8 for Dave Sommerer.

9 **Q. You're not aware of that?**

10 A. I would have to review their tariff
11 before I could answer.

12 **Q. But you are aware that other**
13 **utilities, I believe, have specific tariffs that**
14 **address special contracts; is that right?**

15 A. Without verifying, I would say yes,
16 but I can't guarantee it without looking at their
17 tariff.

18 **Q. Okay. So you're not aware that other**
19 **public utilities have special contract tariffs?**

20 A. I'm not aware of what those tariffs
21 state without reviewing them.

22 **Q. I'm really just asking about the**
23 **existence of them.**

24 A. I believe that they do.

25 **Q. Okay. And some gas companies also**

1 **have what are known as flex tariffs; is that true?**

2 A. I believe so.

3 **Q. What is a flex tariff in your mind?**

4 A. It's where they can flex the rate.

5 **Q. What does that mean to you?**

6 A. That means they can pay a lower rate.

7 **Q. Than the full tariffed rate?**

8 A. Correct.

9 **Q. Now, electric companies in Missouri**
10 **also have been allowed for many years to enter into**
11 **contracts at negotiated rates with some of their**
12 **largest customers; isn't that true?**

13 A. I've not worked on them. I do not
14 know.

15 **Q. You don't know about electric**
16 **companies?**

17 A. I do not know.

18 **Q. So you don't know whether electric**
19 **companies have entered into contracts with steel**
20 **companies or automobile manufacturers or other**
21 **large industrial customers?**

22 A. I do not know.

23 MR. KEEVIL: Objection. Asked and
24 answered.

25 JUDGE PRIDGIN: Sustained. She

1 already said she doesn't know.

2 BY MR. FISCHER:

3 Q. Okay. Well, given the long history
4 of having special contracts in this state, why does
5 Staff feel in this case that whether or not Liberty
6 should be authorized to continue to provide service
7 to select customers pursuant to special contracts
8 is a policy decision?

9 A. Can you state the question one more
10 time, please?

11 Q. Yes. Given the long history of
12 having special contracts in the state, why does
13 Staff feel in this case that whether or not Liberty
14 should be authorized to continue providing service
15 to select customers pursuant to special contracts
16 is a policy decision for the Commissioners to
17 address?

18 MR. KEEVIL: Judge, again, I'm going
19 to object. That's Dave Sommerer's testimony that
20 he referred to, Dave Sommerer's issue. Ms. Cox
21 calculated the adjustment and is sponsoring the
22 adjustment. What he's referring to is the tariff
23 authorization issue. This is improper to be
24 crossing Ms. Cox on Dave Sommerer's issue.

25 MR. FISCHER: Judge, I think I have

1 the opportunity and the right to ask any of the
2 Staff witnesses about the Staff's position on these
3 issues. But I'm really asking why is this a policy
4 decision that has to be addressed, not necessarily
5 whether they need a tariff or not, but whether they
6 should even have a special contract at all.

7 JUDGE PRIDGIN: I've overrule. He's
8 asked her why, and if she doesn't know, she can say
9 she doesn't know.

10 THE WITNESS: I believe Staff
11 believes that it's a policy decision because, for
12 one, Liberty does not have a tariff that authorizes
13 them to do so. They've not shown any cost
14 justification in providing a lower rate. And at
15 this time, after reviewing it as it was my issue,
16 it should be brought up to the Commission.

17 BY MR. FISCHER:

18 Q. Does Staff or do you want the
19 Commission to set a policy regarding special
20 contracts in this case?

21 A. A policy and do I? I don't
22 necessarily know if I want them to set a policy. I
23 believe it's Staff's recommendation that we want a
24 tariff in place if Liberty is able to provide those
25 contracts.

1 **Q. No. I'm going back to the policy**
2 **decision. Are you asking that the Commission set a**
3 **policy related to special contracts in this case?**

4 A. I believe that was Dave Sommerer's
5 testimony.

6 **Q. But I thought you said you were the**
7 **one that made the decision that it was a policy**
8 **decision.**

9 A. I brought it to other Staff members.

10 **Q. Okay. Well, let me ask you just**
11 **directly. Does the Staff or do you want the**
12 **Commission to set a policy in this case regarding**
13 **special contracts?**

14 A. We want -- I want the Commission to
15 see what the issue is at hand and decide upon what
16 Liberty should or should not do.

17 **Q. Okay. I don't think you answered my**
18 **question either yes or no. Do you want them to**
19 **set a policy related to special contracts in this**
20 **case?**

21 A. I'm going to have to say I don't
22 know.

23 **Q. So it's really not a policy decision**
24 **that needs to be made by the Commission?**

25 MR. KEEVIL: Objection. Asked and

1 answered.

2 JUDGE PRIDGIN: I'll sustain.

3 BY MR. FISCHER:

4 Q. Well, let's assume the Commission
5 does set a policy related to special contracts in
6 this case. From your perspective, would that apply
7 only to Liberty?

8 A. I don't know.

9 Q. Do you know if it would apply to
10 other natural gas companies?

11 MR. KEEVIL: Asked and answered.

12 JUDGE PRIDGIN: I'll sustain. She
13 said she didn't know.

14 MR. FISCHER: She said she didn't
15 know if it would just apply to Liberty. I'm asking
16 more specifically about gas companies otherwise,
17 but I'll move on.

18 BY MR. FISCHER:

19 Q. Would it apply to electricity
20 companies?

21 MR. KEEVIL: Asked and answered.

22 JUDGE PRIDGIN: I'll tell you what,
23 I'm going to reverse and overrule. I see where
24 you're going, I think, Mr. Fischer. You can go
25 back to that previous question if you'd like.

1 MR. FISCHER: Thank you, Judge.

2 BY MR. FISCHER:

3 Q. Would this policy apply only to
4 Liberty or would it also apply to other natural gas
5 companies?

6 A. I don't know.

7 Q. Do you know if it would apply to
8 electric companies as well?

9 A. I don't know.

10 Q. Would it be a policy of general
11 applicability throughout the state or just Liberty?

12 A. Again, I don't know.

13 Q. Well, does Staff oppose the use of
14 special contracts by Liberty?

15 A. If they can show cost justification.

16 Q. The answer is, no, you don't?

17 A. No. The answer is they would have to
18 show support in providing those contracts.

19 Q. Okay. But just as a matter of
20 policy, does Staff oppose the use of special
21 contracts by Liberty?

22 A. I believe I have the same answer.

23 Q. I'm sorry. I misunderstood your
24 answer. What was your answer?

25 A. My answer is, if they can show the

1 cost justification of providing them a lower rate,
2 then I don't believe that Staff doesn't think that
3 Liberty should not provide it, but the evidence is
4 not there to show it.

5 Q. So it's -- it's not a matter of
6 policy that you feel that the special contract
7 should not be permitted, it's just you don't think
8 the cost justification is there; is that right?

9 A. Yes.

10 Q. Does Staff oppose the use of special
11 contracts by other gas companies?

12 A. I don't know.

13 Q. Does Staff oppose the use of special
14 contracts by electric companies in Missouri?

15 A. I don't know.

16 Q. So it's not the fact that there are
17 negotiated rates that trouble Staff; is that right?

18 A. Correct.

19 Q. What is it about the Noranda and
20 General Mills contracts in this case that rises to
21 the level of being a policy decision that this
22 Commission needs to decide?

23 A. It's because they've been provided
24 those contracts without any tariff stating that
25 they can do so.

1 Q. So it's the tariff issue itself that
2 is the main policy decision, not whether they
3 should be permitted to have special contracts?

4 A. Correct.

5 Q. Okay. And in past cases, the Staff
6 has settled special contract issues with Atmos
7 without taking the matter to the Commissioners; is
8 that right?

9 A. From my understanding, yes.

10 Q. Has something changed in this case?

11 A. Not that I'm aware of.

12 Q. Does the existing litigation between
13 Noranda and Ameren Missouri regarding Noranda's
14 electric rates in Missouri affect Staff's view of
15 this policy decision?

16 A. No.

17 Q. Okay. In that electric case, Noranda
18 requested a reduction in electric rates from the
19 tariff level in the Ameren existing tariffs; is
20 that your understanding?

21 A. That is my understanding.

22 Q. And in this case, Noranda has been
23 charged the same rate that's been included in the
24 special contract of Atmos; is that right?

25 A. Yes.

1 Q. And Noranda has not requested a lower
2 gas transportation rate from the gas transportation
3 rate that was contained in the contract with Atmos;
4 is that your understanding?

5 A. That is my understanding.

6 Q. And that's true for General Mills,
7 too, isn't it? General Mills has not requested a
8 rate reduction from the rates that have been
9 charged by -- General Mills by Atmos and now
10 Liberty for several years, right?

11 A. Yes.

12 Q. So wouldn't you agree there is a
13 difference between this case where no party's
14 requesting a rate reduction from existing rates and
15 that other case in Ameren where Noranda was
16 requesting a rate reduction from existing tariffs?

17 MR. KEEVIL: I'm going to object to
18 that because he's combining contract rates and
19 tariff rates and misstating basically what I
20 believe Ms. Cox's previous testimony was.

21 JUDGE PRIDGIN: Mr. Fischer?

22 MR. FISCHER: Judge, I'm just asking
23 whether there's a difference between those two
24 cases. It's proper cross-examination to ask her
25 whether there's a difference between this case and

1 that case.

2 JUDGE PRIDGIN: I'm going to
3 overrule. She's answered questions about those
4 cases, and I think your question is going to isn't
5 there a difference or wouldn't you agree there's a
6 difference or something like that. So I'll
7 overrule.

8 THE WITNESS: I didn't work on the
9 electric. I don't know.

10 BY MR. FISCHER:

11 Q. Okay. In the Staff report on the
12 revenue requirement cost of service, I believe
13 there are -- there are 3 lines on page 53 and about
14 33 lines on page 54 which address your
15 recommendation on Noranda and General Mills; is
16 that right?

17 A. Can you state those -- how many lines
18 again?

19 Q. I just counted 3 lines on page 53 and
20 about 33 lines on page 54. Really one page plus a
21 little bit of carryover.

22 A. Yes. That's correct.

23 MR. FISCHER: Judge, I think I
24 probably need to go to the numbers, so I could --
25 can I go in camera?

1 JUDGE PRIDGIN: You'll have to give
2 me just a moment, please.

3 (REPORTER'S NOTE: At this point, an
4 in-camera session was held, which is contained in
5 Volume 14, 330 through 353 of the transcript.)

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

3 BY MR. FISCHER:

4 Q. Ms. Cox, isn't it true that Staff was
5 a signatory to that unanimous stipulation in Case
6 No. GR-2010-0192?

7 A. Yes.

8 Q. And I think Public Counsel and
9 Noranda and the Department of Natural Resources
10 were also signatories, as well as the company; is
11 that right?

12 A. Yes.

13 Q. And on the top of page 54 of the
14 Staff report, you actually quote from that
15 unanimous stipulation that resolved the imputed
16 revenues adjustment issue for both Noranda and
17 General Mills in the last Atmos case, right?

18 A. Yes.

19 Q. That first sentence that you quote
20 reads, The signatories agree that revenues
21 associated with special contracts shall not be
22 imputed in this case; is that right?

23 A. Yes.

24 Q. Does that mean that Staff agreed that
25 in that case the revenues associated with special

1 contracts should not be imputed in that case?

2 A. I believe that's what it states.

3 Q. So would it be correct to conclude
4 that no revenues associated with Noranda and
5 General Mills contracts were imputed in Atmos' last
6 rate case?

7 A. Yes.

8 Q. If we look at the remaining part of
9 paragraph 7 in that Unanimous Stipulation &
10 Agreement where you quoted there at the top of
11 page 54, it indicates that the signatories agree
12 that Atmos shall offer to extend the special
13 contracts of Noranda and General Mills to expire on
14 the effective date of the rates approved in Atmos'
15 next general rate case. The rates for such
16 extended period shall be those in effect at the end
17 of the respective contract's original term; is that
18 right?

19 A. Yes.

20 Q. Is it correct to conclude that Atmos
21 and Staff agreed in that unanimous stipulation that
22 Atmos should extend the special contracts to
23 Noranda and General Mills to expire on the
24 effective date of the rates approved in Atmos' next
25 general rate case?

1 A. Yes.

2 Q. And that stipulation says Atmos shall
3 offer, right --

4 A. Yes.

5 Q. -- to extend?

6 Does that language appear to be
7 mandatory, not discretionary, from your
8 perspective?

9 A. I don't know.

10 Q. Whenever it says shall, does that
11 mean you have a choice?

12 A. I don't believe so.

13 Q. You don't have a choice, right?

14 A. Correct.

15 Q. Okay. And the Staff agreed that the
16 rates for such extended period shall be those in
17 effect at the end of the respective contract's
18 original term; is that right?

19 A. That is what it states.

20 Q. And again, that would be mandatory,
21 the rates shall be those in effect at the end of
22 the respective contract term, right?

23 A. Yes.

24 Q. And Staff was a signatory to that
25 portion of the Stipulation & Agreement, correct?

1 A. To that portion in the whole
2 stipulation, correct.

3 **Q. Okay. Let's look at the Commission's**
4 **order approving the stipulation where it approved**
5 **the terms of that stipulation and found that the**
6 **rates proposed in the agreement are just and**
7 **reasonable. Do you have a copy of that order?**

8 A. No.

9 **Q. I think it's attached.**

10 A. I don't actually.

11 **Q. Okay. Let me give you a copy of it.**
12 **I think it was attached to your --**

13 A. It was.

14 **Q. -- surrebuttal.**

15 MR. KEEVIL: Was the order attached?

16 MR. DOWNEY: It is. KC1-32.

17 MR. FISCHER: Does the Bench need
18 extra copies?

19 BY MR. FISCHER:

20 **Q. First I'd like --**

21 A. I'm sorry. I do not have a copy.

22 **Q. Oh, you don't have a copy. I'm**
23 **sorry.**

24 MR. DOWNEY: It should be an
25 attachment to the surrebuttal.

1 MR. FISCHER: Yeah.

2 JUDGE PRIDGIN: Mr. Fischer, if she
3 needs mine, just to speed things up.

4 MR. KEEVIL: It's attached to your
5 surrebuttal.

6 THE WITNESS: I know. Unfortunately,
7 I don't have it. I apologize.

8 BY MR. FISCHER:

9 Q. I'll give you my copy, if that's all
10 right, your testimony with it attached. Let's look
11 at page 3 to start with. The first full paragraph
12 on page 3 of the Order Approving Stipulation where
13 it says, The parties do not waive final decision.
14 On the contrary, the parties expressly ask for an
15 order approving all of the specific terms and
16 conditions of the stipulation -- of this
17 stipulation.

18 MR. KEEVIL: Where is that?

19 MR. FISCHER: It's on page 3, first
20 full paragraph, unless I'm wrong.

21 THE WITNESS: No.

22 MR. FISCHER: Is it there?

23 THE WITNESS: Yes.

24 BY MR. FISCHER:

25 Q. And then it goes on, The agreement's

1 terms include rates for gas service, rate design,
2 the reclassification of certain customers, billing
3 determinants -- and the next is the phrase I'm
4 interested in -- treatment of special contracts; is
5 that right?

6 A. Yes.

7 Q. And the last sentence of that
8 paragraph states, And without further discussion,
9 the Commission incorporates all the provisions of
10 the agreement as if fully set forth in this order;
11 is that right?

12 A. Yes.

13 Q. Would you interpret that to mean that
14 that includes the provision related to special
15 contracts related to Noranda and General Mills?

16 A. Yes.

17 Q. Let's turn to page 7 of the Order
18 Approving Stipulation and Agreement. The next to
19 the last sentence on page 7 states, The Commission
20 independently finds and concludes that Atmos has
21 not met its burden of proof -- excuse me -- that it
22 has met its burden of proof that the rates proposed
23 in the agreement are just and reasonable. Is that
24 what it said?

25 A. Yes.

1 **Q. Wouldn't you agree that the**
2 **Commission independently found and concluded that**
3 **Atmos had met its burden of proof that the rates in**
4 **the Noranda and General Mills contracts that were**
5 **proposed in the agreement were just and reasonable?**

6 MR. KEEVIL: Judge, I'm going to
7 object to that because the rates I believe which
8 are being referred to on page 7 are the tariffed
9 rates which come out of the stipulation.

10 You see there's a whole bunch of
11 tariff sheets which are attached to the surrebuttal
12 of Ms. Cox prior to this stipulation, and I believe
13 it's those approved tariff rates which that
14 particular paragraph is referring to because those
15 are the rates which came out of that case. I
16 believe he's mischaracterized this portion of the
17 order.

18 JUDGE PRIDGIN: I'll overrule. Let
19 her answer. And Mr. Fischer, you can ask that
20 question again. I think you were asking her if she
21 agreed.

22 BY MR. FISCHER:

23 **Q. I did ask whether she agreed that the**
24 **Commission independently found and concluded that**
25 **Atmos had met its burden of proof that the rates in**

1 the Noranda and General Mills contracts that were
2 proposed in the agreement were just and reasonable.

3 A. For this rate case, yes, I believe
4 that's what it states.

5 Q. And wouldn't you agree that the Order
6 Approving Stipulation & Agreement specifically
7 incorporated all the provisions of the agreement,
8 including the agreement that a rate shall be those
9 in effect at the end of the Noranda and General
10 Mills contracts?

11 A. Yes.

12 Q. And again, Ms. Cox, those are the
13 rates that Liberty charged Noranda and General
14 Mills during the test year, right?

15 A. Yes.

16 Q. Let's assume that this rate case
17 never got filed. What rates would be in effect
18 under the tariff -- excuse me -- under the Noranda
19 and the General Mills contracts?

20 A. What rates would be in effect? The
21 rates --

22 Q. In the contract. The contract rates,
23 yeah.

24 A. Up until the next general rate case,
25 I believe it's stated that the rates within the

1 contract.

2 Q. So they would continue to charge the
3 rates that they actually charged during the test
4 year, and they wouldn't be expiring because there
5 wouldn't be a rate case, right?

6 A. I believe that's what -- yes.

7 Q. And if the rate case was not filed
8 over the next ten years, then Noranda and General
9 Mills' contract rates would continue, right?

10 A. I believe Liberty -- I believe
11 there's something in the stipulation that said they
12 can negotiate a new contract.

13 Q. But if they didn't, the rates would
14 just continue?

15 A. I don't know what Liberty would
16 choose to do.

17 Q. But those contracts wouldn't expire
18 by the terms of this stipulation at least, right?

19 A. Right.

20 Q. And those are the same rates that
21 Liberty charged Noranda and General Mills during
22 the test year, right?

23 A. Yes.

24 Q. And is it correct that Staff agreed
25 that the rates included in the Noranda contract and

1 the General Mills contract shall be the same rates
2 that existed in the Noranda and General Mills
3 contracts at the end of the term of those
4 contracts?

5 A. Can you state that again, please?

6 Q. Is it correct that Staff agreed that
7 the rates included in the Noranda and the General
8 Mills contract shall be the same rates that existed
9 in the Noranda and General Mills contracts at the
10 end of the term of those respective contracts?

11 A. Yes.

12 Q. Do you believe that Staff would have
13 recommended rates for Noranda and General Mills if
14 Staff felt those rates were unjust and
15 unreasonable?

16 A. Are you referring to the last case?

17 Q. Yeah. In your Stipulation &
18 Agreement, you agreed to certain rates for General
19 Mills and Noranda. And I'm asking, do you think
20 that Staff would have recommended those rates at
21 that time if Staff felt those rates were unjust and
22 unreasonable?

23 MR. KEEVIL: Judge, I'm going to
24 object to that, too, because that was a black box
25 type settlement, and the stipulated -- or the

1 special contract rates were simply a part of it.

2 So the whole package, no one could really tell from
3 looking at that stipulation what went into that.

4 MR. FISCHER: Judge, paragraph 7 is
5 not black box. It specifically states what rates
6 are to be charged. That is explicit not black box.
7 That's what we shall do.

8 JUDGE PRIDGIN: I'll overrule and let
9 her answer if she knows the answer.

10 THE WITNESS: Can you ask again,
11 please?

12 BY MR. FISCHER:

13 **Q. Do you believe that the Staff would**
14 **have recommended rates for Noranda and General**
15 **Mills if Staff felt those rates were unjust and**
16 **unreasonable?**

17 A. I don't know. I believe that Staff
18 always proposes just and reasonable rates, and I
19 believe if they felt there was an issue, they would
20 have brought it up. I don't know what happened in
21 that case as far as the contracts go. I didn't
22 work on that issue.

23 **Q. But I think you agreed that Staff did**
24 **agree that those should be the rates, correct?**

25 A. Yes.

1 Q. That case was the last general rate
2 case that Atmos had before it sold its Missouri
3 properties to Liberty; is that your understanding?

4 A. Yes.

5 Q. Is it your understanding that Liberty
6 was required to follow the previous terms of that
7 Stipulation & Agreement?

8 A. Up until the next general rate case,
9 yes.

10 Q. Have you reviewed the unanimous
11 stipulation in the acquisition case that involved
12 Liberty and -- Liberty and Atmos?

13 A. I read it.

14 MR. FISCHER: Judge, I'd ask the
15 Commission to take official notice of the Unanimous
16 Stipulation & Agreement in Case No. GM-2012-0037
17 and the Order Approving Stipulation & Agreement in
18 that case issued on March the 12th, 2012.

19 JUDGE PRIDGIN: Any objections?

20 (No response.)

21 JUDGE PRIDGIN: All right. The
22 Commission will take notice.

23 MR. FISCHER: May I approach the
24 witness with a copy of that unanimous stip?

25 JUDGE PRIDGIN: You may.

1 BY MR. FISCHER:

2 Q. Ms. Cox, would you turn to page 7 of
3 that stipulation. There's a paragraph at the
4 bottom entitled Adherence to Previous Commission
5 Orders and Stipulations & Agreements.

6 A. Okay.

7 Q. Would you review that just for a
8 minute?

9 A. Okay.

10 Q. Does that indicate to you that
11 Liberty/Midstates shall comply with all
12 requirements from all Commission-approved
13 Stipulations & Agreements and Commission Orders in
14 all cases applicable to Atmos which are still in
15 force from the effective date of the Commission's
16 order approving Atmos' acquisition of Greeley Gas
17 in Case No. GM-94-6?

18 A. Yes.

19 Q. Did you also happen to look at the
20 Staff's memorandum in support of that stipulation
21 in that case?

22 A. I don't believe I did.

23 MR. FISCHER: Okay. May I approach
24 the witness with a copy of that Staff memo?

25 JUDGE PRIDGIN: You may.

1 COMMISSIONER HALL: Can I get a copy
2 of that, please, as well? Thank you. Actually,
3 I'd like a copy of the stip itself. If you'd give
4 me a copy and direct my attention to where I --

5 MR. FISCHER: Yeah. I'm sorry. I
6 had it with my copies. Of the GM case?

7 COMMISSIONER HALL: Yes.

8 BY MR. FISCHER:

9 **Q. I'd like to refer you to page 5 of**
10 **the Staff Memorandum at paragraph 16 where it**
11 **states, under the topic Adherence to Previous**
12 **Commission Orders and Stipulations & Agreements,**
13 **this condition puts Liberty in the shoes of Atmos**
14 **with respect to previous Commission Orders and**
15 **Stipulations & Agreements, and it reinforces**
16 **compliance with the Commission's Cold Weather Rule,**
17 **Gas Safety Rules and Affiliate Transactions Rules.**
18 **Do you see that? Did I read that right?**

19 A. Yes.

20 **Q. Would you agree that under the terms**
21 **of that Stipulation & Agreement, GM-2012-0037,**
22 **Liberty effectively stepped into the shoes of Atmos**
23 **when it purchased those Atmos assets and accepted**
24 **the obligations of Atmos contained in the previous**
25 **Stipulations & Agreements?**

1 A. Yes.

2 Q. So Liberty was required to comply
3 with all requirements resulting from all
4 Commission-approved Stipulations & Agreements in
5 cases applicable to Atmos, right?

6 A. Yes.

7 Q. Liberty would have been required to
8 follow the terms of the Stipulation & Agreement
9 approved in the last Atmos rate case under that
10 provision, right?

11 A. Yes.

12 Q. Ms. Cox, in your experience here at
13 the Commission, does the Staff believe it is bound
14 to observe the terms of Stipulations & Agreements
15 in which Staff is a signatory?

16 A. Yes.

17 Q. Is it your understanding that Staff
18 believes Stipulations & Agreements are effectively
19 agreements among signatory parties to the
20 Stipulation & Agreement?

21 A. For that rate case, yes.

22 Q. And they're effectively a contract
23 between the signatory parties, right?

24 MR. KEEVIL: Objection. Calls for a
25 legal conclusion.

1 JUDGE PRIDGIN: Mr. Fischer, could
2 you ask it again? I'm sorry.

3 MR. FISCHER: I asked whether they're
4 treated as contracts among the signatory parties.

5 JUDGE PRIDGIN: I'll overrule. She
6 can answer if she knows.

7 THE WITNESS: Yes.

8 BY MR. FISCHER:

9 Q. So Staff feels bound by its
10 agreements, right?

11 A. Yes.

12 Q. On page 54 of your Staff report, you
13 indicate that Staff has reviewed the contract with
14 Noranda Aluminum that became effective January 1st,
15 2003; is that right?

16 A. Yes.

17 Q. And you also indicate on line 17 and
18 18, Noranda has been billed the ten-year rate for
19 the 12 months of the test year ending September
20 2013; is that right?

21 A. Yes.

22 Q. And that was the same rate that was
23 in effect at the time of Atmos' last rate case in
24 2010; is that right?

25 A. Yes.

1 Q. And that's the same rate that Staff
2 stipulated in Case No. GR-2010-0192 should be
3 offered to Noranda when the existing contract
4 expired; is that right?

5 A. Would you mind going back to the
6 previous question?

7 Q. That question I think was asking
8 about, that was the same rate that was in effect at
9 the time of Atmos' last rate case in 2010?

10 A. Nor Noranda?

11 Q. For Noranda and General Mills both.

12 A. I don't believe for Noranda it was.
13 It was a step down. I believe maybe in 2010 it was
14 a different rate.

15 Q. Well, isn't that the ten-year rate
16 for the 12 months of the test year, and isn't that
17 the last year of the ten-year contract?

18 A. It is, yes.

19 Q. So it would have been the same rate,
20 correct?

21 (REPORTER'S NOTE: At this point, per
22 a discussion with counsel on page 405, the
23 following answer was deemed highly confidential and
24 is contained in Volume 14, page 371 of the
25 transcript.)

1 BY MR. FISCHER:

2 Q. Staff had recommended that you use
3 the last, the ten-year rate?

4 A. That's correct.

5 Q. And by the time Liberty got to
6 operating the system, they got to that ten-year
7 rate, right?

8 A. Yes.

9 Q. And that's what they charged, right?

10 A. Yes.

11 Q. Which would have been the same rate
12 that the Staff had stipulated should be used at the
13 end of the contract, right?

14 A. Yes.

15 Q. But now Staff is suggesting in this
16 case that Liberty did not charge Noranda the
17 appropriate rate during the test year; is that
18 right?

19 A. We are suggesting that they did not
20 have a tariff to charge that rate, and Liberty
21 stated that they had no negotiated sales contract
22 customers. Therefore, they did state that they
23 were an interruptible customer, and that is what
24 Staff applied.

25 Q. I don't think you answered my

1 question. Staff is now suggesting in this case
2 that Liberty did not charge Noranda the appropriate
3 rate during the test year, correct?

4 A. Based off the tariff, correct.

5 Q. Do you believe that there's anything
6 inconsistent with Staff agreeing in the
7 Stipulation & Agreement in GR-2010-019 that Atmos
8 should offer to extend Noranda's contract at the
9 same rate that existed at the end of the contract
10 term and now recommending that Liberty should have
11 charged the full tariff rate to Noranda?

12 A. Just a moment. Okay. Could you ask
13 me the question one more time, please?

14 Q. Certainly. My question was just
15 this: Do you believe that there's anything
16 inconsistent with Staff agreeing to the rate in the
17 GR-2010-019 case that Atmos should offer to extend
18 to Noranda at the same rate that existed at the end
19 of that contract and now recommending that Liberty
20 should have charged the full tariffed rate to
21 Noranda?

22 A. I believe that it does state in the
23 unanimous stip from the 2010 case, that it does
24 state that Atmos and special contract customers,
25 they could accept alternative, mutually agreeable

1 contract provisions or to enter into alternative
2 mutual agreement contracts for service. Therefore,
3 I believe it put it back into the hands of Liberty
4 and Noranda.

5 Q. Ms. Cox, I'm really asking you about
6 the test year. The new contract wasn't even
7 negotiated at that point, was it?

8 A. The new contract?

9 Q. For Noranda.

10 A. I believe we've got that in July.

11 Q. So during the test year we were
12 talking about the old Atmos contract, right?

13 A. Correct.

14 Q. And Staff recommended the rate at the
15 ten-year level that should be extended to Noranda
16 whenever that contract expired, right?

17 A. Yes.

18 Q. But now you're suggesting that
19 Liberty should have charged the full tariff rate
20 instead of that rate, right?

21 A. We're suggesting they follow the
22 tariff.

23 Q. Would you answer my question?

24 A. Can you ask it again, please?

25 Q. Aren't you suggesting that Liberty

1 should have charged the full tariffed rate to
2 Noranda?

3 A. Yes.

4 Q. And that's the basis for your
5 proposed adjustment for Noranda, right?

6 A. I wouldn't say it's the basis.

7 Q. Well, Staff is now recommending the
8 Commission adopt a revenue adjustment that would
9 include \$1.6 million of additional revenues
10 associated with the Noranda contract even though
11 they only charged the contract rate of 273,000,
12 right?

13 A. That is what they charged Noranda,
14 right.

15 Q. And that recommendation is based upon
16 the premise that Liberty should have charged
17 Noranda a rate that was higher than the rate
18 contained in that Noranda contract, right?

19 A. Ask that again.

20 Q. That recommendation is based upon the
21 premise that Liberty should have charged Noranda a
22 rate that's higher than the rate included in the
23 Noranda contract?

24 A. It's based off the tariff,
25 interruptible customer.

1 Q. So the answer is yes?

2 A. We are -- we are recommending that
3 the tariff should have been followed.

4 Q. So the answer is yes?

5 A. Yes.

6 Q. Is Staff suggesting that it was
7 imprudent of Liberty to have charged Noranda the
8 rates contained in the contract between Atmos and
9 Noranda?

10 A. That's a no and a maybe question.

11 Q. I'm sorry. It's a -- I didn't hear
12 you.

13 A. That's no or maybe. That's my
14 answer. I don't -- as far as being prudent?

15 Q. Staff is not suggesting that Liberty
16 was imprudent to have charged Noranda the contract
17 rate; is that what you're saying?

18 A. I think it would have been prudent to
19 show the cost justification.

20 Q. To Staff in the rate case.

21 A. Right.

22 Q. But at the time they charged the
23 rate, are you saying it was imprudent to have
24 charged the contract rate to Noranda?

25 A. No. I'm stating that in this case,

1 they did not show any cost justification of
2 charging that rate and going forward with that
3 rate.

4 Q. So you -- you're not testifying it
5 was imprudent for Liberty to have charged Noranda
6 the contract rate? That's not your testimony? It
7 was okay, it was prudent from your perspective; is
8 that what you're saying?

9 A. No, that's not what I'm saying.

10 Q. Are you saying it was imprudent to
11 have charged Noranda at the contract rate during
12 the test year?

13 A. I'm saying that Liberty provided no
14 evidence that that rate was needed.

15 Q. Well, okay. Let me ask it this way:
16 What does Staff believe that Liberty should have
17 done with Noranda when it began operating the Atmos
18 system with regard to that Noranda contract?

19 A. What does Staff believe Liberty
20 should have done?

21 Q. Yes.

22 A. We believe that they should have
23 filed a tariff.

24 Q. They did adopt all the Atmos tariffs,
25 right?

1 A. They did. And at the time, in the
2 last rate case, they stated they were negotiated
3 sales customers. I submitted a DR asking for the
4 negotiated sales customers, and my response that I
5 received was none.

6 **Q. Let me ask you the question again.**
7 **What does Staff believe that Liberty should have**
8 **done with Noranda when it began operating the Atmos**
9 **system with regard to the Noranda contract?**

10 A. Again, I believe they should have
11 filed a tariff, because at that time they're
12 stating they weren't negotiated sales customers.

13 **Q. Well, does Staff believe that Liberty**
14 **should have begun charging Noranda the full rate on**
15 **the first day that Liberty began operating the SEMO**
16 **district?**

17 A. No.

18 **Q. Does Staff believe that Liberty**
19 **should have begun charging General Mills the full**
20 **tariffed rate on the first day that Liberty began**
21 **operating the NEMO district?**

22 A. No. Staff believes that a tariff
23 should have been filed in order to provide that
24 discounted rate.

25 **Q. So it's not the rate that's the**

1 **issue, it's the fact that they didn't have a**
2 **tariff?**

3 A. It's the fact that there was no
4 evidence to suggest the lower rate. It's the fact
5 that they have no tariff in order to provide that
6 lower rate.

7 Q. They adopted the tariffs of Atmos
8 verbatim, correct?

9 A. They did.

10 Q. And they stepped into the shoes of
11 Atmos with regard to existing contracts for Noranda
12 and General Mills, right?

13 A. Yes.

14 Q. Given the fact that Liberty was
15 required by the previous stipulation in the
16 acquisition case to be bound by the terms of
17 previous Stipulations & Agreements and step into
18 the shoes of Atmos, what does Staff believe Liberty
19 should have done with regard to the Noranda and
20 General Mills contracts on the first day they began
21 operating the local distribution company?

22 A. We believe they should have followed
23 the tariff.

24 Q. So you believe they should have
25 charged the full tariffed rate on that first day?

1 A. Or provided a tariff that they would
2 be able to offer that lower rate.

3 **Q. If Liberty would have charged Noranda**
4 **and General Mills the full tariffed rate as you're**
5 **suggesting, would Staff have been concerned that**
6 **Liberty was violating the terms of the**
7 **Stipulation & Agreement that Atmos extend the**
8 **Noranda and General Mills contracts at the same**
9 **rates that existed at the end of the term of the**
10 **respective contracts?**

11 A. I imagine that some sort of study
12 would have been provided to show what rate was
13 actually just and reasonable.

14 **Q. Well, I'm asking whether you would**
15 **have -- on that first day, would you have**
16 **considered the company to be violating that**
17 **previous stipulation because they were charging a**
18 **rate that was, in the case of Noranda, seven times**
19 **more than what Staff had recommended, and for**
20 **General Mills I think it was twice? Wouldn't you**
21 **have considered that to be a violation of that**
22 **stipulation?**

23 A. I think back in the 2010 case, it was
24 stated they were negotiated sales customers.

25 **Q. That's not my question.**

1 A. But they're different -- Liberty is
2 stating now that they're two different types of
3 customers.

4 **Q. I'm asking whether we had started**
5 **charging the full tariffed rate whenever they took**
6 **over the system, whether that would have been**
7 **inconsistent with the stipulation in the rate case?**

8 A. Without providing the evidence?
9 Without knowing the evidence that I know today,
10 yes.

11 **Q. It would have been inconsistent?**

12 A. Without knowing the evidence that I
13 know today, yes.

14 **Q. Is it your understanding that Liberty**
15 **has entered into a new contract with Noranda that**
16 **contains the same rates as those that were in**
17 **effect at the end of the last Noranda contract?**

18 A. I believe Mr. Krygier submitted that
19 in this case.

20 **Q. And those were the same rates which**
21 **Staff, Public Counsel, Noranda and Atmos stipulated**
22 **should be used after the original Noranda contract**
23 **expired in that situation; is that right?**

24 A. Which it is expired now. That is
25 correct.

1 **Q. And those are the same rates in the**
2 **new contract that you stipulated should be used**
3 **when they extended the contract, correct?**

4 A. Yes.

5 **Q. But you're suggesting to this**
6 **Commission that really they should have been**
7 **charging seven times more, correct?**

8 A. They should have followed their
9 tariff based on what they said the customer
10 actually was under their tariff.

11 **Q. Staff believes that it should --**
12 **well, let me ask it this way: Is it correct that**
13 **because Liberty followed the terms of the**
14 **Stipulation & Agreement in GR-2010-0192, Staff**
15 **believes that the company, Liberty, should be**
16 **penalized by the amount of that revenue adjustment?**

17 A. I believe Liberty chose that rate to
18 provide that discount.

19 **Q. So the answer is yes?**

20 MR. KEEVIL: Objection.

21 THE WITNESS: I don't know if
22 penalize. If they would have chose the tariffed
23 rate, then Liberty wouldn't be penalized. They
24 chose to.

25 BY MR. FISCHER:

1 Q. But they didn't.

2 A. I know. Liberty chose not to.

3 Q. And so, therefore, because they
4 followed the terms of that stipulation and used the
5 lower rate, the company should be penalized by the
6 amount of your adjustment?

7 A. The company should follow their
8 tariff.

9 Q. How would you characterize the
10 Staff's adjustment if it's not a penalty?

11 A. Following the tariff that has been
12 set by the Commission as just and reasonable.

13 Q. Let's shift gears and talk about
14 General Mills. And I'm about done, Judge.

15 On page 54 of the Staff report,
16 beginning on line 25, you state, Staff also
17 reviewed the contract with General Mills. The
18 contract became effective March 1st, 2005, and
19 continued until February 20, 2008, with a
20 consecutive one-year term with three-month notice
21 of termination thereafter; is that right?

22 A. Yes.

23 Q. Now, that's the -- the General Mills
24 contract is the same contract that was in effect
25 during the last Atmos rate case, right?

1 A. Yes.

2 Q. And the rates charged by Liberty
3 during the test year were the same rates that were
4 charged by Atmos previously; is that right?

5 A. Correct.

6 Q. Now, in the unanimous stipulation in
7 Atmos' last rate case, the Staff agreed that Atmos
8 should offer to extend the special contract of
9 General Mills at the same rates that were in effect
10 at the end of the General Mills contract term,
11 right?

12 A. Yes.

13 Q. And Liberty continued to charge
14 General Mills at that same rate that was included
15 in that Atmos contract, right?

16 A. Yes.

17 Q. And those are the same rates that
18 Staff agreed should be charged to General Mills
19 under that stipulation, correct?

20 A. Under that stipulation.

21 Q. Yet now Staff is recommending to this
22 Commission that you adopt a revenue adjustment that
23 would include a certain amount of money, that's
24 included in your HC information, in addition to the
25 revenues associated with the General Mills

1 **contract, right?**

2 A. We are suggesting that Liberty follow
3 their tariff.

4 Q. You're suggesting that there is
5 additional amount beyond what they actually paid to
6 be included in the calculation of the cost of
7 service or revenue requirement in this case, right?

8 A. Yes.

9 Q. And that recommendation is based upon
10 the premise that Liberty should have charged
11 General Mills a rate that was higher than the rate
12 included in the contract, right?

13 A. The rate that was in the tariff,
14 yeah.

15 Q. And that's about two times higher
16 than the rate that was included in the contract,
17 right?

18 A. Yes.

19 MR. KEEVIL: Are we still public?

20 MR. FISCHER: I don't think I've
21 quantified it. I'm trying to avoid that, Judge.
22 If I get close, I'll -- but if you think I'm
23 getting close, we can go in camera, too.

24 MR. KEEVIL: I think you said the
25 tariff rate was two times the rate contained in the

1 contract.

2 MR. FISCHER: Oh, well I guess the
3 contract's public -- or the tariff is public.
4 Maybe we should go in camera, Judge.

5 JUDGE PRIDGIN: All right. Just a
6 moment.

7 MR. FISCHER: Thank you, counsel.

8 (REPORTER'S NOTE: At this point, an
9 in-camera session was held, which is contained in
10 Volume 14, pages 387 through 397 of the
11 transcript.)

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1 JUDGE PRIDGIN: Commissioner Stoll?

2 COMMISSIONER STOLL: I have no
3 questions either. Thank you for your testimony.

4 JUDGE PRIDGIN: Commissioner Kenney?

5 COMMISSIONER W. KENNEY: No, thank
6 you.

7 CHAIRMAN KENNEY: Commissioner Hall?

8 COMMISSIONER HALL: Yes, I have a
9 few. Thank you.

10 QUESTIONS BY COMMISSIONER HALL:

11 **Q. Is there any question as to whether**
12 **or not Liberty violated the law, the tariff or a**
13 **Commission order when it charged the discounted**
14 **special contract rate during the 2013 test year?**

15 A. I believe without them having a
16 tariff, they did violate. They chose to offer a
17 discounted rate to Noranda without having a tariff
18 that allowed them to do so.

19 **Q. And that is your position even though**
20 **there is a Commission order that in my view**
21 **specifically allows that contract rate?**

22 A. Yes.

23 **Q. I find that astounding. Turning to**
24 **page 3 of your surrebuttal, and you had some**
25 **discussion about DR 267. And I guess is -- is that**

1 **question HC?**

2 A. I'm sorry. Which question?

3 COMMISSIONER HALL: I'm sorry. I
4 looked to counsel. I'm a little confused. Is the
5 substance of the question HC?

6 MR. DOWNEY: I don't think so.

7 MR. FISCHER: You're on surrebuttal?

8 COMMISSIONER HALL: Data Request 267.
9 We've had a fair amount of discussion about it
10 already, but I'm -- it's bold. On page 3.

11 MR. FISCHER: Oh, no. That's -- the
12 data request? No.

13 BY COMMISSIONER HALL:

14 **Q. Okay. So in DR 267, Staff asks for a**
15 **copy of all supporting rationale and analysis**
16 **regarding the discounted rate. What exactly were**
17 **you looking for? What would have supported a**
18 **discounted rate?**

19 A. They would have to show that they
20 could bypass. They would have to show that -- that
21 they needed to charge that rate in order to keep
22 them on.

23 **Q. And it was your opinion that the**
24 **testimony of Mr. Swogger failed in that regard?**

25 A. Yes.

1 Q. Why?

2 A. I believe in my testimony I stated
3 that, as far as bypassing, he gave reasons that it
4 didn't make sense to do so.

5 Q. So if in that testimony Mr. Swogger
6 had provided a more compelling rationale, if he had
7 explained that if the discounted rates are not in
8 place going forward, there would definitely be a
9 bypass, would your opinion have changed as to
10 whether or not the discount rate should be allowed
11 in this rate case?

12 A. I don't know, because Mr. Swogger,
13 this testimony is not -- I mean, it's very old data
14 that he's referring to. This was back in the 2006
15 rate case.

16 Q. Okay. Let me rephrase.

17 A. Okay.

18 Q. If right now there was clear and
19 convincing evidence that there would be a bypass if
20 the discounted rate is not put into rates going
21 forward, would Staff's position change on the
22 appropriateness of those discounted rates?

23 A. Yeah. I believe they also have to
24 show --

25 Q. I'm sorry. I didn't hear. Your

1 **answer was yes?**

2 A. Yes.

3 **Q. And then please go ahead.**

4 A. I was just stating, too, they also
5 have to discuss the alternative fuel source, too,
6 that they would be able to have an alternative fuel
7 source as well as bypassing.

8 **Q. Did you review Mr. Brubaker's cost of**
9 **service analysis in his -- in his rebuttal**
10 **testimony?**

11 A. Mr. Imhoff addresses his cost of
12 service study.

13 **Q. So you did not?**

14 A. I looked at it. I did not study it.

15 **Q. Okay. But --**

16 A. So the questions would be more able
17 to be --

18 **Q. Fair enough. If you know, does**
19 **Liberty have any customers in the interruptible**
20 **large volume gas service class?**

21 A. Yes.

22 **Q. They do?**

23 A. Uh-huh.

24 **Q. Do you know who they are?**

25 A. Well, for two of them, they're

1 Noranda and General Mills.

2 Q. I'm sorry. I meant -- well, it's
3 unclear whether those two are appropriately in that
4 class. Other than those two?

5 A. I do believe so, yes.

6 Q. You do believe so. Do you know who
7 they are?

8 A. Not off the top of my head, no.

9 COMMISSIONER HALL: I believe that's
10 all I have. Thank you.

11 JUDGE PRIDGIN: All right. I have no
12 questions. Thank you. Before we proceed, let me
13 inquire of counsel. I hesitate to take a break
14 while a witness is still on the stand. I'm not
15 sure what kind of recross or redirect we might be
16 looking at. If I could get counsel's input.
17 Mr. Downey?

18 MR. DOWNEY: Judge, I have recross,
19 and I really need a break.

20 JUDGE PRIDGIN: Fair enough. Thank
21 you. Let's take about 15 minutes. It looks like
22 on the clock here it's about --

23 MR. KEEVIL: Judge, let me ask a
24 question before we do that.

25 JUDGE PRIDGIN: Mr. Keevil.

1 MR. KEEVIL: Recross is to be based
2 on questions from the Bench?

3 JUDGE PRIDGIN: Correct.

4 MR. KEEVIL: Okay. Thank you.

5 JUDGE PRIDGIN: Commissioner?

6 COMMISSIONER HALL: I actually had
7 one more question. I can do it afterwards, after
8 our break or now. It's your call.

9 JUDGE PRIDGIN: I'd say go ahead,
10 Commissioner.

11 COMMISSIONER HALL: I apologize.

12 BY COMMISSIONER HALL:

13 Q. Looking at the order approving the
14 Unanimous Stip & Agreement in the 2012 case,
15 Section 19D, which is a provision that OPC spent
16 some time on, do you have that document in front of
17 you?

18 A. Yes. I'm going to it. You said 19D?

19 Q. 19D on page 17.

20 A. Okay.

21 Q. Do you believe that Liberty complied
22 with this condition as it relates to the special
23 contracts for Noranda and General Mills?

24 A. I'll need to read it.

25 Q. Okay.

1 MR. FISCHER: Commissioner, could I
2 inquire, is that the GM case, the acquisition case?

3 COMMISSIONER HALL: Yes. I have your
4 copy, don't I?

5 MR. FISCHER: That's all right.

6 THE WITNESS: You're asking if
7 Liberty followed this?

8 BY COMMISSIONER HALL:

9 Q. Yes.

10 A. I'm not sure actually.

11 Q. **And it could be that this question is**
12 **better addressed to another Staff witness. I'm**
13 **looking to counsel.**

14 MR. KEEVIL: I think that's more of a
15 rate design question, Commissioner, which would be
16 Mr. Imhoff.

17 COMMISSIONER HALL: Fair enough.
18 Thank you.

19 JUDGE PRIDGIN: All right. Thank you
20 very much. Let's go into recess until 10:40.
21 Thank you very much. We're off the record.

22 (A BREAK WAS TAKEN.)

23 JUDGE PRIDGIN: All right. Good
24 morning. We are back on the record, and Ms. Cox,
25 you are still under oath. I think when we left

1 off, we were going to have recross-examination. Is
2 there anything further from counsel before we
3 begin?

4 MR. DOWNEY: Judge, I have one point.

5 JUDGE PRIDGIN: Mr. Downey.

6 MR. DOWNEY: I don't know how you fix
7 this, but I think at one point during the
8 cross-examination by Mr. Fischer, the contract rate
9 came out, and it was in public session. And I
10 don't know if there's a way you can instruct the
11 court reporter to redact that.

12 JUDGE PRIDGIN: I can. I guess in
13 the past I've certainly entertained motions to
14 remove certain portions of evidence from public
15 back into proprietary or highly confidential,
16 because I don't know -- until we get the
17 transcript, I don't know exactly where it's going
18 to be.

19 MR. FISCHER: I would appreciate
20 that, too, Judge. If I said something in open
21 session, I'd appreciate it be kept under seal.

22 MR. DOWNEY: We think it was the
23 answer, not your question, and it's very easy to do
24 that.

25 JUDGE PRIDGIN: Certainly. I think

1 in the past the way we have fixed it is just
2 entertain a motion, somebody move the Commission to
3 put that back under seal, and that's the -- that's
4 the first way I can think of to fix it. If counsel
5 have other ideas, I'd entertain them.

6 MR. DOWNEY: Is there a way that I
7 can review the transcript before the public portion
8 is posted?

9 JUDGE PRIDGIN: I would certainly
10 think so. We can certainly talk about that while
11 we're off the record and talk to the court
12 reporter. The short answer is I think probably so,
13 to be helpful as usual.

14 Anything further before recross? All
15 right. Ms. Cox, you are still under oath, and any
16 recross-examination, Mr. Poston?

17 MR. POSTON: No questions.

18 JUDGE PRIDGIN: I don't see Mr. Knee.
19 Mr. Downey?

20 MR. DOWNEY: Yes, Judge.

21 RE-CROSS-EXAMINATION BY MR. DOWNEY:

22 Q. Do you recall the visit you had with
23 Commissioner Hall about the response to DR 267?

24 A. Would you like -- would you mind
25 telling me what my response was?

1 Q. No, no, no. Do you recall just
2 visiting --

3 A. Yes.

4 Q. -- with Commissioner Hall about that?

5 A. Yes.

6 Q. And I visited with you about that
7 issue as well, did I not?

8 A. Yes.

9 Q. And you indicated that you had
10 reviewed Mr. Swogger's testimony but not
11 Mr. Johnstone's?

12 A. Yes.

13 Q. And do you have Mr. Swogger's
14 testimony there?

15 A. Yeah. Yes, I do.

16 Q. Can you turn to page 25?

17 A. Okay.

18 Q. Lines 14 and 15.

19 A. Okay.

20 Q. Do you recall reading that when you
21 read Mr. Swogger's testimony?

22 A. It's pretty lengthy, but yes, I'm
23 sure I read it.

24 Q. Okay. And that's where he indicates
25 Mr. Johnstone explains that the cost to serve

1 **Noranda is 6 cents per MCF, right?**

2 A. That's what it states.

3 **Q. And you weren't curious to read**
4 **Mr. Johnstone's testimony?**

5 A. I don't know if curious would be the
6 word. As far as the part of the cost of service
7 study, that would be Mr. Imhoff's.

8 **Q. Okay. But you're consistently**
9 **telling this Commission there was no support for**
10 **the contract rate, and yet Mr. Swogger tells you,**
11 **because you read this, that the contract rate is --**
12 **we know what that is, but that the cost to serve is**
13 **well below that contract rate, and you weren't**
14 **interested to read Mr. Johnstone's testimony?**

15 A. Well, from this testimony, this is
16 back in the 2006 case. So, therefore, I didn't
17 feel it was pertinent for this rate case.

18 **Q. All right. Let's take a look at the**
19 **order approving the stipulation, and that's in the**
20 **GR-2010-0192 case attached to your surrebuttal.**

21 A. Okay.

22 **Q. The Commission's order is dated**
23 **August of 2010, right?**

24 A. I don't believe I have the order
25 still.

1 Q. Do you have your surrebuttal?

2 A. I do, but as I stated earlier, I
3 don't believe I have the order attached. I believe
4 I just gave it back when we recessed.

5 Q. You don't have the attachments to
6 your surrebuttal?

7 A. Again, no, I do not.

8 Q. Okay.

9 A. I apologize. He had given it to me
10 before, and then I returned it during the recess.

11 Q. Okay. You don't have the originals
12 of your surrebuttal in front of you?

13 A. I have just the testimony piece, not
14 the attachment.

15 MR. DOWNEY: May I approach?

16 JUDGE PRIDGIN: You may.

17 BY MR. DOWNEY:

18 Q. Here's a copy of the order. Take a
19 look at it and make sure that it's correct and it
20 matches what you attached to your surrebuttal.

21 A. This is for the GM case.

22 Q. Okay. No. I'm looking for GR.

23 A. Right. Sorry. Yes, I believe this
24 is it.

25 Q. And was I correct, the Commission

1 entered that order in August of 2010?

2 A. Yes.

3 Q. Turn to page 7.

4 A. Okay.

5 Q. Under conclusion, do you see the
6 second and third sentences under conclusions?

7 A. Yes.

8 Q. The second sentence is, In this order
9 the Commission grants the parties' request to enter
10 all prefiled testimony and affidavits prepared by
11 the parties into the record. Do you see that?

12 A. Yes.

13 Q. And also the next sentence, The
14 record thus contains substantial and competent
15 evidence. Do you see that?

16 A. Yes.

17 Q. Did I read that correctly?

18 A. Uh-huh.

19 Q. And so Mr. Swogger's testimony would
20 be in there as well as Mr. Johnstone's, right?

21 MR. KEEVIL: Objection. That isn't
22 what that says. I mean, it says --

23 MR. DOWNEY: I'm asking her a
24 question. If you want to answer for her, that's
25 fine, but what's the objection?

1 MR. KEEVIL: Well, you're misstating
2 what it says. It says nothing about
3 Mr. Johnstone's testimony or Mr. Swogger's
4 testimony in either of those two sentences.

5 JUDGE PRIDGIN: I'll overrule.

6 BY MR. DOWNEY:

7 Q. Let me ask it differently. Was
8 Mr. Swogger's testimony prefiled testimony?

9 A. I do believe so, yes.

10 Q. And do you know if Mr. Johnstone's
11 would be as well?

12 A. I believe it was.

13 Q. Okay. And so I guess the question is
14 this: Did somebody tell you not to read
15 Johnstone's testimony?

16 A. No.

17 Q. You just decided on your own not to
18 read it?

19 A. It was -- Mr. Swogger's was
20 addressing, I believe, the cost of service portion
21 of it. Mr. Imhoff was the Staff witness for that.

22 Q. Okay. But you indicated, I believe,
23 repeatedly but also to Commissioner Hall that there
24 wasn't support for the contract rate. If the cost
25 to serve is substantially less than the contract

1 **rate, wouldn't that be support for it?**

2 A. For the --

3 MR. KEEVIL: Objection. She stated
4 previously there was no support for it in this
5 case. They keep trying to retry the 2006 and 2010
6 case. Her testimony is regarding this case in
7 2014.

8 MR. DOWNEY: Judge, let me respond.
9 She said -- and she used the DR response and said
10 there was no support for the rate, and the DR
11 response referred her directly to Swogger and
12 directly to Johnstone's testimony.

13 JUDGE PRIDGIN: I'll overrule.

14 BY MR. DOWNEY:

15 **Q. The question is, would the cost to**
16 **serve be a relevant factor in determining whether**
17 **the rate was justified?**

18 A. In this case, in the 2006 case, yes.

19 **Q. Okay. And then you also indicated in**
20 **response to Commissioner Hall that you really**
21 **didn't read Mr. Brubaker's testimony very closely.**
22 **Do you recall that?**

23 A. I believe I stated I reviewed it.

24 **Q. Okay. What did he indicate that the**
25 **cost to serve Noranda was, then?**

1 A. If I recall, he stated it was
2 3 cents, I believe.

3 **Q. And that's substantially below the**
4 **contract rate as well?**

5 A. That's correct.

6 MR. DOWNEY: Judge, I previously had
7 provided copies of Johnstone's testimony. It was
8 yesterday. I don't think we marked those as
9 exhibits. I'd like them marked as exhibits and I'd
10 like to introduce them now.

11 JUDGE PRIDGIN: And I believe that's
12 correct. Let me verify. I believe that's correct,
13 Mr. Downey. So looks like Mr. Johnstone's
14 testimony would be No. 58.

15 MR. DOWNEY: There were two versions.
16 One was direct and -- thank you -- direct and
17 rebuttal. So the direct would be Exhibit 58.

18 JUDGE PRIDGIN: All right.

19 MR. DOWNEY: And, Judge, do you want
20 to make the rebuttal 59?

21 JUDGE PRIDGIN: That's fine. I'm
22 sorry. Is it rebuttal or surrebuttal?

23 MR. DOWNEY: I think it's rebuttal.

24 JUDGE PRIDGIN: All right. Thank
25 you.

1 MR. DOWNEY: And I'd offer those at
2 this time.

3 JUDGE PRIDGIN: 58 and 59 have been
4 offered. Any objections?

5 MR. KEEVIL: Well, yeah. Like I said
6 previously, the testimony concerning a different
7 case, has not been subjected to discovery in this
8 case. It's -- let's see. In the case of the 2006,
9 that's eight years old. That study is stale and
10 does not even respond to -- Mr. Downey is using
11 this response to DR 6 to get that into the record,
12 but it was -- it was Liberty's response, not
13 Ms. Cox's question, that refers to Johnstone
14 testimony.

15 And if you look at the question
16 itself that Ms. Cox asked in this, or whoever
17 submitted this data request, asked for supporting
18 rationale and analysis regarding the discounted
19 rate during the test year ending September 2013.
20 Nothing in the Johnstone testimony talks about the
21 test year ending in 2013.

22 JUDGE PRIDGIN: Mr. Downey?

23 MR. DOWNEY: Yes, Judge. This
24 witness has repeatedly indicated to the Commission
25 both live and in her prefiled testimony that

1 there's no support for the rate. She asked for the
2 support for the rate. The company referred her to
3 these testimonies. She read the Swogger testimony
4 indicating the cost to serve according to Johnstone
5 was 6 cents per unit. She didn't bother to read
6 that.

7 I think it goes to probably her
8 credibility on the opinion she's rendering that the
9 company has provided no support to her for the
10 rate.

11 JUDGE PRIDGIN: The objections are
12 overruled. Exhibits 58 and 59 are admitted.

13 (NORANDA EXHIBIT NOS. 58 AND 59 WERE
14 MARKED AND RECEIVED INTO EVIDENCE.)

15 MR. DOWNEY: Nothing further, Judge.

16 JUDGE PRIDGIN: All right. Thank
17 you. Any recross from Liberty, Mr. Fischer?

18 MR. FISCHER: No, thank you, Judge.

19 JUDGE PRIDGIN: All right. Any
20 redirect?

21 MR. KEEVIL: Just a little bit.

22 REDIRECT EXAMINATION BY MR. KEEVIL:

23 Q. Ms. Cox, let me start out by
24 referring you back to, I think it was Commissioner
25 Hall's very first question to you, where I believe

1 he asked you if Liberty had violated the law, the
2 tariffs or something else. And I believe you
3 stated that you believe that Liberty had violated
4 its tariffs.

5 I want to clarify what your response
6 was or intended to be to the Commissioner's
7 question.

8 MR. KEEVIL: Do you still have that
9 question, Commissioner, that you asked regarding --
10 because I don't have it verbatim written down. I
11 just want to make sure that we're clear on that
12 point.

13 COMMISSIONER HALL: You're asking me
14 if I'm still wondering about that issue or you're
15 asking me can I rephrase my question?

16 MR. KEEVIL: Well, not rephrase.
17 Just repeat the question. I'm afraid Ms. Cox
18 misunderstood your question. Or can the court
19 reporter, can you find where the Commissioner
20 said --

21 COMMISSIONER HALL: My question was
22 whether or not it is Staff's position that Liberty
23 violated either the law, a tariff or a Commission
24 order when it charged the discounted contract rate
25 during the test year in 2013.

1 MR. KEEVIL: And my fear was that
2 Ms. Cox was approaching that from the tariff
3 perspective and not from the general perspective
4 that your question had been phrased.

5 BY MR. KEEVIL:

6 Q. I guess, Ms. Cox, are you here to
7 give a legal opinion regarding Liberty's actions
8 during the test year?

9 A. No.

10 Q. Okay. When you previously answered
11 Commissioner Hall's question on that, did you
12 understand that he was including tariffs -- excuse
13 me -- any provisions of law or the stipulation as
14 well as the tariffs when you previously answered
15 that question?

16 A. When I answered, I was only answering
17 about the tariff.

18 Q. Okay. So is it your position, then,
19 that Liberty's tariffs do not authorize the
20 contracts that they have with Noranda and General
21 Mills?

22 A. Yes.

23 Q. And beyond that, were you intending
24 to say that Liberty had somehow violated the law or
25 any other provision?

1 A. No.

2 Q. Okay. Now, Ms. Cox, the --
3 Mr. Downey had asked you a few questions about
4 Mr. Swogger's testimony from GR-2006-0387, and I
5 believe he's had that admitted as Exhibit 57. He
6 asked you if you'd read that testimony. I believe
7 you said you had, correct?

8 A. Yes.

9 Q. Now, do you recall seeing in there,
10 in that testimony, any actual bypass study?

11 A. I don't recall.

12 Q. You say you don't recall seeing one?

13 A. Seeing any study.

14 JUDGE PRIDGIN: Mr. Keevil, not to
15 interrupt, if I could just -- I've had a few
16 e-mails just in the last few minutes saying they're
17 having a hard time hearing counsel. If you could
18 be sure your -- all counsel make sure your
19 microphone's on and you're talking into it, please.
20 Thank you.

21 BY MR. KEEVIL:

22 Q. Now, Ms. Cox, do you remember
23 Mr. Fischer -- excuse me. It wasn't Mr. Fischer.
24 No. It was Mr. Fischer -- asked you about a data
25 request that Staff had asked Noranda, whether Staff

1 had asked certain data requests of Noranda, do you
2 recall that exchange?

3 A. Yes.

4 MR. KEEVIL: This is HC, Judge.

5 JUDGE PRIDGIN: This will be
6 Exhibit 60.

7 (STAFF EXHIBIT NO. 60HC WAS MARKED
8 FOR IDENTIFICATION BY THE REPORTER.)

9 MR. KEEVIL: Judge, you said this
10 should be 60HC?

11 JUDGE PRIDGIN: Correct.

12 BY MR. KEEVIL:

13 Q. Ms. Cox, I've handed you what's been
14 marked as Exhibit 60HC, and I'm not asking you what
15 exactly is on there because I think we're still in
16 public session, but I'd like for you to take a look
17 at that and then ask you if you identify that as
18 the responses from Noranda that Staff received to
19 the data request we submitted, Staff submitted to
20 Noranda.

21 And if you can take a look at the
22 first page, that is the column under description, I
23 believe, is the data request that we asked, Staff
24 asked. The column under Noranda response obviously
25 is the Noranda response. And if you look down

1 there at the bottom, the very last one, No. 12 --
2 is it No. 12? Yes. No. 12 says, See attached
3 Excel file.

4 So attached to this first page, the
5 first attached page I believe is the payments made
6 by Noranda to Liberty during the months shown, and
7 the second attached page is payments made by
8 Noranda to its upstream pipeline supplier Twin
9 Eagle according to -- or pursuant to that Data
10 Request 12 at the bottom of the first page.

11 Do you recognize this document as
12 I've described it?

13 A. Yes.

14 MR. KEEVIL: Okay. Judge, I'd offer
15 Exhibit 60HC.

16 JUDGE PRIDGIN: Any objections?

17 (No response.)

18 JUDGE PRIDGIN: Hearing none, 60HC is
19 admitted.

20 (STAFF EXHIBIT NO. 60HC WAS RECEIVED
21 INTO EVIDENCE.)

22 MR. KEEVIL: I apologize, Judge, for
23 the small print. We had -- this was part of an
24 Excel spreadsheet that we had to reduce somewhat to
25 get all on one page because otherwise it would have

1 been completely unwieldy.

2 BY MR. KEEVIL:

3 Q. If you'd look at the Noranda response
4 column on DR No. 2, I don't think that's -- no,
5 that's not marked HC. Okay. Does that response --
6 or does that state that Noranda has no such bypass
7 analysis, work papers or studies. We understand
8 that such analyses were performed in the past and
9 form the basis for the contracts, but we are
10 unaware of whether that analyses was performed for
11 Noranda or for Atmos or its predecessor. Did I
12 read that correctly?

13 A. Yes.

14 Q. Okay. The next one down, Noranda has
15 no such bypass analyses, work papers or studies.
16 Did I read that correctly?

17 A. Yes.

18 Q. The response to No. 5, the first two
19 sentences, We understand that the nearest pipeline
20 is Texas Eastern. We do not know the distance to
21 connect to that pipeline. Did I read those
22 correctly?

23 A. Yes.

24 Q. Thank you. Now, Mr. Fischer also
25 asked you several questions about what you would

1 expect residential customers to think of certain
2 rate increases were residential customers to
3 experience them. Do you recall that general line
4 of questioning?

5 A. Yes.

6 Q. To use Mr. Fischer's phraseology,
7 would you expect residential customers to object to
8 subsidizing large industrial customers in the
9 amount of the Staff's adjustments for the Noranda
10 and General Mills contracts? The reason I'm not
11 saying that number is I think we're in public
12 session.

13 A. Yes.

14 MR. DOWNEY: Judge, I'm going to
15 object to the term subsidize. I think the evidence
16 in the record is the rate is actually above the
17 cost to serve Noranda.

18 JUDGE PRIDGIN: Overruled.

19 BY MR. KEEVIL:

20 Q. Ms. Cox, Mr. Fischer also asked you
21 several questions about what you would expect
22 industrial customers to do in the event that they
23 got a rate increase.

24 Following up on those, I'd like to
25 ask, would you expect a utility company to require

1 a study that proves the viability of a bypass
2 situation and the cost to provide service rather
3 than simply take the word of an industrial customer
4 before granting that customer a discount based on
5 the, for lack of a better word, I'll say threat of
6 bypass? Would you expect the utility to actually
7 require a study that shows bypass is actually
8 feasible and viable?

9 MR. FISCHER: Judge, I'll object to
10 that question on lack of foundation that this
11 witness has ever worked for a public utility or
12 have any basis for making that kind of a judgment.

13 MR. DOWNEY: And I'll further object
14 that it misstates the evidence. I think the
15 evidence is very clear that the company, Liberty,
16 had before it the testimony of Johnstone, as this
17 Commission did as well, showing that the cost to
18 serve Noranda is less than the rate.

19 JUDGE PRIDGIN: I'll sustain. And
20 Mr. Keevil, I'll give you a chance to reask because
21 I'm not sure I followed the question.

22 MR. KEEVIL: Well, Mr. Fischer asked
23 Ms. Cox several questions about what she would
24 expect industrial customers to do, and one of them
25 was whether she would expect industrial customers

1 to consider bypass under certain situations such as
2 paying a much higher rate.

3 And my question is, since he asked
4 about industrial customers considering bypass,
5 whether it would be -- she would expect a utility,
6 once the industrial customer told it they were
7 going to bypass, whether the utility would require
8 some sort of bypass study that actually proves the
9 feasibility and viability of bypassing before
10 granting the customer a reduced rate or whether you
11 simply accept the threat and say, sure, here's a
12 reduced rate.

13 MR. FISCHER: Same objection, Judge.

14 JUDGE PRIDGIN: I'm going to sustain.

15 BY MR. KEEVIL:

16 Q. Ms. Cox, when you -- Mr. Fischer was
17 asking you several questions that he began with the
18 phraseology what would Staff do or what would Staff
19 believe, like regarding the -- he was talking about
20 when Liberty, according to him, stepped into the
21 shoes of Atmos and things Liberty may or may not
22 have been required to do pursuant to the
23 stipulation. What would Staff have done if Liberty
24 had not done something or other.

25 When you were responding to questions

1 of that nature, what would Staff believe or what
2 does Staff believe, are you answering that on
3 behalf of yourself or have you had some meeting
4 with a large number of Staff people and come to
5 some consensus or some large Staff conclusion?

6 A. Myself.

7 Q. Now, was it Mr. -- yes, it was
8 Mr. Fischer, I believe, referred you to page 7 of
9 the order in the 2010 case, which I believe is
10 attached -- I may have the wrong order here. Yes.
11 It's the order attached to your surrebuttal as
12 Schedule KC-1-38, page 7.

13 He asked you some questions about the
14 lines that say the Commission has compared the
15 substantial and competent evidence with the
16 agreement as to the rate adjustment and rate
17 design, and then the Commission independently finds
18 and concludes that Atmos has met its burden of
19 proof that the rates proposed in the agreement are
20 just and reasonable rates.

21 Now, when that refers to the rates
22 proposed in the agreement are just and reasonable
23 rates, what rates is that referring -- is it your
24 understanding that's referring to?

25 MR. DOWNEY: I'm going to object.

1 She's not qualified to be rendering opinions on the
2 meaning of the Commission's orders.

3 JUDGE PRIDGIN: I'm going to
4 overrule. She can answer if she knows.

5 THE WITNESS: I believe the rates
6 that they're referring to are the tariff rates.

7 BY MR. KEEVIL:

8 Q. Thank you. Now, Mr. Fischer also
9 asked you several questions about the Staff's
10 position on what Liberty should have done during
11 the test year vis-a-vis the charges to Noranda and
12 General Mills.

13 As we have this case here today, are
14 we setting rates for the test year or are we
15 setting rates on a going-forward basis?

16 A. Going forward.

17 Q. He also asked you some questions
18 about whether you thought it was prudent for the
19 company to do various things. So let me ask you,
20 do you think it's prudent to sign a new contract
21 without supporting analysis?

22 A. No, I do not.

23 Q. And there was a new Noranda contract
24 with Liberty signed in -- or yes, I guess it was
25 signed in July of this year, correct?

1 A. Correct.

2 Q. Have you seen any analysis supporting
3 that contract?

4 A. No, I have not.

5 MR. KEEVIL: Thank you. Nothing
6 further, Judge.

7 JUDGE PRIDGIN: Mr. Keevil, thank
8 you. Ms. Cox, thank you very much. You may step
9 down.

10 MR. KEEVIL: Did I offer her
11 testimony, Judge?

12 JUDGE PRIDGIN: I believe you did,
13 but let me verify. I show it as offered and
14 received with no objection.

15 MR. KEEVIL: Okay. Thank you.

16 JUDGE PRIDGIN: You're welcome.

17 MR. KEEVIL: And 60 was received
18 also, correct?

19 JUDGE PRIDGIN: Correct. I show on
20 the list of witnesses Mr. Marevangepo has testimony
21 on this.

22 MR. KEEVIL: Actually, he was -- if
23 you remember, Judge, he was up yesterday and
24 covered this during his testimony yesterday.

25 JUDGE PRIDGIN: So we're on to

1 Mr. Imhoff. Anything further before Mr. Imhoff
2 takes the stand?

3 (No response.)

4 JUDGE PRIDGIN: If you'll raise your
5 right hand to be sworn, please.

6 (Witness sworn.)

7 JUDGE PRIDGIN: Thank you very much,
8 sir. Please have a seat. Mr. Keevil, when you're
9 ready.

10 MR. KEEVIL: I apologize, Judge.

11 JUDGE PRIDGIN: No problem.

12 MR. KEEVIL: I wasn't planning on
13 Mr. Imhoff to run up there so anxiously.

14 THOMAS M. IMHOFF testified as follows:

15 DIRECT EXAMINATION BY MR. KEEVIL:

16 **Q. All right. Would you please state**
17 **your name for the record, sir.**

18 A. My name is Thomas M. Imhoff,
19 I-m-h-o-f-f.

20 **Q. Thank you. By whom are you employed**
21 **and in what capacity?**

22 A. I am employed by the Missouri Public
23 Service Commission. I am the manager over rate
24 design and tariffs section for the energy
25 department.

1 Q. Thank you. Now, are you -- excuse
2 me. Did you contribute to the Staff's -- this is
3 going to get really interesting with your testimony
4 since you contributed to so many different reports
5 here. But did you contribute to the Staff's
6 revenue requirement cost of service report?

7 A. Yes, I did.

8 Q. Okay. And did you also file direct
9 testimony on the issue of revenue requirement
10 supporting or sponsoring part of that cost of
11 service report?

12 A. Yes, I did.

13 Q. Did you also contribute to the
14 Staff's class cost of service and rate design
15 report filed in this proceeding?

16 A. Yes, I did.

17 Q. And did you file direct testimony
18 along with that report as well?

19 A. Yes, I did.

20 Q. Okay. If I could -- just for your
21 information and for the record, Mr. Imhoff, I
22 believe your direct testimony has been premarked as
23 Exhibit 27, and the other set of direct testimony
24 has been premarked 28.

25 A. I'm sorry. What was No. 28?

1 Q. 28 is the second -- also your direct,
2 but the second, rate design version of your direct.

3 A. Okay.

4 Q. Okay. Exhibit -- are you also -- or
5 have you also submitted rebuttal testimony in this
6 proceeding which has been marked Exhibit 29?

7 A. Yes, I have.

8 Q. And have you submitted surrebuttal in
9 this proceeding marked Exhibit 30?

10 A. Yes, I have.

11 Q. Okay. Do you have any changes or
12 corrections you wish to make to any of this
13 testimony that we've discussed here?

14 A. Yes, I do. Exhibit No. 27, on
15 page 2.

16 Q. Hang on just a second.

17 A. Line 3, it states, Rate and tariff --
18 excuse me -- rate and tariff examination
19 supervisor. That should be changed to manager.

20 And on Exhibit No. 30, page 3,
21 line 2, where it says Atmos has in its position,
22 that should be possession. And on the same
23 page, 3, line 16, it has SEMO district. It should
24 be WEMO.

25 Q. Hang on just a second. You're

1 getting ahead of me. So that should be NEMO and
2 WEMO instead of NEMO and SEMO?

3 A. Yes.

4 Q. Okay. Anything else?

5 A. Not that I'm aware of.

6 Q. Okay. Now, this is a little unusual,
7 but -- because you've contributed to so many pieces
8 of testimony in this proceeding. The surrebuttal
9 you were just referring to is actually the piece of
10 testimony that addresses the issue that we're here
11 today about; is that correct?

12 A. That is correct.

13 Q. And the remaining pieces of your
14 testimony are on other issues which were or may
15 still be in issue in this case but do not address
16 really the issue that we're here this morning
17 about; is that correct?

18 A. That is correct.

19 Q. Okay. Thank you. Mr. Imhoff, if I
20 were to ask you the questions contained in those
21 pieces of testimony that we've discussed, would
22 your answers today be the same as contained therein
23 as you've corrected?

24 A. Yes, they would.

25 MR. KEEVIL: Judge, with that --

1 well, no. I guess Mr. Imhoff is coming back later,
2 or may or may not come back later. So I -- I
3 suppose for now I can't offer any of his testimony,
4 so I'll tender him for cross-examination.

5 JUDGE PRIDGIN: Very good. Thank
6 you. Mr. Poston?

7 MR. POSTON: No questions.

8 JUDGE PRIDGIN: I don't see Mr. Knee.
9 Mr. Downey?

10 MR. DOWNEY: No questions.

11 JUDGE PRIDGIN: Mr. Fischer or
12 Mr. Dority?

13 MR. FISCHER: No, thank you.

14 JUDGE PRIDGIN: Any Bench questions?
15 Mr. Chairman?

16 CHAIRMAN KENNEY: No questions.
17 Thank you, Mr. Imhoff.

18 JUDGE PRIDGIN: Commissioner Kenney?

19 COMMISSIONER W. KENNEY: No. Thank
20 you.

21 JUDGE PRIDGIN: Commissioner Hall?

22 COMMISSIONER HALL: Yes, a couple of
23 questions. Thank you.

24 QUESTIONS BY COMMISSIONER HALL:

25 Q. Let me turn to your surrebuttal

1 testimony on page 3, 1 and 2.

2 A. Yes.

3 Q. Where you say that Staff has not
4 received the data that Atmos has in its -- I assume
5 that should be possession.

6 A. Yes. I made that correction. I'm
7 sorry.

8 Q. I apologize. I missed that -- in its
9 possession that would allow a class cost of study
10 to be performed. Did I --

11 MR. KEEVIL: Are you referring to the
12 surrebuttal, Commissioner?

13 COMMISSIONER HALL: Surrebuttal,
14 yeah.

15 THE WITNESS: Yes, he is. Yes.

16 BY COMMISSIONER HALL:

17 Q. What data are you referring to?

18 A. I am referring to the revenue data
19 that would -- that was actually under Atmos'
20 possession. We have received updates from Liberty,
21 and each time that we have received those updates,
22 we got different customer numbers and different
23 customer usages.

24 So I believe probably what Atmos was
25 doing at the time was just doing a query, but I

1 don't know that for a fact. I do know, though,
2 that Liberty has been trying to get that
3 information from Atmos.

4 Q. Okay. And because Atmos is not a
5 party in this case, there's no way to compel Atmos
6 to provide that information?

7 A. That's my understanding.

8 Q. Okay. Turning to the order approving
9 the unanimous stip in the GM case, the 2012 GM
10 case, the provision I was asking Ms. Cox about and
11 counsel indicated that you might be a more
12 appropriate witness to answer such questions, 19D,
13 provision 19D on page 17.

14 MR. KEEVIL: Commissioner if I could
15 provide Mr. Imhoff with a copy of the stip?

16 COMMISSIONER HALL: That would
17 expedite it.

18 THE WITNESS: I apologize. I don't
19 have it with me.

20 COMMISSIONER HALL: No. That's quite
21 all right. I should have asked you.

22 MR. KEEVIL: Now let's just hope I
23 gave him the right stip.

24 BY COMMISSIONER HALL:

25 Q. I am curious as to whether or not it

1 is your belief that Liberty violated this provision
2 as it relates to the requirement to provide a class
3 cost of study analysis vis-a-vis Noranda and
4 General Mills.

5 A. No. And the reason why I don't
6 believe that they have violated is, when we did our
7 annualization for Noranda and General Mills, they
8 were -- they were under the tariffed rate. So by
9 Liberty proposing an equal percentage, they did not
10 have to file a class cost of service study.

11 Q. I'm sorry. Come again.

12 A. Okay. We -- in the Staff's
13 annualized case that we've just filed, the two
14 customers, Noranda and General Mills, were
15 classified as an interruptible customer, and those
16 rates were used to annualize those revenues.

17 Therefore, by them being under that
18 particular customer class, Liberty would not be in
19 violation because they have proposed an equal
20 percentage for each of the rate classes.

21 Q. But that's not what Liberty proposed.
22 Liberty proposed complying with the special
23 contract for those two customers.

24 A. That is true. That's what they --

25 Q. So is it your position that they did

1 not violate this provision if the Commission takes
2 Staff's position in this case but they did violate
3 this provision if we take Liberty and Noranda's
4 position in this case?

5 A. If there was -- there would be a
6 violation in the Staff's opinion then if there --
7 if they had a -- if you would go with the
8 non-tariffed rate.

9 Q. What is the appropriate recourse for
10 such a violation, if you know?

11 A. Well, if there is a violation, the
12 Staff Counsel could request that a complaint be
13 filed before the Commission. That's my
14 understanding.

15 Q. Turning to Mr. Brubaker's class cost
16 of service analysis, you reviewed that analysis in
17 his -- in his rebuttal testimony?

18 A. Yes, I did.

19 Q. And other than his discussion of the
20 extent to which Noranda took advantage of Liberty's
21 transmission system, other than that issue, is
22 there -- do you take issue with other aspects of
23 the analysis? And I can rephrase that if that's
24 poorly asked or if you don't understand my
25 question.

1 A. Would you mind repeating that? I'm
2 sorry.

3 Q. I understand from looking at your
4 testimony that you've got some -- you have a -- you
5 take some issue with the extent to which
6 Mr. Brubaker determined the cost of service in
7 light of Noranda not taking advantage of the local
8 distribution system to -- because it links directly
9 into the transmission system. As a result,
10 Mr. Brubaker determined a cost of service
11 accordingly. Is there other aspects of his cost of
12 service analysis that you take issue with?

13 A. Well, when I take a look at what
14 Mr. Brubaker classified as the investment for --
15 that should be attributable to Noranda, he just
16 took the tap line into the system from Liberty's
17 pipe.

18 I'm not -- I don't have a lot of
19 detail. From the work papers that were supplied,
20 there's lot a whole lot of detail to that. I have
21 a rate that I don't know exactly where it came
22 from.

23 He also used an allocation for the
24 general plant and for the cost of the connection
25 and metering facility. That's what he attributed

1 to that. And when I take a look at -- he
2 calculated out a three-day peak demand. I'm not
3 going to say anything about rates or anything.

4 The dates that he used were outside
5 the test year, not inside the test year, whenever
6 he made that comparison. He only took three days.
7 So without getting into any detail, because these
8 are confidential --

9 Q. Okay. So it sounds like you've got a
10 number of concerns about his analysis. Let me --
11 let me focus then on what appears to be the most
12 significant aspect of it, and please correct me if
13 you disagree with that characterization, but the
14 most important component of it is the fact that
15 Noranda can tap directly into the transmission line
16 as opposed to using the local distribution network.
17 Would you say that's the most significant aspect of
18 this analysis --

19 A. I would say --

20 Q. -- dollar-wise?

21 A. I would say that he's only including
22 from the pipe itself, just their tap line into the
23 system itself, into Liberty's system.

24 Now, there is a pipe that is coming
25 from the pipeline, and I think it's Texas Eastern,

1 that actually is the interstate pipeline connection
2 that Liberty has, and then it flows down that pipe,
3 and where that taps into that -- that tap is what
4 Mr. Brubaker has included as their cost. So they
5 are using Liberty's system in order to get the gas
6 there.

7 **Q. They're using the local distribution**
8 **system?**

9 A. Well, they're -- I mean, part of that
10 system, yes. I mean, Noranda does not have a
11 direct tap into the interstate pipeline.

12 **Q. So then it was inappropriate for**
13 **Mr. Brubaker in his analysis to assume that they**
14 **did have a direct tap?**

15 A. A direct tap into? I'm sorry.

16 **Q. Into the transmission system as**
17 **opposed to local distribution system.**

18 A. He -- they have a tap into that
19 system itself, but I think that you have to look at
20 all the expenses and the revenues and everything in
21 order to do a proper class cost of service study.

22 **Q. Well, that's -- that's raising**
23 **another issue that I'm not going to go into here.**
24 **The other issue you're raising is there's a lot of**
25 **other variables at play here other than the two,**

1 **three, four, five, whatever that he mentions in his**
2 **testimony?**

3 A. I believe so, yes.

4 Q. **Are you aware of any other**
5 **customers -- let me rephrase that.**

6 **Are you aware of any customers on the**
7 **interruptible class, on Liberty's interruptible**
8 **class?**

9 A. I'm not -- I don't know any of the --
10 no.

11 Q. **Okay. So is that -- Mr. Brubaker**
12 **goes into some length as to the value to other**
13 **customers, to the company and to other customers**
14 **for the fact that Noranda can take interruptible**
15 **service. Are you familiar with that discussion?**

16 A. Yes.

17 Q. **And can you explain to me -- well, do**
18 **you agree with his discussion, with his analysis?**

19 A. Well, I do agree that during the test
20 year they had contributed, and I can't say the
21 number because that would be classified as highly
22 confidential, I would assume. Based off of the
23 adjustment that the Staff did, someone could
24 probably do a calculation.

25 Q. **Well, that's not really what I'm**

1 asking. I'm asking, in the abstract, as a general
2 policy principle, is there some value to Liberty
3 and to other customers to have a large customer
4 such as Noranda that can take interruptible
5 service?

6 A. You would need to have a study that
7 would actually justify that rate.

8 Q. I'm not asking about rate. I'm
9 asking, in the abstract, in general, is there value
10 to a company, not even Liberty, value to a company
11 to have a large industrial consumer that can take
12 interruptible service?

13 A. Yes, there can be.

14 Q. Why?

15 A. It depends on if they're covering
16 their incremental costs, if they're also providing
17 a reasonable amount towards the fixed costs of the
18 utility, and if in the end, if that particular
19 customer were to leave the system, it would have a
20 huge detrimental effect on the rest of the
21 ratepayers then, then it can be justified, yes, to
22 try to keep that particular big customer on the
23 system.

24 COMMISSIONER HALL: Okay. I have no
25 further questions. Thank you.

1 JUDGE PRIDGIN: Commissioner, thank
2 you. Let me see if we have any recross based on
3 the Bench questions. Mr. Poston?

4 MR. POSTON: No question.

5 JUDGE PRIDGIN: Mr. Downey?

6 MR. DOWNEY: I do. Judge, yesterday
7 I think we handed out Mr. Brubaker's work papers,
8 but I'm not sure. Okay. I'm a little concerned
9 that maybe they're upstairs. I know we provided a
10 copy for each Commissioner as well as the hearing
11 officer.

12 JUDGE PRIDGIN: And they may be, and
13 I can certainly check over lunch, Mr. Downey.

14 MR. DOWNEY: Okay. I'd marked mine
15 up, unfortunately, but Mr. Dority is nice enough to
16 give me his. I'd like to have these marked.

17 JUDGE PRIDGIN: This will be No. 61,
18 and I assume this needs to be HC.

19 (NORANDA EXHIBIT NO. 61 WAS MARKED
20 FOR IDENTIFICATION BY THE REPORTER.)

21 MR. KEEVIL: The two are now being
22 combined?

23 MR. DOWNEY: Yes, and I'll just say
24 this. The way I've paper clipped them together,
25 the ten-page work paper is first. The three-page

1 comes after.

2 RECROSS-EXAMINATION BY MR. DOWNEY:

3 **Q. Mr. Imhoff, are those the Brubaker**
4 **work papers that you reviewed?**

5 A. Yes, they are.

6 MR. DOWNEY: Okay. I'd offer
7 Exhibit 61.

8 MR. KEEVIL: 61?

9 JUDGE PRIDGIN: I've got it marked as
10 61.

11 MR. KEEVIL: What was 60, then?

12 JUDGE PRIDGIN: That was what you
13 introduced.

14 MR. KEEVIL: That's why I missed it.
15 I was introducing it and I didn't write it down.

16 JUDGE PRIDGIN: 61 has been offered.
17 Any objection?

18 (No response.)

19 JUDGE PRIDGIN: Hearing none,
20 Exhibit 61 is admitted.

21 (NORANDA EXHIBIT NO. 61 WAS RECEIVED
22 INTO EVIDENCE.)

23 BY MR. DOWNEY:

24 **Q. Okay. Mr. Imhoff, do you have any**
25 **evidence whatsoever that Noranda is using Liberty's**

1 **distribution system?**

2 A. The only evidence that I have is that
3 I know that it has that -- that line that's coming
4 from the Texas Eastern pipeline down, and then they
5 do have a tap into that line.

6 **Q. Into?**

7 A. Noranda has a tap into that line
8 that's coming from, which is off of Liberty's
9 system.

10 **Q. All right. That line that you're**
11 **talking about, that is the Liberty transmission**
12 **system, a line that you said was coming down?**

13 A. Let me find it first.

14 **Q. Okay. Take your time.**

15 MR. KEEVIL: While he's looking,
16 Judge, would you confirm for me that 60 was
17 received?

18 JUDGE PRIDGIN: Yes, Exhibit 60 was
19 offered and, no objections, it was admitted.

20 MR. KEEVIL: Thank you.

21 JUDGE PRIDGIN: You're welcome.

22 BY MR. DOWNEY:

23 **Q. Mr. Imhoff, maybe I can short circuit**
24 **this. Let me try that question again.**

25 A. Okay. I was trying to find the map.

1 I can't find it.

2 Q. Mr. Brubaker states in his testimony
3 that there is a tap directly from the transmission
4 system of Liberty. Do you have any evidence that
5 disputes that?

6 A. No.

7 Q. Okay. I should have asked the
8 question that way. I'm sorry.

9 MR. DOWNEY: No further questions.

10 JUDGE PRIDGIN: Mr. Downey, thank
11 you. Liberty, any recross?

12 MR. FISCHER: Just a little bit,
13 Judge.

14 RE-CROSS-EXAMINATION BY MR. FISCHER:

15 Q. Commissioner Hall was asking you
16 about the method of spreading increases on an equal
17 percentage basis, do you recall that --

18 A. Yes.

19 Q. -- especially as it relates to
20 special contract customers?

21 Is it correct, Mr. Imhoff, that in
22 past Atmos cases the rate increase has been spread
23 to customer classes but not to the special contract
24 customers like General Mills or Noranda? Those
25 rates were left in place?

1 A. I believe they were.

2 Q. And I can show you -- actually, we've
3 been talking about the Unanimous Stipulation &
4 Agreement in the last rate case for Atmos. Can I
5 show you an Appendix A in that particular -- I
6 think we've talked about it in settlement. Maybe
7 you're familiar with it.

8 A. Okay.

9 Q. Mr. Imhoff, would you confirm for me
10 that the increase that we had in the last Atmos
11 case was spread to all customer classes in one way
12 or another but not to special contracts? Is that
13 your recollection?

14 A. Based off of this, I do not see
15 special contracts on this.

16 Q. And is it -- in your experience here
17 at the Commission in all these years, is it common
18 that in other cases, electric cases or other gas
19 cases, that negotiated rate customers often are not
20 given increases as a result of a general spreading
21 of the increase?

22 A. I'm not aware of any other LDC that
23 has that.

24 Q. What about electric customers where
25 there is an electric negotiated rate, isn't it

1 common that you spread the increase but you don't
2 necessarily touch those contract rates?

3 A. I don't know about the electric side.

4 Q. Okay. Are you aware that there has
5 been a Stipulation & Agreement, a Partial
6 Stipulation filed with Public Counsel and the
7 company and other parties that have addressed the
8 rate design issue and how that would be spread if
9 that was adopted?

10 MR. KEEVIL: Judge, I'm going to
11 object to that as that would be under the rate
12 design issue which is scheduled for a future day,
13 and Mr. Imhoff is the Staff witness on that, and
14 he'll be back then to testify about rate design if
15 it's necessary to have that hearing on that issue.

16 JUDGE PRIDGIN: I'm going to
17 overrule. He simply asked if he was aware of a
18 pending partial stipulation. He wasn't asking him
19 to testify about rate design.

20 THE WITNESS: I am aware that that's
21 pending.

22 MR. FISCHER: I'll leave the rest for
23 another day. Thank you very much.

24 JUDGE PRIDGIN: Thank you. Any
25 redirect?

1 MR. KEEVIL: Very briefly, Judge.

2 REDIRECT EXAMINATION BY MR. KEEVIL:

3 Q. If I could refer you to the -- the
4 initial question that Mr. -- or excuse me --
5 Commissioner Hall asked you, I believe he directed
6 you to your surrebuttal, top of page 3, and you
7 referred to some data that Staff did not receive or
8 has still not received which Atmos has in its
9 possession.

10 And just to clarify why Atmos -- why
11 Staff is interested in data in the possession of
12 Atmos, would you explain the connection of Atmos to
13 the test year in this case and who was operating
14 what when?

15 A. Okay. For the first five months of
16 the test year, Atmos was doing the billing,
17 maintaining the revenues, records and everything
18 for Liberty at that time. It is my understanding
19 then that the final seven months during the test
20 year, Liberty took over those duties. So the first
21 five months of the billing information was under
22 Atmos' possession.

23 Q. Thank you, Mr. Imhoff. You also
24 during your discussion with Commissioner Hall
25 referred to the -- Staff's revenue annualization,

1 and I believe you stated that when Staff did its
2 revenue annualization, Noranda and General Mills
3 were included under the interruptible customer
4 class; is that correct, sir?

5 A. Yes, it is.

6 Q. Related to that, you referred to some
7 information that Staff had received from Liberty
8 regarding the interruptible customer class,
9 correct?

10 A. Yes.

11 Q. Okay. Now, if you recall, does
12 Liberty in their recordkeeping and in the material
13 and information that Liberty provided to Staff,
14 does Liberty include Noranda and General Mills in
15 its interruptible customer classification or in a
16 special contract classification?

17 A. I don't really know for sure, to tell
18 you the truth, because I didn't look at the details
19 on that.

20 Q. Also during Commissioner Hall's
21 questioning, just to clarify, I believe
22 Commissioner Hall -- and forgive me if I'm
23 misstating the question. I believe he asked you
24 something about Liberty tapping into the
25 transmission system. And I may have misunderstood

1 either his question or your response, but I had the
2 impression that someone was saying that Liberty is
3 not tapping into the transmission system. And is
4 Liberty tapping into -- excuse me. Not Liberty.
5 Noranda. I'm sorry. That changes this question.

6 Someone was saying Noranda was not
7 tapping into the transmission system, and then
8 later I believe you said they're not tapping into
9 the interstate pipeline. Just so the record is
10 clear, what -- to your understanding, what is
11 Noranda currently tapping into?

12 A. Into Liberty's line.

13 Q. Liberty's what kind of line?

14 A. It's their line that is hooked up to
15 the interstate pipeline, but that line goes on past
16 Noranda's tap into that line that then does feed
17 the rest of the distribution system.

18 Q. Okay. So that line goes beyond
19 Noranda's tap?

20 A. Yes.

21 Q. And serves the rest of the
22 distribution?

23 A. Sure.

24 Q. If you know, when the Liberty --
25 well, what is currently the Liberty system was

1 **constructed, was Noranda a customer and was**
2 **Noranda's presence as a large industrial customer**
3 **taken into consideration in the building of what is**
4 **now the Liberty system?**

5 A. I would assume, yes.

6 MR. KEEVIL: I think that's all I
7 have, Judge.

8 JUDGE PRIDGIN: Mr. Keevil, thank
9 you. Looking at the time, we're approaching the
10 noon hour and would like to break for lunch here
11 shortly. I do show that Ms. Meisenheimer will be
12 the next witness on the stand.

13 Is there anything from counsel before
14 we adjourn for lunch? All right. Hearing nothing,
15 we will stand in recess until one o'clock. Thank
16 you very much. We are off the record.

17 (A BREAK WAS TAKEN.)

18 JUDGE PRIDGIN: All right. Good
19 afternoon. We are back on the record. We are
20 continuing with contract customer witnesses, and I
21 believe that Ms. Meisenheimer is the next witness
22 to be called. Is there anything counsel needs to
23 bring to my attention before she takes the stand?

24 (No response.)

25 JUDGE PRIDGIN: All right. Hearing

1 nothing. Ms. Meisenheimer, if you'll come forward
2 and be sworn, please.

3 (Witness sworn.)

4 JUDGE PRIDGIN: Thank you very much.
5 Please have a seat. And, Mr. Poston, when you're
6 ready.

7 MR. POSTON: Thank you.

8 BARBARA MEISENHEIMER testified as follows:

9 DIRECT EXAMINATION BY MR. POSTON:

10 **Q. Please state your name.**

11 A. Barbara Meisenheimer.

12 **Q. By whom are you employed and in what
13 capacity?**

14 A. I am Chief Utility Economist with
15 Missouri Office of the Public Counsel.

16 **Q. Are you the same Barbara Meisenheimer
17 that prepared and caused to be prepared and filed
18 rebuttal testimony HC and NP marked as Exhibit 41?**

19 A. Yes.

20 **Q. Are you also the same that caused to
21 be prepared and filed surrebuttal testimony marked
22 as Exhibit 42?**

23 A. Yes.

24 **Q. Do you have any corrections to your
25 testimony?**

1 A. I have one correction to rebuttal.
2 On page 15, on line 9, in the question, the word
3 express is missing an X.

4 **Q. Do you have any other changes?**

5 A. No, I don't.

6 **Q. With this correction, if I were to**
7 **ask you the same questions today from your**
8 **testimony, would your answers be the same or**
9 **substantially the same?**

10 A. Yes.

11 **Q. Is this testimony true and accurate**
12 **to the best your knowledge and belief?**

13 A. Yes.

14 MR. POSTON: I offer Exhibits 41 and
15 42.

16 JUDGE PRIDGIN: Exhibits 41 and 42
17 have been offered. Any objections?

18 MR. KEEVIL: Judge, I don't know that
19 I will have an objection, but I believe there still
20 exists the possibility that Ms. Meisenheimer may
21 have to be called back on a subsequent issue. So
22 until then, I would ask that you reserve ruling on
23 her testimony.

24 I'm not even handling that issue. So
25 I would ask that you hold off on admitting the

1 testimony until she comes -- if it's necessary for
2 her to come back on the rate design issue, which
3 is, I think, issue seven on -- or six or seven on
4 the procedural -- yeah, procedural schedule.

5 JUDGE PRIDGIN: Mr. Poston?

6 MR. POSTON: I haven't heard any
7 objection, so I would ask that you admit it.

8 MR. KEEVIL: I do object on the basis
9 that the testimony contains more than is just being
10 addressed here on this issue. Everyone else, as I
11 understood it, withheld their offering of the
12 exhibits until the witness was finished testifying
13 on all issues on which they testify.

14 JUDGE PRIDGIN: I mean, I'll sustain.
15 You can certainly reoffer it later, Mr. Poston, and
16 obviously if rate design is not heard -- in any
17 event, whether it's heard or not, you can certainly
18 reoffer it. In fact, I would encourage you to
19 reoffer it.

20 MR. POSTON: Yes. If someone can
21 remind me, that would be helpful. I'll tender the
22 witness for cross-examination.

23 JUDGE PRIDGIN: Thank you.
24 Mr. Keevil, any cross?

25 MR. KEEVIL: No.

1 JUDGE PRIDGIN: Mr. Downey?

2 MR. DOWNEY: No.

3 JUDGE PRIDGIN: Liberty, Mr. Dority,
4 Mr. Fischer?

5 MR. FISCHER: No, thank you, Judge.

6 JUDGE PRIDGIN: Commissioner Hall,
7 did you have any questions for Ms. Meisenheimer?
8 She has just taken the stand and has no
9 cross-examination. And if you need a moment,
10 that's fine.

11 COMMISSIONER HALL: Just a moment.

12 JUDGE PRIDGIN: Certainly.

13 QUESTIONS BY COMMISSIONER HALL:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Turning to page 5 -- no. Hang on.
17 yeah, page 5 of your rebuttal, to return to an
18 issue that I brought up -- that I brought up this
19 morning. Can you explain to me why you believe
20 Liberty failed to comply with 19D of the Order
21 Approving Unanimous Stip & Agreement in the 2012 GM
22 case?

23 A. In that in the unanimous stip what we
24 agreed to is if the company intended to propose
25 anything except for an equal percent increase to

1 all rate classes and all rate elements, that it
2 would do a class cost of service study and provide
3 that to Staff and Public Counsel when it submitted
4 the its case.

5 The Noranda special contract expired
6 upon -- at this case, the Noranda special contract
7 is expiring. And so to that extent, I believe it
8 was appropriate for them to treat that as a regular
9 member of the class and to propose an equal
10 percent, as they did for all other classes of
11 customers.

12 **Q. Okay. So I think you just answered**
13 **my next question, and that is, what is the result**
14 **of Liberty failing to comply with 19D? I believe**
15 **you said the result is that any special contracts**
16 **are null and void and they have to treat each --**
17 **each member -- they have to ignore any special**
18 **contracts. Is that essentially what you're saying?**

19 A. I'm saying that for purposes of
20 spreading a rate increase, I think it's appropriate
21 that Noranda be treated like other customers coming
22 out of that last case, and that is an equal percent
23 increase.

24 **Q. Is that because of their failure**
25 **to -- Liberty's failure to comply with 19D or is**

1 **that for other reasons?**

2 A. I feel that -- I don't know if it's a
3 product of their failure to -- I feel that had they
4 proposed an equal percent increase on Noranda's
5 revenue like they did for other classes, that that
6 would have been consistent with 19D. I'm not sure
7 if I'm answering the question you're asking me.

8 **Q. I'm not sure either, but I don't**
9 **think it's productive to continue questioning.**

10 **Thank you.**

11 JUDGE PRIDGIN: Commissioner Hall,
12 thank you. Commissioner Kenney, any questions?

13 COMMISSIONER W. KENNEY: My only
14 question is, he left like a minute and a half
15 before me. How did he get into questions so fast?
16 It's good timing. No questions.

17 JUDGE PRIDGIN: Thank you. I don't
18 have any questions. Any recross, Mr. Keevil?

19 MR. KEEVIL: No.

20 JUDGE PRIDGIN: Mr. Downey?

21 MR. DOWNEY: No.

22 MR. FISCHER: No, thank you.

23 JUDGE PRIDGIN: Any redirect?

24 MR. POSTON: No, thank you.

25 JUDGE PRIDGIN: Ms. Meisenheimer,

1 thank you very much. You may step down.

2 THE WITNESS: Thank you.

3 JUDGE PRIDGIN: And I believe

4 Mr. Brubaker is the next witness on this issue.

5 Mr. Brubaker, if you'll raise your right hand to be
6 sworn, please.

7 (Witness sworn.)

8 JUDGE PRIDGIN: Thank you so much.

9 Please have a seat, sir. Mr. Downey, when you're
10 ready.

11 MAURICE BRUBAKER testified as follows:

12 DIRECT EXAMINATION BY MR. DOWNEY:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Do you have your rebuttal and
16 surrebuttal testimony in this case handy?

17 A. I do.

18 Q. I will tell you that your rebuttal
19 has been marked Exhibit 46 and your surrebuttal has
20 been marked Exhibit 47.

21 Please state your name.

22 A. It's Maurice Brubaker,
23 B-r-u-b-a-k-e-r.

24 Q. And by whom are you employed?

25 A. Brubaker & Associates.

1 Q. And did you prepare Exhibits 46 and
2 47?

3 A. I did.

4 Q. Do you have any corrections to the
5 testimony in those exhibits?

6 A. I do not.

7 Q. If I were to ask you the questions
8 that are asked of you in those testimonies, would
9 your answers today be the same?

10 A. They would.

11 MR. DOWNEY: Your Honor, at this
12 point I would offer Exhibits 46 and 47 and tender
13 Mr. Brubaker for cross.

14 JUDGE PRIDGIN: 46 and 47 have been
15 offered. Any objections?

16 MR. KEEVIL: Judge, could I ask a
17 question of counsel?

18 JUDGE PRIDGIN: Certainly.

19 MR. KEEVIL: Mr. Downey, is this the
20 only time -- this is the only issue, I should say,
21 Mr. Brubaker has testimony on?

22 MR. DOWNEY: That's my understanding.
23 I know it's on our list that he would testify on
24 contract customer Issue D, but it's my
25 understanding that he does not address that issue.

1 Is that correct, Mr. Brubaker?

2 THE WITNESS: That's correct.

3 MR. DOWNEY: I don't know how it got
4 on the list that way.

5 MR. KEEVIL: In that event, if this
6 is the only issue he's testifying in regard to,
7 Judge, then I have no objection.

8 JUDGE PRIDGIN: All right. Thank
9 you. Hearing no objection, Exhibit 46, and I see
10 it's both HC and NP, is admitted, and Exhibit 47HC
11 and NP is also admitted.

12 (NORANDA EXHIBIT NOS. 46NP, 46HC,
13 47NP AND 47HC WERE RECEIVED INTO EVIDENCE.)

14 JUDGE PRIDGIN: Any cross from
15 Liberty, Mr. Fischer or Mr. Dority?

16 MR. FISCHER: Not at this time,
17 Judge.

18 JUDGE PRIDGIN: Mr. Poston?

19 MR. POSTON: No questions.

20 JUDGE PRIDGIN: Mr. Keevil?

21 MR. KEEVIL: No questions.

22 JUDGE PRIDGIN: See if we have any
23 Bench questions. Commissioner Hall?

24 COMMISSIONER HALL: Let Commissioner
25 Kenney go first.

1 COMMISSIONER W. KENNEY: I don't have
2 any questions.

3 COMMISSIONER HALL: Yeah. I do have
4 a question or two.

5 QUESTIONS BY COMMISSIONER HALL:

6 **Q. Good afternoon.**

7 A. Good afternoon, Commissioner.

8 **Q. Could you explain to me the**
9 **significance of the fact that -- that Noranda can**
10 **take interruptible service?**

11 A. Certainly. Interruptible service is
12 like an insurance policy. It's the -- the customer
13 that's first on the bubble, if there's an inability
14 to deliver gas to all customers on the system. So
15 they would be among the first off, and that
16 provides protection to the other customers on the
17 system if you get into that circumstance.

18 **Q. Is that benefit quantifiable?**

19 A. It's -- I can quantify it in terms of
20 the difference in cost of service. What it means
21 to residential customers or commercial customers
22 not to have to get interrupted when there's a
23 shortage but to have Noranda take the interruption
24 instead I think is very valuable. I don't know
25 that I could quantify that because I think it would

1 vary quite a bit from customer to customer.

2 **Q. But it's your opinion that because**
3 **Noranda can take service in that manner, that it is**
4 **entitled to a lower rate?**

5 A. Let me answer it this way: My cost
6 of service calculation based on them being
7 interruptible and only paying for the tap from
8 Liberty's transmission system is 3 cents per
9 decatherm. If I say, doesn't matter whether
10 they're interruptible or not, what would the cost
11 be if we don't consider that, that's 11 cents per
12 therm.

13 **Q. You went right to where I was**
14 **confused reading your testimony. Why -- what is**
15 **the link between -- are the costs HC?**

16 A. The costs are not HC. Only the rate.

17 **Q. Okay.**

18 A. Which I almost stated.

19 **Q. So the connection between the 3 cents**
20 **and the interruptible is what?**

21 A. Okay.

22 **Q. What is that connection?**

23 A. 3 cents is the cost to move the gas
24 from Liberty's transmission system to the Noranda
25 facility. The cost to move the gas from Texas

1 Eastern to the Liberty transmission system is
2 8 cents. So if I roll that in, if I say it doesn't
3 matter if they're firm or interruptible, I'm going
4 to charge them for the --

5 **Q. But why do you roll it in if they are**
6 **interruptible?**

7 A. Just to give another data point.

8 **Q. I don't understand the connection,**
9 **though.**

10 A. The connection is, there were
11 allegations, I think, in this case or insinuations
12 that maybe the customer wasn't truly interruptible.
13 So I said, what if we assume --

14 **Q. I'm one step before that. What is**
15 **the connection between being interruptible and not**
16 **having to pay for the local distribution?**

17 A. If they're interruptible, the utility
18 doesn't have to build in capacity to serve them.
19 They serve them out of capacity that's there when
20 it's available. So that would be the Liberty loop.
21 The Liberty transmission system is that.

22 And so in the 3 cent calculations,
23 there is no part of that that's allocated to
24 Noranda. That's why we get 3 cent, just the cost
25 of the tap from the Liberty transmission facility

1 to the facility, to the plant. The other 8 cents
2 is the whole transmission loop of Liberty. The two
3 together, 3 plus 8 is 11 cents in that frame.

4 COMMISSIONER HALL: Okay. That's all
5 I have. Thank you.

6 JUDGE PRIDGIN: Commissioner Hall,
7 thank you. Commissioner Kenney?

8 COMMISSIONER W. KENNEY: No
9 questions.

10 JUDGE PRIDGIN: Okay. Thank you. I
11 don't have any. Any recross based on Bench
12 questions, Mr. Fischer?

13 MR. FISCHER: No, thank you.

14 JUDGE PRIDGIN: Mr. Poston?

15 MR. POSTON: No, thank you.

16 JUDGE PRIDGIN: Mr. Keevil?

17 MR. KEEVIL: Very briefly.

18 RE-CROSS-EXAMINATION BY MR. KEEVIL:

19 Q. Mr. Brubaker, do you have a copy of
20 Exhibit -- actually, it's a highly confidential
21 exhibit, but I don't believe this particular
22 question is highly confidential -- the Exhibit 60,
23 which was the Noranda responses to data requests we
24 submitted?

25 A. I do have it.

1 Q. Commissioner Hall asked you about the
2 significance of Noranda taking interruptible
3 service. If you look at the -- and correct me if
4 I'm wrong here. Looks like DR No. 9 asked, When
5 was the last time natural gas service to Noranda
6 was interrupted by Liberty or its predecessor
7 Atmos?

8 And the response states, 2010. We do
9 not have the specific date or time or amount that
10 would have been delivered absent the interruption.
11 In that year Atmos interrupted service because of a
12 seismic valve failure. Interruption lasted six
13 hours. Do you see that?

14 A. I do.

15 Q. Do you know, what's a seismic valve
16 failure?

17 A. My understanding is it's -- a seismic
18 valve is a valve that reacts to any earth tremors,
19 which will shut off the supply of gas in the event
20 that that event occurs.

21 Q. So in that event, it wouldn't just be
22 the interruptible customers that got shut off, it
23 would be all the customers down the line from the
24 valve that got shut off, correct?

25 A. It would depend on where the valve

1 was located.

2 Q. All the customers down the line from
3 the valve?

4 A. It was my understanding that the
5 seismic valve was just feeding the Noranda
6 facility.

7 Q. Okay. So it's your understanding
8 that Noranda was the only customer affected by the
9 seismic valve failure?

10 A. That was my understanding, yes.

11 MR. KEEVIL: Okay. No further
12 questions. Thank you.

13 JUDGE PRIDGIN: Mr. Keevil, thank
14 you. Commissioner Hall.

15 COMMISSIONER HALL: I'm sorry. One
16 other line of questioning.

17 FURTHER QUESTIONS BY COMMISSIONER HALL:

18 Q. On page 2 of your rebuttal
19 testimony, you per-- I'm not going to get into the
20 details of it, but you perform a class cost of
21 study analysis or at least some version of one.
22 And my question for you is, you've been involved in
23 cases here numerous times. I've only been here a
24 year and I think I've seen you six times, I think.
25 So I --

1 A. Sorry to be a nuisance.

2 Q. No, no nuisance at all, sir. But I
3 assume that you have performed full-blown cost of
4 study analysis or class cost of study analysis in
5 the past?

6 A. I have, yes, sir.

7 Q. To what extent did those differ from
8 the one you did here? Were there factors, issues
9 that you did not take into account here that you
10 typically would in the class cost of study?

11 A. No. I mean, this is my -- the
12 traditional approach that I would use to identify
13 any specific facilities that are serving only the
14 customer in question, assign those 100 percent, and
15 then determine what part of the system facilities
16 are serving the customer or are used in serving the
17 customer. That's why I didn't allocate any part of
18 the distribution system because it's just not used
19 to serve Noranda.

20 The only part that actually flows gas
21 over it is the transmission part of the Liberty
22 system, and so that's either zero or 8 cents,
23 depending on how you want to view the
24 interruptibility of Noranda.

25 COMMISSIONER HALL: All right. Thank

1 you.

2 JUDGE PRIDGIN: Commissioner Hall,
3 thank you. Any further Bench questions? Any
4 further recross based on further Bench questions?

5 (No response.)

6 JUDGE PRIDGIN: Hearing none.
7 Redirect?

8 MR. DOWNEY: Thank you, Judge.

9 REDIRECT EXAMINATION BY MR. DOWNEY:

10 Q. Mr. Brubaker, does Liberty have
11 transmission, distribution and general plant costs?

12 A. It does.

13 Q. And did you include any of the
14 distribution plant in your calculation of cost to
15 serve Noranda?

16 A. I did not.

17 Q. Why?

18 A. Because the distribution system of
19 Liberty is not used to supply service to Noranda.
20 It's only the transmission system.

21 Q. All right. Now, Mr. -- Commissioner
22 Hall asked you about local distribution versus
23 interruptible and how the interruptible nature of
24 the service enters into whether you allocate any
25 cost of distribution. Do you recall that question?

1 **You may have heard it as transmission.**

2 A. I think I did hear it as
3 transmission. I'm sorry if I garbled the answer.

4 **Q. But if the question was distribution**
5 **plant, what's your answer?**

6 A. It wouldn't matter whether they're
7 firm or interruptible, the distribution part of the
8 Liberty system isn't used to serve Noranda.

9 **Q. And would you explain a little, just**
10 **so it's absolutely clear, the components that are**
11 **in your work papers, the 3 cents, the 8 cents and**
12 **then in your testimony the 11 cents per MCF?**

13 A. Sure. The 3 cents is the cost based
14 on just the tap from the Liberty transmission pipes
15 to the Noranda facility, and that includes an
16 allocated share of the general plant, the property
17 itself that supports the whole system.

18 The 8 cents is based on the Noranda
19 share of the cost of the Liberty transmission mains
20 if you want to allocate costs to them, forget that
21 they're interruptible and treat them as a regular
22 firm customer. That's the 8 cents. That includes
23 roughly 10 percent of the cost of transmission
24 loops plus an allocated share of general plant.

25 So adding the two together, the

1 maximum I see from a cost basis to serve the load
2 is 11 cents per MCF.

3 **Q. Now, I earlier asked you about**
4 **transmission, distribution and general plant. We**
5 **talked about transmission and distribution. Did**
6 **you allocate any of the general plant costs to**
7 **Noranda in your calculation?**

8 A. I did. I allocated a proportionate
9 share based on the amount of transmission plant
10 allocated to Noranda. So if we had allocated,
11 let's say, \$100,000, just to make up a number so
12 it's simple, \$100,000 of transmission plant to
13 Noranda and general plant was 5 percent of the
14 total T&D plant, then I would allocate 5 percent of
15 100,000 of general plant to Noranda, so they've got
16 a proportionate share of all the supporting
17 efforts, the buildings and the trucks and stuff
18 that support the transmission and the distribution
19 system.

20 **Q. So can you tell the Commission what**
21 **the cost of the SEMO transmission plant is per**
22 **year?**

23 A. The cost of the SEMO transmission
24 plant on an annual basis is roughly \$1 million.
25 It's calculated in my work papers.

1 **Q. I think an approximate is good enough**
2 **for my question.**

3 A. Okay.

4 **Q. If you're looking it up, go ahead.**

5 A. That's fine. \$1 million in round
6 numbers is fine.

7 **Q. And then what's the approximate cost**
8 **per year of the distribution plant for SEMO?**

9 A. I believe the total cost of service,
10 depending on whether you look at Staff or Liberty,
11 is around 12 or \$13 million. So the transmission
12 plant represents 7 or 8 percent out of the total
13 revenue requirement, and the distribution system
14 would be the other 90 or so percent of the cost.

15 **Q. And I know it's in your work papers,**
16 **the costs of the tap on an annual basis?**

17 A. \$33,000.

18 **Q. All right. And do you know how much**
19 **Noranda would be paying if it paid a rate of \$1.44**
20 **per MCF, how much it would pay per year? Again, a**
21 **round number's going to be good enough.**

22 A. Round numbers, 1.9 million.

23 **Q. Okay. And so that would cover the**
24 **entire cost of the tap, correct?**

25 A. Yes, handily.

1 **Q. And would it also cover the cost of**
2 **all of the SEMO transmission plant?**

3 A. Yeah, even that which doesn't serve
4 Noranda.

5 **Q. And would it include then some**
6 **contribution to the cost of the distribution plant**
7 **as well?**

8 A. There would be about \$700,000 left
9 over to cover the cost of the distribution plant.

10 **Q. Okay. And your -- I think you said**
11 **it would cover part of the use of the transmission**
12 **plant for Noranda, but -- so you're saying part of**
13 **the transmission plant's used for Noranda and**
14 **part's used for someone else?**

15 A. Right. Noranda uses about \$100,000
16 worth of the transmission plant. Total
17 transmission revenue requirement's a million. So
18 even if you charged them for the whole transmission
19 system plus their tap, that would be way less than
20 the revenues from the \$1.44.

21 **Q. All right.**

22 A. To the extent of \$700,000.

23 **Q. I had a PowerPoint slide on this very**
24 **point, and I wanted to make sure the numbers are in**
25 **the record.**

1 MR. DOWNEY: So thank you very much.

2 JUDGE PRIDGIN: Mr. Brubaker, thank
3 you very much. You may step town.

4 THE WITNESS: Thank you very much.

5 JUDGE PRIDGIN: Looks like we'll be
6 moving on to the other contract customer issues and
7 going back to Mr. Krygier. Counsel, please correct
8 me if I'm wrong or if there's something else we
9 need to do.

10 MR. FISCHER: I think it's --
11 Mr. Krygier is not on this issue. The company
12 would call Francisco DaFonte.

13 JUDGE PRIDGIN: Mr. DaFonte, if
14 you'll come forward to be sworn, please.

15 MR. KEEVIL: So Mr. Krygier is not
16 testifying on this. Okay.

17 JUDGE PRIDGIN: Good afternoon. If
18 you'll raise your right hand to be sworn, please.

19 (Witness sworn.)

20 JUDGE PRIDGIN: Thank you very much.
21 Please have a seat, sir. And Mr. Fischer, when
22 you're ready.

23 FRANCISCO DAFONTE testified as follows:

24 DIRECT EXAMINATION BY MR. FISCHER:

25 Q. Please state your name and address

1 **for the record.**

2 A. My name is Francisco C. DaFonte.
3 Last name is DaFonte. My address is 15 Buttrick
4 Road, Londonderry, New Hampshire.

5 **Q. Did you cause to be filed in this**
6 **proceeding rebuttal testimony, both an HC version**
7 **and an NP version?**

8 A. Yes, I did.

9 **Q. And it has been marked as Exhibit**
10 **No. 12 for your information. If I were to -- do**
11 **you have any corrections that you need to make to**
12 **that exhibit?**

13 A. I do not.

14 **Q. If I were to ask you the questions**
15 **that are contained in that exhibit today, would**
16 **your answers be the same?**

17 A. Yes, they would.

18 **Q. And are they true and accurate to the**
19 **best of your knowledge and belief?**

20 A. They are.

21 **Q. And there's also a schedule attached**
22 **to it. Does that schedule depict accurately what**
23 **it's designed to show?**

24 A. Yes, it does.

25 MR. FISCHER: Judge, with that, then

1 I would move for the admission of Exhibit 12 and
2 tender the witness for cross-examination.

3 JUDGE PRIDGIN: Thank you. Any
4 objections?

5 (No response.)

6 JUDGE PRIDGIN: Hearing none,
7 Exhibit 12HC and NP is admitted.

8 (LIBERTY EXHIBIT NOS. 12NP AND 12HC
9 WERE RECEIVED INTO EVIDENCE.)

10 JUDGE PRIDGIN: Cross-examination.
11 Mr. Downey, any questions?

12 MR. DOWNEY: No questions.

13 JUDGE PRIDGIN: Mr. Poston?

14 MR. POSTON: No questions.

15 JUDGE PRIDGIN: Mr. Keevil?

16 MR. KEEVIL: Yes, I have a few.

17 CROSS-EXAMINATION BY MR. KEEVIL:

18 Q. Mr. DaFonte, are you -- excuse me.

19 DaFonte. I apologize, sir. I know I'm going to
20 mess up your name.

21 A. That's quite all right.

22 Q. I apologize in advance.

23 Mr. DaFonte, are you familiar with
24 the Liberty application in FERC Docket CP12-42?

25 A. Yes, I'm somewhat familiar with that.

1 Q. Do you have a copy of it with you by
2 any chance?

3 A. Yes, I do.

4 Q. Okay. Could you take a look at the,
5 let's see, top of page 7 of that application?

6 A. I'm sorry. The application or the
7 order?

8 Q. The application.

9 A. I do not have a copy of the
10 application.

11 Q. Oh, I'm sorry. I've only got one
12 copy of it, Mr. DaFonte, so I apologize. Hand you
13 a copy of this and see if you can identify that or
14 if you recognize that as a copy of Liberty's
15 application in that docket I referenced?

16 A. Yes, I recognize it.

17 Q. Okay. If you'd turn to the top of
18 page 7, look at Item 7 there, the first sentence
19 under section 7. Read that first sentence into the
20 record for me, if you would.

21 A. Sure. Liberty/Midstates requests
22 pursuant to Section 284.123(B)(1)II,
23 18 CFR Section 284.123(B)(1)II 2011 that its rates
24 for service with the Missouri facilities be the
25 rates contained in Liberty/Midstates transportation

1 rates schedules for intrastate service approved by
2 the Missouri Public Service Commission for
3 comparable intrastate service.

4 Q. Okay. Thanks, sir. Now, when that
5 says comparable intrastate service, what does
6 comparable mean to you in this context?

7 A. That would be comparable to any
8 similarly situated customer.

9 Q. Okay. I forgot I had another
10 sentence I needed you to read. I wouldn't have
11 walked that far. Same thing I just handed you, if
12 you'd read the following sentence, sir, into the
13 record. Begins pursuant to.

14 A. Pursuant to the requirements of the
15 Missouri PSC, Liberty/Midstates will adopt without
16 modification the tariff and cost-based rates of
17 Atmos currently on file with and approved by the
18 Missouri PSC.

19 Q. And do the next sentence as well.

20 A. The proposed rates will become
21 effective upon the closing of the acquisition
22 transaction and commencement of service in Missouri
23 by Liberty/Midstates.

24 Q. Okay. Thank you. Now, in the
25 context of what you just read, what does the term

1 **cost-based rates mean to you?**

2 A. Those are rates established based on
3 the cost of service to provide a firm
4 transportation service.

5 Q. Would you agree with me -- I don't
6 think I'm getting HC here. If I do, please stop
7 me. Would you agree that those cost-based rates
8 are, in fact, the rates that Mr. Sommerer based his
9 adjustment on when comparing the maximum FERC rates
10 to the discounted contract rate?

11 A. I believe he used those rates as the
12 maximum tariff rate, which is not the rate that is
13 being charged.

14 Q. Right. It's not the rate being
15 charged, but that's -- he used same rates that are
16 referred to that we just read about as being
17 cost-based rates approved by the Missouri PSC,
18 correct?

19 A. Correct.

20 Q. Now, with the exception of the --
21 I'll read it out loud rather than just the
22 acronym -- the infrastructure system replacement
23 surcharge, with the exception of that, would you
24 agree that the FERC adopted the comparable Missouri
25 intrastate rates as the maximum FERC-approved rate

1 **for interstate service?**

2 A. Yes, I would.

3 **Q. Okay. I'll hand you the application**
4 **again, sir, still on page 7, but further down the**
5 **paragraph, sentence beginning with the word**
6 **failure, could you read that sentence into the**
7 **record?**

8 A. Sure. Failure to collect such fees
9 and charges from transportation customers receiving
10 comparable interstate transportation service under
11 the authorization requested in this application
12 would be unduly preferential to the interstate
13 shippers and unduly discriminatory against shippers
14 receiving comparable intrastate service.

15 **Q. Thank you. Mr. DaFonte, who are the**
16 **shippers receiving comparable intrastate service**
17 **that are being referenced in that passage you just**
18 **read?**

19 A. At this time, there is one customer
20 receiving service, which is Source Gas. There are
21 no other comparable customers receiving service.

22 **Q. Can you explain the FERC discount**
23 **policy in a situation where FERC decides that a**
24 **discount is justified? In other words, does FERC**
25 **allow the interstate pipeline to spread the**

1 difference between the maximum cost-based rate and
2 the discount to the other shippers that receive the
3 FERC jurisdictional service?

4 A. Yes, I believe it does.

5 Q. And I believe you just stated right
6 before I asked you that that, other than Source
7 Gas, there are no other shippers on Liberty
8 receiving FERC jurisdictional service; is that
9 correct?

10 A. That's correct.

11 Q. Okay. At -- I lost your testimony.
12 I apologize. Here it is. Now, let me hand you a
13 another document here, and again I apologize. I
14 only have one. Have you -- are you familiar with
15 this, what at the top of the page claims to be a
16 Reciprocal Emergency Standby --

17 MR. KEEVIL: We may need to go HC
18 here, Judge. It just occurred to me.

19 JUDGE PRIDGIN: Just a moment,
20 please.

21 (REPORTER'S NOTE: At this point, an
22 in-camera session was held, which is contained in
23 Volume 14, pages 481 through 493 of the
24 transcript.)

25

1 MR. FISCHER: Should I restate that,
2 too?

3 JUDGE PRIDGIN: I think just to be
4 safe, if you could reask the question, please.
5 Thank you. We're in public forum.

6 REDIRECT EXAMINATION BY MR. FISCHER:

7 Q. Mr. DaFonte, Staff counsel asked you
8 about a Docket No. CP12-42. I think my question
9 was, is that a FERC docket?

10 A. Yes, it is.

11 Q. And would you explain for the
12 Commissioners the background of that docket and why
13 Liberty was in front of the FERC at that point in
14 time?

15 A. Sure. Just a bit of background. I
16 think I mentioned earlier that prior to the sale of
17 the southeast Missouri assets to Atmos, Arkansas
18 Western owned Associated Natural Gas, which
19 operated distribution systems in southeast Missouri
20 and in Arkansas.

21 Those distribution systems were
22 integrated even across the state line, and because
23 they were integrated, the movement of gas across
24 the State line required a Hinshaw exemption, which
25 was obtained at the time by Arkansas Western for

1 ANG.

2 Q. And for purposes of the Commission,
3 what is a Hinshaw exemption? What does that mean?

4 A. It essentially allows for the
5 movement of natural gas across state lines that are
6 not subject to the Natural Gas Act, essentially.
7 And obviously they were able to obtain that and gas
8 flowed, I assume, back and forth.

9 Once the southeast Missouri assets
10 were sold to Atmos, then any movement of gas across
11 the state line would require an interstate -- a
12 FERC interstate transportation tariff. And I
13 believe that, you know, one of the conditions of
14 the sale of the southeast Missouri assets would
15 have been the need to have the provision of an
16 interstate service from southeast Missouri owned by
17 Atmos to ANG, given that the northeast Arkansas
18 distribution system required gas coming in from
19 southeast Missouri in order to serve the customers
20 in northeast Missouri, including the human needs
21 customers. Without that, my understanding is that
22 there wouldn't be sufficient supply as the system
23 was situated at that time, the distribution system.

24 And following up on that service that
25 was provided by Atmos, the acquisition of the Atmos

1 assets by Liberty Utilities required that, again,
2 that we either stop providing the interstate
3 service or continue to provide it in some form or
4 fashion.

5 So in order to continue to provide
6 it, Liberty Utilities had to go and seek the same
7 type of interstate transmission service that was
8 sought and received by Atmos, and that is the
9 docket that --

10 Q. And was that filed in the beginning
11 of 2012 when you were -- when Liberty was
12 attempting to move into the Atmos service territory
13 here in Missouri?

14 A. That's correct.

15 Q. Staff counsel asked you about the
16 rates that were discussed in that docket, and I
17 believe he talked about the maximum rates. Do you
18 recall that?

19 A. Yes, I do.

20 Q. And would you explain to the
21 Commission how that process works at FERC in
22 determining what the -- not only the maximum rate,
23 but what the actual discount rate would be?

24 A. Sure. In the application to the FERC
25 for interstate transportation service, the company

1 filing for the interstate service has to establish
2 a maximum rate for that type of service. The
3 maximum rate can be based on the cost of service or
4 it can be based on the distribution system tariff
5 of the company.

6 In the Atmos case, when they were
7 providing the service, they developed a cost of
8 service study and established a rate for -- a
9 maximum rate for that service and I believe -- and
10 this is public -- the rate is \$5.38.58.

11 In the case of Liberty Utilities, we
12 determined that the best course of action for
13 establishing the maximum rate was to use the
14 existing Liberty or at that time the Atmos large
15 customer tariff rate.

16 **Q. Is that consistent with the FERC's**
17 **discounting policy and general approach to these**
18 **kinds of cases, to be able to use either a cost of**
19 **service based rate or perhaps an intrastate**
20 **tariffed rate?**

21 MR. KEEVIL: Excuse. I'm going to
22 object to that. I think that slightly
23 mischaracterized. If I understood Mr. DaFonte --
24 Mr. DaFonte's response previous was how do they set
25 the rates. It didn't really even get to the

1 discount question. As I understood Mr. Fischer's
2 question, it has to do with how the FERC set
3 discounts.

4 MR. FISCHER: I'll rephrase it,
5 Judge.

6 BY MR. FISCHER:

7 Q. Let's first talk about how the
8 maximum rate is set, what the alternatives are.
9 Would you do that?

10 A. Sure. I just explained that. The
11 maximum rate is set either on a cost of service
12 basis or utilizing the existing distribution system
13 tariff rates for, in this case, the large customer.

14 Q. And Staff counsel asked you about the
15 negotiated discount rate. Do you recall that?

16 A. Yes, I do.

17 Q. Would you explain how that works at
18 FERC and how a negotiated rate comes about?

19 A. Sure. The negotiated rate is
20 determined on a case-by-case basis, and it is
21 supposed to be nondiscriminatory in nature. And in
22 this case, the rate is an agreement between the
23 parties that essentially allows for each party to
24 benefit from that particular rate.

25 So it's -- in a sense, it's a benefit

1 to the shipper as well as benefit to the
2 transporter, in this case the transporter being
3 Liberty and the shipper being Source Gas.

4 Q. And in the case of this discounted
5 rate in this -- as a part of this docket, was
6 Liberty able to negotiate a different price from
7 the price that had been previously paid by Source
8 Gas to Atmos?

9 A. Yes, it was. The Atmos rate that was
10 being charged was approximately 17 --

11 Q. Okay. Let's -- is the percentage
12 confidential? Maybe it is.

13 MR. FISCHER: Judge, could we go in
14 camera?

15 JUDGE PRIDGIN: One moment, please.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 Volume 14, pages 500 through 506 of the
19 transcript.)

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1 JUDGE PRIDGIN: Nothing further,
2 Mr. DaFonte. Thank you very much. You may step
3 down. Again, I see the next witness would be
4 Mr. Sommerer for Staff.

5 MR. KEEVIL: I hate to keep asking
6 this, Judge, but was that exhibit I offered, 62,
7 was that admitted?

8 JUDGE PRIDGIN: It was.

9 MR. KEEVIL: Thank you.

10 JUDGE PRIDGIN: You're welcome. And
11 if I'm not mistaken, Mr. Sommerer, you were on the
12 stand yesterday and you were sworn in yesterday; is
13 that correct?

14 THE WITNESS: That's correct.

15 JUDGE PRIDGIN: All right. You're
16 still under oath. Mr. Keevil, anything you need to
17 inquire of him?

18 MR. KEEVIL: I think we covered
19 everything when he was on the stand yesterday,
20 although yesterday he was coming back, so today I
21 think he's -- this is the last time he's scheduled
22 to testify, so I would offer -- I would offer
23 Mr. Sommerer's surrebuttal testimony, I believe
24 it's been marked as Exhibit 39, into the record.

25 JUDGE PRIDGIN: Any objections?

1 (No response.)

2 JUDGE PRIDGIN: Hearing none, 39HC
3 and NP are admitted.

4 (STAFF EXHIBIT NOS. 39NP AND 39HC
5 WERE RECEIVED INTO EVIDENCE.)

6 MR. KEEVIL: And I believe the
7 remainder of Mr. Sommerer's testimony is contained
8 within one of the Staff reports which was filed
9 with direct. I don't believe Mr. Sommerer has any
10 rebuttal. Is that correct, Mr. Sommerer?

11 THE WITNESS: That is correct.

12 MR. KEEVIL: So I can't offer the
13 reports at this time since there's lots of other
14 witnesses in those. So I guess we'll just tender
15 Mr. Sommerer for cross.

16 JUDGE PRIDGIN: Mr. Keevil, thank
17 you. Mr. Poston, any questions?

18 MR. POSTON: No questions.

19 JUDGE PRIDGIN: Mr. Downey?

20 MR. DOWNEY: No.

21 JUDGE PRIDGIN: Mr. Fischer or
22 Mr. Dority?

23 MR. FISCHER: Oh, I'll ask a few.

24 DAVID SOMMERER testified as follows:

25 CROSS-EXAMINATION BY MR. FISCHER:

1 Q. Good afternoon, Mr. Sommerer, how are
2 you today?

3 A. Very well, Mr. Fischer. How are you?

4 Q. I think I'm okay. As I understand
5 the Staff's cost of service report, you're the
6 Staff witness or expert on Staff's proposed
7 adjustments for Source Gas; is that right?

8 A. That's right.

9 Q. I believe in the Staff report at
10 page 55 you address your recommendations on Source
11 Gas; is that right?

12 A. Yes.

13 Q. Is there anywhere else in the Staff
14 report on revenue requirements that addresses
15 Staff's adjustment related to the Source Gas
16 contract?

17 A. I think the testimony is contained on
18 page 55 and page 56 of that testimony. That's it.

19 Q. Okay. Did you quantify in that Staff
20 report the amount of the actual adjustment that
21 you're recommending related to Source Gas?

22 A. I believe that adjustment was
23 developed as part of the work paper provided to the
24 company.

25 Q. Okay. It's not -- I didn't see it

1 here, and that's what I was asking. It's not in
2 the Staff report, right?

3 A. That's right.

4 Q. Okay. And you didn't file any direct
5 testimony or any rebuttal testimony on the subject
6 of Source Gas; is that right?

7 A. Well, I filed direct testimony, which
8 is in the Staff report, no rebuttal on Source Gas,
9 and then surrebuttal on Source Gas.

10 Q. Is your surrebuttal testimony the
11 only testimony you filed in addition to the Staff's
12 report on revenue requirements that discusses the
13 Source Gas contract adjustment?

14 A. Yes.

15 Q. And could you point to a place in
16 your surrebuttal where you quantified your revenue
17 requirement adjustment related to Source Gas?

18 A. As mentioned previously, that
19 adjustment was quantified in a Staff work paper
20 provided to the company, but not in surrebuttal
21 testimony.

22 Q. And is that surrebuttal -- is that
23 work paper somewhere in our record?

24 A. I do not believe so.

25 Q. On page 55 of the Staff report, at

1 page -- at lines 2 through 3, you state, Staff
2 recommends imputing --

3 MR. FISCHER: I guess we ought to go
4 in camera. I'm sorry.

5 JUDGE PRIDGIN: No problem. Just a
6 moment, please.

7 (REPORTER'S NOTE: At this point, an
8 in-camera session was held, which is contained in
9 Volume 14, pages 512 through 527 of the
10 transcript.)

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1 JUDGE PRIDGIN: We are back in public
2 session. Mr. Chairman, any questions?

3 CHAIRMAN KENNEY: Just a couple.
4 Mr. Sommerer, good afternoon. They're regarding
5 his testimony and it's HC.

6 JUDGE PRIDGIN: We'll go back in
7 camera. Just one moment, please.

8 CHAIRMAN KENNEY: Sorry. It's brief.

9 JUDGE PRIDGIN: Not a problem.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 Volume 14, pages 529 through 531 of the
13 transcript.)

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1 JUDGE PRIDGIN: All right. We're in
2 public session. Mr. Chairman, when you're ready,
3 sir.

4 QUESTIONS BY CHAIRMAN KENNEY:

5 Q. So, you were asked about Staff having
6 never proposed a revenue imputation before. Do you
7 remember that?

8 A. That's correct, yes.

9 Q. And your answer was that Staff had
10 not. Can you tell me why not?

11 A. Well, I think I tried to answer it
12 just in the context of my knowledge on being on the
13 Staff, and obviously I wouldn't be as familiar with
14 the electric situations and perhaps not even a rate
15 case that may have brought it up.

16 But I am quite familiar with these
17 systems, and I've worked on previous rate cases
18 over the years, and I would say that in the early
19 years of this agreement -- and recall that it was
20 started in the year -- are we in camera?

21 JUDGE PRIDGIN: We are not.

22 THE WITNESS: We need to go in
23 camera.

24 JUDGE PRIDGIN: Just one moment,
25 please.

1 CHAIRMAN KENNEY: Sorry.

2 (REPORTER'S NOTE: At this point, an
3 in-camera session was held, which is contained in
4 Volume 14, pages 534 through 551 of the
5 transcript.)

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1 (A BREAK WAS TAKEN.)

2 JUDGE PRIDGIN: All right. Very
3 good. We are back on the record. It looks like
4 depreciation is the next issue. And before we move
5 on to that first witness, I believe I was talking
6 off the record briefly with Mr. Keevil and
7 Mr. Dority about a possible schedule change for
8 tomorrow.

9 And please correct me if I've
10 misunderstood, but my understanding was that
11 counsel wanted a little time to talk in the morning
12 rather than go through the hearing process, to see
13 if they could resolve or at least narrow their
14 differences on the remaining issues.

15 And counsel wished to resume the
16 hearing tomorrow after agenda, roughly 1:30 or so,
17 and that would give them time to talk about the
18 remaining issues and whether they could reach
19 agreement on those issues or not. Is that
20 counsel's understanding?

21 MR. KEEVIL: That's correct, Judge.

22 JUDGE PRIDGIN: Any objection or
23 response?

24 (No response.)

25 JUDGE PRIDGIN: All right. So with

1 that -- and when we close this evening, I'll verify
2 that again, but that will be the plan. We'll get
3 back at 1:30, see if we need to take evidence or if
4 we have a stipulation or whatever announcement that
5 counsel has for us.

6 Anything further before we move on to
7 depreciation and Liberty's witness Mr. Fallert?

8 (No response.)

9 JUDGE PRIDGIN: All right. Hearing
10 none. Mr. Fallert, if you'll raise your right hand
11 to be sworn, please.

12 (Witness sworn.)

13 JUDGE PRIDGIN: Thank you very much.
14 Please have a seat. And Ms. Jones --

15 MR. DORITY: Mr. Dority.

16 JUDGE PRIDGIN: I'm sorry. It's your
17 witness. I'm sorry. It's been a long day.
18 Mr. Dority.

19 JAMES FALLERT testified as follows:

20 DIRECT EXAMINATION BY MR. DORITY:

21 Q. Good afternoon, Mr. Fallert.

22 A. Good afternoon.

23 Q. Would you please state and spell your
24 name for the record.

25 A. James Fallert, F-a-l-l-e-r-t.

1 **Q. Mr. Fallert, could you please state**
2 **the name of your company and your business address?**

3 A. I'm an independent consultant, doing
4 business under the name James Fallert Consultant,
5 LLC. My address is 3507 Burgundy Way Drive,
6 St. Louis, Missouri 63129.

7 **Q. Mr. Fallert, on whose behalf are you**
8 **testifying in this proceeding?**

9 A. Liberty Utilities.

10 **Q. Did you cause to be prepared and**
11 **filed in this proceeding prefiled direct, rebuttal**
12 **and surrebuttal testimony that has been marked for**
13 **identification as Exhibits 9, 10 and 11**
14 **respectively?**

15 A. Yes.

16 **Q. Do you have any corrections or**
17 **changes to that testimony?**

18 A. No.

19 **Q. If I asked you today the questions**
20 **that are contained in that testimony, would your**
21 **answers be the same?**

22 A. Yes.

23 **Q. And are those answers true and**
24 **correct to the best of your information, knowledge**
25 **and belief?**

1 A. Yes, they are.

2 MR. DORITY: Your Honor, I offer
3 Exhibits 9, 10 and 11 into evidence, and tender
4 Mr. Fallert for cross-examination.

5 MR. KEEVIL: Does he come up again,
6 Mr. Dority?

7 MR. DORITY: No. This is it.

8 MR. KEEVIL: I thought he was on cost
9 of removal.

10 MR. DORITY: I'm sorry?

11 MR. KEEVIL: I thought he was on cost
12 of removal if that winds up going to hearing. He's
13 not?

14 MR. DORITY: Well, he is on -- I
15 guess to the extent that that could possibly go to
16 hearing. I thought you announced that you had no
17 objection.

18 MR. KEEVIL: Well, yeah. That's
19 true, I have no objection to that, but --

20 MR. DORITY: Okay. I don't believe
21 he would be a witness for cost of removal. That
22 would only be Mr. Krygier. So I think this would
23 be Mr. Fallert's issue.

24 JUDGE PRIDGIN: All right. Any
25 objection to those exhibits?

1 (No response.)

2 JUDGE PRIDGIN: Hearing none,
3 Exhibit 9 is admitted. Exhibit 10 I show a P and
4 an NP version. That is admitted. Exhibit 11 is
5 admitted.

6 (LIBERTY EXHIBIT NOS. 9, 10P, 10NP
7 AND 11 WERE RECEIVED INTO EVIDENCE.)

8 JUDGE PRIDGIN: And
9 cross-examination. Mr. Downey, any cross?

10 MR. DOWNEY: No cross.

11 JUDGE PRIDGIN: Mr. Poston?

12 MR. POSTON: Yes. Thank you.

13 CROSS-EXAMINATION BY MR. POSTON:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. The first question I have is, would
17 you agree that the best evidence to have to change
18 a depreciation rate would be a depreciation study?

19 A. Yes.

20 Q. And did Liberty file a depreciation
21 study in this case?

22 A. No.

23 Q. And you state in your rebuttal
24 testimony that you agree with Staff's depreciation
25 rates except the corporate hardware and software

1 used in Liberty's corporate office in Jackson,
2 Missouri; is that correct?

3 A. Yes.

4 Q. So focusing just on the hardware
5 piece, can you please describe the corporate
6 hardware, what exactly -- what type of hardware it
7 is, what does it do?

8 A. Be computers and servers, personal
9 computers and that type of thing. Equipment used
10 to run the software obviously.

11 Q. So it's just PCs just that someone
12 would have an individual --

13 A. Well, it's PCs and it's servers to
14 run the larger software programs, the accounting
15 system, the customer information system.

16 Q. And do you know approximately what's
17 the dollar value of that software -- or that
18 hardware?

19 A. The hardware, it's difficult to split
20 off from software. Some's in the same account.
21 The total of the hardware and the software is about
22 16 million at the Midstates level, and a portion of
23 that's allocated down to Missouri.

24 Q. Okay. Do you know roughly how much,
25 what percentage Missouri would take of that?

1 A. Around 65 percent. Maybe roughly
2 10 million allocated to Missouri.

3 **Q. And then the software, can you**
4 **describe the corporate software, what that's used**
5 **for?**

6 A. The biggest items in software is the
7 Cogsdale system, which is a customer information
8 billing system, and then the Great Plains software,
9 which is an accounting system. That takes up the
10 vast majority of the software.

11 **Q. And did this software replace**
12 **existing software?**

13 A. Liberty purchased these systems when
14 they purchased the assets here in Missouri.
15 Purchased these systems in order to operate the
16 system here in Missouri.

17 **Q. And Atmos --**

18 CHAIRMAN KENNEY: Mr. Fallert, can
19 you speak into your microphone, please?

20 THE WITNESS: I'm sorry.

21 BY MR. POSTON:

22 **Q. Atmos, I would assume, had been using**
23 **a computer system for the same purposes but just a**
24 **different system?**

25 A. Yeah. I'm sure Atmos had some system

1 doing the same functions.

2 Q. And you say you're not an employee of
3 Liberty, correct?

4 A. That's correct.

5 Q. How is it you're familiar with
6 Liberty's hardware and software?

7 A. Well, I've -- I reviewed them when I
8 took the job here to help with this rate case.

9 Q. And you went to the Jackson office
10 and looked at the software and --

11 A. I've been to their Jackson office.
12 Yes, I have seen the software and the hardware.

13 Q. And you retired from Laclede Gas
14 Company in February of 2012?

15 A. That's right.

16 Q. And when you were with Laclede, did
17 you ever testify before this Commission on
18 depreciation issues?

19 A. No.

20 Q. Are you familiar with Laclede's May
21 2012 request to establish a depreciation rate for
22 its Enterprise Information Management System or
23 EMIS?

24 A. That actually happened after I
25 retired.

1 Q. I understand. Are you familiar with
2 it?

3 A. Not really, no.

4 Q. Are you aware that Laclede spent
5 \$60 million on this system?

6 A. I know it was a big number. Some of
7 it was spent after I was there, so I don't know the
8 exact number, but you're in the ballpark probably.

9 Q. Some of it was spent before you left?

10 A. Yeah.

11 Q. So I guess the process to have that
12 system put in place started before you left?

13 A. Yes.

14 Q. Would you agree that that system,
15 Laclede's system involved computer software and
16 hardware to manage information related to customer
17 service, billing and information, financial
18 performance, supply chain, inventory, human
19 resources and asset management?

20 A. Yeah. It was an all-encompassing
21 system.

22 Q. You said yes?

23 A. Yes.

24 Q. Would you agree that Laclede filed an
25 application with the Commission seeking to

1 establish a rate for the company's new EIMS, or New
2 Blue as they called it, I think?

3 A. It's my understanding they did, yes.
4 Again, that happened after I retired, so I wasn't
5 really involved.

6 Q. And did Liberty file a similar
7 application seeking to establish a new rate for its
8 computer hardware and software?

9 A. No.

10 Q. And the Laclede application was
11 contested by Staff and OPC; is that correct?

12 A. I didn't really keep track of that
13 case, to tell you the truth.

14 Q. Okay. Do you know that Laclede asked
15 to put its hardware and software into a new
16 subaccount under USOA Account 391?

17 A. No. I'm not familiar with where they
18 put it on the books.

19 Q. Are you familiar with Account 391?

20 A. Yes.

21 Q. And what is that account for?

22 A. Well, it's -- it's office furniture,
23 mechanical office equipment, and a lot of companies
24 put their computer equipment in there, too, as kind
25 of a successor to mechanical office equipment.

1 Other companies use 399 for computer equipment.
2 You'll find it in both places depending on the
3 company.

4 Q. If you had put it in Account 391,
5 what would that rate be?

6 A. If we had put what into 391?

7 Q. If you had put the computer software
8 hardware that's at issue here, if you had put that
9 into Account 391, what would that rate be?

10 A. I'm not -- I don't remember that
11 rate.

12 Q. Do you have the schedule of rates
13 with you?

14 A. I don't -- I have the rates that
15 Mr. Robinett proposed.

16 Q. Yes, which I believe you stated that
17 you did not oppose all of those rates with the
18 exception of Account 399; is that right?

19 A. I can answer the question what 391
20 is, but I can't really accept the premise that we
21 would put computer equipment in there and it would
22 be appropriate to use that rate for computer
23 equipment.

24 Q. I'm just asking for what is the rate
25 under 391?

1 A. 391, which is office furniture and
2 equipment, is 4.75 percent for the corporate rates,
3 yeah.

4 **Q. For all districts?**

5 A. But again, that's -- as that's used
6 at Liberty, that's chairs and desks and adding
7 machines and that type of thing, not computers.

8 **Q. And you put it in Account 399; is
9 that right?**

10 A. That's where Liberty books that
11 equipment, yes.

12 **Q. And what's the description of that
13 account?**

14 A. Other tangible property.

15 **Q. And would you agree with me that the
16 Laclede case resulted in the Commission ordering
17 Laclede to use a 7 percent depreciation rate for
18 its new hardware and software?**

19 A. That's my understanding.

20 **Q. And you're proposing over twice that
21 here; is that correct?**

22 A. We're proposing a continuation of the
23 rates that have been used for many years.

24 **Q. I'm asking, are you proposing a rate
25 twice what Laclede got?**

1 A. 14.29 percent for the largest part of
2 the equipment, yes.

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

5 JUDGE PRIDGIN: Mr. Poston, thank
6 you. Ms. Jones?

7 MS. JONES: Thank you, your Honor.

8 CROSS-EXAMINATION BY MS. JONES:

9 **Q. Good afternoon, Mr. Fallert.**

10 A. Hello.

11 **Q. I just have a few questions for you.**

12 **Generally, can a utility use depreciation rates for**
13 **its accounts that were not first authorized by the**
14 **Commission?**

15 A. Not in my experience. All the
16 depreciation rates should go into an order
17 authorizing the use of those rates by the
18 Commission.

19 **Q. Thank you. And you stated in your**
20 **rebuttal testimony that Liberty is using the same**
21 **depreciation rates that were used by Atmos for the**
22 **disputed accounts, correct?**

23 A. Yes.

24 **Q. And were those depreciation rates**
25 **that Atmos was using for the corporate allocated**

1 **plant ordered by the Commission?**

2 A. For the corporate allocated plant?

3 No. We can't find any evidence that the Commission
4 has ordered any corporate rates, which is kind of
5 the reason we're having this dispute here.

6 **Q. And what exactly were the current**
7 **ordered depreciation rates for Liberty Utilities?**

8 A. For which accounts?

9 **Q. For the ones that are in dispute,**
10 **what are the current ordered -- or rather for --**
11 **for the ones in dispute, what are the current**
12 **ordered depreciation rates?**

13 A. There are no current ordered
14 depreciation rates in an order we can find for the
15 corporate software and hardware. We've got some
16 de facto authorized rates because they've gone
17 through a couple of rate cases and we've been using
18 them for eight years. But as far as finding them
19 in an order, we haven't been able to locate
20 anything to that effect.

21 **Q. Isn't it true that in your response**
22 **to -- or the company's response to Staff's Data**
23 **Request No. 0225, which we asked for the current**
24 **Commission-ordered depreciation rates for the**
25 **accounts that are in dispute, what were the**

1 **account -- what were the depreciation rates? I'm**
2 **sorry.**

3 A. Looking for an order, attachment to
4 an order showing those rates?

5 **Q. The response to DR No. 225.**

6 A. I don't have that DR in front of me.

7 **Q. You don't have that?**

8 A. I'd need a copy of it.

9 MS. JONES: May I approach?

10 JUDGE PRIDGIN: Yes, you may.

11 BY MS. JONES:

12 **Q. All right. Mr. Fallert, I apologize.**
13 **Let me reword my previous question.**

14 A. Okay.

15 **Q. What are the current ordered**
16 **depreciation rates for Liberty Utilities, not the**
17 **ones that are in dispute, but for -- the ones for**
18 **the Account 399?**

19 A. For Account 399? According to this
20 sheet, well, there's -- there are seven districts.
21 Butler is 4.75. Kirksville is 4.75; SEMO, 4.75;
22 UCG, 5.00; PAO, which is Palmyra, 5.00;
23 Neeleyville, 5.00; and Rich Hill, 4.75.

24 **Q. Thank you. And this was given as a**
25 **response to Staff's request of providing the**

1 **current Commission-ordered depreciation rates,**
2 **correct?**

3 A. Right. Those are the ordered rates
4 for those districts.

5 **Q. And does that schedule that was**
6 **provided by the company where you reference those**
7 **depreciation rates, do they contain the rates for**
8 **the corporate allocated plant?**

9 A. No. There's -- there's no rates for
10 corporate allocated plant ordered here, which has
11 been our issue is not really being able to find
12 anything beyond these rates, which only cover the
13 districts.

14 **Q. And the plant subaccounts that are**
15 **actually in dispute, so 399, the 399.3, 4 and 5,**
16 **are those corporate allocated plant accounts?**

17 A. Yes. I believe it's 399.1, .3, .4,
18 .5, are the four accounts in question.

19 **Q. Thank you. Mr. Fallert, in the**
20 **absence of specific corporate allocated plant**
21 **rates, companies usually book items in general**
22 **plant accounts, correct?**

23 A. Well, I'm having a little trouble
24 with that question. I think that you'd book -- if
25 you don't have any specific subaccounts, that would

1 imply that all the plant going into that account's
2 going in at the -- at the general plant rate. But
3 if you've got subaccounts, you'd have separate
4 rates for them.

5 Q. Okay. Thank you. And, Mr. Fallert,
6 you referenced a recommendation of Staff witness
7 Mr. Robinett that was given in the Summit rate
8 case, Case No. GR-2014-0086, in your surrebuttal
9 testimony, correct?

10 A. Yes.

11 Q. Do you know if there was a
12 depreciation study submitted by Summit in that case
13 that you referenced?

14 A. No. I didn't look for a depreciation
15 study there.

16 Q. I'm sorry. Can you repeat your
17 answer?

18 A. No.

19 Q. Isn't it true that the rates that
20 were recommend by Mr. Robinett in the Summit case
21 were, in his opinion, the current Commission-
22 ordered rates for Summit's districts?

23 A. I -- I'm not sure what Mr. Robinett's
24 opinion was.

25 Q. But from your interpretation of

1 reading his report or his recommendation in the
2 Summit case, would you say that those were
3 Mr. Robinett's opinions of the current ordered
4 depreciation rates?

5 MR. DORITY: Objection, your Honor.
6 He's already answered he doesn't know the basis for
7 Mr. Robinett's opinion. He just knows what his
8 recommendation was.

9 JUDGE PRIDGIN: Ms. Jones?

10 MS. JONES: I was just simply asking
11 for his opinion or interpretation of what
12 Mr. Robinett's opinion is based on.

13 JUDGE PRIDGIN: I'll overrule. If he
14 doesn't know, he can say so.

15 THE WITNESS: I'm not sure what
16 Mr. Robinett used as a basis for that
17 recommendation.

18 BY MS. JONES:

19 Q. But pertaining to this case,
20 Mr. Robinett recommended that the Commission-
21 ordered depreciation rates be used by Liberty
22 Utilities, correct?

23 A. He proposed that the currently
24 ordered rates for the districts be applied to the
25 corporate hardware and software, for which we don't

1 have ordered rates.

2 Q. Mr. Fallert, are you aware of any
3 Missouri utilities seeking depreciation rates for
4 newly implemented or soon-to-be-implemented
5 corporate software and hardware? I know you
6 discussed the Laclede software with Mr. Poston, but
7 are you aware of any other Missouri utilities?

8 A. No.

9 Q. So did you know that in 2011 Missouri
10 American Water Company stipulated to a 5 percent
11 depreciation rate for their business transformation
12 hardware and software?

13 A. I believe I read that in
14 Mr. Robinett's testimony.

15 Q. But you weren't personally aware?

16 A. No.

17 MS. JONES: I have no other
18 questions.

19 JUDGE PRIDGIN: Ms. Jones, thank you.

20 Let me see if we have any Bench questions.

21 Mr. Chairman?

22 CHAIRMAN KENNEY: A few.

23 QUESTIONS BY CHAIRMAN KENNEY:

24 Q. Mr. Fallert, thanks for your time and
25 testimony.

1 A. You're welcome.

2 Q. Just let me ask you -- I want to make
3 a general statement and see if I'm correct. Can
4 you hear me okay?

5 A. Yes.

6 Q. A depreciation rate, is it intended
7 to roughly reflect the useful life of the asset in
8 question?

9 A. Yes.

10 Q. And so at the end of the time in
11 which the asset is depreciated, the utility will
12 have recovered its cost of that asset?

13 A. Right.

14 Q. Is that generally a correct
15 statement?

16 A. Yes.

17 Q. And so it's the company's position
18 that depreciating these computer assets over
19 21 years wouldn't accurately reflect the useful
20 life of these assets, right?

21 A. Well, that's part of our position,
22 but really our main position is we've got rates
23 that we've been using that our predecessor company
24 Atmos used that have been used in the last couple
25 of rate cases in 2006 and 2010 that Liberty has

1 continued to use.

2 We're saying really we should
3 continue using those rates until we can do a
4 depreciation study in our next rate case, and at
5 that point we'll reexamine what the appropriate
6 rates are.

7 But in addition to that,
8 4.75 percent, while I don't have a depreciation
9 study, that looks mighty low to me as far as
10 computer equipment and software.

11 **Q. And so I'm going to get back to the**
12 **rates that are currently -- that Liberty's**
13 **currently using. So is everything I've said thus**
14 **far you would generally agree with?**

15 A. Yes.

16 **Q. So let's turn then to the -- the**
17 **14.29 is what Atmos was using for the system and**
18 **network hardware and software?**

19 A. Yes.

20 **Q. And 18.98 for personal computers?**

21 A. Yes.

22 **Q. But those weren't ordered by the**
23 **Commission, correct?**

24 A. Right. We have not found any
25 evidence that any of the corporate rates were

1 included in an order.

2 **Q. And I read your testimony, but I'm**
3 **not clear on how Atmos and thus Liberty derived**
4 **those rates.**

5 A. Well, the --

6 **Q. Can you tell me?**

7 A. It's unclear where they were derived.
8 What I can say with some confidence is that all the
9 parties used them in the 2006 rate case. Atmos
10 continued to book on those using those rates after
11 that. In the 2010 rate case they were continued
12 and Atmos continued to book on those rates. When
13 Liberty came in and stepped into Atmos' shoes, they
14 continued at that level.

15 But as to the original genesis of
16 those rates, we don't have a study or anything to
17 tell us where Atmos got those rates originally,.
18 At some point it seems all the parties thought they
19 were a reasonable rate.

20 **Q. Say that last part again. I'm sorry.**
21 **At some point the parties what?**

22 A. Well, in 2006, in the 2006 rate case
23 and again in the 2010 rate case, there wasn't any
24 dispute over these rates. That's what was used.
25 So it -- I have to think the parties thought they

1 were reasonable at that point in time.

2 **Q. Or maybe -- so put another way, I**
3 **think what you're saying is Staff's silence**
4 **constitutes acquiescence?**

5 A. Well, it's a pretty unusual situation
6 not to have the rates laid out somewhere, and I can
7 only assume that as you go into 2010 and if anybody
8 had realized these rates weren't laid out in an
9 order, they probably would have put them in an
10 order. But you don't always go all the way back to
11 the original schedule. Everybody knows what the
12 rates are and you're agreeing on them continuing to
13 use them.

14 So, you know, I would think that the
15 parties probably thought these rates were the
16 authorized rates, and the fact that we -- that they
17 never really made it onto a piece of paper probably
18 wasn't something that people really realized.

19 **Q. Is it appropriate to set a**
20 **depreciation rate without a depreciation study?**

21 A. The ideal would be to have a
22 depreciation study.

23 **Q. But in the absence of one, is it**
24 **appropriate to set rates seemingly at random?**

25 A. Well, I don't know if I'd

1 characterize as setting the rates at random because
2 there is a long history of usage.

3 Q. We don't have any indication of how
4 these rates were derived. They seem reasonable
5 because of what we know about computers, but
6 there's no evidence to show where these came from,
7 and there's no evidence to show that they are, in
8 fact, reasonable because there's no study.

9 A. Yeah. That's true.

10 Q. So maybe random isn't the right word,
11 but I don't know. There's no basis upon which to
12 determine how these rates were derived. So in the
13 absence of a study, is it okay to set rates based
14 upon, I don't know, something other than random,
15 some synonym for random?

16 A. I understand what you're struggling
17 with because it's kind of something we struggled
18 with when we came across the situation. I don't
19 know that we have a study to support the
20 4.75 percent rate that's in the -- that the
21 districts are using that Staff has proposed either.

22 We're kind of in a situation where we
23 don't really have a good study to tell us what the
24 rates should be here. What we do know is that
25 we've been using the 14.29 and 18.98 for many

1 years, and that we plan on doing a depreciation
2 study for our next rate case. That's the point
3 where we really need to look at this and determine
4 what the right rates are and make any adjustments
5 that are deemed appropriate at that point in time.

6 **Q. I guess what I'm saying is, as a**
7 **matter of policy, wouldn't it be more appropriate**
8 **to use the depreciation rates that have been**
9 **applicable to other assets that were -- that are**
10 **supported by a depreciation study at some point and**
11 **that were ordered by this Commission, and when the**
12 **company concludes its depreciation study, then to**
13 **adjust the depreciation rates for the computer?**

14 **A.** I think if we did that, we'd be
15 adjusting the rates that have been in use for many
16 years and adjusting to a rate that, while we don't
17 have a depreciation study, is -- I don't know if
18 you have to have a depreciation study, frankly, to
19 say that 21 years looks mighty long for computer
20 equipment.

21 **Q. Okay. I think it's a conundrum.**

22 **A.** I understand.

23 **Q. We'll figure it out.**

24 **CHAIRMAN KENNEY:** I don't have any
25 other questions. Thank you, sir.

1 JUDGE PRIDGIN: Mr. Chairman, thank
2 you. Commissioner Kenney?

3 COMMISSIONER W. KENNEY: No
4 questions.

5 JUDGE PRIDGIN: Commissioner Hall?

6 COMMISSIONER HALL: I have no
7 questions.

8 JUDGE PRIDGIN: Very good. Let me
9 see if we have any recross based on Bench
10 questions. Mr. Downey?

11 MR. DOWNEY: No.

12 JUDGE PRIDGIN: Mr. Poston?

13 MR. POSTON: Just real quick.

14 RECROSS-EXAMINATION BY MR. POSTON:

15 **Q. In Account 399, what's the difference**
16 **between the actual, I guess -- I'm sorry. Hang on**
17 **a second.**

18 **How can you distinguish between what**
19 **is currently in 399, the ordered 399, and what you**
20 **think should be included in the 399 subaccounts for**
21 **corporate? What is the differences between those**
22 **two?**

23 A. Well, the current ordered 399 is
24 equipment that exists in the districts, and it's a
25 fairly small number. I think it's less than

1 \$100,000. It's equipment that's out in the
2 districts that's subject to the 4.75 percent.

3 The corporate hardware is in the
4 Midstates corporate office, and this is -- that's
5 the billing hardware and -- or billing software and
6 accounting software and the hardware to run it. So
7 that's the vast bulk of the computer equipment
8 there.

9 **Q. And you said there's software and**
10 **hardware, including PCs, but each of those things**
11 **aren't going to have an identical life span,**
12 **correct? I mean, like a software to run your**
13 **billing system may have a longer life span than,**
14 **say, like a PC; is that correct?**

15 A. Yes. And that's part of the reason
16 for the 18.98 percent rate for PC hardware and
17 software, which is about 5.3 years, and 7 -- about
18 14.29 percent for the network-type servers, that
19 type of thing. That's a seven-year life.

20 **Q. Do you think if a utility makes a**
21 **mistake and charges the wrong rate, that just**
22 **because nobody caught it, it should be allowed to**
23 **continue to charge that rate?**

24 A. Well, I think if we find we're
25 charging the wrong rate, we should probably fix

1 that going forward.

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

4 JUDGE PRIDGIN: Mr. Poston, thank
5 you. Ms. Jones?

6 MS. JONES: Thank you, Your Honor. I
7 just have one question.

8 RE-CROSS-EXAMINATION BY MS. JONES:

9 Q. Mr. Fallert, in response to the
10 Chairman's question, you stated there isn't any set
11 in stone, hard evidence of the 14.29 and the
12 18.98 percent being used, but it was contemplated
13 in the 2006 and 2010 cases, correct?

14 A. Yes.

15 Q. But there is a Commission order to
16 support the 4.75 percent depreciation rate,
17 correct?

18 A. For the equipment in the districts,
19 yes, but not for the corporate hardware and
20 software.

21 MS. JONES: Thank you. No further
22 questions.

23 JUDGE PRIDGIN: Thank you.
24 Mr. Dority, any redirect?

25 MR. DORITY: Yes, just a few. Thank

1 you.

2 REDIRECT EXAMINATION BY MR. DORITY:

3 Q. Mr. Fallert, Mr. Poston was asking
4 you about your position at Laclede. What was your
5 position at Laclede at the time of your retirement?

6 A. I was controller.

7 Q. And your testimony indicates that
8 you've testified numerous times before this
9 Commission; isn't that correct?

10 A. That's correct.

11 Q. What accounts did Atmos utilize for
12 the corporate hardware and software?

13 A. 399.1, 399.3, 399.4 and 399.5.

14 Q. Chairman Kenney was asking you about
15 the Staff's position that you reference and was
16 wanting to know if Staff's silence would be deemed
17 acquiescence. Would you agree that Staff was
18 actually silent on this issue?

19 A. I don't know if I'd characterize it
20 as silence. I think they -- they put together work
21 papers that use these rates and use these rates in
22 calculating depreciation. The depreciation
23 calculated based on these rates is what went into
24 the cost of service in the last two rate cases.

25 Q. I'd like to refer you to your

1 **surrebuttal testimony if you have that with you.**

2 A. Okay.

3 **Q. And at line 10 the question is, What**
4 **evidence have you found to support these rates?**
5 **Could you read your response at lines 11 through**
6 **16, please?**

7 A. The rates of 14.29 percent for
8 general office server and network hardware and
9 software and 18.98 percent for PC hardware and
10 software comport with the Staff's Accounting
11 Schedule 8 from Case No. GR-2010-0192, the most
12 recent 2010 Atmos rate case. A copy of this
13 schedule is attached as Schedule JFS-S4. Staff's
14 direct report in that case stated that Staff
15 annualized depreciation expense by applying
16 currently authorized rates times the February 28,
17 2010 plant in service balances.

18 **Q. And that Schedule JFS-S4 is attached**
19 **to your surrebuttal; is that correct?**

20 A. That's correct.

21 **Q. And that's been offered into**
22 **evidence. Could you --**

23 MR. DORITY: I think that's all I
24 have. Thank you, Judge.

25 JUDGE PRIDGIN: Mr. Dority, thank you

1 very much. Mr. Fallert, thank you very much. You
2 may step down.

3 And it looks like Mr. Robinett for
4 Staff is the next witness. If you'll raise your
5 right hand to be sworn, please.

6 (Witness sworn.)

7 JUDGE PRIDGIN: Thank you very much,
8 sir. Please have a seat. And, Ms. Jones, when
9 you're ready.

10 JOHN ROBINETT testified as follows:

11 DIRECT EXAMINATION BY MS. JONES:

12 **Q. Mr. Robinett, could you please state**
13 **your full name for the record.**

14 A. John A. Robinett. It's
15 R-o-b-i-n-e-t-t.

16 **Q. And where are you employed and in**
17 **what capacity?**

18 A. At the Missouri Public Service
19 Commission as a Utility Engineering Specialist 3 as
20 part of the Engineering Management Services Unit.

21 **Q. Are you the same Robinett who**
22 **prepared or caused to be prepared the testimony**
23 **that's been marked -- or the cost of service report**
24 **revenue requirement, HC and NP, that's been marked**
25 **as Staff Exhibit No. 13, your rebuttal testimony**

1 that's been marked as Staff Exhibit No. 35, and
2 your surrebuttal testimony that's been marked as
3 Staff's Exhibit 36, and the Appendix No. 3 that's
4 been marked as Staff's Exhibit No. 16?

5 A. Yes.

6 Q. And do you have anything you wish to
7 correct in that testimony?

8 A. Yes. As part of my surrebuttal, on
9 page 3, starting about line 10, upon further review
10 of the FERC USOA for gas accounts, I've -- I have
11 found that Account 399 is for asset retirement
12 costs of general plant, and that is -- 399.1.
13 Sorry. That is for the asset retirement costs of
14 general plant, and that is currently one of the
15 accounts that the company is -- that is in dispute.

16 And so I'm not sure how to really fix
17 it, but a potential move to a different subaccount
18 may be appropriate.

19 Q. Okay. And with that correction in
20 mind, Mr. Robinett, if I asked you the same
21 questions today, would your answers be the same?

22 A. They would.

23 Q. And is the information in that
24 document true and correct to the best of your
25 knowledge and belief?

1 A. Yes.

2 MS. JONES: At this time, your Honor,
3 Staff offers rebuttal testimony No. 35, surrebuttal
4 No. 36, and Appendix No. 3 that's been marked as
5 Staff Exhibit No. 16 into evidence.

6 JUDGE PRIDGIN: Any objections?

7 (No response.)

8 JUDGE PRIDGIN: Hearing none. Show
9 Exhibit 35 admitted, Exhibit 36 admitted. And did
10 I understand correctly, is it Exhibit 16 or just a
11 portion thereof?

12 MR. KEEVIL: It's the whole thing.

13 MS. JONES: Both.

14 JUDGE PRIDGIN: Exhibit 16 offered
15 and admitted.

16 (STAFF EXHIBIT NOS. 16, 35 AND 36
17 WERE RECEIVED INTO EVIDENCE.)

18 MS. JONES: Tender the witness for
19 cross-examination.

20 JUDGE PRIDGIN: Mr. Poston, any
21 questions?

22 MR. POSTON: Yes.

23 CROSS-EXAMINATION BY MR. POSTON:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. Do you have Mr. Fallert's testimony
2 up there?

3 A. Which one?

4 Q. His surrebuttal.

5 A. Yes.

6 Q. I just wanted to ask you about his
7 Schedule JFS-S4.

8 A. Okay.

9 Q. That is titled Accounting Schedule 8.
10 I'm not sure how long you've been with the
11 Commission, but were you involved in the
12 preparation of this?

13 A. No.

14 Q. Do you know who was involved in the
15 preparation of this?

16 A. I believe it was Mr. Guy C. Gilbert,
17 who is now deceased. He was the depreciation
18 expert, I believe, possibly.

19 Q. Okay.

20 A. But not for certain, no.

21 Q. I know at some point Staff had hired
22 some outside consultant to work on, I believe, one
23 of Atmos' cases; is that correct?

24 A. Yes. I believe it was the 2010 case.

25 Q. Okay. And so is it possible this was

1 prepared by this outside consultant and not Staff?

2 A. Yes.

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

4 JUDGE PRIDGIN: Mr. Poston, thank
5 you. Mr. Downey, any questions?

6 MR. DOWNEY: No questions.

7 JUDGE PRIDGIN: Mr. Dority, any
8 questions?

9 MR. DORITY: Yes. Thank you.

10 CROSS-EXAMINATION BY MR. DORITY:

11 Q. Good afternoon, Mr. Robinett.

12 A. Good afternoon.

13 Q. As you just testified with your
14 counsel, you're employed as a Utility Engineering
15 Specialist 3 for the Commission; is that correct?

16 A. Yes.

17 Q. And your employment began with the
18 Commission in 2010?

19 A. I believe April of '10, yes.

20 Q. What is your role as a Utility
21 Engineering Specialist 3?

22 A. Specifically my duties are performing
23 depreciation studies and analysis on anywhere from
24 small water and sewer companies to the large
25 electrics and natural gas.

1 Q. And you're in the Staff Utility
2 Services Department?

3 A. Yes.

4 Q. And who do you report to?

5 A. Directly, Mr. Derrick Miles.

6 Q. Is Ms. Kremer the manager of the
7 Engineering Management Services Unit?

8 A. Yes.

9 Q. So matters dealing with the subject
10 of depreciation would be handled in her unit; would
11 that be correct?

12 A. Yes.

13 Q. And just to be clear, the testimony
14 you've sponsored addresses the issue in this case
15 designated as what depreciation rate should be
16 ordered by the Commission for corporate plant
17 Accounts 399.1, .3, .4 and .5; is that correct?

18 A. My testimony encompassed all of the
19 rates for the company, yes.

20 Q. But the issue that we are addressing
21 here today has been shown on the issues list is
22 what depreciation rate should be ordered by the
23 Commission for corporate plant accounts, and those
24 are the subaccounts I just enumerated; is that
25 correct?

1 A. Yes.

2 Q. And would you agree with the
3 following statement that is found in the Staff's
4 Statement of Position at page 5, and I quote, all
5 of the accounts in dispute concern corporate
6 allocated plant depreciation rates for which there
7 are no currently ordered depreciation rates. Would
8 you agree with that?

9 A. Specifically set out for corporate,
10 yes.

11 Q. And you previously discussed with
12 your counsel and in your rebuttal testimony you
13 confirmed that you contributed to the Staff cost of
14 service report filed in this proceeding, I think
15 it's Exhibit 13; is that correct?

16 A. Yes, I filed a portion.

17 Q. And that would be found at pages 71
18 to 73 of that report dealing with depreciation?

19 A. I don't know specifically that's the
20 pages, but I will take your word for it.

21 Q. Okay. In providing the background
22 for your section of the report, you begin by
23 stating that, In the order approving the Unanimous
24 Stipulation & Agreement in Case No. GM-2012-0037,
25 the Commission ordered Liberty Utilities to adopt

1 the depreciation rates of Atmos, end quote.

2 So as we've discussed throughout this
3 hearing, you're agreeing that Liberty was ordered
4 to step into the shoes of Atmos and in this
5 instance adopt their depreciation rates. Would
6 that be a fair characterization?

7 A. Yes. That's what they stipulated to
8 and then was ordered by the Commission.

9 Q. Okay. And then you continue with the
10 observation, and I quote, In addition to adopting
11 the depreciation rates, Liberty and Atmos agreed to
12 other recordkeeping and reporting requirements in
13 Section 2A(10) of the Stipulation & Agreement, end
14 quote.

15 And that particular paragraph 10 of
16 the stipulation is titled Depreciation Related
17 Issues; isn't that correct?

18 A. I believe so, yes.

19 Q. Thank you. At page 73 of the report,
20 and that's Exhibit 13 that we referenced
21 previously, you reference your Schedule JAR(DEP)-1
22 that's attached in Appendix 3 to that report. Do
23 you have that with you?

24 A. Possibly. Appendix 3, yes.

25 Q. Your schedule -- your schedule within

1 **that appendix?**

2 A. Yes. It possibly is the only thing
3 in that appendix.

4 **Q. All right. And you state that Staff**
5 **has supplemented the depreciation schedule with**
6 **corporate allocated plant depreciation rates; is**
7 **that correct?**

8 A. Specifically set out corporate
9 allocated depreciation rates, yes.

10 **Q. So supplemented the previous schedule**
11 **with these specific corporate allocated**
12 **depreciation rates; is that correct?**

13 A. That are identical to the current
14 ordered general plant accounts for the districts,
15 yes.

16 **Q. Is it important to have these**
17 **corporate rates delineated on a depreciation**
18 **schedule like you've done for this case?**

19 A. When they're not there, it's my
20 opinion that you fall back onto the general plant
21 accounts that are currently ordered.

22 **Q. But for this case you felt -- you**
23 **went ahead and filed a supplemental schedule that**
24 **supplemented those rates, the corporate allocated**
25 **plant depreciation rates, and you sponsored that as**

1 a witness in this proceeding; isn't that correct?

2 A. Yes.

3 Q. Thank you. Mr. Robinett, in your
4 surrebuttal testimony, you were asked at page 1 in
5 the question, Was the 14.29 percent depreciation
6 rate for system and network hardware and software
7 referenced by Mr. Fallert utilized by both Atmos
8 and Staff in the 2010 Atmos rate case, end quote?
9 And your answer is, yes. Is that a correct reading
10 of your testimony?

11 A. Yes, it is.

12 Q. It's my understanding that such a
13 14.29 percent depreciation rate would equate to a
14 seven years life for those assets. Would that be
15 correct?

16 A. I think roughly it's seven years,
17 yes.

18 Q. The next Q and A in your surrebuttal
19 is, and I quote, Was the 18.98 percent depreciation
20 rate for personal computer hardware and software
21 referenced by Mr. Fallert utilized by both Atmos
22 and Staff in the 2010 Atmos rate case, end quote?
23 And again, your answer is yes. Is that a correct
24 reading of your testimony?

25 A. Yes, it is.

1 Q. And for that 18.98 percent
2 depreciation rate, that would equate to a 5.3 year
3 life for those referenced assets; is that your
4 understanding?

5 A. Yes.

6 Q. Mr. Robinett, are you aware of what
7 depreciation rate for system and network hardware
8 and software was utilized by Staff in the 2006
9 Atmos rate case?

10 A. All I have to go off of is the
11 ordered rates that were there. I don't
12 specifically know the 2006 rate case, no.

13 Q. And, in fact, Staff objected and
14 refused to provide copies of the Staff accounting
15 schedules and work papers related to the
16 depreciation expense and depreciation rates in the
17 Case No. GR-2006-0387; isn't that correct?

18 A. Yes.

19 Q. Turning back to your surrebuttal
20 testimony, you were asked, Does Liberty Utilities
21 use the same software and hardware as the previous
22 owner, Atmos Energy Corporation? And your response
23 is, and I quote, No. Liberty Utilities was in the
24 process during the merger case of purchasing
25 software packages to be used for running the

1 utility's daily processes, end quote. Did I read
2 that correctly?

3 A. Yes, you did.

4 Q. During the Staff's audit in this
5 case, did you have occasion to visit the company
6 offices in Jackson, Missouri?

7 A. Yes. I came down -- I can't remember
8 what day it was, but I was in Jackson.

9 Q. Were there other Staff members with
10 you on that occasion?

11 A. Yes.

12 Q. Did you meet with company officials,
13 in particular Mr. Krygier, who's sitting to my
14 right, while you were there?

15 A. Yes.

16 Q. Is it true that, among other
17 purposes, one reason for your trip was to inspect
18 the company's new divisional headquarters in
19 Jackson, Missouri?

20 A. That was part of our reasoning for
21 there, yes, for coming down, yes.

22 Q. Did you get a tour of the new
23 building?

24 A. Yes.

25 Q. Did you take pictures documenting

1 **your findings?**

2 A. Not that I recall, but I'm unsure. I
3 don't know.

4 **Q. While you were on the visit, did you**
5 **ask to see the finance or accounting hardware and**
6 **software that are the subject of your depreciation**
7 **adjustment in this case?**

8 A. The software, no.

9 **Q. How about the hardware?**

10 A. We were taken in to see where the
11 servers were, yes.

12 **Q. Mr. Robinett, you've already, I**
13 **think, discussed with your counsel that you were**
14 **the depreciation witness in the Summit Natural Gas**
15 **rate case, Case No. GR-2014-0086; is that correct?**

16 A. Yes.

17 **Q. And in that case, did you recommend**
18 **depreciation rates for computer equipment in a**
19 **range from 12.9 percent to 14.29 percent?**

20 A. For district specific, the current
21 ordered rates is what I recommended, in my belief,
22 the current ordered rates for that company.

23 **Q. Were those rates 12.9 percent to**
24 **14.29 percent for computer equipment?**

25 A. I think they were specifically those

1 two amounts. It wasn't a range.

2 Q. Okay. Those two amounts?

3 A. I believe so, yes.

4 Q. In fact, the Partial Stipulation &
5 Agreement filed in that case on August 18th and the
6 resulting Order Regarding Partial Stipulation &
7 Agreement entered by this Commission last week
8 adopted a depreciation rate of 12.9 percent for
9 computer equipment, an average service life of
10 seven years; isn't that correct?

11 A. It was part of a stipulated
12 agreement, yes.

13 Q. And that was approved by this
14 Commission's order just this past week, isn't that
15 correct, September 3rd?

16 A. If that's when it was ordered, yes.

17 Q. Okay.

18 MR. DORITY: Sorry for the delay.

19 BY MR. DORITY:

20 Q. Mr. Robinett, did you conduct a
21 depreciation study in this rate case?

22 A. No.

23 Q. Have you suggested any modifications
24 to the existing depreciation rates in this rate
25 case?

1 A. I'm no longer at the seven district
2 current ordered depreciation rates, that would be
3 correct. So that would be an adjustment from the 7
4 to 3.

5 Q. And as a result of that, some of
6 those rates did change; isn't that correct?

7 A. Yes.

8 Q. Thank you. Mr. Robinett, were you in
9 the hearing room yesterday morning when Mr. Fischer
10 was presenting his opening statement?

11 A. Yes, I was.

12 Q. And you heard his reference to how
13 the computer and his cell phone could change in the
14 next 21 years?

15 A. I believe he also stated iPad, but
16 yes.

17 Q. That's a good point, also his iPad.
18 Well, according to my CCN alert on my iPhone, were
19 you aware that Apple today unveiled the Apple
20 Watch, the iPhone 6 and the iPhone 6 Plus along
21 with the Apple Pay Mobile Payment Platform?

22 A. I was unaware of that.

23 Q. Mr. Robinett, could you have had a
24 real-time dialog with Chairman Kenney located in
25 St. Louis 21 years ago, to your knowledge?

1 A. I don't know.

2 MR. DORITY: Okay. That's all the
3 questions I have. Thank you.

4 JUDGE PRIDGIN: Mr. Dority, thank
5 you. Let me see if we have any Bench questions.
6 Mr. Chairman?

7 CHAIRMAN KENNEY: Just a few.
8 QUESTIONS BY CHAIRMAN KENNEY:

9 Q. You can watch the release of the
10 iPhone 6 and 6 Plus in the iWatch on an iPad. And
11 I'm sure it's archived, so you can go back and
12 stream it later.

13 Thanks for being here, Mr. Robinett.
14 I just have a couple of questions. You were in the
15 hearing room there during my exchange with
16 Mr. Fallert?

17 A. Yes.

18 Q. So is it your understanding that the
19 depreciation rate should roughly approximate the
20 length of the useful life of the asset?

21 A. That is what we try to do in
22 depreciation, to assign an average service life to
23 recover the original value over that life.

24 Q. And Staff is recommending the
25 4.75 percent, is that the right rate?

1 A. Yes.

2 Q. That that depreciation rate should be
3 applied to the computer hardware and software?

4 A. Absent a study, yes.

5 Q. And that is roughly how many years?

6 A. 21.

7 Q. Is it your opinion that that does or
8 does not roughly approximate the useful life of the
9 computer hardware and software?

10 A. We recently -- and I was the witness
11 in the Laclede case, and Laclede just retired a
12 mainframe server as part of the New Blue, the New
13 Blue system that they installed, that was over
14 30 years old. So, I mean, we have a historical
15 look at that, and it's lasted 30 years. And the
16 current order from that case in the New Blue was
17 for 15.

18 CHAIRMAN KENNEY: All right. Fair
19 enough. I don't have any other questions. Thanks.

20 THE WITNESS: Thank you.

21 JUDGE PRIDGIN: Mr. Chairman, thank
22 you. Commissioner Kenney?

23 COMMISSIONER W. KENNEY: No
24 questions. Thank you.

25 JUDGE PRIDGIN: Commissioner Hall?

1 COMMISSIONER HALL: Yes.

2 QUESTIONS BY COMMISSIONER HALL:

3 Q. On page 3 of your surrebuttal
4 testimony, lines 7 through 9, you discuss the fact
5 that Staff agreed to waive the requirement of a
6 depreciation study and that a depreciation study is
7 required for purposes of the next rate case.

8 A. Yes.

9 Q. I'm a little confused. The next rate
10 case meaning this one or the next time they come in
11 for a rate?

12 A. As part of the merger, we agreed to
13 waive a depreciation study for this case.

14 Q. This case being?

15 A. Current. The current one.

16 Q. So why did you agree to that waiver?

17 A. A lot of it was we recently -- in
18 2010 we had a filed depreciation study, and part of
19 the rules is for three years within filing a case.
20 It's within three or five years if they're outside
21 of a case. So for the rate case proceeding,
22 they -- at the time of the merger, they were still
23 within the five-year rule since there was no
24 impending rate case.

25 Q. What is required to do a depreciation

1 **study?**

2 A. What we look for is a vintaged, which
3 are year by year, the inputs, the additions and
4 retirements in each individual account, and they're
5 all rolled up into a large database, and we run it
6 through a very old DOS-based system to do our
7 study.

8 **Q. Did you request any of that**
9 **information in this rate case?**

10 A. No.

11 **Q. If you were asked to do a**
12 **depreciation study, how much time would that take,**
13 **ballpark?**

14 A. I honestly don't know. Between all
15 the meetings that usually go in, we take site
16 visits like most of the hired consultants do for
17 companies. We go out and look at the plant. I
18 honestly don't have a figure for you, how long it
19 would take.

20 COMMISSIONER HALL: I have no further
21 questions. Thank you.

22 JUDGE PRIDGIN: Commissioner Hall,
23 thank you. Commissioner Rupp?

24 COMMISSIONER RUPP: No questions.

25 JUDGE PRIDGIN: All right. See if we

1 have any recross based on Bench questions.

2 Mr. Poston?

3 MR. POSTON: No questions.

4 JUDGE PRIDGIN: Mr. Downey?

5 MR. DOWNEY: No questions.

6 JUDGE PRIDGIN: Mr. Dority?

7 MR. DORITY: No questions. Thank
8 you.

9 JUDGE PRIDGIN: Any redirect?

10 MS. JONES: Just a few questions,
11 your Honor.

12 REDIRECT EXAMINATION BY MS. JONES:

13 Q. Mr. Robinett, why did you feel the
14 need to supplement the depreciation schedule?

15 A. Early on in meetings with the
16 company, it came to my attention that they were
17 booking corporate allocated plant to -- they were
18 basically booking corporate allocated plant and
19 didn't have current ordered depreciation rates
20 delineated out on a specific rate sheet.

21 Q. Okay. And Mr. Dority mentioned
22 Staff's objection to Data Request No. 280. Why did
23 Staff object to providing those work papers for the
24 2006 and 2010 cases?

25 A. The depreciation witness that was

1 present at that time is now deceased, and I cannot
2 attest to the work papers that he presented the
3 company in that case.

4 **Q. And Mr. Dority also referenced the**
5 **Stipulation & Agreement for the previous case, the**
6 **2010 case. In your opinion, do stipulations have**
7 **any precedential effect?**

8 A. My non-attorney opinion is no, they
9 don't, and I think there may be a clause in there
10 that says that.

11 **Q. And then reference was made to**
12 **Liberty Utilities consolidating their rates from**
13 **seven -- or their districts from seven to three.**
14 **Did Liberty Utilities have Commission authorization**
15 **to do so, from your knowledge?**

16 A. Are we talking specifically about the
17 depreciation rates?

18 **Q. Yes.**

19 A. I have found no order that allowed
20 for the depreciation rates to go down to three
21 districts. However, the 2010 case, I believe they
22 did the three districts at that point in time. But
23 there were no depreciation rates ordered
24 specifically on those three districts. It's still
25 left at the 2006 rates.

1 **Q. Was Liberty already recording its**
2 **depreciation districts from three instead of seven**
3 **before your recommendation?**

4 A. In our discussions, they had the
5 ability to pull out a potential fourth with the
6 UCG, which was Hannibal, but yes, it was down to
7 four, as many as four districts that they could
8 pull out and differentiate with the plant records.

9 MS. JONES: I have no further
10 questions.

11 JUDGE PRIDGIN: Ms. Jones, thank you.
12 Mr. Robinett, thank you very much. You may step
13 down.

14 THE WITNESS: Thank you.

15 JUDGE PRIDGIN: Mr. Addo will be our
16 last witness of the day, if I'm reading this
17 correctly.

18 MR. ADDO: Yes.

19 JUDGE PRIDGIN: If you'll raise your
20 right hand to be sworn, sir.

21 (Witness sworn.)

22 JUDGE PRIDGIN: Thank you very much.
23 Please have a seat. And, Mr. Poston, when you're
24 ready.

25 MR. POSTON: Thank you.

1 WILLIAM ADDO testified as follows:

2 DIRECT EXAMINATION BY MR. POSTON:

3 Q. Please state your name for the
4 record.

5 A. My name is William Addo. Addo is
6 A-d-d-o.

7 Q. And by whom are you employed?

8 A. I'm employed by the Missouri Office
9 of the Public Counsel.

10 Q. And what's your position?

11 A. Public Utility Accountant 1.

12 Q. Are you the same William Addo that
13 prepared rebuttal and surrebuttal testimonies that
14 have been marked as Exhibits 43 and 44?

15 A. Yes.

16 Q. Do you have any corrections to that
17 testimony?

18 A. No.

19 Q. If I were to ask you the questions in
20 your testimony here today, would your answers be
21 substantially the same?

22 A. Yes.

23 Q. Is your testimony true and accurate
24 to the best of your belief?

25 A. Yes.

1 MR. POSTON: Your Honor, I offer
2 Exhibits 43 and 44.

3 JUDGE PRIDGIN: 43 and 44 are
4 offered. Any objection?

5 (No response.)

6 JUDGE PRIDGIN: Hearing none,
7 Exhibits 43 and 44 are admitted.

8 (OPC EXHIBIT NOS. 43 AND 44 WERE
9 RECEIVED INTO EVIDENCE.)

10 MR. POSTON: I tender the witness.

11 JUDGE PRIDGIN: Mr. Poston, thank
12 you. Ms. Jones, any questions?

13 MS. JONES: Staff has no questions.

14 JUDGE PRIDGIN: Mr. Downey?

15 MR. DOWNEY: No questions.

16 JUDGE PRIDGIN: Mr. Dority?

17 MR. DORITY: No questions. Thank
18 you.

19 JUDGE PRIDGIN: All right. Thank
20 you. Any Bench questions, Mr. Chairman?

21 CHAIRMAN KENNEY: No questions.

22 Thank you, sir.

23 JUDGE PRIDGIN: Thank you.

24 Commissioner Kenney?

25 COMMISSIONER W. KENNEY: No

1 questions.

2 JUDGE PRIDGIN: Commissioner Hall?

3 COMMISSIONER HALL: No questions.

4 Thank you.

5 JUDGE PRIDGIN: Commissioner Rupp?

6 COMMISSIONER RUPP: No questions.

7 JUDGE PRIDGIN: All right. Thank
8 you. Mr. Addo, thank you very much. You may step
9 down.

10 And I believe that concludes taking
11 evidence for the day, and we had already discussed
12 earlier counsel's preference that we stand in
13 recess until 1:30 tomorrow afternoon to give
14 counsel an opportunity to discuss some issues and
15 hopefully resolve them. And 1:30 was chosen to try
16 to give ample time for agenda, which is set for
17 noon, and maybe a quick lunch.

18 And then at 1:30 I guess we will
19 simply hear from counsel to see if we have any
20 issues that remain to be heard. Is that my
21 understanding?

22 MR. DORITY: I think that's correct,
23 Judge.

24 MR. POSTON: I was just going to
25 wonder, is this room going to be available?

1 JUDGE PRIDGIN: It's available for
2 you if you'd like, absolutely.

3 Anything further from counsel before
4 we adjourn for the evening? All right. Hearing
5 nothing, we will stand in recess until 1:30
6 tomorrow afternoon. Thank you. We're off the
7 record.

8 (WHEREUPON, the hearing was adjourned
9 at 4:32 p.m.)

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1 I N D E X

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