

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

February 14, 2003

Jefferson City, Missouri

Volume 4

In the Matter of Laclede Gas)
Company's Purchased Gas Adjustment) Case No.
Tariff Revisions to be Reviewed in) GR-2001-387
Its 2000-2001 Actual Cost Adjustment)

In the Matter of Laclede Gas)
Company's Purchased Gas Adjustment)Case No.
Factors to be Reviewed in Its)GR-2000-622
1999-2000 Actual Cost Adjustment)

BEFORE :

MORRIS L. WOODRUFF, Presiding
SENIOR REGULATORY LAW JUDGE.
CONNIE MURRAY,
SHEILA LUMPE,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:
TRACY L. CAVE, CSR, CCR
ASSOCIATED COURT REPORTERS

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A P P E A R A N C E S

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1 JUDGE WOODRUFF: All right. Welcome back. And
2 this is the continuation of the hearing in GR-2001-387. And
3 Mr. Sommerer was on the stand yesterday and you're still
4 under oath.

5 Commissioner Lumpe, if you'd like to ask your
6 questions.

7 COMMISSIONER LUMPE: Okay.

8 DAVID M. SOMMERER, having been previously sworn, testified
9 as follows:

10 QUESTIONS BY COMMISSIONER LUMPE:

11 Q. Just for some clarification, Mr. Sommerer. On
12 page 4 of your direct where you mentioned the 63 million
13 that's at the top of the page --

14 A. Yes.

15 Q. -- line 2, okay, that is what you have put
16 together in Schedule 5; is that right? That's where you
17 made that calculation?

18 A. That's correct.

19 Q. Okay. And then on page 10, lines 22 and 23,
20 you refer to, I think schedule -- I'm looking at where it --
21 page 10 -- where you talk -- that's on line 22 where you
22 talk about Laclede traded out many -- that line there. I
23 don't know if -- this all says highly confidential, so I'm
24 not -- okay. And then is that what you reference on
25 Schedule 9 then? Does that relate to Schedule 9 then?

1 A. Yes. That's followed up on page 11 of that
2 testimony where Schedule 9 is referenced, which is Staff's
3 initial analysis of Laclede's option trading.

4 Q. And is that a highly confidential document
5 also? It has HC down there and that's why I'm not sure.

6 A. At this point in the proceedings it's my
7 understanding it is, although I believe the company was
8 going to take a look at it. Since most of the items that
9 I've marked highly confidential was because Laclede's
10 program description was highly confidential and that has
11 been made public for this proceeding, so I think the company
12 has made a commitment to go through my testimony and try and
13 establish what's still confidential and what's not.

14 JUDGE WOODRUFF: Let me interrupt for a moment
15 here, because we did have this discussion yesterday. And
16 can you tell me what the company reached on its decision on
17 this?

18 MR. ZUCKER: The only things that we would
19 like to still keep confidential from Mr. Sommerer's Direct
20 Testimony, Schedules 9-1 to 9-5 and from his Surrebuttal,
21 Schedules 2 to 4.

22 JUDGE WOODRUFF: Okay. And is there anything
23 within the text of his testimony that needs to remain
24 confidential?

25 MR. ZUCKER: No, sir.

1 JUDGE WOODRUFF: Okay. Very good.
2 You can proceed.
3 COMMISSIONER LUMPE: But Schedule 9 is highly
4 confidential. Is that what you're saying?
5 MR. ZUCKER: Yes, Commissioner.
6 COMMISSIONER LUMPE: Okay. Well, I was going
7 to ask for some discussion on that, but --
8 JUDGE WOODRUFF: We can go in camera -- or
9 session, if you'd like to.
10 COMMISSIONER LUMPE: I would like to hear a
11 discussion of that.
12 JUDGE WOODRUFF: All right. At this time then
13 we're going to go into an in-camera session. Is there
14 anyone in the room that needs to leave that doesn't have
15 authority to be here? If you'd look around and let me know.
16 It sounds like we're okay. Let me get us off
17 the Internet.
18 (REPORTER'S NOTE: At this time, an in-camera
19 session was held, which is contained in Volume No. 5, Pages
20 186 through 189 of the transcript.)
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1 JUDGE WOODRUFF: And we're out of the
2 in-camera session and you can proceed with your further
3 questions.

4 BY COMMISSIONER LUMPE:

5 Q. In your Rebuttal Testimony, Mr. Sommerer, on
6 page 9 you have a quote there by Kenneth Neises. And I'm
7 wondering is your interpretation of that, the line 31, it
8 does not believe it should continue -- and I don't know is
9 this -- well, there's an HC down there, but the text --

10 JUDGE WOODRUFF: They indicated the text is
11 not highly confidential.

12 BY COMMISSIONER LUMPE:

13 Q. Should continue to have -- it does not believe
14 it should continue to have an opportunity to profit under
15 the program.

16 Do you interpret that to mean the entire
17 program, not just piece parts of the program?

18 A. That's my interpretation, yes, the entire
19 program.

20 Q. Okay. Just wanted to make sure about that.

21 And then I think I have something on your
22 surrebuttal. And I see on page 4 you make the statement
23 that -- and it's on line 17, The option proceeds the company
24 repeatedly points to were not isolated results from a
25 profitable trading operation, but were, in fact, only

1 possible because natural gas prices were extremely high.

2 Would you sort of explain that to me?

3 A. Yes. The value of an option is directly
4 related to how high natural gas prices are. And so I think
5 this program really needs to be viewed in the context of the
6 fact that gas prices were going to astronomical levels,
7 levels that hadn't been seen before in the gas industry.

8 And so the fact that we do have some proceeds
9 here isn't unusual. In Staff's opinion, that would be
10 expected in the case of seeing very high gas costs. And
11 really the question the Staff has is, how do you interpret
12 the remaining terms and provisions of this program after
13 Laclede had opted out of various guarantees.

14 And we want to emphasize that there's always a
15 direct relationship between the gains that are coming
16 through from a hedging program like this and what they're
17 really meant to address. They're not a stand-alone profit
18 center where you can just look at the net that comes in and
19 say, Job well done.

20 You also have to consider the gas prices were
21 going up to -- to very high levels as well and could have
22 absorbed those gains or even made those gains -- even made
23 those gains be a very small percentage when you look at it
24 on a total overall basis as compared to actual gas costs.

25 Q. So when you use the word "proceeds," in

1 effect, you're saying that because the prices were going up,
2 yes, there were proceeds, but there were not actually
3 savings for the customer. Am I interpreting that correctly?
4 A. That is Staff's position, yes.
5 Q. Okay. And I think you've already discussed
6 Schedules 5 and 6, have you not, in your -- I guess, yeah.
7 If I recall, I thought you mentioned those sometime
8 yesterday. I believe I -- believe you mentioned those
9 yesterday when you were discussing them with Commissioner
10 Gaw. Do you recall that?
11 A. I don't think that's the case, at least in
12 terms of Schedule 5 and 6 of my Surrebuttal Testimony.
13 Q. All right. Well, are those highly
14 confidential? No.
15 Okay. Would you sort of walk me through those
16 then? I thought you had discussed those yesterday with
17 Commissioner Gaw, but that's --
18 A. Yes. I think most of the time was spent
19 during the discussion with Commissioner Gaw on Schedule 9 --
20 Q. Okay.
21 A. -- if I'm not mistaken.
22 Q. All right.
23 A. Schedule 5 is the summary of Staff's
24 calculation of what the net cost of this program was in year
25 two. And it compares the proceeds that Laclede received,

1 which is that first calculation. Laclede received a total
2 of 33,499,000 in proceeds, and the cost of the options,
3 basically the premiums that Laclede spent was 8,922,450.
4 So the net proceeds would be -- and these are actual --
5 \$24,576,550.

6 And to that number the Staff compared the
7 proceeds that would have been received had Laclede simply
8 spent the \$4 million and made the same option purchases that
9 it did on an actual basis.

10 So this is not considering Laclede's original
11 obligation to protect cost at the catastrophic price level.
12 This is simply trying to estimate the proceeds that would
13 have been received had Laclede spent the \$4 million and went
14 forward with the various decisions that it made later in the
15 year.

16 And so the proceeds generated from that
17 assumption were \$33,134,960. The initial MRA expenditure
18 was \$4 million, or that would have been the amount of cost
19 that was incurred by Laclede up to the MRA. And the net
20 amount under Staff's assumption would be \$29,134,960. And
21 those two numbers are compared to come up with an actual
22 cost of net price stabilization. That number is compared to
23 the MRA to get a net cost of \$558,410.

24 Schedule 6 is simply a summary of Laclede's
25 cash. We tried to go back and see if Laclede ever went down

1 to zero in terms of cash coming in from early sales and the
2 initial funding level. And what this analysis shows is this
3 there was always at least \$2 million and Laclede wasn't
4 required to use any of its own funds to make any of these
5 purchases unless it was in terms of simply a temporary
6 borrowing, which was accounted for through the carrying cost
7 provision in this program.

8 COMMISSIONER LUMPE: Thank you, Mr. Sommerer.
9 That's all I have for Mr. Sommerer.

10 JUDGE WOODRUFF: Commissioner Murray?

11 COMMISSIONER MURRAY: Thank you.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good morning, Mr. Sommerer.

14 A. Good morning.

15 Q. I regret I had to miss the first portion of
16 this hearing, so I hope I'm not going to be too repetitive
17 here.

18 But I guess my first question for you is, does
19 Staff also contest the \$4 million of savings that Laclede
20 used to supplement year three? And the reason I ask is that
21 if Staff maintains that none of the \$8 million was
22 Laclede's, how could it be appropriate to use any of it for
23 Laclede's portion of the funding for year three?

24 A. Yes. We believe that there was a constraint
25 that was put out by the Commission's order where it said

1 that it did want \$4 million of that to go to year three.
2 And we didn't believe there was really an alternative based
3 upon that order.

4 We never agreed with Laclede's calculation.
5 And the way that Staff viewed it was regardless of whether
6 it was the customer's money pursuant to a calculation or it
7 was Laclede's money, the Commission wanted \$4 million of the
8 \$8.9 million to go to the purchase of options for year
9 three.

10 Q. All right. So you're not contesting that
11 portion of it?

12 A. That's correct.

13 Q. On page 2 of your Direct Testimony you mention
14 there a review of 10Q documents filed with the SEC. Is
15 there a copy of that in the record? Is there a copy of
16 those 10Q documents?

17 A. No.

18 Q. Do all of our gas utilities file those with
19 the SEC?

20 A. Generally speaking, large publicly traded
21 companies are required to file those documents with the SEC.
22 I don't know that all of the LDCs do, but my suspicion is
23 that's the case unless you're dealing with a very small
24 company like perhaps Fidelity Natural Gas, a very small
25 operation.

1 Q. And do they file copies with us or is this
2 something that you asked for during this proceeding?

3 A. This was a document that was accessed through
4 Laclede's website where they will give you access to the
5 SEC's filed documents.

6 Q. Your testimony spends quite a bit of time
7 talking about Staff's position in GO-98-484 and the fact
8 that you argued in that case that Laclede's program was
9 speculative and that it offered Laclede out from any real
10 guarantees of price protection.

11 But the reality -- the outcome of that case
12 was the Commission did not agree with Staff; is that
13 correct?

14 A. That is correct.

15 Q. So what you're claiming in this proceeding,
16 are you restating what you stated in that case or is your
17 position here somewhat different? Is your position that
18 even though the Commission disagreed with you in GO-98-484
19 and approved, I believe it was, alternative B of Laclede's
20 proposal, is your position that Laclede did not implement
21 alternative B as the Commission ordered?

22 A. No. That's not Staff's position and we're not
23 trying to re-litigate that case. The Staff's position in
24 this particular case is one of trying to make sure that the
25 program description and the tariffs of the PSP were followed

1 and any savings that were claimed by Laclede were calculated
2 in accordance with those provisions.

3 And based upon a review of those provisions,
4 the Staff believes that based upon Laclede's June 2000
5 letter opting out of the price level protection and based
6 upon the September 2000 Stipulation and Agreement which, in
7 essence, took away the obligation to cover a certain volume
8 level pursuant to the program, that certain terms became
9 ambiguous in the program description and, therefore, the
10 Staff made a study based upon its view of what those
11 remaining terms meant.

12 Q. Okay. But the Commission had obviously
13 disagreed with Staff in GO-98-484 that those terms were
14 ambiguous because the Commission approved the plan -- the
15 alternative plan B that Staff at that time said, no, those
16 terms are ambiguous; is that correct?

17 A. That is correct.

18 Q. And on page 11 of your Direct Testimony you
19 speak on line 7 -- there's the question posed to you, What
20 is an additional flaw of the program? And there when you
21 talk about -- I'll try not to be specific because it is
22 highly confidential --

23 JUDGE WOODRUFF: Before you came in, we had a
24 discussion about that and nothing in the text is considered
25 highly confidential anymore. The company indicated that it

1 was not highly confidential, so you can ask specifics about
2 it.

3 COMMISSIONER MURRAY: All right. Thank you,
4 Judge.

5 BY COMMISSIONER MURRAY:

6 Q. Anyway, you go on to answer the question about
7 an additional flaw of the program. When you are referencing
8 a flaw of the program, are you referencing a flaw in the
9 program that the Commission approved?

10 A. That is correct.

11 Q. So you still think that it was a bad program
12 that the Commission approved?

13 A. I think that the program in terms of the
14 portions that offered real guarantees were good, but the
15 program contained certain outs and those outs were -- were
16 always there. And it was a flaw in the program that the
17 Staff believed it at that time and it believes it now.

18 Q. But isn't that collaterally attacking what the
19 Commission did before when the Commission said, yes, it is
20 appropriate for Laclede to have those opt-out provisions and
21 we approved them and Laclede took advantage of them and now
22 the Staff is saying, no, that opt-out provision didn't work
23 well, it was a bad program to begin with?

24 A. Well, we're simply saying that I don't think
25 that the Staff fully understood the consequences of what

1 would happen if the market-out clause was invoked. I am not
2 confident that the Commission understood at that time what
3 the consequences were of an opting out based upon radical
4 market changes.

5 And so this is not a situation where we're
6 trying to go back and rehash a case that the Staff lost.
7 It's a situation of saying that I don't believe it was ever
8 defined. And although the Commission said in its order that
9 it lacked enough definition to go forward, I believe there
10 was enough definition there, I believe Staff also agreed
11 with that, to the extent that you did have the price
12 protection in place.

13 What I think was unclear was whether the
14 company would be allowed to go on making money in the
15 context of no price stabilization, no guarantee, no
16 guarantee for price protection, no insurance, no volume --
17 volumes to be covered. Those events really weren't
18 considered in that case.

19 Q. But if you look at the tariff sheets, and
20 that's Schedule 7 of your testimony -- okay. If you look at
21 your Schedule 6, which is a highly confidential schedule --

22 MR. ZUCKER: Judge, that's not highly
23 confidential anymore.

24 Only Schedule 9 from the Direct Testimony,
25 Commissioner.

1 COMMISSIONER MURRAY: Okay. Thank you.

2 BY COMMISSIONER MURRAY:

3 Q. I apologize because I haven't looked at this
4 for a few days and I can't find quickly what I'm looking
5 for.

6 Okay. Where is the -- I believe in that
7 schedule there was language about the opt-out provision. Am
8 I correct?

9 A. That's correct.

10 Q. Where is it?

11 A. That is on my Direct Schedule 6-4, page 4 of
12 the program description, paragraph B, small i -- actually,
13 it's small double i.

14 Q. All right. Okay. And then paragraph 3 talks
15 about the overall cost reduction incentive; is that correct?

16 A. That's correct.

17 Q. And that is treated separately from the price
18 protection incentive which you just referred to; is that
19 correct?

20 A. Well, the Staff believes there is a tie
21 between those two. There are two separate elements, I would
22 agree, two ways that Laclede can make money off of this
23 incentive program.

24 And the relationship that Staff sees in this
25 is that there's a \$4 million MRA and that's referred to in

1 paragraph 3 that you just pointed out. And MRA is defined
2 as being \$4 million. And for that \$4 million the price
3 protection guarantee, which you also pointed out in
4 paragraph B above there, requires that Laclede maintain a
5 certain level for that \$4 million.

6 So the idea is that for a certain amount of
7 price protection, the MRA, Laclede is incentivized to drive
8 that cost down as low as possible. And that there's also a
9 direct relationship -- if you'll look at paragraph 3, the
10 overall cost reduction incentive, you'll see in parenthesis
11 it talks about prior to the last three business days of
12 NYMEX option trading.

13 So that lends some definition of how these two
14 incentives interact together. That early trading or
15 intermediate trading is something that's captured under this
16 overall cost reduction incentive, whereas, activities,
17 realized gains that take place in the price protection
18 incentive in the last three days are captured as part of
19 that program.

20 So there is an interrelationship between the
21 two. And really if you go back to the record in the '98
22 case, that was discussed at length as to how those two
23 incentives were to work in tandem together.

24 Q. Did you cite those discussions in this
25 testimony?

1 A. If you will just allow me a minute.

2 Okay. As an example of that, if you would go
3 to page 8 of my Rebuttal Testimony --

4 Q. All right. I'm there.

5 A. Okay. If you would go -- actually it's on
6 page 9, line 9 through 16, which says, From Laclede's
7 initial brief, page 18, first with regard to the issue of
8 cost, it is clear that the maximum amount the ratepayers
9 will be required to pay for price protection under any
10 circumstance is \$4 million or less than 1 percent of
11 Laclede's total cost plus transaction fees.

12 This cost can and almost certainly will
13 decrease as Laclede generates gains from option
14 transactions, but it can never increase under any
15 circumstance.

16 And 17 through 21, from Laclede's initial
17 brief, page 19, At the same time ratepayers will be
18 guaranteed a substantial level of price protection under any
19 scenario. Even in the unlikely event that Laclede was to
20 leave itself completely unhedged, ratepayers would still
21 have price protection paid for by Laclede above the CPL.

22 And the way I interpret that, and this is
23 really throughout the transcript in that proceeding and
24 throughout Laclede's testimony, these two incentives work
25 together. In other words, Laclede has a certain level of

1 funding. And the cost reduction incentive was meant to give
2 Laclede an incentive to bring that cost down to as low as
3 possible for a given guaranteed amount of price protection.
4 And I think that's discussed here.

5 Q. But the last paragraph that you just read from
6 where Laclede's brief said, At the same time ratepayers will
7 be guaranteed a substantial level of price protection under
8 any scenario, wouldn't that include the scenario of which
9 they opted out? Wouldn't any scenario include that
10 scenario?

11 A. I think it points to the fact that when
12 Laclede was talking about the guarantees, it usually said
13 the guarantee was absolute and it didn't refer to this
14 opt-out provision. And Staff criticized that aspect. And I
15 think in response to that, Laclede's witness, Kenneth
16 Neises, tried to give the Commission some assurance that to
17 the extent that Laclede did opt out, Laclede would have no
18 interest in the savings under the program.

19 Q. Well, I read that to say ratepayers will be
20 guaranteed a substantial level of price protection under any
21 scenario, but where do you see in there that Laclede
22 wouldn't share in any savings under that scenario?

23 A. Yeah. If you go back to page 7 of that same
24 testimony, lines 18 through 24 -- and this comes from
25 Mr. Neises' Surrebuttal Testimony in that case -- Of course,

1 if the company believes market conditions have changed
2 radically enough to warrant such actions, it does not
3 believe it should continue to have an opportunity to profit
4 under the program.

5 Accordingly, if Laclede invokes this provision
6 during the first 90 days, it agrees that the incentive
7 aspects of the program should terminate for that year.

8 Q. And your definition of the incentive aspects
9 of the program, would you state what that is?

10 A. To me, that statement would cover both the
11 cost reduction aspect and the price protection aspect.
12 There are two elements to the price stabilization program.

13 Q. All right. Now, let's take your
14 interpretation. And can you tell me under what set of
15 circumstances would the overall cost reduction incentive
16 provide -- under what circumstances would that incentive be
17 applicable if Laclede opted out of the price protection
18 incentive?

19 A. Well, I think it was somewhat vague. And
20 that's why the Staff went ahead and it understood that,
21 according to the Stipulation and Agreement that was signed
22 back in September of 2000, that that provision was still
23 active, whatever meaning it had.

24 And I don't think there was ever a meeting of
25 the minds between the company and the Staff and Public

1 Counsel on what the effect of that incentive would be, given
2 that Laclede had opted out of the price protection.

3 But the Staff went ahead and made its own
4 evaluation of what it believed was left of that provision.
5 And that study was done in Staff's Direct Testimony and to
6 address some of Laclede's concerns, the study was updated in
7 Staff's Surrebuttal Testimony.

8 Q. All right. Would you mind pointing that
9 out -- pointing that to me -- pointing me to that?

10 A. Yes. The study that Staff performed in Direct
11 Testimony is located in Sommerer Direct Schedule 9.

12 Q. And this is still highly confidential.
13 Correct?

14 A. Yes. And the study that was performed in
15 surrebuttal is attached to my testimony as Schedule 2,
16 Surrebuttal Testimony.

17 Q. All right. I apologize for doing this, but
18 I'm going to ask you to walk me through -- well, we have to
19 go in-camera to do it, if you'd walk me through Schedule 9.

20 JUDGE WOODRUFF: We were in-camera before so
21 we can do it again.

22 At this time we'll go in-camera. If there's
23 anyone in the room that needs to leave, please do so. We're
24 off the Internet.

25 (REPORTER'S NOTE: At this time, an in-camera

1 session was held, which is contained in Volume No. 5, Pages
2 207 through 211 of the transcript.)

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1 JUDGE WOODRUFF: And we're back live and out
2 of the in-camera session and back in regular session. And
3 you can proceed with any further questions, if you have any.
4 BY COMMISSIONER MURRAY:

5 Q. Would you look at page 12 of your Direct
6 Testimony, 12 and 13?

7 A. I'm there.

8 Q. And at the top of page 13, it's the
9 continuation of a sentence, but you say, Gas costs increased
10 were unprotected and were escalating to astronomical levels.

11 And I'm puzzling over the unprotected, the
12 definition of unprotected there or how you're referencing
13 it. Because wouldn't it be possible to achieve savings over
14 what the cost would have been absent call options and
15 wouldn't that be protection?

16 A. Not necessarily. It depends what you
17 determine the benchmark to be. If gas costs are based upon
18 an index price, which is, in essence, a variable price, you
19 don't know what it's going to be beforehand and it, in
20 essence, follows the market, then the higher that goes, the
21 higher the PGA rate is, it's a direct pass-through.

22 And so you could have some proceeds, perhaps
23 let's say, \$10 on a \$300 million portfolio. And it could be
24 argued in the narrow sense that if you look at the
25 \$300 million of cost versus the \$10 that came in through

1 some sort of a transaction in the financial markets, that
2 the \$10 was a savings.

3 And Staff has argued that that really -- it
4 isn't the case. If you were an option trader and it was
5 your business to buy and sell options and that's all you did
6 and you didn't have to buy physical supply, you would look
7 at that transaction in an isolated way and you would say, I
8 bought the option for 10 cents, I got a dollar from it and,
9 therefore, I had savings or I had income or it was a
10 beneficial thing to my bottom line.

11 But for an LDC. you have to look at the gas
12 cost side. I think that was part of the protection that
13 Laclede had with the catastrophic price level. And once
14 that protection was removed, I think that the term "savings"
15 became ambiguous because, in Staff's view, that savings
16 really meant savings for a certain level of insurance at a
17 certain premium, at a certain deductible.

18 And once there was no obligation for any
19 insurance, then what is the savings? Will you take
20 Laclede's interpretation where any time you have a proceed,
21 even though the gas costs are going up perhaps at a factor
22 of 10 times larger than what those proceeds are, that some
23 savings has been achieved?

24 And I think that's Laclede's interpretation of
25 what a savings is. Staff's interpretation of the term

1 "savings" is there has to be some definition of price
2 stabilization. That's one of the terms in the tariff, net
3 cost of price stabilization. And what was the customer
4 getting for the money that was being spent?

5 And the Staff's interpretation was, well, that
6 was the MRA. And it wasn't as an aggressive position as
7 assuming that Laclede should have lived up with its
8 original -- lived up to its original guarantee of locking in
9 the March prices. The Staff just said, What was left after
10 these two provisions were taken away?

11 And that's the basis for Staff's study is
12 there is a certain amount of protection you can buy with
13 \$4 million. And the original idea was that Laclede was
14 going to be able to better this concept of holding the
15 option until the end and so that's the Staff's definition of
16 savings.

17 Q. All right. I'm still trying to figure out
18 practically where Laclede would have had any incentive to do
19 option trading once it opted out of the price protection
20 incentive portion with Staff's interpretation. Do you think
21 there still would have been an incentive there?

22 A. Well, certainly there was opportunity for gain
23 because to the extent that you could make decisions on an
24 early trading basis by buying and selling that beat the buy
25 and hold calculation, then the company would have received a

1 certain percentage of those -- those savings.

2 Q. So long as it beat the buy and hold scenario?

3 A. That's correct.

4 Q. Okay. In Mr. Mathews' Rebuttal Testimony, he
5 speaks about the results that would have been achieved had
6 Staff's recommendation -- at the time that the Commission
7 was considering this program, had Staff's recommendation
8 been approved instead of the company's.

9 Can you tell me what would have been the
10 results under Staff's proposal as it was at the time?

11 A. It's very difficult to say. The Staff's
12 proposal at that time was that the company go forward and
13 continue with its traditional call option program, which has
14 been called a buy and hold program and also to diversify its
15 supply portfolio. That was part of my testimony in that
16 case.

17 And I think we viewed the call option program
18 as a tool to be used and to -- in addition to any further
19 fixed pricing that the company might do.

20 The company has argued that the Staff's
21 program had an artificial strike price of \$4, which would
22 have precluded the company from buying call options and,
23 therefore, the Staff's program would have been little use,
24 would have been little help to the company in the year
25 2000/2001.

1 But when this case was being argued, the first
2 year of the program was '99/2000. And, frankly, I don't
3 know what the outcome would have been had Laclede
4 renegotiated the call option program in terms of the Staff
5 parameters.

6 I can tell you that there were three large
7 LDCs that followed the call option program originally all
8 the way back in '97/98 and those two -- three companies took
9 different paths eventually. MGE continued with the call
10 option program. Laclede developed this incentive program.
11 And AmerenUE continued with the call option program for a
12 period of time and then decided to self-hedge or hedge
13 without a specific program.

14 And so the Staff really was not trying to
15 force the program on anyone. It was trying to work with the
16 utilities in the context of their particular gas supply.
17 You had seven other LDCs at that time that had no call
18 option programs and yet there was some hedging that was
19 taking place for those LDCs. They were doing it in the
20 context of the day-to-day management of their gas supply.

21 And the three LDCs that originally did have
22 the call option program I think did have different paths
23 eventually by the time you got to the 2000/2001 period.

24 Very long answer to your question, but the
25 bottom line answer is I do not know specifically how that

1 call option program would have come out in year two.

2 Q. Do you think the ratepayers would have
3 benefited under Staff's -- do you have any way of knowing?

4 A. I think it depends upon the timing. That if
5 the original call option program would have been in place,
6 there would have needed to have been some adjustment to the
7 strike price because of the very high strike prices. And
8 the timing of that and whether or not it would have occurred
9 I think is subject to some dispute.

10 Also, whether or not the option purchases
11 would have taken place in March and April and May, which
12 would have been much more favorable prices versus later on
13 in the year. I think that's a question which would have
14 driven the proceeds under a standard type call option
15 program.

16 Q. And speaking of the timing when it would have
17 been more beneficial for Laclede to act, and I'm trying to
18 remember this from when we had the case before. But wasn't
19 a reason that Laclede ended up opting out of this the fact
20 that our decision came kind of late in the process? That
21 had we made our decision and approved it earlier, that it
22 would have been unlikely that they would have opted out?

23 A. I don't think that's the case at all. You'd
24 have to go to Ken Neises' letter, his June 2nd letter, which
25 is in my testimony, but Laclede argued that the main reason,

1 if not the total reason, for the opting out was a radical
2 market change, not something that the Commission did or the
3 Staff did, but the fact that gas prices were increasing at a
4 dramatic rate in May of the year 2000.

5 Q. But that's my question. That radical market
6 change took place after the Commission finally got around to
7 issuing a decision in that matter; isn't that correct?

8 A. I'm trying to recall the specific time period,
9 but year one was the '99/2000 period and the Commission
10 issued its order, I think, in June of 1999.

11 So there may have been some allowances made
12 for the calculation of the target strike price way back in
13 year one, but the Commission's decision was long before the
14 setting of the target strike price in March of 2000. So it
15 would have had no bearing whatsoever on Laclede's
16 decision-making process in March of 2000. It was just back
17 in 1999.

18 Q. Again, in Mr. Mathews' testimony on page 8,
19 the bottom of the page, lines 22 and 23 --

20 A. Is that surrebuttal or rebuttal?

21 Q. I apologize. That is rebuttal.

22 A. I'm sorry. The page number again?

23 Q. Eight, lines 22 and 23.

24 A. Thank you.

25 Q. Mr. Mathews said, Staff's analysis simply

1 assumes the company had nearly \$9 million to spend on call
2 options. The difference, nearly 5 million, is the one -- is
3 the money that would not have been available but for the
4 company's intermediate trading activity.

5 And isn't it true that the \$5 million beyond
6 the 4 million that the ratepayers contributed was money that
7 wouldn't have been available but for the company's trading
8 activity?

9 A. I agree with that. And I would simply try and
10 clarify that agreement by saying that the Staff recognized
11 that Schedule 9 did consider the full \$9 million and that
12 some of those funds would not have been available had the
13 company not -- not done early trading. And so that was the
14 reason for Staff's analysis in Surrebuttal Testimony.

15 Q. And how much of that 9 million did Staff
16 attribute to the company's trading activity?

17 A. Well, the Staff's analysis assumed that the
18 company would use its initial MRA or its \$4 million for
19 purchasing a certain amount of options, not all of the
20 options that the company bought, because clearly the options
21 that were purchased with the 9 million were greater than
22 what would have been available under the 4 million.

23 And so the Staff developed an analysis which
24 tried to segregate between funds that would have been used
25 for establishing a position under the maximum -- maximum

1 recoverable amount, the MRA, versus funds that would have
2 been used simply to reinstate option positions.

3 Q. And you say that's Schedule 9 of your
4 rebuttal?

5 A. That should be Schedule 2 of my surrebuttal.

6 Q. So where you show on page 2 of that schedule
7 adding -- it looks like adding back in the initial 4 million
8 expenditure to come up with net proceeds, is that --

9 A. Yes. On Schedule 2-2 I've summarized the
10 results of the schedule where the first group of numbers
11 there were the actual results from Laclede's overall
12 trading.

13 And we see a total proceeds level of
14 \$33,499,000 versus the total option cost of \$8,922,450 to
15 yield a net proceeds level of 24,576,550. And that number
16 is compared to the level of proceeds that Staff would have
17 assumed were received by holding the options that were
18 invested with the initial MRA expenditure.

19 So the proceeds under the Staff's study were
20 33,134,960. The cost, which would have been the initial MRA
21 funding level, were \$4 million. And the net proceeds then
22 would have been \$29,134,960. After comparing those two
23 numbers, the actual cost of price stabilization was compared
24 to the MRA to yield the net cost or savings of 558,410.

25 Q. I think I just have one last question or maybe

1 a couple questions here.

2 The program actually cost \$4 million plus the
3 transaction cost; is that correct?

4 A. In year two of the program -- and there is
5 some dispute about what the program actually cost is part of
6 what the case is about, what is the actual cost of price
7 stabilization and what is that price stabilization that's
8 received for that cost.

9 But the total option cost from Laclede's
10 perspective and from the perspective of just looking at the
11 premium without any reduction for proceeds was 8,922,450.
12 So more money was spent than the MRA for call options, and
13 that's strictly on an absolute cost basis.

14 Q. But that included the transaction cost, did it
15 not?

16 A. Yes. I believe the tariffs require that the
17 transaction cost be included in the calculation. That's --
18 my understanding if they're not there, they should be there.

19 Q. So how much of that was transaction cost? Is
20 that apparent?

21 A. I believe the level of transaction fees for
22 that period was \$98,060.

23 Q. Okay. So you'd subtract that to see what each
24 party was claiming as the cost of the program then?

25 A. My understanding is that would be included as

1 part of the cost of the program.

2 Q. Okay. You'd add it to -- well, I didn't
3 phrase that right, but I know what you mean.

4 COMMISSIONER MURRAY: Okay. I thought I had
5 one other question, but I can't find it right now, so thank
6 you, Mr. Sommerer.

7 THE WITNESS: You're welcome.

8 JUDGE WOODRUFF: Commissioner Gaw?

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. Good morning, Mr. Sommerer.

11 A. Good morning, Commissioner.

12 Q. I wanted to back up from this just for a
13 moment and ask Staff's position in regard to -- in regard to
14 this case as it relates to the opting out of the one portion
15 of the tariff.

16 And is it Staff's position that by opting out,
17 the second portion of the incentive plan was thereby
18 rendered ineffective?

19 A. I think it's more accurate to say it was
20 rendered ambiguous.

21 Q. All right. So you're not taking the position
22 that the second portion was also then no longer a valid
23 portion of the tariff --

24 A. That's correct.

25 Q. -- am I understanding that?

1 A. That is correct.

2 Q. All right. And that's how we get into the
3 discussion about your calculation in regard to the amount --
4 or the number that should be utilized in determining how
5 much, if any, Laclede should be able to share; is that
6 accurate?

7 A. Yes.

8 Q. All right. And your position is that the
9 comparison then relates to prices in the last three days of
10 trading versus what the price was at the time that the
11 options were actually liquidated?

12 A. That's correct.

13 Q. All right. And where do we look in the tariff
14 or in an analysis of the tariff that allows that logic to
15 come to a conclusion? Where do you get that out of the
16 tariff or interpret the tariff in such a way that that
17 result is achieved?

18 A. If you would go to the program description
19 that's contained in my Direct Testimony, Schedule 6,
20 Schedule 6-4, paragraph D, small i, which says, Laclede
21 shall credit ratepayers 100 percent of the difference
22 between the lower of the strike price of the option or the
23 average of the last three days of NYMEX future settlement
24 prices for the month in which the option expires in the CPL.

25 So that, in essence, offered, when the

1 guarantee was still in place, this measurement of what the
2 price protection would be. And it had this concept in it of
3 the last three days of NYMEX, and that's N-Y-M-E-X, future
4 settlement, so clearly that's in the program description.

5 Now, when Laclede opted out with its June 2000
6 letter, the question became what price stabilization was
7 left at that time. You really had no guarantee.

8 The only guarantee that was left in June was
9 the fact that Laclede was still obligated to cover
10 70 percent of their normal supplies at any strike price.
11 Could have been a \$15 strike price and they would have met
12 that obligation and that was a real concern.

13 And so after September 2000, that restriction
14 was removed and you really aren't left with anything. You
15 don't have an obligation then for price stabilization
16 because their protected volumes could be zero and you don't
17 have any guarantees of a strike price.

18 And so if you look at paragraph 3 then trying
19 to interpret it, what's left -- and it's just about the only
20 provision that is effective after September of 2000. You
21 read it and you see the word savings achieved through
22 reductions in the cost of the program below the MRA as a
23 result of favorable option purchases or intermediate trading
24 activity prior to the last three business days of NYMEX
25 option trading shall be shared.

1 And the question in Staff's mind was, is
2 savings defined still -- is it as Laclede interprets savings
3 to be, that any time you sell an option for more than what
4 it cost and it was prior to three days, that's a savings?

5 Even if you can get that far and agree with
6 that definition, what do you believe the net cost of price
7 stabilization is? And that's a term in the tariffs that was
8 secret, part of the actual tariffs in Laclede's tariff book.

9 And that term "net cost of price
10 stabilization" had a certain meaning, we believed, in year
11 one where there were specific insurance amounts that were
12 covered. What does it mean afterwards? We made an
13 interpretation of what that meant, but we believed it was
14 ambiguous in year two.

15 Q. And explain to me how you arrived at that
16 meaning.

17 A. In essence, the program guaranteed a certain
18 amount of coverage at \$4 million. One thing that was
19 defined and remained defined throughout, even in year two
20 was the MRA. That level was \$4 million and everybody agrees
21 that's what it was. It was well defined.

22 And so the question was, what does the
23 customer get for \$4 million? The customer gets a certain
24 amount of price stabilization. But if the program has been
25 opted out, what's left? What does the customer get for that

1 \$4 million?

2 Well, the original guarantee was the customer
3 gets protection at the CPL, but Laclede had the right to opt
4 out at the catastrophic price level. So, again, the
5 question is, what does the customer receive for \$4 million?
6 Anything? Nothing?

7 And the Staff's interpretation was the
8 customer receives whatever Laclede chose to give the
9 customer by buying options. Laclede did go into the market
10 in July and August, September and placed option positions.

11 It became complicated because Laclede also was
12 selling options at that time, reversing its original option
13 positions that it may have set out in July. And so the
14 Staff developed a method for trying to allocate this
15 \$4 million and asking the question when would the \$4 million
16 be spent and what kind of option levels would you have for
17 that 4 million?

18 It wasn't going to be 70 percent, that
19 guarantee was gone. But whatever the coverage was, the
20 customer was due some price protection in terms of what
21 Laclede did, whatever that might have been. And so that's
22 how the Staff interpreted the remaining provisions of this
23 price program.

24 Q. All right. But what did you -- I'm sorry. I
25 may not be following that exactly.

1 What did you -- what did you utilize to come
2 up with your interpretation? What portions of the language
3 that's here did you utilize to come up with your
4 calculation?

5 A. It was just a general overall rating of the
6 tariff sheets and the price program description and how the
7 two incentives were meant to work together and what was
8 left.

9 I would agree flat out that Staff's
10 methodology isn't written in these tariffs. We had to
11 develop what we believed was a reasonable methodology to
12 interpret what was left of the tariffs.

13 So if you believe those terms are ambiguous, I
14 think you understand you have to come up with some approach,
15 because according to the Stipulation and Agreement in
16 September of 2000, that overall cost reduction incentive was
17 still in effect.

18 Q. And very shortly, if you would, tell me what
19 Staff's interpretation of the remaining portions of that
20 tariff were in regard to the incentive program calculation.

21 A. Yes. Our interpretation was that this is not
22 a speculation program where you can have savings simply by
23 selling or liquidating an option early and seeing your gain
24 come in where gas costs just escalate to \$500 million,
25 \$600 million without regard to that.

1 And so the Staff is saying, you do need to
2 take a very close look at that word "savings." Was that
3 defined specifically? Is it defined in the limited sense
4 that Laclede defines it, that anything that comes in that
5 reduces actual gas costs without regard to how high the
6 unprotected gas costs are going, but it reduces gas costs,
7 is that a savings?

8 And you also accept Laclede's definition of
9 net cost of price stabilization as being simply the premiums
10 reduced by the savings that are coming in from early
11 liquidation of the call options. And I think the -- the key
12 to Staff's case is the fact that savings -- there is a major
13 dispute between what savings means.

14 Q. I understand. But I want you to give me short
15 sweet definition of savings from Staff's viewpoint.

16 A. Savings occur any time that Laclede's
17 intermediate trading betters holding the options in the last
18 three days --

19 Q. All right.

20 Q. -- Staff's definition.

21 Q. All right. And give me, if you would, your
22 interpretation, if you can in that way, Laclede's definition
23 of savings.

24 A. Savings occur any time Laclede sells an option
25 early and receives more money than it spent for the option.

1 Q. All right. And does Staff agree that there is
2 an incentive the way the original tariff was constructed for
3 Laclede to sell the option before the last three days? Was
4 there an incentive in the program because of the ability of
5 Laclede to share in the proceeds if the option were sold
6 prior to the last three days?

7 A. The way the program was originally
8 constructed --

9 Q. Yes.

10 A. -- without regard to the opting out, but
11 simply assuming that you had price guarantees in place, I
12 think it's still a matter of question of what Laclede's
13 actions would have been, because there were two incentives.

14 And I think Laclede characterized it this way
15 back in 1999, maybe it was late 1998, but it was the fact
16 that certainly you could reduce costs by getting high strike
17 prices and it was a major concern that Staff had.

18 But the way that Laclede addressed that
19 concern was to develop this price protection incentive,
20 which was to give Laclede money for bringing the strike
21 prices down. And those two provisions were meant to work
22 together in concert with one another. The problem --

23 Q. Now -- go ahead. I'm --

24 A. The problem came in year two when Laclede
25 opted out of the price protection incentive. And by

1 Laclede's own theory, that was to give them an incentive to
2 get lower strike prices and establish a guarantee. The
3 problem became that Laclede's only way of profiting was by
4 early trading prior to the last three days.

5 Q. And tell me why that is.

6 A. Because, in Laclede's interpretation, the way
7 that the remaining program components worked after the
8 opt-out took place, the overall cost reduction incentive was
9 the only way that Laclede could make money from this
10 program.

11 Q. And that is because -- and I'm asking a
12 question here. Is that because that if the options were
13 sold in the last three days, what would remain in the tariff
14 under Staff's or Laclede's interpretation of this could not
15 be shared -- the proceeds could not be shared; is that
16 accurate?

17 A. I think that's correct, that basically the
18 last three days of trading related to the price protection
19 incentive feature.

20 Q. And that was gone?

21 A. That was gone.

22 Q. And both parties -- all three parties agree
23 that that's the case, is that your understanding?

24 A. That's my understanding, yes.

25 Q. So what we were left with, if we look at this

1 from your understanding, if Laclede is correct, was a
2 self-interest provision to do away with the -- or sell the
3 options prior to the last three days because there was -- if
4 that occurred, Laclede received a portion of the savings,
5 whatever that definition ends up being here, but the savings
6 in the sale, but they could not receive any portion of any
7 proceeds if the option was sold in the last three days?

8 A. I believe that's correct. And if I could
9 illustrate it, if I could take that opportunity, I'd --

10 Q. If you'd like, go ahead. I'd be glad to see
11 it.

12 COMMISSIONER GAW: Judge, if you'll help us
13 out for the record here.

14 JUDGE WOODRUFF: Sure.

15 BY COMMISSIONER GAW:

16 Q. Mr. Sommerer, you're here --

17 JUDGE WOODRUFF: If you move it over to the
18 podium, we can get you on the camera.

19 BY COMMISSIONER GAW:

20 Q. There we go. You're at the board there. Now,
21 Mr. Sommerer, go ahead, if you want.

22 A. Okay. Okay. To use an example -- and I'll
23 just use round numbers, these aren't actual numbers. But,
24 for example, if you were looking at a December contract,
25 let's say December of 2000, and in this case you're the

1 company and you've got a \$5 strike for a December 2000
2 option. That gives you protection at \$5. And let's say
3 that it's December the 10th. And the market, the actual gas
4 market --

5 Q. You're fine, Mr. Sommerer. I'm watching you
6 on the television and you go right ahead.

7 A. The actual gas market is at \$6. Now, you have
8 to put yourself in the shoes of Laclede at this point and
9 say --

10 MR. SCHWARZ: If I might interrupt a moment,
11 is that a December contract or a January contract trading on
12 December 10th?

13 THE WITNESS: Thank you. This is a January
14 2001 contract, which trades in December. It actually
15 expires around December the 27th.

16 And so the actual price in December in this
17 example would be \$6 and the strike price for a January 2001
18 option contract is 5. That gives you price protection then
19 at that strike price.

20 And if you put yourself in Laclede's shoes,
21 you look at that and you say there is a potential today,
22 December the 10th, 2000, to turn that into a dollar
23 proceeds. Now, you may have spent, way back in October,
24 September just 10 cents for that. That would be the premium
25 cost. But the proceed in this case is a dollar. And that

1 can be applied to reducing the cost of gas. And it's a
2 decision that's going to have to be made.

3 Unfortunately, gas is still trading and it
4 continues to trade until late December for the January
5 price. That's what Laclede's customers are going to have to
6 pay, the January 1st, 2001 price.

7 And so Laclede's remaining incentive, as
8 Laclede is interpreting, this is you've got a 40 percent
9 sharing percent for this \$1 and 40 cents drops down to
10 Laclede's shareholders at that point. So that's 40 cents
11 that has to be overcome later on if you're going to be
12 interested in knowing what the ultimate result was in
13 holding this option in the last three days.

14 If prices go up, clearly that's not a good
15 result from the customer's standpoint, because you're out of
16 protection at this point. You've traded out of protection,
17 gas costs might go up to \$7 over here and what do you have
18 to apply to that? You have the dollar, but you also have to
19 reduce by 40 cents.

20 So in putting yourself in Laclede's shoes,
21 you've got to assume that gas costs are going down because
22 you're trying to lock in that savings, but you also have to
23 assume that they're going down by 40 cents.

24 And this is in the face of a winter which was
25 extremely cold, it was in the face of a rising gas market

1 and yet you're saying that a savings was achieved here and
2 you're -- as Laclede, you're trying to define this as the
3 difference between this dollar of proceeds and the
4 40 cents -- or actually the cost up here, the premium, all
5 the time realizing that you really have to overcome this
6 40 cents as time goes on.

7 And so that's Staff's view of it. Staff's
8 definition of savings would simply be let's compare this
9 dollar that was received by early trading versus what would
10 have happened had Laclede held this. Well, if Laclede held
11 it, you would have had a \$5 strike over here, you would have
12 had \$2 worth of proceeds and you make a comparison on that
13 basis.

14 Q. Now, on the last part, Mr. Sommerer, you're
15 going to have to give me a little more information. How do
16 you -- you went very quickly to the \$5. Where do you get
17 the \$5? At what point in time do you know what that is?

18 A. You know that as soon as you bought that
19 option way back in October, let's say.

20 Q. All right.

21 A. That's the strike.

22 Q. I guess what I'm asking you is when you're
23 making your calculation from Staff's standpoint on what the
24 savings were, do you have to employ hindsight to make the
25 calculation?

1 A. I don't think so. I -- you do have to know
2 ultimately where the option finished, but that could be in
3 Laclede's favor or it could be in the customer's favor,
4 however you want to look at that.

5 Because clearly if gas costs go way down,
6 let's say to \$5, the option would have finished out of the
7 money. And so Laclede would have been bringing in proceeds
8 from the early trade and Staff has recognized that there's a
9 savings there. That's better than holding the option until
10 the end.

11 Q. But what I'm getting to here is, don't you
12 have to employ hindsight to make the calculation? You have
13 to know what eventually the price was, don't you, when
14 you're making your calculation?

15 A. I think ultimately -- and I would respectfully
16 disagree with the term "hindsight."

17 Q. I'm just trying to get that clarified, so you
18 go ahead and tell me what you think about it.

19 A. Okay. I think in order to view Staff's
20 definition of savings, you do need to know where that option
21 settled. And there's no way that you could possibly make a
22 determination of savings right here (indicating) because you
23 don't know the result. So Staff's calculation has to be
24 made after the fact.

25 Q. And does that element exist in Laclede's

1 methodology of calculation of using their definition of
2 savings?

3 A. Using Laclede's definition of savings, you
4 know -- when you've sold that option, you already know your
5 cost basis and you already know the proceed. So it's the
6 difference between the proceed as you see it that day and
7 the cost basis. You know it that day.

8 Q. Would it be accurate to say that that
9 calculation of savings has any hindsight element to it when
10 you're looking from the time of the initial purchase of the
11 option? Do you understand what I'm asking?

12 A. Yeah. I think I do. And I would just say
13 that Laclede does have to segregate their options between
14 what was done in the last three days and what was done
15 early. That's part of their calculation.

16 Q. Yes.

17 A. And so you can't possibly know what happened
18 in the last three days until after the last three days. So
19 part of their calculation is also hindsight.

20 Q. Using that term loosely, I assume?

21 A. Yes.

22 Q. My definition of hindsight may be a little bit
23 different than everyone else's.

24 All right. So in the method of calculation
25 that Staff is employing, you are not -- you are not

1 conceding this incentive to sell early as a part of the
2 calculation of what might or might not be savings that would
3 be shared by Laclede? I can ask that in a different way, if
4 you'd like.

5 A. No. The Staff is not conceding that that
6 calculation -- or Laclede's definition, if that's what
7 you're asking --

8 Q. Well, I guess -- under Staff's position, there
9 would not be an incentive to sell early just for the sake of
10 avoiding the last three days of sale where there was no
11 savings?

12 A. That's correct.

13 Q. Okay. Mr. Sommerer, when this stipulation was
14 filed regarding the -- I guess it was in the summer of --
15 was it in the summer of 2000 when there was a stip filed in
16 this case?

17 A. There was a stip filed I believe in September
18 of 2000, and I think it was ultimately approved by the
19 Commission in October of 2000.

20 Q. All right. At that point in time was there
21 concern expressed by the parties about this issue that we've
22 got in front of us? Did anyone identify this as an issue at
23 that point in time, to your recollection?

24 A. No. It was not brought up at that time. I
25 think the first time that it may have surfaced was when the

1 Staff tried to end the program early. There were subsequent
2 filings made perhaps in December of 2000.

3 There was an on-the-record hearing at that
4 time and I think the Staff's point of view was we may have a
5 disagreement on how savings are calculated here, we're not
6 going to agree with Laclede's interpretation of it, but,
7 Commission, this is going to be an issue in the actual cost
8 adjustment on it and that's when we'll look at it.

9 Q. Okay. Now, there's been reference made to
10 this letter from -- is it Mr. Neises?

11 JUDGE WOODRUFF: Mr. Sommerer, if you want to
12 go back to --

13 COMMISSIONER GAW: Yeah. I'm sorry. I didn't
14 mean to keep you up there forever.

15 Thank you, Judge.

16 BY COMMISSIONER GAW:

17 Q. You might help me out. Is it Mr. Neises?

18 A. Mr. Neises.

19 Q. Neises. I'm sorry. The quote that I think
20 you have in some of your testimony regarding a memo or a
21 letter from him that there wouldn't be any savings after the
22 opting out, I'm paraphrasing, do you recall generally what
23 I'm referring to?

24 A. Yes.

25 Q. Help me understand if Staff is taking the

1 position that this one provision still existed but it was
2 ambiguous, but that there is still some methodology of
3 calculation of savings, how is that statement of help to the
4 Staff's position?

5 A. Well, I think the ambiguity that is associated
6 with the term "savings" and "net cost of price
7 stabilization" happens because of two things. First of all,
8 the June 2000 Neises' letter and, second of all, the
9 September 2000 Stipulation and Agreement.

10 And the Staff's point here is that in order to
11 have saving as I've illustrated it, you have to have some
12 sort of a definition of what those savings will be and they
13 need to be real savings.

14 And so once you no longer have the price
15 protection or any obligation to have insurance, absolutely
16 no obligation, then I think you have to go through the
17 Staff's analysis and make that determination. And so the
18 terms of the tariff became ambiguous to us at that time.

19 Q. But there's a reference in your testimony to
20 the remarks of Mr. Neises, is it? Did I get that right?

21 A. Yes.

22 Q. Thanks. In regard to the inference that there
23 wouldn't be any -- or maybe not any incentive left after the
24 program was opted out of. That's not really Staff's --
25 Staff isn't taking the position that there is no incentive

1 mechanism left in the tariff after the opt-out. Am I
2 understanding that right?

3 A. That's correct.

4 COMMISSIONER GAW: I think that's all I have,
5 Judge.

6 Thank you, Mr. Sommerer.

7 THE WITNESS: You're welcome.

8 QUESTIONS BY JUDGE WOODRUFF:

9 Q. I have a couple of questions.

10 The gist of what you -- what I interpret from
11 what you said particularly with Commissioner Gaw yesterday
12 was that the company could have saved, I believe it was,
13 approximately \$60 million if they had got into their hedge
14 position early in March and April of 2000; is that fair?

15 A. That's correct.

16 Q. Okay. But they didn't do that and they waited
17 until May and by that time the prices were going up and they
18 had to opt out. And that sounds like a prudence type
19 question, but Staff hasn't asked -- hasn't done a prudence
20 review in this case. Is there a reason for that?

21 A. This would be subject to some input from legal
22 counsel, but it was my interpretation of the tariffs that
23 were in effect at that time that a prudence review would be
24 somewhat limited. Laclede was still under the last year. I
25 believe it was the last year of their incentive program.

1 Q. Okay. So the incentive program itself
2 indicated there would not be a prudence review?

3 A. I think parts of the incentive program
4 indicated that a certain element of gas supply could not be
5 reviewed for prudence to the extent that Laclede was in a
6 particular grid.

7 Q. Okay. Now, you've indicated that Staff
8 interprets the program as being ambiguous after the company
9 opted -- chose to opt out of the portions of it; is that
10 right?

11 A. That's correct.

12 Q. Okay. But the overall cost reduction was
13 still in the tariff; is that right?

14 A. That's also correct.

15 Q. Okay. And this was the tariff that was
16 approved by the Commission as late as October, I believe?

17 A. Yes. I believe the Stipulation and Agreement
18 was filed in early September. It was probably approved in
19 late September of 2000, but there would have been a
20 compliance filing in early --

21 Q. A compliance tariff?

22 A. That's correct.

23 Q. Okay. And it's my understanding that that
24 compliance tariff does contain quite specific language on
25 how to calculate savings under that overall cost reduction;

1 is that correct?

2 A. In Staff's view, that tariff is the same
3 tariff that was in place originally. The only tariff sheet
4 that I recall coming in in October of 2000 was just to make
5 it clear that whatever hadn't been opted out was still in
6 effect.

7 Q. Okay. And they did not opt out over -- they
8 did not opt out of the overall cost reduction?

9 A. That is correct.

10 Q. Okay. So tariff language is still there?

11 A. Yes.

12 Q. Okay. And that tariff language itself is not
13 ambiguous, is it, unless you look at that time from external
14 viewpoints? You've already explained several times, I
15 think, as to why Staff thought there was some ambiguity in
16 there, but it's not ambiguity in the language of the tariff.
17 Is that fair to say?

18 A. I think that the tariff is clear enough in
19 terms of situations where you have price stabilization.

20 Q. Okay. And you're saying since there's no
21 price stabilization, then the tariff became ambiguous?

22 A. Yes.

23 Q. Are you aware of any situation where the
24 Commission has found that a tariff was ambiguous and,
25 therefore, did not have to be followed?

1 A. No.

2 Q. I guess it's really a legal question that
3 counsel will have to answer as to whether or not the
4 Commission has that authority.

5 JUDGE WOODRUFF: All right. I don't have any
6 other questions. We're actually due for a break. So let's
7 take a break now and come back at 10:30.

8 (A RECESS WAS TAKEN.)

9 JUDGE WOODRUFF: Okay. We're back from our
10 break and we're ready for recross based on questions from
11 the Bench, and we'll begin with Public Counsel.

12 RECROSS-EXAMINATION BY MR. MICHEEL:

13 Q. Let's see. Mr. Sommerer, Commissioner Gaw
14 asked you some questions yesterday regarding the overall
15 cost reduction portion of the incentive that was left after
16 the company opted out of a price protection portion. Do you
17 recall those questions?

18 A. Yes.

19 Q. Is it your opinion that after Laclede Gas
20 Company opted out of the price protection feature, that the
21 calculation of the overall cost reduction portion of the
22 incentive was clear?

23 A. No. That's not Staff's opinion.

24 Q. And I guess in further questioning -- I forgot
25 something at my seat.

1 JUDGE WOODRUFF: Go ahead.

2 BY MR. MICHEEL:

3 Q. I believe in further questioning from

4 Commissioner Gaw today you pointed to paragraph 4 of the

5 program found on Sheet 28-F, is that correct, for -- that's

6 the definition of the overall cost reduction incentive?

7 A. That's correct.

8 Q. And in looking at this tariff, is the

9 definition of net cost of price stabilization ever defined

10 anywhere in this tariff?

11 A. No.

12 Q. I believe it was Commissioner Murray who asked

13 you some questions about savings relating to intermediate

14 trading and the company opting out. Do you recall those

15 questions?

16 A. Yes.

17 Q. In your mind, what was the underlying purpose

18 of the PSP program?

19 A. The underlying purpose was to provide cost

20 stabilization and reduction of natural gas price volatility

21 for the customer.

22 Q. And once Laclede Gas Company opted out of the

23 price protection portion, in your mind, did the overall cost

24 reduction portion provide any real price protection to the

25 customers?

1 A. No.

2 Q. And is that -- why?

3 A. Well, the overall cost reduction incentive was
4 really meant to work with the price protection incentive.
5 It was meant to incentivize Laclede to reduce the cost of a
6 certain amount of protection.

7 But once Laclede opted out of the price
8 protection incentive in June of 2000, as followed up from
9 the lack of obligation to reduce any volumes in September of
10 2000, there really weren't any guarantees that were left.

11 Q. And so to make sense of the purpose of the
12 program, in your mind, is that why Staff has posited the
13 calculations and whatnot found on Schedule 9?

14 A. That's correct.

15 Q. I believe that both Commissioners Lumpe and
16 Commissioners Gaw asked you about a quote that you have on
17 page -- starting on the bottom of page 9 of your Rebuttal
18 Testimony and going over to the top of page 10, a quote from
19 Mr. Neises in GO-98-484. Do you recall those questions?

20 A. Yes.

21 Q. Is it your understanding of Mr. Neises' quote
22 there that he claimed that if the company opted out of the
23 price protection program, that there would be absolutely no
24 incentives for the program, be it the price protection or
25 the overall cost protection portion?

1 A. That's my interpretation of that statement,
2 yes.

3 Q. And I'm just curious what that is based on.
4 Is that based on the last phrase there, It agrees that the
5 incentive aspects of the program should be terminated for
6 that year?

7 A. That's correct. That appears to be discussing
8 the elements or aspects in plural of the overall program,
9 that Laclede would agree that there would be no additional
10 opportunity to profit.

11 Q. I believe that Commissioner Murray asked you
12 some questions about page 13 of your Direct Testimony and I
13 think she was focusing on lines 1 and 2 about the
14 unprotected and escalating cost to astronomic levels. Do
15 you recall those questions?

16 A. Yes.

17 Q. Do you have an opinion about whether or not
18 merely trading in and out of price options gives customers
19 any real price stabilization?

20 A. Yes. It's been Staff's opinion that to the
21 extent that you do not hold the options, it's putting the
22 customer at risk since gas prices can continue to escalate
23 until the gas costs are finally closed out for the
24 particular delivery month.

25 So to the extent there's early trading, there

1 is the possibility that gas costs would be exposed if the
2 positions aren't re-established at strike prices that indeed
3 give you some protection.

4 Q. Okay. Commissioner Murray asked you some
5 questions about Mr. Mathews' Rebuttal Testimony and the
6 radical market changes that resulted in Laclede Gas Company
7 opting out of the price protection portion of the program on
8 June 2nd. Do you recall those questions?

9 A. Yes.

10 Q. If you know, Mr. Sommerer, if Laclede Gas
11 Company would have stuck with its program as designed and
12 not opted out of the price protection portion of the
13 program, have you done an analysis of what the result would
14 have been?

15 A. That analysis is contained on Schedule 5 of my
16 Direct Testimony. The Staff quantified that result as
17 approximately \$60 million in terms of the proceeds that
18 would have been received had Laclede guaranteed 70 percent
19 coverage at the catastrophic price level.

20 Q. And is that using the prices that existed at
21 the time the company opted out?

22 A. That would have been using the prices that
23 originally set the catastrophic price levels, which would
24 have been in March of 2000.

25 Q. Tell me, if you know, did the Staff or the

1 Office of Public Counsel, pursuant to the program
2 description of the tariff, did they have any input or
3 decision about whether or not Laclede Gas Company opted out
4 of the price protection portion of the program?

5 A. No.

6 Q. And so is it your belief that the option to
7 opt out was a unilateral right of Laclede Gas Company?

8 A. Yes.

9 Q. I just have some questions about -- let me
10 move this over.

11 JUDGE WOODRUFF: Very good.

12 BY MR. MICHEEL:

13 Q. I just have some questions about this. I'm
14 trying to understand what you did here with these numbers
15 and make it understandable. Do you recall the questions
16 that Commissioner Gaw asked you that directed you to do this
17 diagram up here?

18 A. Yes.

19 Q. And you indicated that the way -- if I
20 understand this right, the way that Laclede Gas Company
21 calculated savings into the overall cost reduction was any
22 time they sold out of a position and generated proceeds,
23 that that was a savings. Is that a proper understanding?

24 A. To the extent the proceeds were greater than
25 the premium cost and it was prior to the last three days,

1 that's correct.

2 Q. And I think you told me earlier that the
3 purpose of the program was to provide insurance -- price
4 insurance to customers. Is that a proper understanding?

5 A. That's correct.

6 Q. So I'm trying to boil it down into something
7 that I understand because -- I mean, I think about this
8 as -- let me ask you this. The program was like an
9 insurance program, isn't it? Is that an okay understanding?
10 Are you comfortable with that?

11 A. Yes.

12 Q. And so when Laclede bought options at, in your
13 example here, a \$5 strike price, it was buying insurance for
14 customers against prices rising. Is that an all right
15 understanding of this diagram?

16 A. Yeah. I think the strike price was meant to
17 act as the ultimate cap, which would have been the insurance
18 that was provided.

19 Q. And we don't know what the ultimate, if you
20 will, damage will be until we know that January 2001 first
21 of the month price because that's my understanding of what
22 customers would be paying. Is that an appropriate
23 understanding?

24 A. That is an appropriate understanding, yes.

25 Q. Okay. So on this chart if Laclede sells -- if

1 the price of gas is at \$6, as you've posited here, and
2 Laclede has a strike price at \$5 and they sell, they get a
3 dollar of proceeds. Right?

4 A. That's correct.

5 Q. And here I think on your example you posited
6 that gas ended up at \$7; is that correct? That would be the
7 January first of the month price?

8 A. That's correct.

9 Q. Are you saying that by utilizing Laclede's
10 calculation, that Laclede is taking the insurance
11 proceeds, i.e., the dollar, their 40 cents share of the
12 proceeds, before we know what the damage is, the \$7 first of
13 the month price?

14 A. I think under Laclede's theory of calculation,
15 they would be taking that 40 cents regardless of what the
16 gas price ended up being.

17 Q. So just trying to understand it from something
18 I understand, insurance. Is that like Laclede taking the
19 proceeds from an insurance policy prior to the person
20 holding the policy knowing what the damages are that
21 occurred under that policy?

22 A. I would agree with that.

23 Q. And then with this diagram you talked about
24 the Staff's calculation of savings. Do you recall those
25 questions that Commissioner Gaw asked you?

1 A. Yes.

2 Q. And I guess my question is, under Staff's
3 calculation of savings, does Staff wait to know what the
4 damages are be-- does Staff's calculation wait to know what
5 the damages are before they allocate the insurance proceeds?

6 A. I think that's correct, yes.

7 Q. And if I understood your discussion with
8 Commissioner Gaw regarding the tariffs and the definition of
9 savings found there on Tariff Sheet 28-F, if I understood
10 your colloquy with Commissioner Gaw properly, you were
11 suggesting that's what Staff believes the meaning of net
12 cost price stabilization is?

13 A. Yes. the Staff believes that the net cost of
14 price stabilization is more accurately defined as any
15 savings that were achieved by Laclede from early trading as
16 opposed to holding the option until the end.

17 Q. And is that because it's Staff's belief that
18 the program was supposed to provide insurance to customers
19 to use -- I mean, to boil it down, insurance to customers
20 against price spikes as opposed to the ability just to do
21 intermediate trading to gain proceeds that benefit the
22 company?

23 A. That's correct.

24 MR. MICHEEL: That's all I have, your Honor.

25 JUDGE WOODRUFF: All right. For Laclede?

1 MR. PENDERGAST: Thank you, your Honor.

2 RECROSS-EXAMINATION BY MR. PENDERGAST:

3 Q. Good morning again, Mr. Sommerer.

4 A. Good morning.

5 Q. Let's talk about the chart up here again and

6 let's talk about this concept of insurance. And you just

7 had a little discussion with Mr. Micheel about it.

8 Now, under the program how many dollars was

9 Laclede given to buy insurance for during the 2000/2001

10 year?

11 A. \$4 million was the MRA level.

12 Q. Okay. And how much money did Laclede spend on

13 buying insurance?

14 A. Well, again, there was no obligation for

15 Laclede to buy any insurance, but \$9 million was the total

16 cost of premiums.

17 Q. Okay. So when Mr. Micheel sits here and talks

18 to you about, well, you sold your insurance and that was

19 before you knew what the damages were, it's not like we just

20 hung onto that money and put it in our pocket. We used

21 those proceeds to buy additional insurance later on, did we

22 not?

23 A. Some of the proceeds could have gone to

24 additional option purchases, that's correct.

25 Q. Well, it's not that some of the proceeds could

1 have gone to additional options. Some of the proceeds did
2 go to additional option purchases, did they not?

3 A. The additional proceeds did go for additional
4 option purchases, yes.

5 Q. Thank you.

6 Now, you've had some discussion about savings.
7 Let's talk about savings. Do you remember our discussion
8 about savings yesterday?

9 A. That's correct.

10 Q. And do you remember that we talked in terms of
11 when you apply the proceeds to the PGA, which included our
12 purchase gas expenses plus \$4 million for the cost of the
13 program, that under the dictionary definition of savings
14 that you had in your testimony, those constituted savings?

15 A. For those specific definitions that we talked
16 about, that's right.

17 Q. Okay. And, once again, how much in the way of
18 reductions in purchased gas expenses did Laclede go ahead
19 and flow through to its customers?

20 A. I think the number was approximately
21 \$16 million after you reduce the proceeds for the cost of
22 the options and Laclede's incentives.

23 Q. Okay. And plus \$4 million contribution the
24 next year of the program; is that correct?

25 A. That's correct.

1 Q. Okay. Fine. And those represented a
2 reduction in purchased gas expense; is that correct?

3 A. That is also correct.

4 Q. Okay. And what you're really talking about as
5 savings is not a comparison of what reduction in purchased
6 gas expense actually occurred. Your definition of savings
7 is let's compare what reduction in purchased gas expense
8 actually occurred to what reduction in purchased gas
9 expenses might have occurred in the event you did this buy
10 and hold analysis after the fact; isn't that correct?

11 A. That is also correct.

12 Q. Okay. You were asked some questions about
13 this program and whether or not Staff was just trying to
14 rehash some of the issues that it raised when this program
15 was initially approved. Do you remember those?

16 A. Yes.

17 Q. Okay. And undoubtedly one of the issues was
18 whether or not the company should be required to hold these
19 options until the last three days or it should be allowed to
20 go ahead and engage in intermediate trading activities; is
21 that correct?

22 A. That's also correct.

23 Q. But that wasn't the only Staff recommendation
24 in that case, was it?

25 A. That's correct.

1 Q. Okay. And, once again, you were asked some
2 questions about Staff's \$4 ceiling cap that it wanted to
3 have in there; is that correct?

4 A. That's correct.

5 Q. Okay. And what you haven't done is when
6 you've gone back and you've done this ex post facto analysis
7 where you've gone ahead and you've looked at what would have
8 happened if Laclede held these options until the last three
9 days, you haven't gone back and you haven't asked yourself
10 the question, well, what if my recommendation had been
11 adopted to go ahead and have a ceiling price of \$4, have
12 you?

13 A. That's correct.

14 Q. Okay. And you haven't gone back and you
15 haven't asked yourself what would have happened if my
16 recommendation that Laclede not be able to go ahead and use
17 puts so it could have costless collars had been adopted and
18 what impact would that have had on gas costs?

19 A. That's correct.

20 Q. Okay. And you haven't gone ahead and gone
21 back and asked yourself, well, what if my recommendation
22 that Laclede not be allowed to cover summer volumes had not
23 been rejected, what would have -- what impact that would
24 have had on gas costs?

25 A. That's correct.

1 Q. Okay. So really what you've done is you've
2 gone back and you've said, well, you know, we had a bunch of
3 ideas back in this case, one of them was this. And for
4 purposes of evaluating the success of this program, I'm
5 going to take this one idea I had and I'm going to go ahead
6 and measure the company's performance against that, but I'm
7 going to ignore all the other ideas I had, all the other
8 things I was proposing to the Commission and I'm not going
9 to even try and estimate what would have happened if those
10 other ideas had been approved; is that correct?

11 A. I disagree with that.

12 Q. Okay.

13 MR. SCHWARZ: Is there a question here?

14 MR. PENDERGAST: I don't think so. He says he
15 disagrees with that and I think his answers prior to that
16 fill out the answer.

17 BY MR. PENDERGAST:

18 Q. You also talked about some other LDCs; is that
19 correct?

20 A. That is correct.

21 Q. Okay. And we had a discussion yesterday about
22 how Laclede's PGA rates actually compare to other Missouri
23 LDCs; is that correct?

24 A. Yes.

25 Q. Including both the winter when prices went as

1 high as they did and moving forward through the next year
2 when the PSP was still in effect; is that correct?

3 A. That is correct.

4 Q. And in sitting here and offering your
5 evaluation of the program to the Commission, you didn't
6 bother to go ahead and tell the Commission how the program
7 operated the next year, did you?

8 A. No. That was not part of Staff's analysis.

9 Q. Okay. And it also wasn't part of Staff's
10 analysis to go ahead and say, you know, let's take a look at
11 Laclede and let's see what kind of performance it had during
12 that winter and let's see what kind of performance it had
13 during the subsequent winter when the PSP was in effect and
14 compare it to other utilities and see how well it worked?

15 A. Again, that was not part of Staff's analysis
16 in this case.

17 Q. Okay. But you know, even though you didn't do
18 an analysis, that -- your suspicion would be that Laclede's
19 PGA rates would be below what MGE's rates were, what
20 AmerenUE's rates were if you look back over the last couple
21 of years?

22 A. Well, what I testified yesterday was that you
23 have to take into account such things as Laclede has an
24 aquifer that's in rate base, the Panhandle Eastern rates are
25 a lot higher than MRT rates, which MRT is Laclede's main

1 supplier. But that simply looking at the absolute PGA rate,
2 as you would find it in a tariff sheet, Laclede's PGA rate
3 is typically lower than Ameren's or MGE's.

4 Q. But you haven't gone back and you haven't said
5 let's try and account for those factors and let's do a
6 comparison and see how they shake out?

7 A. That's correct.

8 Q. Okay. And as far as price stabilization is
9 concerned, when you're using call options, does price
10 stabilization get created in any way other than having
11 proceeds?

12 A. Certainly price stabilization can be created
13 through the use of fixed price contracts, through the use of
14 storage, through the use of costless collars, through any
15 one of a number of different instruments or tools.

16 Q. Similar to some of the ones that the company
17 was asking for authority to implement in August; is that
18 correct?

19 A. Those were additional financial instruments,
20 yes.

21 Q. Okay. But I'm saying under this specific
22 program where you're using call options, does all price
23 stabilization come from the fact that you have proceeds?

24 A. I think that's a fair characterization, yes.

25 Q. Okay. Whether you hold them until the last

1 three business days or you go ahead and you sell them
2 before, when all is said and done, price stabilization means
3 proceeds. Right?

4 A. I disagree with that.

5 Q. Okay. Well, you disagree with that, but you
6 don't disagree with the fact that the only way you get that
7 price stabilization is through proceeds?

8 A. You get the price stabilization through
9 proceeds to the extent that the call options are in the
10 money. I would also say you get price stabilization to the
11 extent you have call options available and you have
12 protection and the call options don't go into the money.
13 There's some value there as well.

14 Q. Okay. But the only time it stabilizes prices,
15 okay -- only time it stabilizes prices is if there's a
16 proceed to offset against your expenses; isn't that correct?

17 A. You have to have a proceed in order to
18 stabilize the price.

19 Q. Okay. And how much in the way of that kind of
20 price stabilization did Laclede have?

21 A. Again, on a gross basis, before you reduce the
22 proceeds for the net cost of options and Laclede's claimed
23 share, the number was approximately \$33,500,000.

24 MR. PENDERGAST: Okay. If I could approach
25 the witness.

1 JUDGE WOODRUFF: You may.
2 This will be No. 16.
3 (EXHIBIT NO. 16 WAS MARKED FOR
4 IDENTIFICATION.)
5 BY MR. PENDERGAST:
6 Q. You had some discussion yesterday with
7 Commissioner Gaw -- excuse me -- about events during March
8 and where prices were and in April; is that correct?
9 A. That's correct.
10 Q. Okay. And what I've handed you is Exhibit 16,
11 I think?
12 JUDGE WOODRUFF: Yes, it's 16.
13 BY MR. PENDERGAST:
14 Q. And I'd just like to ask if this exhibit
15 reflects your understanding generally of where NYMEX strip
16 prices were over the last four or five years?
17 A. No.
18 Q. Okay. You want to give me what your view is
19 of where they were over the last four or five years?
20 A. Yes. Over the last four or five years, and
21 this would be prior to the 2000/2001 winter, strip prices
22 usually could be obtained for less than \$3 an MMBtu.
23 Q. But that's what this says right here. Right?
24 A. Your graph goes on -- in addition to the price
25 being under \$3 after approximately April of 2000, it appears

1 that the strip price goes quite a bit north of \$3 and
2 exceeds that level greatly.

3 So I would simply say that if the question is
4 do I believe this is a fairly accurate representation of
5 where strip prices are for the past four or five years, then
6 I'm thinking four or five years ago you could get a strip
7 price for less than \$3 typically. And this graph shows that
8 for a long period of time prior to March of 2000 that that
9 indeed is the case, it's \$3, but after that time it's
10 greatly in excess of \$3.

11 Q. And I'm trying to go ahead and determine what
12 problem you have with that.

13 A. Well, if the question that you're asking is,
14 is this graph an accurate representation of strip prices and
15 those strip prices are less than \$3 prior to March of 2000,
16 I'd say generally I think that's the case.

17 Q. Okay. Yeah. My question was are these an
18 accurate representation of strip prices, period?

19 A. That appears to be so.

20 Q. Okay. And if we look at March 1st, 2000 at
21 the time that the PSP was established for 2000/2001, does
22 that indicate that that is at the highest level since
23 01/02/96?

24 A. Yes.

25 Q. Okay. And it continued to increase from

1 there; is that correct?

2 A. That is correct.

3 Q. Okay. You were asked a number of questions

4 about a comment by Mr. Neises in his testimony and I think

5 Mr. Micheel said that he referred to incentive provisions in

6 the plural or something. Do you have Mr. Cline's

7 Surrebuttal Testimony?

8 A. Yes.

9 Q. Well, that's unfortunate because it will be of

10 absolutely no use for you on this next question of mine.

11 Do you have Mr. Mathews' Surrebuttal

12 Testimony? If you don't have it, I can give you mine.

13 A. I just found it.

14 Q. Okay. And if you could turn to Schedule 1 in

15 that, please.

16 A. I'm there.

17 Q. Okay. And if we look at this, this is the

18 tariff that was filed in compliance with the Stipulation and

19 Agreement of September 1st, 2000; is that correct?

20 A. Yes. This tariff was filed -- or issued

21 October the 5th, 2000 in compliance with the Commission's

22 order.

23 Q. Okay. And, once again, this was the tariff

24 that implemented a Stipulation and Agreement under which the

25 70 percent requirement was eliminated, but it had language

1 saying everything else stays in full force and effect; is
2 that correct?

3 A. That is correct.

4 Q. Okay. And it also specifically recognized the
5 company's exercise of its right under the provisions that
6 you were discussing earlier regarding the price protection
7 incentive; is that correct?

8 A. That is also correct.

9 Q. Okay. And does it say in that first
10 paragraph, And subject to the company's notice of opting out
11 of the price protection incentive features in year two?

12 A. Yes.

13 Q. Talks about that in the plural?

14 A. Yes.

15 Q. Okay. And in point in fact, there were
16 different ranges under that price protection incentive
17 feature, were there not?

18 A. There were different grids, that's correct.

19 Q. Okay. And you also mentioned, discussed part
20 of your testimony where you talked about various passages in
21 Laclede's brief that was filed in the GO-98-484 case. Do
22 you remember that?

23 A. Yes.

24 MR. PENDERGAST: Okay. And, unfortunately, I
25 don't have copies of this, but I will show it to counsel if

1 I can approach the witness.

2 JUDGE WOODRUFF: You may.

3 BY MR. PENDERGAST:

4 Q. Could you identify the document I've just
5 handed you? Is that a copy of Laclede's initial brief in
6 the GO-98-484 case?

7 A. Yes.

8 Q. Okay. And if I could direct your attention to
9 page 10.

10 A. I'm there.

11 Q. Okay. And in this brief Laclede made a number
12 of additional suggestions as to things it would be willing
13 to do to modify the program in response to some concerns
14 that had been raised during the hearing by both
15 Commissioners and other parties; is that correct?

16 A. That's correct.

17 Q. Okay. And this presented Laclede's
18 understanding of the program; is that correct?

19 A. Are you saying that understanding is
20 summarized on page 10?

21 Q. Yes.

22 A. Could I have a moment to review page 10,
23 please?

24 Q. Sure.

25 A. Okay.

1 Q. Okay. And could you just read -- since this
2 wasn't, I don't believe, one of the sections you included in
3 your various citations in your testimony -- the paragraph
4 that begins with the price protection incentive?

5 A. Price protection incentive has an additional
6 feature that would prevent its operation under certain
7 adverse market conditions. If during the 90 days
8 immediately following the establishment of the PSP, market
9 conditions change radically and Laclede determines it is
10 necessary to purchase -- and this is highly confidential,
11 but I'm assuming it's now public.

12 Q. It's now public.

13 A. -- call options at strike prices above the
14 CPL, Laclede would notify the Commission in writing and the
15 price protection incentive would not be operational for that
16 year.

17 This feature was designed to ensure that
18 ratepayers would receive price protection and Laclede would
19 not suffer catastrophic losses if a radical change in the
20 market occurs early in the program.

21 Q. Okay. And in that, does that talk about --
22 reference the cost reduction incentive at all?

23 A. No, it does not.

24 Q. And that is consistent with the letter that
25 Laclede ultimately filed in June when it declared the price

1 protection incentive inoperable?

2 A. That's correct.

3 Q. Okay. One final question, Mr. Sommerer.

4 With respect to your comments regarding

5 Laclede and how it compared with other utilities and how its

6 hedging programs compared with other utilities and we took

7 different paths, the path that Laclede took resulted in the

8 net benefits that have been described in the testimony; is

9 that correct?

10 A. Certainly we've agreed that the proceeds are

11 \$33,500,000 from that program, yes.

12 Q. Okay. And you have -- well, and we've already

13 established that under its hedging program that was

14 ultimately terminated, that MGE had no financial proceeds;

15 is that correct?

16 A. Under the specific terms of that program, I do

17 not believe MGE had any call options pursuant to that

18 program, that is correct.

19 Q. And while you've mentioned AmerenUE, you've

20 never offered a comparison in testimony between how what it

21 did under its hedging program compared to what Laclede did

22 under this program, have you?

23 A. That comparison has not been made, that's

24 correct.

25 Q. Okay. And you haven't presented anything in

1 this case that would discuss what sort of ACA balance
2 AmerenUE had at the end of its winter versus what kind of
3 ACA balance Laclede had, have you?
4 A. That is also correct.
5 MR. PENDERGAST: Okay. If I could approach
6 the witness one more time.
7 JUDGE WOODRUFF: You may.
8 BY MR. PENDERGAST:
9 Q. Could you identify the document I've just
10 handed you?
11 A. This document is a copy of the Final Report of
12 the Missouri Public Service Commission's Natural Gas
13 Commodity Price Task Force issued August 29th, 2001.
14 Q. And you were involved in that process, were
15 you not, Mr. Sommerer?
16 A. Yes.
17 Q. Okay. And as part of that report, the Staff
18 put together an evaluation of what happened during the
19 winter of 2000/2001; is that correct?
20 A. That's correct.
21 Q. Okay. And as part of that evaluation, if I
22 can direct your attention to -- I think it was page 80. Is
23 that the one that has the table on it?
24 A. On page 86 there appears to be a table.
25 Q. Okay. And in that report Staff presented a

1 comparison of the PGA rates during that winter that were in
2 effect for various utilities, including Laclede and MGE; is
3 that correct?

4 A. That's correct.

5 Q. Okay. And could you please indicate how
6 Laclede's PGA rates compared to the other utilities that
7 Staff chose and presented on that table?

8 A. Well, this table records PGA rates effective
9 on January 1st, 2001, so it's a specific snapshot in time.

10 Q. Sure.

11 A. But it appears that Laclede is one of the
12 lower gas costs in the table. Arkansas has a lower average.

13 Q. Well, could you just, so we don't have to do
14 our own assessments of how they compare, just read off what
15 they were?

16 A. Yes. It appears that -- are you looking on an
17 LDC basis or a statewide basis?

18 Q. I'm talking about whatever's on that table.

19 A. It appears that Arcla -- the PGA rate for
20 Arcla was 7.60 -- \$7.60 per MCF; AWG was \$3.59 an MCF;
21 Peoples Gas, \$9.70 -- 77 cents an MCF; Nygas, \$9.50 an MCF;
22 Mid-American, \$10.51 an MCF; IES, \$9.49 cents an MCF; Kansas
23 Gas Service, \$8.68 cents an MCF; Louisville Gas and
24 Electric, \$6.44 cents an MCF; Columbia Gas, \$7.67 an MCF;
25 Western Kentucky Gas, \$7.74 cents per MCF; Laclede Gas

1 Company, \$6.45 cents per MCF; Missouri Gas Energy, \$6.80 per
2 MCF; Oklahoma Natural Gas, \$7.89 an MCF; Mid-American
3 Energy, \$10.50 an MCF; Montana-Dakota Utilities, \$6.80 an
4 MCF; Nashville Gas, \$7.03 an MCF; and United Cities Gas,
5 \$7.31 an MCF.

6 Q. So you've got 10 or 12 utilities there and out
7 of those, Laclede was the second lowest?

8 A. Yes. At that time, that's correct.

9 Q. Okay. And in the interest of full disclosure,
10 Laclede ultimately, towards the end of January, did raise
11 its PGA rate for a short period of time, did it not?

12 A. That's correct.

13 Q. Okay. And was that for about two or three
14 weeks, from what you remember?

15 A. That's my recollection, yes.

16 Q. Okay. And then it returned back down?

17 A. That's correct.

18 MR. PENDERGAST: If I could have just one
19 moment.

20 JUDGE WOODRUFF: Certainly.

21 BY MR. PENDERGAST:

22 Q. And just so we're clear, there was a lot of
23 discussion about Schedule 9-1. And I don't want to go into
24 specifics so we don't have to go in-camera, but wherever you
25 listed detriment on there, just so that we're very clear, in

1 each and every one of those cases, there was net cash money
2 coming back to the company's customers, was there not?

3 A. I believe that's correct, yes.

4 Q. Okay. And, finally, there was some discussion
5 about the changes that Staff thinks need to be made to the
6 overall cost reduction incentive or the method that needs to
7 be applied to it now and whether that was discussed at any
8 of the various times that we've gone through and letters
9 were filed and Stipulations and Agreements were entered and
10 that sort of thing.

11 And I asked you yesterday whether or not you
12 remembered that being discussed at a June 9th meeting
13 between the company and the Staff and you said you didn't
14 recall. Would it refresh your memory if I were to tell you
15 that you were there, Mr. Schwarz was there, Bo Maddly was
16 there, Mike Wallace, Mike Straub, Tim Mathews, Steve
17 Mathews, myself and George Godette?

18 A. I don't recall the specific individuals that
19 were there, but that sounds familiar to me, yes.

20 Q. Okay. And, once again, you don't remember
21 specifically asking Mr. Neises whether or not, if revisions
22 were made, the company would still want to maintain the
23 incentive on the cost savings part of the program?

24 A. That's correct.

25 Q. And you don't remember him saying absolutely?

1 A. No, I do not.

2 Q. Okay.

3 MR. PENDERGAST: Thank you. I have no further

4 questions.

5 JUDGE WOODRUFF: Did you wish to offer 16?

6 MR. PENDERGAST: Yes, I would at this time.

7 JUDGE WOODRUFF: Exhibit 16 has been offered

8 into evidence, that's the price chart. Does anyone have any

9 objection to its receipt?

10 Hearing none, it will be received into

11 evidence.

12 (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)

13 JUDGE WOODRUFF: And we'll go to redirect.

14 MR. SCHWARZ: If I might as a preliminary

15 matter, Commissioner Gaw yesterday afternoon had requested

16 Staff to prepare a chart of price movement in the first half

17 of the year 2000.

18 Staff has prepared such a chart and the

19 underlying figures for the January 2001 futures contract,

20 which would reflect the futures market price for the first

21 six months of 2000. And we've distributed copies to the

22 other parties and I would ask -- --

23 JUDGE WOODRUFF: That will be Exhibit 17.

24 MR. SCHWARZ: Yes.

25 (EXHIBIT NO. 17 WAS MARKED FOR

1 IDENTIFICATION.)

2 MR. SCHWARZ: I'm prepared to lay a foundation

3 for it, but if there are no objections from the parties, I'd

4 just move for its admission.

5 JUDGE WOODRUFF: All right. Exhibit 17 has

6 been offered into evidence. Are there any objections to its

7 receipt?

8 MR. PENDERGAST: No objections, your Honor.

9 JUDGE WOODRUFF: It will be received.

10 (EXHIBIT NO. 17 WAS RECEIVED INTO EVIDENCE.)

11 REDIRECT EXAMINATION BY MR. SCHWARZ:

12 Q. Mr. Sommerer, would you look at Schedule 7-1

13 of your Direct Testimony, please? And when you get there,

14 is that the public tariff of the PSP program?

15 A. Yes, it is.

16 Q. And who issued that tariff?

17 A. The tariff was issued by Kenneth J. Neises,

18 senior vice president of Laclede.

19 Q. And is that the same Ken Neises whose

20 testimony in GO-98-484 has been the subject of some

21 conversation?

22 A. Yes.

23 Q. And do you recall if in case GO-98-484

24 Mr. Neises was the senior witness of the Laclede witnesses?

25 A. That is correct.

1 Q. And Mr. Pendergast had you read a portion of
2 Laclede's initial brief into the record. Do you recall
3 that?
4 A. Yes.
5 Q. And did that brief revoke or deny Mr. Neises'
6 statement that had been given earlier in the case?
7 A. I don't believe it did either.
8 Q. It was silent as to the cost recovery
9 incentive in case Laclede had opted out of the price
10 incentive mechanism? The brief was silent on that point I
11 think you said; is that correct?
12 A. That's correct.
13 Q. Let's turn back then to the public tariff
14 sheets, which are set out on pages 7-1 through 7-3 of your
15 Direct Testimony. And if you look on page 7-1, paragraph 1,
16 does it not, incorporates the terms of the highly
17 confidential description into the Laclede tariff?
18 A. Yes. It states there that the parameters of
19 the PSF are included in the description of the incentive
20 price stabilization program filed by the company on
21 June 25th, 1999 in Case No. GO-98-484, which description has
22 been designated highly confidential and is only available to
23 the Missouri Public Service Commission or to any proper
24 party that executes a non-disclosure statement.
25 Q. Read the following sentence too, would you,

1 please?

2 A. Accordingly, the definitions of certain terms
3 have not been disclosed herein, but are available in such
4 description.

5 Q. Okay. Would you turn the page, please, and
6 take a look at paragraph 4? Is the term -- and I'm reading
7 from paragraph 4. Is the term "the overall cost of price
8 stabilization" defined in the public tariff sheets?

9 A. No.

10 Q. Is it defined in the secret tariff sheets?

11 A. No.

12 Q. A little further down, is the term "the net
13 cost of price stabilization" defined in the public tariff
14 sheet?

15 A. No.

16 Q. Is it defined in the secret tariff sheet?

17 A. No.

18 Q. Now, is Schedule 6 to your Direct Testimony
19 the secret tariff sheets that were incorporated by reference
20 into Laclede's public tariff sheets?

21 MR. PENDERGAST: I'm going to object here. We
22 have a term called "confidential" and "highly confidential."
23 And I don't know if Mr. Schwarz is trying to be pejorative
24 or not by using the term "secret," but I don't think that's
25 a proper word to use. They weren't secret. They were known

1 to Staff, they were known to Public Counsel, they were known
2 to any property party, and I think we ought to use the terms
3 that were actually designated.

4 JUDGE WOODRUFF: I'll sustain the objection.
5 If you'd refer to it as confidential or highly confidential.

6 BY MR. SCHWARZ:

7 Q. What's the title of that document?

8 A. The title of the document is Laclede Gas
9 Company Description of Incentive Price Stabilization
10 Program.

11 Q. And if you drop down on that first page to the
12 maximum recovery amount, what is that definition?

13 A. Yes. It says the maximum recovery amount,
14 MRA, for the program is 4 million annually plus transaction
15 costs.

16 Q. And the term of the program is used in the --
17 is defined in the following section and that too is in the
18 singular, is it not? Program, singular?

19 A. That's correct.

20 Q. Turn to Schedule 6-4, if you would, please.

21 A. I'm there.

22 Q. Paragraph 3, is the term "favorable option
23 purchases" defined in the highly confidential tariff sheets?

24 A. No.

25 Q. Is the term "intermediate trading activity"

1 defined in the highly confidential tariff sheets?

2 A. With respect to intermediate trading activity,
3 you do see a clarification there which says that will be
4 activity that is prior to the last three business days of
5 NYMEX option trading. NYMEX is N-Y-M-E-X.

6 Q. Is either term defined in the public tariff
7 sheets described in the PSP?

8 A. No.

9 Q. That last phrase that you read that was in
10 parenthesis, prior to the last three business days of NYMEX
11 option trading, does that also have a reference or a use in
12 the price incentive element of the price stabilization
13 program?

14 A. Yes.

15 Q. Does the acronym MRA have meaning in both the
16 cost reduction and price incentive elements of the PSP?

17 A. Yes.

18 Q. Is there any explicit language in the public
19 tariff that specifically indicates that if Laclede opts out
20 of the price incentive feature of the program, that it will
21 be permitted to claim incentives under the cost recovery
22 mechanism of the program?

23 A. The only reference in tariffs with regard to
24 that would have been the reference that refers to the
25 Stipulation and Agreement, that the remaining tariffs are

1 still in effect except for what Laclede has opted out from.

2 Q. I'm -- excuse me. I'm sorry. I'm talking
3 about Schedule 7 to your Direct Testimony. Is there any
4 reference there, any explicit notation that if Laclede opts
5 out of the price incentive, that it will be permitted to
6 claim retainages under the cost reduction incentive?

7 A. There is no reference in Schedule 7, no.

8 Q. With respect to the highly confidential
9 portions of the tariff as it was in June of 1999, is there
10 any explicit mention of Laclede being able to claim cost
11 reduction incentives if it opts out of the price incentive
12 mechanisms?

13 A. No.

14 Q. If Laclede, when it filed the tariffs, were
15 intending something other than Mr. Neises had represented in
16 his testimony, would you have expected Laclede to have so
17 indicated in the tariffs?

18 A. Yes.

19 Q. You recall that Mr. Pendergast took you
20 through some calculations in Mr. Cline's testimony?

21 A. Yes.

22 Q. In your view, were Mr. Cline's calculations
23 done in the proper context? And if -- go ahead.

24 A. Mr. Cline's calculations were a representation
25 of Laclede's interpretation of the tariff sheet. And in

1 that context, I believe Mr. Cline's calculations were
2 accurate, but it certainly does not represent the Staff's
3 view on how savings should be viewed in this case.

4 Q. And could you explain that difference a little
5 further for me, please?

6 A. Well, the Staff believes that the only time
7 that you would have savings is if the actions from
8 intermediate trading were better than the alternative, which
9 would have been to hold the option until the last three days
10 of trading.

11 Q. Would you take a look at Schedule 3-1 of your
12 Direct Testimony?

13 A. I'm there.

14 Q. That is a letter from Mr. Neises. Correct?

15 A. That's correct.

16 Q. In that letter does Mr. Neises specifically
17 state that Laclede will claim cost reduction savings now
18 that they have opted out of the price incentive feature of
19 the PSP?

20 A. That statement is not made.

21 Q. For the second year of the program Laclede
22 calculated the target strike price and the catastrophic
23 price level in mid-March of 2000; is that correct?

24 A. That's correct.

25 Q. Was there an opportunity for Laclede to secure

1 guaranteed price insurance between the target strike price
2 and the catastrophic price level between the time it made
3 those calculations and the time it opted out by letter of
4 June 1st?

5 A. Yes.

6 Q. And would that opportunity be reflected in the
7 figures that are represented in Exhibit 17? Let me rephrase
8 the question.

9 Do the figures in Exhibit 17 reflect that
10 prices moved forward, moved upward slowly between the middle
11 of March and the early part of May in the year 2000?

12 A. Yes.

13 Q. And comparing that with Exhibit 16, which
14 gives the NYMEX strip price for, say, five years, because of
15 the compression of time on that graph, does the time
16 between -- does the time between the March 1st date and the
17 May 22nd date appear relatively smaller than it does on
18 Exhibit 17?

19 A. Yes.

20 Q. So the suddenness of that spike is emphasized
21 by Exhibit 16 and lessened by Exhibit 17 just by virtue of
22 the scale of those diagrams?

23 A. That's correct.

24 Q. Mr. Pendergast asked you questions about
25 hedging summer supplies. Do you recall those?

1 A. Yes.

2 Q. Was there any restriction on Laclede that
3 prevented it from hedging summer gas prices in the year
4 2000?

5 A. There were no restrictions in terms of outside
6 the context of the PSP and its normal way of procuring gas
7 supplies, that's right.

8 Q. Did Laclede Gas exercise the authority it did
9 have under this program to hedge winter supplies between
10 March and June of 2000?

11 A. Not pursuant to the program guarantees, no.

12 Q. Excuse me. I can't read my own writing.
13 Do you recall that yesterday Mr. Pendergast
14 gave you some excerpts from a report by John Herbert that
15 was marked Exhibit 14?

16 A. Yes.

17 Q. And Mr. Pendergast asked you if this passage
18 was descriptive of the Laclede PSP program; is that correct?

19 A. That's correct.

20 Q. And you answered?

21 A. In a general way, it is, that's right.

22 Q. Would you read the first sentence of that
23 passage into the record?

24 A. On page 26 the first sentence says,
25 Surprisingly enough, some approaches to price risk

1 management had evolved into a profit-making program for the
2 utility where it wasn't clear that reducing systems
3 customers exposure to price risk was the primary purpose of
4 the program.

5 Q. So that was Mr. Herbert's view of the PSP?

6 A. Certainly that reflected his general
7 understanding, yes.

8 Q. Would you now read the last sentence of the
9 excerpt that you were given?

10 A. The last sentence on page 27?

11 Q. Yes.

12 A. When the company received a gain by selling
13 the insurance prior to its maturity, however, the consumers
14 would necessarily be exposed to price risk unless a physical
15 deal was coupled with the financial deal at the time the
16 financial deal was completed.

17 Q. Let's go back to the example that you drew up
18 here on the board. And explain to the Commission what that
19 last sentence of Mr. Herbert's means. And he's talking
20 about when he does this -- when a hedger does this
21 transaction and sells out of the position early, that he
22 would couple that with a physical deal. So what would
23 happen here if the position was going to be continued to be
24 hedged?

25 A. Well, once the hedger removed the position of

1 the \$5 strike, I think what Mr. Herbert's referring to is
2 the fact that the hedger would want to remain hedged on the
3 physical side because the financial hedge had been removed
4 and so that hedger would look at alternatives.

5 For example, the hedger would look to the
6 fixed price market and perhaps execute a fixed price deal or
7 try to negotiate a cap for the physical supply, but in some
8 way try and reconstruct that financial hedge on the physical
9 side.

10 Q. So that at the time that he sold the financial
11 instrument, he'd make a physical purchase of gas so that
12 this position would remain locked in for the consumer or the
13 ratepayer?

14 A. That would be the goal, to make sure that the
15 hedge stayed in place.

16 Q. To your knowledge -- you had occasion to
17 review Laclede's gas purchases in the course of this ACA, or
18 your staff did?

19 A. Yes.

20 Q. Are you aware of any purchase of physical --
21 or any physical gas purchases to retain the hedge position
22 that Laclede might have done?

23 A. I do not recall any long-term physical fixed
24 priced purchases for that period.

25 Q. Well, it wouldn't have been long-term

1 physical, would it, if it's being -- if the hedge is
2 liquidated in the middle of December on a January contract,
3 what you need to do is buy January gas at a fixed price and
4 that's not particularly long-term at that stage, is it?

5 A. I think Laclede's gas supply was generally
6 based upon a spot market index -- first of the month index,
7 daily pricing or something that reflected the market on a
8 fairly current basis.

9 Q. Do you recall questions about this activity
10 involving hindsight? Do you recall that line of questions?

11 A. Yes, I do.

12 Q. Under the PSP as it was set out in Schedules 6
13 and 7 of your Direct Testimony -- you don't need to look at
14 it -- isn't it true that as long as the price incentive
15 mechanism is in place, that there is no need for any
16 hindsight evaluation because the PSP and CPL that were
17 determined in March would have been the basis for any
18 comparison of results?

19 A. That's correct.

20 Q. So that it's only when you opt out of the
21 price incentive feature that any ambiguities are introduced
22 and you need to find some other way of measuring savings; is
23 that correct?

24 A. That's correct.

25 Q. You had a series of questions from

1 Commissioner Gaw about the effect of Mr. Neises' testimony.
2 And I think that we've shown that at least Laclede did not
3 revoke Mr. Neises' position in their brief, they did not
4 revoke it in their tariff filings and I think that you
5 indicated earlier that the first time Staff really became
6 aware that that position might be revoked was when Staff
7 filed to terminate the third year of the PSP. Is that an
8 accurate summation of your testimony?

9 A. I think it certainly would have been through
10 some series of Laclede's filings. In my recollection, it
11 was during the course of GO-2000-394 and that case that --

12 Q. Which one was that, because I don't remember?

13 A. That case was the case where Staff attempted
14 to end the program before its three-year term. And there
15 were a series of Laclede filings that listed financial
16 benefits as of a certain time frame and I think this took
17 place in January of 2001. And it was my recollection the
18 Staff at that time -- some time in early 2001 recognized
19 that Laclede intended to claim some money from the cost
20 reduction incentive.

21 Q. And so that's the first time that Staff was
22 really aware that Laclede was changing its position from
23 Mr. Neises' testimony in the spring of 1999?

24 MR. PENDERGAST: I'm going to object to that,
25 because it assumes facts that aren't in the record.

1 Mr. Schwarz is saying changed the position and he can ask
2 him whether or not he thinks it would have changed compared
3 to what Mr. Sommerer believes Mr. Neises' position was, but
4 he can't state that as a fact because it hasn't been
5 demonstrated in the record.

6 JUDGE WOODRUFF: I'll sustain the objection.
7 It's also leading, I believe.

8 BY MR. SCHWARZ:

9 Q. Was that the first time that Staff had been
10 alerted, to your memory, that its impression of Mr. Neises'
11 testimony in the spring of 1999 was no longer the position
12 that Laclede was advancing?

13 A. Yes.

14 MR. SCHWARZ: I think that's all I have.

15 JUDGE WOODRUFF: All right. Thank you. It is
16 now time for -- you may step down.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: Now it's time for lunch. And
19 we did take a long time this morning, we're off schedule at
20 this point, if everyone would agree with that. I'm going to
21 cut the lunch hour a little bit short and ask you to come
22 back at 12:45.

23 I'm still optimistic that we can finish today,
24 but you might want to check your calendars for next week. I
25 know the Commission does have some dates available for next

1 week. All right? And we'll come back at 12:45.
2 (A RECESS WAS TAKEN.)
3 JUDGE WOODRUFF: All right. Let's come to
4 order, please. And we're back from lunch.
5 And I believe that we finished with
6 Mr. Sommerer, so I believe next on the list is Mr. Mathews
7 for Laclede.
8 MR. PENDERGAST: Yes. At this time we would
9 call Mr. Mathews to the stand.
10 JUDGE WOODRUFF: Mr. Pendergast, would you
11 please move that out of the way? It's blocking my TV here.
12 MR. PENDERGAST: Oh, sure.
13 JUDGE WOODRUFF: We have to make sure we keep
14 our fans happy here.
15 MR. MICHEEL: Getting some protest, Judge?
16 JUDGE WOODRUFF: Pardon me?
17 MR. MICHEEL: Getting some protest from the
18 fans?
19 JUDGE WOODRUFF: No. But the sound was off
20 for a while this morning and the Commissioners let me know
21 it. They do watch from up there.
22 JUDGE WOODRUFF: Okay.
23 (Witness sworn.)
24 JUDGE WOODRUFF: And you may proceed.
25 STEVEN MATHEWS testified as follows:

1 DIRECT EXAMINATION BY MR. PENDERGAST:

2 Q. Yes. Would you please state your name and

3 business address for the record, Mr. Mathews?

4 A. Steven F. Mathews, 720 Olive Street,

5 St. Louis, Missouri.

6 Q. Are you the same Steven F. Mathews who has

7 previously caused to be filed in this proceeding Direct,

8 Rebuttal and Surrebuttal Testimony that has been premarked

9 as Exhibits 4, 5 and 6?

10 A. I am.

11 Q. Do you have any corrections or changes to make

12 to your testimony regarding the confidentiality aspects of

13 it?

14 A. Yes. My -- my entire testimony with the

15 exception of the duplication of Mr. Sommerer's -- of

16 Mr. Sommerer's schedule can be considered public.

17 Q. Okay. And is that duplication of

18 Mr. Sommerer's schedule contained in Schedule 2 to your

19 Rebuttal Testimony?

20 A. That is correct.

21 Q. So that would remain highly confidential?

22 A. Yes, sir.

23 Q. But everything else in the text of your

24 testimony or any other schedules would not --

25 A. Can be public.

1 Q. -- have to be?

2 Okay. With that modification, if I were to
3 ask you the same questions today that appear in your Direct,
4 Rebuttal and Surrebuttal Testimony, would your answers be
5 the same?

6 A. With one exception. On January the 30th I was
7 named vice president of gas supply -- or elected vice
8 president of gas supply with Laclede Gas Company.

9 Q. Okay. With that correction, would there be
10 any other changes?

11 A. No.

12 Q. And if I were to ask you the same questions
13 today then as appear in your Direct, Rebuttal and
14 Surrebuttal with that one correction, would your answers be
15 the same?

16 A. They would.

17 Q. And are those answers and the information
18 contained in your exhibits and schedules true and correct to
19 the best of your knowledge and belief?

20 A. They are.

21 MR. PENDERGAST: At this time I would tender
22 Mr. Mathews for cross-examination and offer Exhibits 4, 5
23 and 6 into evidence.

24 JUDGE WOODRUFF: All right. Exhibits 4, 5 and
25 6 have been offered into evidence. And actually these are

1 Exhibits 4-NP and 4-HC through all of them. Since they've
2 been offered, I guess we'll go ahead and take them, although
3 at this point there's not much difference between the two.
4 But 4, 5 and 6 have been offered. Are there
5 any objections to their receipt?
6 Hearing none, they will be received into
7 evidence.
8 (EXHIBIT NOS. 4, 5 AND 6 WERE RECEIVED INTO
9 EVIDENCE.)
10 JUDGE WOODRUFF: And for cross-examination
11 we'll begin with Staff.
12 MR. BATES: Thank you, your Honor.
13 CROSS-EXAMINATION BY MR. BATES:
14 Q. Good afternoon, Mr. Mathews.
15 A. Good afternoon.
16 Q. I always have trouble with this microphone, so
17 if for some reason my words suddenly disappear, please let
18 me know.
19 A. Likewise. If I'm not speaking loudly enough
20 let me know. Pardon me. Sorry.
21 Q. Mr. Mathews, would you tell the Commission
22 what the basis for your expertise regarding the issue before
23 the Commission today is?
24 A. I have been the individual who has performed
25 almost all of the trades that are the subject of this

1 program. And when I say "almost all," it may actually for
2 this period be all of them. I am the authorized trader
3 under the program along with one other individual, but I
4 believe in this program, I performed all the trades.

5 Q. Just for the record, who would that other
6 individual be?

7 A. Scott Jaskowiak.

8 Q. Is he any longer with Laclede?

9 A. He is currently an employee of Laclede Energy
10 Services. Since that period of time I have performed all
11 trades.

12 Q. Okay. Thank you.

13 What role, if any, did you have in the
14 development of the PSP tariff language, including the
15 program description?

16 A. Very active role. We -- I did not testify in
17 that case, however, I was here for portion -- portions of
18 it. And in the formative stages of the all -- all -- excuse
19 me -- all stages of testimony, I was involved in it.

20 Q. In your opinion, what was the purpose of the
21 PSP?

22 A. PSP really had two purposes. To provide price
23 protection for the customers and in light of the fact that
24 this program was also approved with a trading element, that
25 trading element being approved to recognize that in previous

1 years the coverage that the company had obtained for
2 insurance had largely not been into the money, if you will.

3 A number of modifications were tr-- were put
4 before the Commission to address some concerns of Staff in
5 previous hedging programs to try to produce a program that
6 would also have a cost reduction feature -- an overall cost
7 reduction feature that would operate separately from the
8 price protection incentive to -- to allow the company to
9 modify positions when it deemed necessary to produce an
10 overall better result.

11 Q. Did you personally have any job
12 responsibilities that related to implementing any aspect of
13 the PSP?

14 A. Could you define "implementing"?

15 Q. Other than what you've described your
16 involvement in already, did you have any role in it?

17 A. I have, I guess you'd say, by far the most
18 experience of any of the people at Laclede as far as
19 trading -- or actually as far as now trading, but at that
20 time when we -- when we developed this program, performing
21 trades.

22 And as such, I was -- I played a -- certainly
23 a formative role in how the program would be designed and
24 how -- how it would work, how we could benefit, you know,
25 for the customers.

1 Q. Were you involved in the decision of Laclede
2 to opt out of the price protection features of the PSP?

3 A. Yes.

4 Q. And what was the nature of your involvement
5 there?

6 A. It was a day-to-day involvement through the
7 March through May period. We analyzed the market, we looked
8 at a number of price projections that indicated that it was
9 not the appropriate time to purchase options.

10 In addition to that, we had to consider
11 Staff's prior views, that the previous year we had bought
12 strike prices that were too high. And it was a very
13 difficult decision to consider buying 4.70 to 5.20 options.

14 And in light of the experts and the experts
15 such as the EIA and the government, Goldman Sachs and their
16 views that the market in the forward months would be lower
17 priced than it was at that period of time, we, during the
18 March, April period, monitored the market, watched the
19 market closely, but were -- we were hoping for a price
20 correction.

21 Around about -- if you don't mind, let me just
22 look at our schedule and see the date of the first trade.

23 Q. Sure.

24 A. May the 4th -- in light of the fact that we
25 had no coverage, the market had been on a steady incline,

1 not -- rather gradual through the March, April period, had
2 not given us any real opportunities to purchase at
3 attractive levels and we determined on that 4th of May to
4 attempt to buy some protection.

5 We had one -- one order that we placed that we
6 did -- were able to acquire the options. At that point in
7 time we were -- quite frankly, the subsequent July -- July
8 trades would have been roughly the shape of what we would
9 have purchased on that May date had the market not moved
10 dramatically upward and, unfortunately, continued to do so
11 for the rest of that month.

12 Q. Just for the record, which May are you
13 referring to?

14 A. May 2000. I'm sorry, Mr. Bates.

15 Q. That's fine.

16 What were the consequences to Laclede's
17 customers as a result of Laclede's decision to opt out of
18 the price protection features for the 2000/2001 winter?

19 A. You mean at the time we opted out, what were
20 the consequences?

21 Q. Yes.

22 A. That opt-out provided that we would no longer
23 be responsible for the CPL price under the price protection
24 feature, but the company would be responsible to do the best
25 it could to obtain price -- price coverage. So at that

1 point in time the consequences were unknown.

2 Q. And what were the long-term consequences that
3 flowed out of that? Were you able to obtain that coverage?

4 A. In -- ultimately we -- we obtained a
5 significant amount of coverage.

6 Q. What do you mean by "significant"?

7 A. The -- Mr. Sommerer's schedule -- I'd prefer,
8 if we can, not go into HC on this, but if you review
9 Mr. Sommerer's schedule -- we can if you wish, we can go
10 through number by number, we'd need to go in-camera.

11 Q. Let me ask you this. By "ultimately," how
12 much time was involved there?

13 A. Our first -- well, our next -- our next trade
14 after the May 4th trade occurred after several meetings with
15 Staff in which we had tried to increase the funding under
16 this program. The company believed that -- in fact, I
17 believe the first -- the first meeting occurred just a week
18 later. June 9th, I believe is the meeting I attended.
19 Mr. Pendergast referred to it.

20 We were -- we were down here to discuss two --
21 two primary issues, one being the PGA and what we could do
22 for summer -- summer pricing to potentially sort of cushion
23 the impact of the increases that we'd seen in the
24 marketplace.

25 And, secondly, we proposed a number of

1 different scenarios of coverage levels that we felt the
2 company could obtain based on different moderate increases
3 to the fund -- overall funding of the program. At that
4 point in time we believed the \$4 million as a result of the
5 opt-out to be an inadequate level of funding.

6 We came to -- again, I'm just kind of going
7 through the short-term and long-term consequences, but the
8 next -- the next step in that really was to try to get these
9 discussions started with Staff that would hopefully, in our
10 opinion, result in an adequate funding level so that we
11 could obtain the appropriate amount of coverage for -- for
12 our customers.

13 Q. Before we go on, for the record, when you were
14 referring to Mr. Sommerer's schedule, do you mean Schedule 3
15 that's referenced in your testimony?

16 A. Mr. Sommerer's -- Mr. Sommerer actually
17 analyzes the whole series of trades in both his -- well,
18 both of the protected schedules. Different ways --
19 different ways of going through the entire number of trades,
20 but -- is that the answer? I mean, should I go on?

21 Q. If you --

22 A. I mean, I just kind of started into the
23 consequences. It's -- these are rather broad questions, but
24 I think to get to the consequences, I have to give you a
25 little bit of a history.

1 JUDGE WOODRUFF: I think the question was
2 which particular schedules were you referring to, the number
3 of the schedules you were referring to.
4 THE WITNESS: Oh, oh, oh.
5 JUDGE WOODRUFF: Is that correct, Mr. Bates?
6 MR. BATES: Yes.
7 THE WITNESS: The protected schedules.
8 BY MR. BATES:
9 Q. Okay.
10 A. Okay. Mr. Sommerer lists the trades in the
11 9-1, 9-2 by month, 9-3, 9-4, 9-5.
12 Q. Okay. Thank you.
13 What was the target strike price of the PSP
14 program for the winter of 2000/2001 if Laclede had not opted
15 out of the price protection features of the PSP?
16 A. \$5.20.
17 Q. What volume --
18 A. I'm sorry. Did you say target strike price?
19 Q. Yes.
20 A. \$4.70. I'm sorry.
21 Q. Thank you.
22 What volume of gas would have been covered
23 under the PSP had Laclede chosen not to opt out of the price
24 protection features of the PSP?
25 A. The -- let me just go to the schedule here.

1 Just a second. Schedule 6.1 that number is 36,880,000
2 MMBtu.

3 Q. And what volume of gas did Laclede actually
4 buy call options for related to the 2000/2001 winter?

5 A. Well, if you don't mind, let's go through
6 those schedules and I can total.

7 Q. That's fine. If you'll just also identify the
8 schedules that you're talking about.

9 A. Sure. Sure. Here I'm referring to -- let
10 me -- hang on just a second. Let me make sure this is the
11 best source of that total. This number is 3,000 -- I'm
12 sorry. Let me go back. Pardon.

13 Q. Okay.

14 A. The number is contained on Schedule 2.2 of
15 Mr. Sommerer's surrebuttal. That is the master listing of
16 options sorted by dates of purchases. And that number is
17 3,709, but you have to take that times 10,000 per contract.
18 That's actually a listing that totals the contracts. So
19 3,709 times 10,000 gives you 37,000,090 contracts.

20 Q. What volume --

21 A. I'm sorry, 37,090,000 MMBtu.

22 Q. Okay. Thank you.

23 What volume of gas did Laclede cover with call
24 strike prices that were at or below the TSP for the -- that
25 was in effect had Laclede not opted out of the price

1 protection part of the program?

2 A. Did you say at or below the TSP?

3 Q. Yes.

4 A. Zero.

5 Q. Okay. How many meetings did Laclede have with

6 the Staff and with OPC to discuss its decision to opt out of

7 the price protection feature of the PSP before it made its

8 announcement in June 2000?

9 A. There were no meetings before that date.

10 Q. Do you happen to know if Laclede sought input

11 from Staff or OPC regarding its decision?

12 A. Regarding its decision to opt out?

13 Q. Yes.

14 A. No.

15 Q. Can you tell us why?

16 A. It was the -- certainly the company's program

17 to manage subject to the tariff terms.

18 Q. Do you happen to know of your own knowledge

19 when Staff or OPC discovered that Laclede was going to opt

20 out of the price protection feature?

21 A. That would be the letter from Mr. Neises.

22 Q. Okay. The letter that's been referred to in

23 earlier testimony?

24 A. Yes. The letter that's attached as a --

25 pardon me, as a -- do you want the schedule number? It's

1 been referred to before. It's the opt-out letter of
2 June 2nd.

3 Q. Thank you very much.

4 Do you recall meeting with Staff after the
5 decision was made?

6 A. Yes.

7 Q. And how many times did you meet, do you
8 recall?

9 A. Numerous times.

10 Q. Do you recall when the first one of those was?

11 A. That was June the 9th.

12 Q. Okay. So about a week after Mr. Neises'
13 opt-out letter?

14 A. Correct.

15 Q. Okay. Were you involved in the purchase of
16 options for the winter of 2000/2001?

17 A. I was.

18 Q. And what was the nature of your involvement
19 there?

20 A. In that period I -- I performed most -- most
21 of the trades that we did. Scott may have -- may have
22 performed a few in that -- in that particular period.

23 Q. At that time could you buy options on your own
24 or did you require the approval of anyone else at Laclede?

25 A. I was authorized by the board of directors to

1 purchase options.

2 Q. Without consulting anyone else?

3 A. I al-- well --

4 Q. Or without the requirement to consult anyone

5 else?

6 A. Under the direction of a risk management

7 committee and under the direction of Mr. Neises as the

8 senior trader.

9 Q. Besides Mr. Neises, who served on that risk

10 management committee?

11 A. At that point in time Jerry McNeive and Doug

12 Yaeger.

13 Q. And what were their positions at Laclede at

14 that time?

15 A. Doug was chairman, president, CEO. And Jerry

16 would have been senior account -- or senior vice president

17 and general counsel.

18 Q. Were you given any parameters on when you were

19 to buy options versus when you weren't supposed to by

20 anyone? Any parameters, any guidelines, anything like that?

21 A. We met throughout that period prior to putting

22 on positions.

23 Q. Okay. And who do you mean by "we met"?

24 A. Mr. Neises as the day-to-day -- the senior

25 trader involved in the -- in the program. We would meet on

1 a continuous basis when we were putting positions on. And
2 he -- he signs the actual letters to authorize each trade.

3 Q. And by "continuous," do you mean daily or
4 weekly or --

5 A. Generally, at least daily when we were -- when
6 we were trading or when we were acquiring -- when we were
7 acquiring protection.

8 Q. To your understanding, what were the price
9 stabilization parameters that were in place under the PSP
10 for the 2000/2001 winter?

11 A. Say that again, please.

12 Q. To your knowledge, what were the parameters
13 for the price stabilization that were in place under the PSP
14 during the 2000/2001 winter?

15 A. They are the parameters we've -- we've
16 discussed. There was an overall cost reduction incentive
17 that was operating. We had opted out of the price
18 protection incentive and we were under the obligation and
19 the commitment to do the best we could to provide coverage
20 for our customers.

21 Q. With regard to the \$4 million associated with
22 the MRA in this case, what level of price protection is
23 associated with that amount for the winter of 2000/2001?

24 A. Mr. Bates, could you give me a couple minutes
25 to find it? I'm certain I have it.

1 MR. BATES: Is that all right, your Honor?

2 JUDGE WOODRUFF: Do you wish to get something

3 off your desk?

4 THE WITNESS: Yes, sir. I know I've got that

5 information.

6 JUDGE WOODRUFF: Go right ahead.

7 THE WITNESS: Thank you.

8 I'm sorry. Could you ask me the question

9 again?

10 BY MR. BATES:

11 Q. With regard to the \$4 million associated with

12 the MRA, what level of price protection is associated with

13 that amount for the winter of 2000/2001?

14 A. Oh, I apologize. I went and got a schedule I

15 didn't need. That's the 11-- I'm sorry.

16 Okay. Thank you for your patience.

17 \$11,566,000.

18 Q. Okay. What level of price protection was

19 guaranteed by the MRA for the winter of 2000/2001?

20 A. Say that again, please.

21 Q. Yeah. What level of price protection was

22 guaranteed by the MRA for the 2000/2001 winter?

23 MR. PENDERGAST: Your Honor, I'm going to

24 object to that because I believe it assumes facts that

25 aren't in evidence. I don't believe the 4 million MRA

1 guaranteed any level of price protection.

2 JUDGE WOODRUFF: I'm going to overrule the
3 objection. The witness can answer.

4 He may have just received his answer, but you
5 can go ahead and answer.

6 THE WITNESS: Go ahead and ask the question
7 again.

8 BY MR. BATES:

9 Q. What level of price protection was guaranteed
10 by the MRA for the winter of 2000/2001?

11 A. I think that's why I'm struggling with the
12 question. The MRA doesn't guarantee any price protection.

13 Q. Why did Laclede sell an option or any option
14 prior to the last three trading days related to that option?

15 A. Well, this really relates back to kind of what
16 I was getting into when you asked me about consequences and
17 I kind of -- I got into a deep explanation, but I kind of
18 feel like I need to go a little further to give you kind of
19 what you're asking for.

20 Q. That's fine.

21 A. The methodology we were under throughout the
22 period was one in which we were trying to do the best we
23 could for our -- for our customers.

24 And as -- as a result of the opt-out, as a
25 result of the radical price change and the increase in

1 option cost, we were still trying to do the overall best --
2 best thing for the customer when we came down here to meet
3 right after sending the opt-out letter and talked about
4 increasing the funding under the program or modifying the
5 percentages that we were required so that we could acquire
6 more favorable -- more favorable coverage.

7 And we -- I kind of need to go into the entire
8 kind of where we ended up to get to the answer to your
9 question. And the answer -- the answer -- is that okay to
10 kind of go through the series of events?

11 Q. Sure.

12 A. We -- we came down in that June meeting and we
13 proposed a number of different features that could result in
14 an improved result for our customers. And we took our
15 obligation very seriously to try to acquire price protection
16 on the best basis that we could, but we were faced -- faced
17 with a problem because of the market move, the options that
18 we could afford to buy were extremely high.

19 So we made proposals to try to increase that
20 funding. And it's just that lack of funding that -- that
21 was the problem at that point in time. And, you know,
22 this -- during -- during that same period we met a number of
23 times and we were unable to get either Staff or Public
24 Counsel to agree to the modifications. Those modifications
25 were increasing funding, doing fixed price contracts, using

1 collars.

2 And then ultimately we did -- we did file to
3 modify only -- as a result of the agreement of the parties,
4 to modify only the 70 percent requirement so that we could
5 acquire strike prices that would be more effective in the
6 coverage.

7 Faced with a lack of overall funding, the
8 company pursued a strategy really starting, oh, in the
9 midst -- in the midst of our meetings with Staff and
10 continuing through the end of the year -- or through the end
11 of the winter heating season which rolled in and out of
12 coverage.

13 And to answer your question -- I believe your
14 question was why would we ever take off coverage; is that
15 correct?

16 Q. Well, my question was, why did Laclede sell
17 any option prior to the last three trading days related to
18 that option?

19 A. It's -- I take that as that same question.
20 And that -- that strategy that we had of rolling in and out
21 of protection was one that because of the lack of adequate
22 funding -- and earlier in the day this was referred to
23 insurance -- we would roll the insurance and spread it out
24 over a later period.

25 We were very successful in taking advantage of

1 opportunities in the market through those early months,
2 which I believe is -- is illustrated in the schedules. And
3 that's -- that's how you end up with a result where we
4 started with \$4 million but you ultimately purchased almost
5 \$9 million in options.

6 And throughout the entire period of time, what
7 we were really trying to do was focus on the overall best
8 result for the customer. And faced with the reality of
9 inadequate funding and the inability to afford coverage in
10 the later months, we had to, at times, liquidate options
11 prior to the last three days.

12 And that is ultimately how we were able to
13 purchase \$9 million in options and also ultimately how we
14 were able to acquire considerable February coverage, some
15 March coverage. The February coverage we didn't -- we had a
16 very positive result on, the March -- the March coverage
17 ultimately expired without -- without value.

18 Q. Did Laclede ever sell an option prior to the
19 last three trading days for that option in order to qualify
20 for monies that Laclede could retain?

21 A. Absolutely not. That was not the primary
22 focus. What we were doing at that -- at that point in
23 time -- I mean, while we knew the incentive was in place,
24 what we were trying to do was produce the overall best
25 result for the customer.

1 And we were -- we were faced with -- with the
2 shortfall of funds. Even -- even though we never ran out of
3 money, we were never in a position where we could -- where
4 we could acquire adequate coverage for the remainder of the
5 season.

6 We went to great lengths to attempt to do so.
7 And I believe earlier in the day we -- we discussed that --
8 that lifting -- lifting of coverage and -- more or less as
9 if it were a strategy.

10 And that's something that Mr. Sommerer had
11 mentioned in his testimony. And I looked long and hard at
12 it to see if there was any -- any logic to it. And if
13 you -- if you look at our option liquidations that occurred
14 in the last three days and extend that out for an equal
15 period of time, what you'll find is that we -- you'll
16 actually find 1,662 options that went into either the last
17 three days or the three days that preceded the last three
18 days. And of that total, only 150 of those were liquidated
19 in the three days prior.

20 What that indicates is that we weren't
21 lifting -- lifting for the value. We were lifting at prior
22 times to produce the funding to cover subsequent months.
23 And that is what we did.

24 We weren't -- we weren't taking insurance off
25 with the strategy of -- of -- of taking the profits. We

1 were taking that coverage off with the strategy of producing
2 the best overall result.

3 And in addition, earlier in this proceeding
4 we -- on this exact same subject I -- I heard Mr. Sommerer
5 talk about the steadily increasing price through the month
6 of December. And I -- I didn't believe that to be the case.

7 And if you look at the -- the NYMEX strip
8 during that period of time, it was extremely volatile and
9 extremely choppy. The values that we're discussing here
10 were -- were appearing and then -- and then being --
11 changing -- changing dramatically by day.

12 So what we really were doing was taking a very
13 moderate -- moderate approach to the rolling of those
14 positions. And I believe that that -- the fact that only
15 9 percent of those options were actually sold in those few
16 days preceding the last three days is a real indication of
17 that.

18 Q. Let's go for a minute to the January 2001
19 options. Were you involved in selling those options on
20 December 20th of 2000?

21 A. Yes.

22 Q. Was anyone else at Laclede involved?

23 A. We would have -- we would have discussed that
24 as a group, Mr. Neises and Scott Jaskowiak and myself.

25 Q. Okay. Were the last three trading days for

1 the January 2001 call option contract December 21st, 22nd
2 and 26th?

3 A. Bear with me.

4 They were.

5 Q. Okay. And was December 20th the fourth
6 trading day prior to the January 2001 option expiration?

7 A. Yes, sir. And that would be one of those
8 options I referred to when I was talking about the -- I
9 believe on that day we sold 50 -- make that 100 options,
10 which were -- were a portion of that 150 over the 1,662 that
11 produced the 9 percent.

12 Q. Why did you sell options on December 20th
13 versus selling those options on the 21st?

14 A. Again, it had to do with the volatile nature
15 of that market, the fact that we were at record levels.
16 Those -- earlier in the month we had achieved those record
17 levels, the long-term forecasts were actually starting to
18 moderate.

19 We were very concerned that the funding was --
20 was still -- would be required -- because the NYMEX contract
21 for February was still staying very, very high. And we
22 thought that in the short term there could be an abrupt
23 value change and we needed the funding for later because we
24 were -- we were faced with inadequate funding from the very
25 beginning.

1 Q. Is it true that on December 20th you sold two
2 blocks of 50 options at a \$5.50 strike price for a sales
3 premium of \$3.90 and \$4.20? And I think you might -- no,
4 I'm sorry.

5 A. I think I can verify that for you. Could you
6 just read that to me again, please?

7 Q. Sure. December 20th did you sell two blocks
8 of 50 options at a \$5.50 strike price for a sales premium of
9 \$3.90 and \$4.20?

10 A. That is correct.

11 Q. Okay. Is it true that under the company's
12 interpretation of the cost reduction incentive in its
13 tariff, that Laclede would be entitled to at least
14 40 percent of those monies?

15 A. At that moment in time -- well, let me first
16 of all say that it is my belief Staff was very aware of
17 that. That was raised in the first meeting we came down
18 here. And I was in that meeting and I -- I recall very
19 clearly Staff being aware that that was still operating. So
20 it wasn't only Laclede's belief that that was operating, I
21 believe that was Staff's belief.

22 Q. So the answer to the question is, yes, that
23 was the company's belief?

24 A. Well -- well, the answer to the -- the answer
25 to the question is it was our belief that it was still

1 operating, but I believe it was also Staff's belief that it
2 was still operating.

3 Q. Did you --

4 A. They may not have been aware we were making
5 the trade, however, you know. There's a disconnect there.
6 I mean, I don't think they -- they had any -- I can't
7 exactly recall when the quarterly reports were generated,
8 but I don't believe that Staff had an appreciation yet for
9 just how successful we may have been under the program.

10 Q. Did you expect that by December 21st the price
11 of natural gas would fall in excess of \$1 MMBtu for those
12 January options?

13 A. Say that again, please.

14 Q. Did you expect that by December 21st the price
15 of natural gas would fall in excess of \$1 per MMBtu for
16 those January options?

17 A. We were not making that expectation, but that
18 was certainly possible. There were some dramatic movements
19 within that month. That price had -- the price had gone
20 well into the \$9 range, had gone all the way back into the
21 \$7 range in very short periods of time, a matter of days.

22 Towards the end of trading that is entirely
23 possible. With the advent in the intermediate term weather
24 forecast of some normal weather, it was -- it was very
25 possible that those proceeds could have -- could have

1 changed dramatically.

2 But, again, I want to restate that at all --
3 at all times in making these transactions, you know, the
4 underlying goal of the company was to produce the best
5 overall result. And in light of the fact that we had a --
6 an inadequate level of funding, we were faced with a very
7 difficult proposition.

8 Q. Well, what were the company's expectations?

9 A. At that point in time?

10 Q. Yes.

11 A. The company's expectations were we would fund
12 February and we would potentially fund March and it would
13 cost a great deal of money, because at that point in time we
14 still didn't have enough money to -- to cover those months.
15 And if you look at the trades that occurred for February
16 during the month of January, you'll see that February
17 options were extremely expensive and we were going through
18 that money extremely -- at a very fast rate.

19 Q. Okay. Do you agree that the proceeds you
20 received on those sales were approximately \$4 million?

21 A. Approximately, yes.

22 Q. And do you agree that the cost of those
23 options was approximately \$200,000?

24 A. That looks accurate.

25 Q. Okay. Now, Mr. Mathews, by making that sale

1 on December 20th, 2000 versus holding those options until
2 December 21st, or the next day, would that allow Laclede to
3 qualify to keep, under Laclede's interpretation of the PSP,
4 approximately \$1.5 million?

5 A. I will say at that moment it didn't -- it did
6 not provide that opportunity. When the entirety of the
7 program was complete, we -- we then looked at the overall
8 results of the program and applied the tariff.

9 And that was the \$11.5 million we talked about
10 earlier that went into the one -- the price protection --
11 price protection incentive and then there was a sum of money
12 that went into the -- the overall cost reduction incentive
13 and a result was achieved. However, I can't say that some
14 of those dollars weren't reinvested in the market.

15 Q. Okay. But Laclede certainly considered it
16 possible that they could keep that much money?

17 A. At that point in time --

18 Q. Yes.

19 A. -- we were certainly aware that we were
20 producing some very positive results under this program, but
21 we weren't -- we weren't finished. We -- we were still very
22 troubled by the funding problem, we were very troubled by
23 February pricing.

24 It wasn't until a short amount -- or a short
25 amount of time after that that -- when we -- when we started

1 purchasing some additional coverage at very high strike
2 prices in February. Probably another two weeks -- two weeks
3 later we put some more money into the market and then we
4 made a decision to -- I believe what you'll find is we
5 actually -- we took some of the money that we put into
6 February and we -- we liquidated it in order to -- at that
7 point in time address March. March was still at a very high
8 price.

9 And subsequent to that, we put some money into
10 March and then that -- that money in March ultimately
11 acquired -- or expired without -- without value. And then
12 and only then could you really look at how we came out.

13 Q. You couldn't be sure until then, but you did
14 realize that there were possibilities?

15 A. We recognized an incentive was operating.

16 Q. Okay.

17 A. But our focus on that day was not those
18 dollars.

19 Q. How does the falling price of gas hurt the
20 ratepayer?

21 A. Falling price of gas doesn't hurt the
22 ratepayer.

23 Q. Okay. When you were buying and selling
24 options for the winter of 2000/2001, did you have an
25 understanding of the term "net cost of price stabilization"

1 under the company's PSP tariff?

2 A. Generally speaking, I would -- I would say
3 that if we want to get into the -- certainly tariff
4 definitions, Mr. Cline has sponsored all that testimony.

5 Q. What was your understanding of the term
6 though?

7 A. I need to describe for you really how the
8 calculation works.

9 Q. That's fine, but I'd also like to know what
10 your understanding of the term was.

11 A. For what purpose? I mean, define how you're
12 using that cost of price stabilization.

13 Q. For any purpose. For the purpose of this
14 program. You were acquainted with the PSP tariff at that
15 time, were you not?

16 A. Certainly.

17 Q. And, in your mind, what was your understanding
18 of the term "net cost of price stabilization" as you went
19 about performing --

20 A. Well, let's find where it's used in the tariff
21 and we'll work -- we'll work our way through how it's being
22 used and I'll explain in the context you're looking for
23 what -- what that answer is.

24 Q. That's fine, but I would still like to know
25 just from your mind what your understanding of that term was

1 without having to look at it.

2 MR. PENDERGAST: Your Honor, I'm going to
3 object. I think the witness is free to look at whatever --

4 MR. BATES: I don't object to him looking at
5 it.

6 MR. PENDERGAST: That's fine. I thought he
7 was being instructed not to look at it.

8 MR. BATES: No. No.

9 BY MR. BATES:

10 Q. You can look at it. I wasn't asking you to
11 read the definition. I was asking for your understanding of
12 the term.

13 A. I need to find out where exactly you're using
14 the term. Once again, this is -- it's a term with some
15 understanding based on the context it's being used
16 certainly. Let's just find where it is in the tariff and
17 we'll work through this. I mean, could you find me to where
18 we are that we're using cost --

19 Q. I was really just looking for your
20 understanding, in general, of the term "net cost of price
21 stabilization" in relation to the company's PSP tariffs.

22 A. In relation -- in relation to the costing
23 proposition in this tariff, the -- the calculations are
24 really very straightforward. And I believe as we go through
25 this, we'll -- I'll explain it in general terms and I will

1 describe a term which may or may not be the term that you
2 would define -- or we will -- if we go through here will be
3 net cost.

4 Q. Well, if you could begin by defining it for me
5 in general terms, as you understood it.

6 A. Well, the way -- you've almost got to describe
7 how the tariff works to get to it, because what you start
8 with in this program are defining dollars which -- which go
9 through the price protection incentive.

10 Q. Okay.

11 A. And under this program there are a total
12 number of proceeds. And in this -- in this case, that total
13 number of proceeds had to be reduced by that price
14 protection amount in order to get to an amount which you
15 take.

16 Q. Let me ask this. Would you agree with me that
17 that specific definition is not contained within the tariff?

18 A. Net cost of price protection?

19 Q. Net cost of price stabilization.

20 A. Net cost of price stabilization. I cannot say
21 for sure. I think Mr. Cline can probably tell you for sure.
22 He's certainly the tariff expert or we could read through
23 it.

24 Q. Let me ask you one more question then. If you
25 had been at a meeting of your risk committee at that time

1 and someone had used the term "net cost of price
2 stabilization," what would you have understood it to mean?

3 A. Are you asking in the context of an overall
4 program or are you asking in the context of the specific
5 trade? You know, the way that these trades --

6 Q. Okay.

7 A. -- the way these trades operate, you described
8 very succinctly a specific option in December, you assumed
9 the purchase price, assumed a sales price --

10 Q. Okay.

11 A. -- and the net cost of the price stabilization
12 for that 50 contracts or each of those 50 contracts in a
13 certain context would be taken one way and in the context of
14 this tariff, it's very clear how the costing works.

15 Q. Okay. I was referring to the tariff. So if
16 you'd give me your understanding of that.

17 A. Well, the tariff has, as a mechanism, a
18 defined series of terms which -- which produce for the
19 purposes of this program two different funding components.
20 And one is associated with a price protection, the other is
21 overall cost reduction.

22 And I -- I'm not going to argue with you about
23 whether or not we find that -- whether or not we find that
24 term, but like I explained before, on a specific option --
25 on a specific purchase or a specific transaction, the net

1 cost of price stabilization is very clear. In the overall
2 program that we're dealing with, the calculation of either
3 overall cost reductions or price protection incentive
4 dollars is also very clear.

5 Q. Okay. What is that then in context of the
6 overall program?

7 A. Well, in the overall program the way it works
8 is that the \$11 1/2 million come out of the total proceeds
9 and then you compare the difference in addition to the MRA.

10 You take a total -- total amount of dollars
11 that takes into account the difference between the MRA and
12 that reduction. And then you take that amount of dollars
13 and you put it through the other calculation, which is the
14 sharing calculation, which has two different grids.

15 And that's the one that's recognized in the --
16 in the tariff, but described in the program description.
17 And it's the overall stabilization fund that's -- that's
18 talked about more in the tariff versus the actual proceeds
19 of a specific trade, which is described explicitly in the
20 program description.

21 Q. Do you have -- oh, this is not a challenging
22 question. I just don't have the information here. Do you
23 have an accounting degree?

24 A. I do not.

25 Q. Okay. Are you familiar with Laclede Case

1 No. GO-90-484 that's been referenced in previous testimony
2 before the Commission?

3 A. That is the establishment of the PSP case, is
4 it not?

5 Q. Were you a witness in that case?

6 A. I was not.

7 Q. Okay. I believe you specified in your Direct
8 Testimony -- and your Direct, I believe it's page 5,
9 beginning at lines 13 -- that you believe the record in
10 Case No. GO-98-484 was important in interpreting the
11 meaning of the various provisions for the PSP. Is that
12 correct?

13 A. That is correct.

14 Q. Okay. Would you define the term "savings" as
15 that term relates to the cost reduction feature as used in
16 the context of the PSP for the 2000/2001 ACA period?

17 A. Again, could you just show me in what context
18 we're using it?

19 Q. Okay. In the context of the PSP for the
20 2000/2001 ACA period. Just give me your understanding of
21 the term "savings" as that term relates to the cost
22 reduction feature.

23 A. Well, let's get the program description out
24 and work through the context you're using it in, if you
25 don't mind.

1 Q. Okay. Well, what's your general understanding
2 of that?

3 A. I believe you've got to look at how you're
4 using it. And we'll, again, work through what specific
5 savings you are talking about as it's -- as it's -- as it
6 relates to the calculation. I mean, could you just tell me
7 where we're at?

8 Q. I was just looking really for your
9 understanding of the term in an overall sense.

10 A. I mean, there is certainly a very -- again,
11 I -- I need you to kind of find me where we are so that I
12 can explain to you how it's being used and give you my
13 interpretation. I mean, savings has different meanings
14 depending on what context you're using it in, sir.

15 Q. I understand that. And I'd like you to use it
16 in the sense of relate to the cost reduction feature for the
17 PSP of the 2000/2001 ACA period. What's your best answer on
18 that?

19 A. Well, are you -- are you describing it as it
20 is used to calculate the dollars that are remaining for the
21 overall cost reduction incentive? I mean, is that the
22 context? I mean --

23 Q. All right. We'll do that.

24 A. -- that's the most straightforward portion of
25 the calculation.

1 Q. All right. Please.

2 A. And those -- those savings are the remainder
3 after you deduct the \$11 1/2 million and taking into account
4 the MRA. You get a total amount that is defined as savings.
5 And in that context, that is the savings -- that is the
6 savings that that feature is talking about.

7 Q. What other contexts are there, or possibly?

8 A. Savings in a bank. I mean, I can think of any
9 number of different savings that we could.

10 Q. I was talking about --

11 A. I don't know that there's not the word
12 "savings" in other places in either the tariff or the
13 testimony or any number of different places that would be
14 used subtly differently.

15 Q. Could you define the term "cost reduction" as
16 used in the context of the PSP?

17 A. Cost reduction?

18 Q. Yes.

19 MR. PENDERGAST: I'm going to object to that,
20 your Honor. And the reason I'm going to object to that is
21 because Mr. Bates is throwing out, you know, these terms and
22 he's not referring the witness to any place.

23 And, you know, terms can go ahead and be used
24 in multiple places. And if he's talking about a term in a
25 specific tariff or he's talking about a term in a program

1 description, then I think he ought to go ahead and reference
2 what he's talking about.

3 JUDGE WOODRUFF: I'm going to overrule the
4 objection. He has a right to ask the questions he wants to
5 ask.

6 But the witness -- if you don't understand --
7 if you can't give him a general definition, just say, I
8 can't give him a general -- can't give you a general
9 definition and we'll move on from there.

10 THE WITNESS: Okay. Thank you, Judge.

11 JUDGE WOODRUFF: And on redirect if your
12 counsel wants to ask you further questions about that, you
13 can, and if Mr. Bates wants to ask you further questions
14 about going into more details and in what might context it
15 might mean something, he can ask those questions.

16 THE WITNESS: Okay. Thank you.

17 JUDGE WOODRUFF: Okay. You may proceed,
18 Mr. Bates.

19 BY MR. BATES:

20 Q. Was --

21 A. Just ask me that one again and I'll.

22 Q. Could you define the term "cost reduction" as
23 used in the context of the PSP?

24 A. We were just in that same area that -- I mean,
25 that is the overall cost reduction component of the program

1 description, you know, as a subset of our tariff.

2 Q. Okay.

3 A. Which is a -- is a feature that is -- is
4 operating and has a series of dollar calculations that
5 occurs to produce savings based on how much the total --
6 total dollars are that go into a series of calculations
7 under that -- under that feature.

8 Q. Pursuant to Laclede's ability in the PSP to
9 opt out of protecting at the CPL, could you provide examples
10 of situations where market conditions change radically in
11 the natural gas market?

12 A. The -- the environment we've been in in the
13 last couple of years have been certainly more -- that's
14 occurred more frequently than the occurrences that you
15 probably could make a very, very good argument that have
16 been radical changes because we've gone to price levels
17 that, you know, we certainly never -- never imagined we
18 would go to and come back -- come back down and gone back
19 up. It's been extremely volatile. I'm -- are you asking me
20 to define ones other than what occurred in the March through
21 May period of that year?

22 Q. Sure. If you --

23 A. I mean, certainly there was a radical move in
24 price during -- during the period in early December. There
25 was a radical move in price that occurred back down from

1 \$9 to \$7 in December of 2000. There was a radical move in
2 price back up to \$9 and I think the ultimate settle was
3 9.98.

4 Q. What were the causes of those?

5 A. Extreme volatility in natural gas, extreme
6 volatility in natural gas pricing.

7 Q. And what were the causes of the extreme
8 volatility?

9 A. During that period of time, we had experienced
10 very cold weather, storage -- storage levels were being
11 depleted very quickly and, again, the volatility. I mean,
12 in natural gas has been the most volatile commodity -- you
13 read that very frequently, that -- since its inception.

14 Q. How much do natural gas prices have to
15 increase or decrease before there's a situation that you
16 would classify as a radical market change?

17 A. You know, over time that -- that has been
18 something that when we -- when we went into this program, we
19 had reasonably stable prices I think as shown in that
20 schedule we looked at this morning. And one would have
21 certainly probably quantified a radical -- radical price
22 movement very differently at that point in time, you know,
23 Where in May you saw nearly a dollar move, I believe. You'd
24 seem a gradual move in March and April.

25 And that -- let me get -- let me just look at

1 the -- look at the historic price a little bit before that
2 and give you a little bit of flavor.

3 What ultimately happened here was during the
4 months of April and May, this market went -- well, in the --
5 in those specific months the market went to price levels it
6 had never been at in history -- in the history of the NYMEX.
7 Now, granted that's not a very long history, but since 1990
8 we've never seen an April contract at that level.

9 The May contract actually moved up -- just a
10 second. I can give you that -- give you that number. But
11 my definition -- I realize this is a long explanation, but
12 what we saw at that point in time and considered to be that
13 radical price -- price movement which to -- the subsequent
14 month actually went to a NYMEX settle from 3.09 to 4.41, I
15 mean, was certainly a radical change in the overall context
16 of the price -- price at that point in time.

17 I will say, however, that what we experienced
18 throughout the rest of that year probably taught us
19 something about what radical price movements are because we
20 indeed went to historic price levels.

21 Q. Would you consider, as a rule, a change of \$1
22 per MMBtu to be a radical change?

23 A. I think it totally depends on -- on a number
24 of those factors that I've discussed.

25 Q. Based on factors, could a change of less than

1 \$1 be a radical change?

2 A. Certainly.

3 Q. Do you believe that issues relating to Enron

4 created a radical change in the natural gas market?

5 A. I really can't -- I can't conclude at this

6 point in time, you know, what market effects Enron really

7 had. I mean, it's certainly an area of interest. I can't

8 call it an area of expertise.

9 Q. Do you classify the reduction in available

10 natural gas marketers as a radical change in the natural gas

11 market?

12 A. In the con-- in the context of -- certainly

13 of -- of that realm one would say that, certainly.

14 Q. Would you classify the fact that March of

15 2003's futures contract as traded near \$6 an MMBtu be a

16 radical change in the gas market?

17 MR. PENDERGAST: Your Honor, I'm going to

18 object at this point. I'm going to object at this point. I

19 don't see what the relevancy of these questions are.

20 JUDGE WOODRUFF: Sustained.

21 BY MR. BATES:

22 Q. Mr. Mathews, if we could go over some of the

23 trades that were made both on the buy and sell side back in

24 July, August and September of 2000 -- you were involved in

25 those, were you not?

1 A. I was.

2 Q. Okay. Do you recall the specific reasoning

3 behind each of those trades?

4 A. We throughout that period had the same

5 underlying goals that I described before. We were faced

6 with a shortfall of available funds and we were going to try

7 to produce the best overall result for the -- for the

8 customer that we could.

9 We determined -- we watched the market on a

10 daily basis, we tried to take advantage of intermediate

11 opportunities to -- to essentially roll these positions in

12 order to fund -- fund later purchases and achieve short-term

13 coverage -- coverage levels throughout that winter. That --

14 that goal was a consistent goal through -- or that series of

15 specifics never really changed. Those were the -- really

16 the key features in everything we did.

17 Q. So would you say that those were the reasons

18 behind the trades for each of those three months?

19 A. I believe that that actually stayed consistent

20 throughout the entire time.

21 Q. Were there any reasons for any of those trades

22 that were not common to all three?

23 A. Common to all three?

24 Q. Trades.

25 A. Common to all three trades?

1 Q. Yes.

2 A. Let's go ahead and look at the trades.

3 Q. All right.

4 A. I mean -- you are referring to which three
5 dates, please?

6 Q. That would be July, August and September of
7 2000.

8 A. Again, that -- that general theme, which I
9 described as one of trying to roll into some coverage to
10 produce the best overall result for the customers, was the
11 direction we were going in all of those -- in all of the
12 activities through that time.

13 MR. BATES: Your Honor, could I have just a
14 minute?

15 JUDGE WOODRUFF: Certainly.

16 BY MR. BATES:

17 Q. Mr. Mathews, do you recall receiving a data
18 request regarding this case in which you were asked to
19 provide the reasons for each of those trades?

20 A. Are you referring to a recent data request
21 that was referring to my state of mind during the trades?

22 Q. Yes. That's true.

23 A. We provided a rather -- rather lengthy
24 response to that -- to that data request. I'd be happy to
25 read it. It certainly encompasses the type of things I've

1 talked about. It goes quite a bit farther than that.

2 Let me say though that it -- it also refers to
3 oh, seven -- seven volumes of information regarding this
4 market that were on an individual basis. It's certainly
5 information that we reviewed throughout the period that
6 contains more specific what you would call maybe
7 day-to-day -- more day-to-day fundamental reasons that we
8 were seeing in the marketplace.

9 Q. Do you believe that your answer to that data
10 request fully answered the question about your state of mind
11 at the time for each -- excuse me. I believe the
12 question -- perhaps this is the best way to do this.

13 MR. BATES: May I approach the witness?

14 JUDGE WOODRUFF: You may.

15 BY MR. BATES:

16 Q. Mr. Mathews, I've handed you a document and
17 could you identify that?

18 A. Yes, sir. This is Case No. GR-2001-387, Staff
19 Data Request No. 5064.

20 Q. And is that the data request that you've been
21 referring to?

22 A. Yes, sir, it is. It was dated January the --
23 oh, maybe this is -- I'm looking for a date on it.

24 Q. I believe on the first page there's a date at
25 the bottom, at least a transmission date from Laclede.

1 A. Yes. You are correct. I believe this was
2 probably asked in January and answered in January.

3 Q. Of this year?

4 A. Yes, sir.

5 Q. Okay. Now, does that appear to be a full and
6 complete and honest replication of your answer to Staff Data
7 Request No. 5064?

8 A. I believe so. I mean, it -- you have to take
9 in mind what I referred -- take into mind what I referred
10 to, which is a -- a series of volumes of data that we refer
11 to in here, that 3,000 pages or over 3,000 pages of
12 materials that Staff actually had in their possession for
13 roughly a year and a half and then sent back to the company
14 this last fall and then came down and reviewed recently.

15 But rather than specifically copying or
16 producing voluminous data, what this does is it refers --
17 refers to that data which certainly had considerable
18 additional information in it. But I'd be happy to read
19 this -- this response. Is that okay?

20 Q. That's not necessary right now.

21 MR. BATES: Your Honor, I think I'd like to
22 have this marked.

23 JUDGE WOODRUFF: All right.

24 THE WITNESS: I should say, Mr. Bates --

25 JUDGE WOODRUFF: There's not a question.

1 THE WITNESS: Sorry. Okay.
2 JUDGE WOODRUFF: This will be No. 18.
3 (EXHIBIT NO. 18 WAS MARKED FOR
4 IDENTIFICATION.)
5 THE WITNESS: Did I answer your question,
6 Mr. Bates?
7 BY MR. BATES:
8 Q. Yes. Thank you.
9 A. Okay.
10 MR. BATES: Your Honor, I'd like to have two
11 other items marked.
12 JUDGE WOODRUFF: Okay. The Neises' testimony
13 will be 19, the other testimony -- can you define what this
14 is, 20, the other documents here?
15 MR. BATES: Yes. That is a copy of some
16 in-hearing testimony from Mr. Kenneth Neises in Case
17 No. GO-98-484. It's part of the transcript.
18 JUDGE WOODRUFF: Okay.
19 (EXHIBIT NOS. 19 AND 20 WERE MARKED FOR
20 IDENTIFICATION.)
21 JUDGE WOODRUFF: You can inquire.
22 MR. BATES: Thank you.
23 BY MR. BATES:
24 Q. Mr. Mathews, if you would refer to what's been
25 marked for identification as Exhibit No. 19, which is the

1 Surrebuttal Testimony of Kenneth Neises in Case
2 No. GO-98-484 and turn to page 14, please.

3 A. Okay.

4 Q. And I'm sorry. I don't have it in front of me
5 so I don't have the line on which it begins, but I'd like to
6 read you a quote and see if you agree that -- thank you.

7 I'm going to ask you to look at line 12 and
8 I'd like -- and I wonder if you would read for me lines 12
9 through line 18 beginning at -- not the first word on line
10 12, but beginning at the beginning of the sentence there.

11 A. Of course. Starting with, Of course?

12 Q. Yes, please.

13 A. Of course, if the company believes market
14 conditions have changed radically enough to warrant such
15 actions, it does not believe it should continue to have an
16 opportunity to profit under the program. Accordingly, if
17 Laclede invokes this provision during the first 90 days, it
18 agrees that the incentive aspects of the program should
19 terminate for that year.

20 Q. And I wonder if you would now turn to Exhibit
21 No. 20, which is a partial record of the transcript from
22 GO-98-484.

23 A. Okay.

24 Q. Excuse me just a second.

25 On the first page of that exhibit, which is

1 page 41 of the transcript, beginning at line 23 -- excuse
2 me. Begin at line 16 and read through line 22, please.

3 A. Page 41?

4 Q. Yes.

5 A. 16 through 22?

6 Q. Yes.

7 A. In some responses to some of Mr. Schwarz's
8 questions, you talked about savings. And I think you used
9 that term and used it in the context ratepayers savings, I
10 think you said, or customer savings. In this context, in
11 the context of your program that you're presenting for
12 approval here, could you define savings for me.

13 Q. And would you please read Mr. Neises answer
14 beginning at line 23?

15 MR. PENDERGAST: Your Honor, I have no reason
16 to doubt that this may be Mr. Neises answer, but is there a
17 complete set of the transcript we could look at to identify
18 who these people are?

19 MR. BATES: We can certainly provide one, your
20 Honor.

21 JUDGE WOODRUFF: You're concerned about who's
22 asking the question?

23 MR. PENDERGAST: Right.

24 JUDGE WOODRUFF: That's certainly -- I'm
25 wondering about that too.

1 MR. BATES: I do think if -- and I appreciate
2 Mr. Pendergast's stating that he has no reason to doubt, but
3 I think what's really important here is Mr. Neises answer.
4 And I was just having Mr. Mathews read the question to put
5 that in some context.

6 JUDGE WOODRUFF: Mr. Schwarz?

7 MR. BATES: We can certainly provide the
8 entire transcript.

9 MR. SCHWARZ: Reference to the transcript
10 reveals that it's Mr. Micheel asking this particular
11 question.

12 JUDGE WOODRUFF: Thank you for that
13 clarification.

14 Does that satisfy your objection?

15 MR. PENDERGAST: Yes. I can see that.

16 JUDGE WOODRUFF: You may proceed then.

17 THE WITNESS: Line 23?

18 BY MR. BATES:

19 Q. Please.

20 A. Savings, generally, in the broadest sense here
21 is what we're talking about. Currently, under the existing
22 program, the company is authorized to spend \$4 million in
23 the purchase of call options.

24 Q. And if you'd go on with the answer.

25 A. And, generally speaking, what we're talking

1 about here is a program that is going to provide -- that has
2 the potential of providing what we termed, consider
3 catastrophic price protection, which is the concept in the
4 current program for amounts less than \$4 million. So to the
5 extent we can ultimately spend fewer dollars on this
6 program, if it's 3 million at that point, it's a \$1 million
7 dollars. That's what I am talking about.

8 Q. Okay. Do you agree with Mr. Neises definition
9 of savings as set out in this transcript?

10 A. I -- it appears the context he's talking about
11 it is not the same context we were talking about the way
12 that the -- the tariff operates.

13 Q. And what is the difference that you perceive,
14 the difference in the context?

15 A. This is just giving one example and providing
16 one -- one example based on assumptions.

17 Q. So you don't believe that it's applicable as
18 far as the tariff is concerned?

19 A. Well, I believe that this is applicable to the
20 example which I read.

21 Q. Okay. And not applicable then to the PSP in
22 question then in this case?

23 A. I -- I believe it is applicable in the context
24 that he's talking about it and there he's -- again, this is
25 page 41 and I'm reading a -- an excerpt which appears to be

1 a characterization of savings along certain lines.

2 Q. Okay. But you would agree that this
3 particular case that this transcript is from is from the
4 ultimate precursor of this case?

5 A. I would agree that this particular text is no
6 doubt part of -- of that case prior to the Commission's
7 ultimate decision, prior to the order, prior to the actual
8 tariffs being filed.

9 MR. BATES: Okay. Thank you very much,
10 Mr. Mathews.

11 Thank you, your Honor.

12 JUDGE WOODRUFF: Did you wish to offer these
13 exhibits?

14 MR. BATES: Yes, sir. If I might offer
15 Exhibits No. 18, 19 and 20 into evidence.

16 JUDGE WOODRUFF: All right. 19 is stamped
17 highly confidential. Do you know if anything in here is
18 still highly confidential?

19 MR. PENDERGAST: Your Honor, I don't believe
20 there is anything that would probably remain highly
21 confidential in here. The only thing I would request is
22 that instead of just putting in provisions of the testimony
23 that he wanted to show to Mr. Mathews and get his reaction
24 to -- he's putting in all the testimony here.

25 And this testimony is Surrebuttal Testimony so

1 it responds to various witnesses that have raised certain
2 points and that sort of thing. That's not being put into
3 the record.

4 And the only thing I would ask is that if we
5 go through this, if we're going to have the whole exhibit
6 put in and all the testimony and we find something else in
7 that case that this was responding to that we think is
8 necessary to put it in context, we'd want the ability to do
9 that.

10 JUDGE WOODRUFF: Mr. Bates, is it necessary to
11 have the entire document put in evidence?

12 MR. BATES: Your Honor, I don't believe it is.
13 If we could simply have those portions that were referred
14 to.

15 JUDGE WOODRUFF: Which pages were those?

16 MR. BATES: Let's see. That would have been
17 page 14 and -- just page 14, your Honor.

18 JUDGE WOODRUFF: All right. All right. With
19 that restriction then, we're only talking about page 14 of
20 Neises' testimony.

21 MR. BATES: Right. And I think,
22 Mr. Pendergast, I should have thought of that myself.

23 JUDGE WOODRUFF: With that restriction, are
24 there any objections to this exhibit or any other exhibits?

25 Hearing none, they will be received into

1 evidence.

2 (EXHIBIT NOS. 18, 19 AND 20 WERE RECEIVED INTO
3 EVIDENCE.)

4 JUDGE WOODRUFF: Mr. Micheel, you may proceed.

5 CROSS-EXAMINATION BY MR. MICHEEL:

6 Q. Mr. Mathews, why is Schedule 9 attached to
7 Mr. Sommerer's Direct Testimony still highly confidential?

8 A. Could I consult with my attorneys, please?

9 Q. Let me ask you this. You don't know?

10 A. I -- we discussed this last night among other
11 things and we were trying to make as much information as
12 possible that is reasonably sensitive -- we took a lot of
13 terms that we used to be very concerned about, but looking
14 back at them we -- we've decided that we're not any longer
15 concerned about them because it's -- it is behind us. We
16 did talk through this last night and I'd like to talk to
17 them about that decision because they were involved in it.

18 Q. Well, let me ask you this, Mr. Mathews, about
19 Schedule 9 to Mr. Sommerer's Direct Testimony. That's all
20 stale, old information; isn't that correct?

21 A. For the purposes of this case, it's just --
22 which -- Schedule 9 to which -- to which?

23 Q. Schedule 9 to Mr. Sommerer's Direct Testimony.

24 A. Direct Testimony?

25 Q. Yes, sir.

1 A. Stale in the context of what date? What date
2 is it? I mean, I guess it was three or four months ago that
3 it was generated, the theory.

4 Q. No. The information contained on the
5 schedules. I mean, that's about trades that took place in
6 the year 2000 and things like that; isn't that correct?

7 A. Yeah. The characterizations that have been
8 made regarding -- regarding the program, the sum and
9 substance of the two different schedules we're still
10 protecting, I wouldn't characterize either as stale. I
11 think they've both got three or four months of life maybe.

12 Q. Let me ask you this. Is the program that
13 we're discussing right now, the PSP, is that program still
14 in effect?

15 A. No.

16 Q. Okay. So if the program's no longer in effect
17 and Schedule 9 deals with that program, in your mind -- I
18 don't want to know what Mr. Pendergast thinks, I want to
19 know what Mr. Mathews thinks about this -- why should that
20 schedule remain highly confidential?

21 A. I think it asks for an interpretation of
22 something that we talked about as a group and made a
23 decision, Mr. Micheel. I -- I was involved in the decision
24 to a certain degree, but others had input.

25 And I believe that it's appropriate to -- you

1 know, when others have the expertise in an area like this
2 to -- to let their views be known. I personally feel like
3 we went to great lengths to open up virtually everything and
4 I can talk about those schedules in very general terms
5 without going into in-camera, you know, and even earlier in
6 the day several -- several different instances people talked
7 about those schedules. And I'm comfortable with the same
8 terms.

9 Q. All right. So you don't know why, in your
10 mind, those schedules are HC; is that correct?

11 A. I'd like to consult with my attorneys, please.

12 MR. PENDERGAST: Your Honor, if I could
13 interject here, this comes as a complete surprise to us from
14 the standpoint of Mr. Micheel being dissatisfied with what
15 we have retained as confidential.

16 We'd be happy to take a break and discuss it
17 with him if he'd like us to go ahead and do that and see
18 what his concerns are, but I think that there's a procedure
19 set out in the protective order -- I don't have a copy of it
20 here -- that talks about how a party can go ahead and
21 challenge something that's been designated as highly
22 confidential and I don't think the proper procedure is to
23 start asking a witness why he --

24 JUDGE WOODRUFF: Mr. Micheel, if you do want
25 to pursue this further, I'll go ahead and take a break and

1 discuss it.

2 MR. MICHEEL: You know, given the time, I'll
3 just move on. But I still don't understand it, but maybe
4 I'll file something after the hearing. I just wanted to
5 know this witness's view and he's not willing to give it.
6 And I'll move on.

7 JUDGE WOODRUFF: He's given his view, so you
8 can move on.

9 BY MR. MICHEEL:

10 Q. Is it correct, Mr. Mathews, that the incentive
11 price stabilization program was approved by the Commission
12 in Case No. GO-98-484?

13 A. That is correct.

14 Q. And is it correct that that program had a
15 three-year term?

16 A. That is correct.

17 Q. And would you agree with me that the program
18 was approved by a three-to-two decision of the Commission?

19 A. You'd have to show me that. I'm --

20 Q. Okay.

21 A. Doesn't sound unfamiliar, doesn't sound
22 familiar.

23 Q. In preparing to testify in this case, did you
24 review Mr. Sommerer's Direct Testimony?

25 A. I did. Could we find that answer in there?

1 Q. Do you have a copy of Mr. Sommerer's Direct
2 Testimony --
3 A. You bet.
4 Q. -- with you?
5 A. Sure.
6 Q. Would you turn to Schedule 2-1, please? Let
7 me know when you're there.
8 A. I am there.
9 Q. And then if you'd turn to schedule -- or
10 page 8 of 10, also Schedule 2-8, could you turn to that?
11 Holding your finger on the first Schedule 2, I want to
12 confirm with you that that's the Report and Order in
13 GO-98-484. Is that the Report and Order?
14 A. Yes, sir.
15 Q. And then if you turn to page 8 of 10,
16 Schedule 2-8, are you there, sir?
17 A. Yes, I am.
18 Q. Does it indicate there that Commissioners
19 Crumpton, Drainer and Murray concurred in the opinion and
20 Chair Lumpe and Commissioner Schemenauer dissented?
21 A. It does.
22 Q. And does that indicate to you that it was
23 approved by a three-to-two decision?
24 A. It does.
25 Q. Okay. And --

1 A. I can answer that affirmatively, yes, sir.

2 Q. Would you agree with me that the two
3 Commissioners who dissented in that program -- or dissented
4 in that order believed that, quote, critical terms, closed
5 quote of the price stabilization program were, quote, ill
6 defined, closed quote?

7 MR. PENDERGAST: Your Honor, I'm going to
8 object to this line of questioning. First of all, it would
9 be speculation on Mr. Mathews' part to go ahead and
10 speculate on what a Commissioner believed or didn't believe.
11 Their words do speak for themselves, their words say what
12 they say. And I don't think it adds anything to the
13 proceeding and certainly doesn't move things along to have
14 him speculate on what they believed or didn't.

15 JUDGE WOODRUFF: Response?

16 MR. MICHEEL: Well, he can turn to
17 Schedule 2-10 and it says that in the dissent. I'm asking
18 him if that's what the dissent says and I would assume that
19 that's the view of those two Commissioners, your Honor.

20 JUDGE WOODRUFF: Presumably it is and it's in
21 the documents and asking him whether or not that's what it
22 says doesn't add anything, so I'm going to sustain the
23 objection.

24 BY MR. MICHEEL:

25 Q. Is it correct in GO-98-484 you did not testify

1 on behalf of Laclede Gas Company?

2 A. That is correct.

3 Q. Is it correct in GO-94-484 that Mr. Cline,
4 Mr. Neises and Mr. Jaskowiak, J-a-s-k-o-w-i-a-k, testified
5 on behalf of Laclede Gas Company?

6 A. I'm -- I could look real quickly and just
7 verify that Michael Cline did. I'm almost certain he did.
8 Could you show me his testimony? I'm --

9 Q. I don't have it with me. If you --

10 A. You're wanting me to confirm something. I
11 believe that you probably know. I know that I've reviewed
12 all that testimony. I reviewed an awful lot of testimony in
13 this case and I believe Mike did file the tariff portions of
14 that.

15 Q. And let me ask you. Do you know if Mr. Neises
16 filed testimony?

17 A. I absolutely know that Mr. Neises and
18 Mr. Jaskowiak did, and I'm pretty certain that Mike did the
19 tariff portion of that.

20 Q. Can you tell me why Mr. Neises didn't present
21 testimony in this proceeding?

22 A. I -- I believe I'm the most -- the one with
23 the most expertise as to what we did as far as the trades in
24 this program, which is the subject of this case.

25 Q. And can you tell me why Mr. Jaskowiak didn't

1 present testimony in this proceeding?

2 A. Again, I am the individual that traded this
3 entire program and -- with their -- certainly their
4 cooperation as I have described before. We spent a great
5 deal of time and effort each -- each day we were -- we were
6 putting positions on or taking positions off.

7 Q. So with that testimony is it safe to say that
8 you're the most knowledgeable individual at Laclede Gas
9 Company with respect to this program?

10 A. I believe I am the most knowledgeable with
11 respect to -- to what I said, which is the subject of this
12 case is the trades that were made during that period. I'm
13 not going to argue whether I am or am not the most
14 knowledgeable in the company with the overall program.

15 Q. Is it correct that in preparing to testify in
16 this proceeding you reviewed Laclede Gas Company's tariff
17 Sheets 28-E, 28-F and 28-G and those are attached to your
18 testimony as Exhibit 1?

19 A. That's -- that is certainly accurate. We then
20 subsequently had Mr. Cline file, who certainly has more
21 working knowledge and is responsible for actually filing
22 those tariffs. He's the next witness, but yes, of course.

23 Q. And is it correct in preparing to testify in
24 this proceeding you reviewed the description of the
25 incentive price stabilization program?

1 A. The program description?

2 Q. Yes.

3 A. Yes, sir.

4 Q. And would you agree with me that the

5 description of the incentive price stabilization program is

6 incorporated by reference into Tariff Sheet 28-E? And

7 that's the first sheet behind your Exhibit 1 to your Direct

8 Testimony.

9 A. Just bear with me for just a second. Where

10 did you -- the specific reference you referred me to was on

11 which sheet?

12 Q. Sheet 28-E, paragraph large G, little 1.

13 A. Uh-huh.

14 Q. It says, The parameters of the PSP or PSF --

15 A. Uh-huh.

16 Q. -- are included in the description of the

17 incentive price stabilization plan filed on -- and it goes

18 on.

19 A. Sure. Yeah, that is the correct tariff sheet.

20 Q. And that portion I just read to you

21 incorporates the program description into the tariff sheet.

22 Would you agree with me?

23 A. I do agree with you.

24 Q. Now, I want to understand the program design.

25 Is it correct, Mr. Mathews, that the program that was

1 adopted in GO-98-484 was the program presented by Laclede
2 Gas Company?

3 A. Yes.

4 Q. Is it correct that in that program the funding
5 level that Laclede Gas Company recommended for the program
6 was \$4 million?

7 A. You mean in that year that we did it, that we
8 filed the program? That is correct.

9 Q. And I think we established earlier that that
10 program was to last for a three-year term; is that correct?

11 A. Yes, sir.

12 Q. And was it your understanding that for each
13 year of the three-year term that -- when it was filed and
14 approved by the Commission, that the funding level was going
15 to be \$4 million?

16 A. Absolutely.

17 Q. Now, I want to understand the PSP design.
18 It's my understanding that there were two components to the
19 incentive, the price protection component and the overall
20 cost reduction component; is that correct?

21 A. That is correct.

22 Q. And is it correct that for the first year of
23 the program both of those incentives were in effect?

24 A. Yes.

25 Q. And in the second year of the program the

1 company opted out of the price protection incentive; is that
2 correct?

3 A. That is correct.

4 Q. And I believe you testified that the first
5 time the Staff or the Public Counsel became aware that the
6 company was going to opt out of that program was Mr. Neises'
7 June 2nd letter to the Commission; is that correct?

8 A. I believe that to be the case.

9 Q. And then --

10 A. There may have been a phone call, but right
11 around that time, yes. I don't -- I don't know that there
12 was or wasn't, so --

13 Q. And then you discussed a June 9th meeting, did
14 you not?

15 A. I did.

16 Q. Is it correct that Public Counsel was not in
17 attendance or invited to the June 9th meeting that you
18 had -- that Laclede Gas Company had with the Staff?

19 A. I am unaware of whether Public Counsel was
20 invited to that meeting. They were not in attendance at
21 that meeting.

22 Q. Okay. You would agree with me, would you not,
23 that the PSP program was the company's program to manage
24 pursuant to the tariff terms approved by the Commission?

25 A. I would agree.

1 Q. Okay. I want to ask you some questions about
2 the program description that is attached as Exhibit 1 to
3 your testimony, your Direct Testimony.

4 A. Okay.

5 Q. Are you there? And I guess what I want to
6 understand is -- this sets out kind of the secret -- or the
7 highly confidential, excuse me, the highly confidential
8 portions -- former highly confidential portions of the PSP
9 program; is that correct?

10 A. That is correct.

11 Q. And I want to understand what portions of this
12 description were effective, in effect, after the company
13 opted out of the price protection program and after the
14 company, the Staff and the Public Counsel entered into the
15 September 2000 Stipulation and Agreement so I know what is
16 still in effect here. Okay?

17 A. Uh-huh.

18 Q. And I'll just go paragraph for paragraph and
19 hopefully that will make it go easier. With respect to the
20 first paragraph there -- or the first bullet point, Required
21 Price Protection, would you agree with me, Mr. Mathews, that
22 as a result of the September 2000 Stipulation and
23 Agreement -- and if you need to look at that, that's
24 Schedule 4.2 to Mr. Sommerer's Direct Testimony -- that that
25 portion of the program was no longer in effect as written

1 there?

2 A. I would agree with that.

3 Q. With respect to the authorized financial

4 instruments, the next paragraph there, would you agree with

5 me that that was still in effect?

6 A. After that point?

7 Q. Well, it never -- it never became ineffective.

8 A. The 70 percent.

9 Q. No. The authorized financial instruments

10 paragraph. I'm trying to go paragraph by paragraph here or

11 bullet point by bullet point.

12 A. Oh, I'm with you. Certainly. That is still

13 in effect.

14 Q. And the maximum recovery amount for the

15 program, even after opting out and the September

16 stipulation, that is still in effect?

17 A. That is still in effect.

18 Q. And even after opting out and the September

19 Stipulation and Agreement, the term of the program, the

20 three years is still in effect; is that correct?

21 A. That is correct.

22 Q. Okay. Now, onto page 2, the incentive

23 mechanism. And would you agree with me that as a result of

24 the June 2000 letter from Mr. Neises, that that entire page

25 was no longer in effect for the second year of the program?

1 And I'm just doing it page by page. I'm going to get to the
2 next page.

3 A. I could certainly argue that the TSP had been
4 established, but as a result of those -- those things, the
5 TSP level itself and the CPL level, while they had been
6 established pursuant to this mechanism, the company no
7 longer had that obligation.

8 Q. And that was my question. I'm not trying to
9 trick you, Mr. Mathews. I'm just trying to make the record
10 clear.

11 A. No. I just didn't think that was explicitly
12 clear that the -- that they were not in effect.

13 Q. Okay. Let me backfill. It's correct that for
14 the period we're talking about, the company developed a
15 target strike price and a catastrophic price level; isn't
16 that correct?

17 A. We did that in -- in -- pardon me -- in March
18 pursuant to that section establishing price parameters on
19 the business days discussed in that section.

20 Q. And then after the June 2nd opt-out letter,
21 those numbers really became ineffective; isn't that correct?

22 A. The company was no longer -- as a result of
23 the opt-out letter, was no longer obligated pursuant to the
24 CPL commitment.

25 Q. And then if we go to the next page, page 3 of

1 that and there's a Roman numeral ii and little Roman numeral
2 iii, you would agree with me that as a result of the June
3 2000 letter, those portions of the program were disabled; is
4 that correct?

5 A. The portions with regard to sharing pursuant
6 to where those strike prices ended up and the resulting
7 price protection -- or -- and the encompassing, pardon me,
8 price protection incentive, those -- those mechanisms no
9 longer apply.

10 Q. And then we have a No. 2 there, the price
11 protection incentive. And on that page we have A and Roman
12 numerals i, ii, and iii. And you would agree with me as a
13 result of the June 2000 letter, that those program
14 components were disabled; is that correct?

15 A. I'm sorry. That's what I was referring to.
16 We skipped -- did we -- did I miss a page here? That's what
17 I thought I just referred to.

18 Q. Okay. And that whole page was disabled as a
19 result of the June --

20 A. I'd gone through the sharing, which is on
21 page 3, which is what I was thinking you'd asked.

22 Q. Well, first I'd asked about the Roman numeral
23 ii and the Roman numeral little iii on --

24 A. Right. I thought we determined that that
25 mechanism, which actually appears under Roman numeral ii and

1 iii, that those are the mechanisms and that I had already
2 concurred with that. And then I'd gone on to the rest of
3 page 3 and was trying to clarify that we could get through
4 page 3 because that's discussing the sharing mechanism.

5 Q. I'm sorry. It's more confusing than I wanted
6 it to be.

7 Would you agree with me on page 4 that the
8 Item B and Roman numeral i are disabled as a result of the
9 June 2000 letter?

10 A. Did you say Item B and one little i?

11 Q. Yes. One little i.

12 A. Yes, sir.

13 Q. And then B ii, that's the provision that
14 allows Laclede to opt out; isn't that correct?

15 A. That is the specific language that allows for
16 the opt out.

17 Q. Okay. So that was still in effect, if you
18 will, or had --

19 A. Had been triggered, if you will.

20 Q. And so that leaves us with three, the overall
21 cost reduction incentive, and that was still in effect; is
22 that correct?

23 A. Absolutely.

24 Q. And really the focus of what we're doing here
25 today, isn't that right, in terms of the adjustments being

1 made and the arguments? That's the focus, that's the issue,
2 the overall cost reduction incentive; isn't that correct?

3 A. I believe that the -- the issues in this case
4 are clearly stated, but I mean, that's a portion of it
5 certainly.

6 Q. Okay. And that's the only portion of the
7 incentive that's still enabled after the opt-out letter;
8 isn't that correct?

9 A. You said the only portion of the incentive
10 that's still enabled?

11 Q. Yes.

12 A. It is still effective.

13 Q. Okay. And I want to talk to you a little bit
14 your Exhibit 1, the tariff in that program description now.
15 Would you agree with me, Mr. Mathews, that there is no
16 definition section contained in Tariffs 28-F, 28-G, 28-E or
17 the program description that we've been discussing?

18 A. You mean a specific section titled
19 Definitions?

20 Q. Yes, sir.

21 A. I would agree that there's not a specific
22 section titled Definitions.

23 Q. Would you agree with me that there is no
24 specific definition contained in these tariffs of the phrase
25 "net cost of price stabilization"?

1 A. I would have to review it. And, again, if you
2 you wish to go through this very quickly, Mr. Cline is --
3 has really sponsored this, again. I realize this was in my
4 direct, but Mr. Cline came in and he certainly is very much
5 more -- you know, has much more daily working knowledge of
6 these provisions. But I will read through this and
7 determine for sure that I don't find that, if you wish me
8 to.

9 Q. Well, I do. And I guess my question is, I
10 asked you earlier if you reviewed the tariffs when you were
11 preparing for this testimony. Do you recall that?

12 A. I've reviewed literally volumes of information
13 in this case. And you're pulling out a word that may be
14 here, may not be here. I will verify that for you if you
15 wish. I'm not going to guess in this three pages that it's
16 not in there.

17 Q. Okay. Go ahead and verify it.

18 A. What I'm looking for is the words "net cost of
19 price stabilization." Correct? Correct?

20 Okay. I really -- I only find it in the one
21 point, which is consistent with the description I gave
22 Mr. Bates. The way it operates or do you want me to just
23 read that section?

24 Q. Well, I'd like you to tell me what you believe
25 the term "net cost of price stabilization" means as

1 contained in Tariff Sheet 28-F, paragraph 4 there.

2 A. For the purposes of this -- for this section
3 what we're dealing with is the -- again, it's the same thing
4 I described for Mr. Bates.

5 It's the -- once you have total proceeds and
6 you've taken that component of the total proceeds which were
7 sold in the last three days, there is a resulting component
8 of dollars, which if you take the -- the MRA into account,
9 produces a value which then goes into this calculation and I
10 can read that section to you.

11 To provide an incentive for the company to
12 reduce the overall cost of price stabilization, at the end
13 of each ACA the company shall account for any differences
14 between the MRA, the 4 million, and the net cost of price
15 stabilization -- that's the number I referred to -- for the
16 preceding heating season exclusive of the gains and costs
17 covered by Section G-3 in accordance with the following
18 schedule.

19 And then if you read on, it describes how you
20 calculate the component for the company and the component to
21 be returned to the ratepayers.

22 Q. Let me ask you this, Mr. Mathews. In the
23 absence of a specific definition of a term, do you think
24 there are more than one ways -- more than one way to define
25 a term?

1 A. Certainly not in this -- this paragraph there
2 isn't.

3 Q. And why is that?

4 A. Because this paragraph is very clearly taking
5 the dollars that didn't get set aside as price protection
6 incentive dollars, taking the net amount between \$4 million
7 and that number, which is essentially just adding \$4 million
8 to that number, to produce a total which then goes into a --
9 well, in this case it goes into a series of calculations
10 that produces the numbers that are -- well, it actually
11 produces the \$8.9 million which was reduced by the
12 \$4 million that the company contributed in the third year to
13 result in the \$4.9 million in question.

14 Q. Okay. And in giving me that explanation, you
15 said once you've established the price protection dollars,
16 did you not?

17 A. Once you have established what I described
18 before, that the price protection dollars apply to any sales
19 made in the last three days, that total of 11 million, 500--
20 hang on just a second, please.

21 That total of 110,000,566 then gets taken out
22 of the -- out of the calculation and what you are left with
23 is -- is essentially 17,000,010 -- \$17,010,550 which then go
24 through this series of calculations.

25 Q. And you would agree with me in this case

1 during this time period the price protection incentive
2 portion of the program was disabled; is that correct?

3 A. The price protection incentive component was
4 disabled?

5 Q. Yes, sir.

6 A. That is correct. But the price protection
7 dollars that are sold were -- still define the amounts in
8 the last three days. I mean, the dollars are still defined
9 as sales in the last three days --

10 Q. And --

11 A. -- that go --

12 Q. -- where does that specific definition appear
13 in the tariff?

14 A. Well, you have to go back into -- again, let's
15 just read through the tariff. Those -- those dollars which
16 are no longer subject to sharing -- you know, when we
17 discussed before that the sharing mechanism under the price
18 protection incentive cease to exist, that now provides that
19 all of those dollars remain in the price protection
20 incentive, all 11--

21 Q. But my question is, where does that definition
22 appear in the tariffs? Where can I find that?

23 A. By virtue of the sharing mechanism going away,
24 those dollars remain in the last three days. That -- that
25 is still there. The dollars -- the dollars in the last

1 three days of sales are still going to flow through the
2 price protection incentive as -- it's just without sharing
3 now.

4 Q. Let me ask you some questions again about the
5 description of incentive price stabilization program.

6 JUDGE WOODRUFF: I hate to interrupt your
7 cross-examination, but we are past due for a break. Do you
8 have substantial cross-examination left to go or --

9 MR. MICHEEL: No. I think this is my last
10 line, your Honor.

11 JUDGE WOODRUFF: Let's go ahead and finish
12 with it and then we'll go ahead and take a break.

13 BY MR. MICHEEL:

14 Q. Mr. Mathews, I'm focusing on page 4 there,
15 paragraph 3, the overall cost reduction incentive portion of
16 the program description.

17 A. Yes.

18 Q. Would you agree with me that there's no
19 definition of favorable option purchases contained in the
20 tariff or the program description?

21 A. I would agree with that.

22 Q. And would you agree with me that there's no
23 definition of savings contained in the tariff or the program
24 description?

25 A. I think we've been through this. I believe

1 savings overall savings are defined. We may be dealing with
2 semantics. I don't believe there's a definition section so
3 there's not -- by the nature, not a savings, per se, that's
4 in a definition section.

5 Q. Okay. So because there's no definition
6 section, I mean, there's nothing we can look at other than
7 the words in the tariff to try to define what they mean; is
8 that correct?

9 A. And the words -- yes, the words in the tariff
10 and the remainder of this section that we just discussed
11 deals with how the dollars flow through this tariff very
12 explicitly.

13 Q. You had a discussion with Mr. Bates about
14 trading out of positions before the final three days?

15 A. That is correct.

16 Q. And I think your answer was that the reason
17 Laclede did that was because it was faced with funding
18 problems; is that correct?

19 A. That was certainly a big -- a big factor. The
20 underlying problem we were faced with in -- in June, even in
21 May and March and April as prices were starting to rise, was
22 a difficulty with the funding that became -- became such a
23 problem that when we came, you know -- or when we made the
24 presentations to Staff and then subsequent to that --
25 subsequent to that first meeting, Staff and Public Counsel,

1 on a number of occasions what we were faced with was a very
2 high strike price that -- we -- we thought we would be able
3 to produce better benefits for the customers if we were to
4 modify the -- that was a big, big factor in the overall
5 methodology we operated under through the entire period
6 which did involve rolling in and out of positions.

7 Q. Would you agree with me that the root cause of
8 that funding problem was the fact that Laclede Gas Company
9 requested that the funding level for this program and for
10 all three years be \$4 million?

11 A. I would not.

12 Q. And why not?

13 A. I believe the root cause of that problem was
14 the move in the market.

15 Q. So it wasn't anything that the Office of the
16 Public Counsel did, it wasn't anything that the Staff did,
17 it wasn't anything that Laclede Gas Company did? It's
18 something that the market did?

19 A. I would say that, no, the market -- the market
20 caused the problem. You know, I do believe that Office of
21 Public Counsel and Staff could have played a more active
22 role in producing a better benefit for our customers.

23 I believe that as a result of those meetings
24 that summer, I believe we made many proposals, all of
25 which -- whether it would have been fixed prices -- the

1 first meetings, fixed prices in the \$4 range, collars,
2 whether they be costless or not, which could have had
3 substantial benefits, modifications of the -- of the overall
4 expenditure could have certainly produced a -- even far
5 greater benefit than what we did produce.

6 However, I would say that that was probably
7 the area that when we proposed to all the parties, probably
8 caught most of the attention.

9 Q. Hopefully one last question.

10 MR. MICHEEL: I'm sorry, your Honor.

11 JUDGE WOODRUFF: Go ahead.

12 BY MR. MICHEEL:

13 Q. Would you agree with me that if the company
14 had not opted out of the price protection -- or of the
15 requirement to protect 70 percent of its flowing supplies
16 and kept that portion of the program in place, that the
17 results would have been different?

18 A. Would I agree with you that had the company
19 not opted out, that what results would have been different?

20 Q. Well, that the results of the program would
21 have been different had the -- the ability to protect the
22 70 percent versus the 40 percent, would the results of the
23 program have been different?

24 A. Had we not opted out -- you mean would the
25 other calculation have still been in place and would there,

1 therefore, have been different results had we not opted out?

2 Q. Yes.

3 A. The nature of the tariffs is such that that

4 would have been a different result.

5 Q. And did Mr. Sommerer calculate that result in

6 one of his schedules?

7 A. No.

8 MR. MICHEEL: Thank you very much.

9 JUDGE WOODRUFF: Thank you. And with that, we

10 will take a break and we'll come back at 3:15.

11 (A RECESS WAS TAKEN.)

12 JUDGE WOODRUFF: And I'll get us back on the

13 Internet here.

14 And that completed cross-examination of

15 Mr. Mathews, so we'll now come to questions from the Bench.

16 And, Commissioner Gaw?

17 COMMISSIONER GAW: Thank you.

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. If I could try to limit this the best I can

22 here. Can you give me an idea about the reason why there

23 were so few hedges evidently that were done in March and

24 April and even into May of 2000 by Laclede?

25 A. Sure.

1 Q. Do you know why that was?

2 A. Sure. It's really two-fold. First and

3 foremost, there was very consistent perspective amongst the

4 experts that --

5 Q. Hold on a second.

6 COMMISSIONER GAW: Is his microphone on?

7 JUDGE WOODRUFF: You just need to speak into

8 it.

9 THE WITNESS: Sorry.

10 BY COMMISSIONER GAW:

11 Q. Thanks.

12 A. First and foremost, there was a very

13 consistent recommendation amongst EIA, Goldman Sachs, there

14 are others out there. Our broker, RMI, was expecting a

15 price correction as well. They do a number of analysis

16 which -- or a number of different type of analysis for

17 different customers, but the government, EIA and Goldman

18 Sachs are both very well respected. We both -- we use both

19 of those.

20 We -- when we looked at it in March and April,

21 we considered levels of potential purchase on a number of

22 different occasions. We were never given an opportunity

23 really to -- because of a gradual decline and then a steep

24 decline to beat the 4.70, and we knew we'd been criticized

25 for \$4 options the year before. That was in the back of our

1 mind.

2 We really had hoped for a price correction.
3 On May the 4th, we made a determination, despite the rising
4 prices, to try to get a level of coverage on. It was going
5 to be expensive but, unfortunately, we only got one trade
6 that we were able to buy before what we perceived to be
7 expensive became too expensive and we were going to go
8 through the money way too quickly. So we went back into the
9 same mode.

10 Unfortunately, the -- that May 4th date when
11 we determined it was -- it was time to go ahead and make
12 every attempt to try to get something on coincided with a
13 sharp incline.

14 Q. So your testimony is that prior to that
15 May 4th date, it was the conclusion of Laclede based upon
16 the input that you were receiving from the people who you
17 normally would get input from on analyzing the potential for
18 future prices --

19 A. Yes, sir.

20 Q. -- that it was not the right time to buy?

21 A. Yes. And in the marketplace from the
22 pricing -- from a pricing perspective, you know, the
23 reasons -- there were a number of reasons for that, you
24 know, some of them less -- less convincing.

25 You never want to count solely on weather.

1 The lag time on rig counts was such that the drilling
2 increases should have been coming on at that point in time
3 from rig account increases six and nine months prior. Some
4 of the other things, however, remain the -- were more the
5 price trend. If you looked at the forward curve at that
6 point in time, it was at a higher level than it had been in
7 roughly four years.

8 Q. And what did that mean?

9 A. What -- what that really meant was that it
10 appeared that the market was at a -- at a price that was too
11 high to buy. And especially in light of all the experts
12 saying that these more fundamental factors were going to
13 cause the market to adjust.

14 We -- we believed that -- well, we certainly
15 believed that buying at this price level -- we had to be
16 very cautious about buying at such a high price level. We
17 had been criticized for \$4, so 4.70 to \$5 was difficult to
18 consider on its own.

19 But in light of the fact that we were at a
20 historically high level and the forward price was at a
21 higher level than what the projections indicated, we really
22 wanted -- we wanted to give every opportunity for the market
23 to give us a better chance to buy.

24 Q. In retrospect, of course, the market did
25 exactly the opposite of that. Right?

1 A. Yes, sir.

2 Q. And so we ended up with prices, although there
3 were some ups and downs, escalating dramatically before it
4 was all over. Would that be right?

5 A. At -- yes. I mean, the escalations
6 occurred -- if you look at the strip, the escalations
7 occurred during limited periods. One very short period in
8 May, then not a lot of escalations, some moderate
9 escalations, some pull-backs in price and then one monster
10 escalation.

11 Q. Yeah. And when Laclede made the decision to
12 pull out of the -- as I think it's been phrased by Laclede,
13 one part of the incentive program, was that done pretty
14 close to the date that the notice was given to the
15 Commission? Was that decision fairly close to that point?

16 A. The final decision certainly was. I mean, we
17 were hoping not to make it. You know, we were hoping to get
18 that opportunity, the final decision was made right then.

19 Q. Yeah. And, of course, if purchases would have
20 been made during that time frame -- I'm not asking that this
21 be a standard that you be held to. I'm just asking the
22 question.

23 From the standpoint of what would have
24 happened if purchases would have been made in March and
25 April and even perhaps into May that were similar to what

1 had been done the year before by Laclede, about how much
2 would have been hedged, if you recall?

3 A. We -- we had a different -- the year before
4 was very different because of the late start date.

5 Q. Okay.

6 A. I mean, the year before, we were -- we
7 literally didn't have a lot of time to wait. But if you
8 take a good indication of what our first set of purchases
9 would have been and would have been probably on that -- in
10 that May 4th time frame, would have been approximately what
11 we did on July -- I think it was -- pardon me. I can --

12 Q. Sure.

13 A. -- tell you real quickly. July the 26th we
14 purchased 1,000 contracts. That's 10 billion cubic feet.
15 On that May 4th date all we were able to cover was a half of
16 a billion cubic feet, 500,000 MMBtu.

17 Q. Okay.

18 A. But that would have been the purchase program
19 we would have liked to have got in place had we not had the
20 market move dramatically. I believe that even had we done
21 that, we would have still been forced after that abrupt
22 change in May to have opted out.

23 Q. And explain that to me, if you would, about
24 why even if you had made some of those purchases prior to
25 the May 4th date or on or before then, why you think it

1 would have been necessary to get out anyway.

2 A. Well, I mean -- of course, it's --

3 Q. I understand you're speculating.

4 A. It's definitely speculating. It's just

5 that -- what I wanted to indicate to you was just that this

6 wasn't the type of a level of purchase that -- it would have

7 been a -- you know, in a sense, a dollar cost averaging

8 attempt.

9 Q. Okay.

10 A. In light of the fact of all the prevailing

11 conditions, I can't -- I can't imagine a circumstance where

12 we would have put a sufficient amount on and it wouldn't

13 have been enough because of the -- the steep incline. The

14 option values just -- they went to all -- to dramatically

15 new levels.

16 Q. And is that because of the amount you had to

17 work with to begin with, the 4 million, in light of the

18 prices?

19 A. I believe that the -- what -- it was a cause

20 and effect. I mean, what we experienced was something we'd

21 never experienced before. But once we hit June, that's when

22 you looked at the market and you looked at how drastically

23 it had changed and you saw something you'd never seen

24 before, which was essentially a strike price required under

25 the program that was approaching at different times 10 to 12

1 dollars to -- and that would be all you could buy for the
2 \$4 million.

3 So what -- what would have cost before -- or
4 what would have cost you \$4 million for the same amount of
5 coverage, you could have only bought 10 or 12 dollar
6 coverage. That's kind of why --

7 Q. I see. Okay. And that's for a certain amount
8 of -- when you're talking about certain amount of coverage,
9 you're talking about certain amount of volume coverage?

10 A. Yes, sir. It's the program coverage and
11 it's -- it is a tiered -- it's a tiered series of volumes
12 over the November/March period that reflect 70 percent of
13 our normal purchases.

14 Q. So if the 70 percent figure were adjusted,
15 that price might have been different --

16 A. Correct.

17 Q. -- I would assume --

18 A. Correct.

19 Q. -- for what you could have built with the
20 4-million-some-odd-dollars?

21 A. And that is ultimately -- with the relaxation
22 of that 70 percent, we were able to get into strike prices
23 in the range of most -- most of what we purchased throughout
24 the fall was in the 5 to 6 dollar range.

25 They were still expensive, quite a bit more

1 than the average price. There's a -- Mr. Sommerer
2 characterized an average price under the program I believe
3 yesterday as roughly 12 cents, that's in the ballpark. I
4 think it's 10.8 that you have to spend per option. That
5 doesn't mean you'd spend that per option. It depends when
6 you do it and what you buy at any given time in the market.

7 Q. The concept of savings, which has been
8 discussed a lot in this hearing, when we're dealing with the
9 portion that Laclede says remained after the opt-out --

10 A. Right.

11 Q. -- can you help me to understand why there was
12 a policy reason to have adopted -- I'm not expecting you
13 necessarily to know the answer to this, but if you do, what
14 policy reason would there be for having the provision left,
15 have a disincentive -- or excuse me -- an incentive for
16 selling prior to the last three days of trading? Because
17 that appears to be what we end up with if Laclede's position
18 is confirmed here.

19 A. I don't -- I would -- I would beg to differ if
20 we had adequate funding.

21 Q. All right.

22 A. I mean, I believe that what we ended up with
23 because we rolled in and out of positions was -- because of
24 the inadequate funding mechanism, was an uphill battle. We
25 never did get the back of the winter covered adequately.

1 We were rolling in and out of positions to do
2 that and we indeed started with \$4 million and ultimately
3 purchased almost \$9 million worth of options which resulted
4 in 33 million.

5 From a policy perspective and in light of
6 where we were when we developed this program, I believe it
7 made perfect sense because we were in an incentive
8 environment and we did -- did believe that as a package
9 when -- when you had to pull out because of a radical change
10 in the market environment, you should still be incentivized
11 to do everything you can and be committed to do everything
12 you can to produce the best result and that that was a
13 natural time to -- to have an incentive in place.

14 Q. And my question here is -- I mean, when you
15 put the rest of the package with it, then you have -- you
16 have an incentive that sort of counters -- or at least takes
17 care of the incentive that's supposedly left in this to sell
18 early --

19 A. Right.

20 Q. To sell earlier. And I guess what I'm asking
21 you is, when you remove that portion, from a policy
22 standpoint, what is the -- what positive policy
23 considerations are there in having a tariff which would
24 encourage Laclede financially to sell prior to that last
25 three days, if you know?

1 A. Well, I think I do. I -- I believe that the
2 one thing you get into in a market -- this again -- this is
3 kind of looking back at what we experienced, but there were
4 a lot of times through the series of valleys and peaks in
5 this market when you could take advantage of a good
6 decision.

7 And I believe for that reason you can produce
8 a better result through -- through your market knowledge,
9 through good sound trading, you know, not -- not speculative
10 trading. I mean, what we really did was we rolled into
11 positions when we could acquire them trying to buy them in
12 the valleys.

13 We tried to roll some of the -- to the best of
14 our ability, you know, to roll out when there was value to
15 them put into a month that we -- we heretofore hadn't been
16 able to cover. And that was the very successful effort that
17 produced the \$33 million.

18 I believe that it was that commitment that --
19 from a policy stand-- I'm not doing a very good job of
20 answering your question, but from a policy perspective, it
21 came along with the company's commitment to use its
22 expertise to do the very best they could and it was sort of
23 a trust thing. It was really that there could be
24 opportunities even -- even in a market you would opt out,
25 there may still be opportunities to produce a good benefit.

1 Q. And I'm going to keep following up for just a
2 little bit here. If we were looking at a provision that
3 provided Laclede the same sharing for selling or for holding
4 until the last three days --
5 A. Yes.
6 Q. -- would you say that was better policy than
7 what appears to be the policy that's being enunciated by
8 Laclede's position?
9 A. See, I think my disconnect -- I have a problem
10 with the whole discussion of that and that whole effort
11 because I don't believe we did anything -- I don't -- I
12 don't believe that the numbers support an environment where
13 we were pulling money out of this to put in our pocket. The
14 numbers supported a company that was fighting an uphill
15 battle.
16 Q. Let me, if I could, interject here. I'm not
17 necessarily suggesting that Laclede did or did not do
18 anything as a result of that incentive with my question.
19 A. Yeah.
20 Q. I'm asking why that makes good policy sense to
21 have an incentive for Laclede to sell before those last
22 three days?
23 A. I -- I believe that the results prove that it
24 was a good policy. I believe had -- at a number of
25 different times you could have purchased options that would

1 have -- would have virtually all expired worthless. At a
2 number of different times you could have purchased more
3 options that would have had more value, but by leaving that
4 incentive in there, you did -- you did create an environment
5 where we could take a measured approach to this and that is
6 what we did.

7 We didn't -- we took some of the positions off
8 at various different times and in doing so absent -- absent
9 a revision to the funding mechanism, it still gave you an
10 opportunity to -- I mean, if you would have gone strictly
11 into a buy and hold strategy, you would have made a decision
12 at some point in time and it would have been either right or
13 wrong and you would have given up on trying to take
14 advantage of market opportunities and we never would have
15 produced the \$9 million that ultimately produced the 33.

16 Q. I think I'm not making myself clear on my
17 question or maybe I'm just not understanding your answer.
18 What I'm asking you is not whether or not there should have
19 been an incentive, but whether or not the incentive should
20 have been to sell prior to the three days as opposed to an
21 incentive to share regardless of when the selling took
22 place.

23 A. I think --

24 Q. Do you understand what I'm asking?

25 A. I understand the difference. I -- yeah.

1 Q. And do you have -- do you have a different
2 response to that question than what you've already given to
3 me?

4 A. I don't have a strong opinion as to whether
5 you'd have come out better if you would have been sharing in
6 both. I -- I think because of this measured approach I
7 described, you know, where we -- we didn't -- we really sold
8 very -- we sold very few options right before the last three
9 days. You know, I think that would have been a problem if
10 you had a lot of sales right before. What you had was less
11 than 10 percent.

12 Q. But, in essence, what I hear you telling me is
13 that Laclede made its decisions to sell and the timing on
14 sales irrespective of the incentive being in place.

15 A. We really did. We were trying to produce a
16 better overall result throughout -- throughout the entire
17 period. And it really had to do with the fact that the
18 prices, once we got into winter for January and February,
19 were in lock step and we had no February coverage.

20 And when we started rolling out in some of the
21 those January positions and buying February coverage, it was
22 very, very expensive. And you could have seen it -- making
23 that decision, you could have seen it disappear and, in
24 fact, we did through the first -- I would say not the first
25 two weeks, but about probably day 3 of December through

1 maybe day 18 of December, somewhere in that couple-week
2 period of time you saw dramatically different values each
3 and every day.

4 So the benefits under the program were
5 changing dramatically, the coverage for the customer -- the
6 adequacy of the coverage was changing dramatically. And we
7 didn't have February covered. So that's -- you know, the
8 strategy was a sound strategy. Still not sure I answered
9 your question.

10 Q. Well, I think -- I think you may have. What I
11 think you're telling me is that Laclede is -- the decisions
12 Laclede made were made without regard to the incentive; is
13 that --

14 A. I would -- I would say that the incentive was
15 definitely in, you know, the back of our mind. The best
16 overall result was very much what we were trying to do and
17 the reason for it, again, is the -- the lack of protection
18 in the back months.

19 We -- we did some -- we did some things in
20 hindsight that look -- that look perfect. Obviously we did
21 some things in hindsight pursuant to Mr. Sommerer's schedule
22 that don't look perfect. But the lion's share of what we
23 rolled into and spent a great deal of money on February, we
24 decided we were fighting too much of an uphill battle and we
25 took it off. And that could have been a decision that would

1 have looked bad had prices gone to, you know, another --
2 another new price level.

3 Q. But your statement that the incentive was in
4 the back of your mind -- I apologize for belaboring this
5 point, but your testimony is that the incentive was a factor
6 in -- or not a factor in the timing of the sales made by
7 Laclede?

8 A. Okay. The incentive was not a factor in the
9 timing of the sales. The incentive was definitely
10 subordinate to trying to produce this best overall result.

11 Q. And help me to understand this. Is it not
12 Laclede's position that the incentive is a measure of the
13 difference between the purchase price -- and I'm ignoring
14 the sharing percentages, but is measured by the difference
15 between the purchase price and the sales price --

16 A. That --

17 Q. -- as long as it was sold prior to the last
18 three days?

19 A. Taking into -- pardon me. Taking into account
20 the other factors in the calculation, that is almost right
21 on point.

22 Q. All right.

23 A. Yeah. That's almost all of it.

24 Q. But the incentive -- okay. But the incentive
25 does not exist if you hold to the last three days?

1 A. That -- after the opt-out, that is correct.

2 Q. Yeah. So and I think that --

3 COMMISSIONER GAW: I think I'll stop there. I
4 think I'll stop there. Thank you.

5 JUDGE WOODRUFF: Okay.

6 COMMISSIONER GAW: Thank you, sir.

7 THE WITNESS: Okay.

8 QUESTIONS BY JUDGE WOODRUFF:

9 Q. I have one question and it concerns something
10 you state on page 11 of your Surrebuttal Testimony. You
11 indicate that Laclede had no choice but to opt out of the
12 price protection incentive when it did. And you say short
13 of exposing itself to financial ruin, it was the only step
14 the company could take.

15 Can you explain to me what you mean by
16 financial ruin and why would the company be facing financial
17 ruin if it didn't opt out?

18 A. Because we would have -- we would have
19 provided -- at that point in time in a marketplace that had
20 moved to a dramatically higher level, we would have had a
21 guarantee for 36 billion cubic fee, 36.88 billion cubic feet
22 of gas.

23 Q. You would have had to guarantee that?

24 A. We would have had to guarantee the difference
25 between the CPL and that and whatever the price would have

1 ultimately gone to.

2 Q. You would have had to spend more than
3 \$4 million that was being provided by the customer; is
4 that --

5 A. Absolutely. At various different times we
6 would have gone to a number of different levels to cover
7 something in the low \$5. It approached \$10 million.

8 Q. And that was that 70 percent coverage figure.
9 Is that where we're coming from?

10 A. Yes, sir.

11 Q. Okay. Now, ultimately there was a Stipulation
12 and Agreement to remove that 70 percent requirement?

13 A. That is correct.

14 Q. Okay. Why was it at that point -- at that
15 point would the company have been able to go back into the
16 incentive if it were going to agree to do that?

17 A. If we would have made modifications to -- to
18 address different funding levels, we certainly could have --

19 Q. Is that what the company was proposing?

20 A. What we were proposing at the time really was
21 a -- a much more portfolio approach to take into some -- to
22 take into account some strategies that weren't authorized
23 under this program. We really thought collars were probably
24 the better approach on a portion, but probably some fixed
25 costs would make sense on whatever we could agree to. You

1 know, in combination some level of increased funding --
2 Q. I presume --
3 A. -- then would have needed to be considered.
4 Q. That would have required more money from the
5 customers to fund that, I assume?
6 A. That is absolutely correct.
7 Q. And more money -- more of their money would
8 have been at risk?
9 A. More money would have been at risk, but we --
10 we've said in these proceedings previously and we believe it
11 to still be a reasonably moderate amount. Again, this is
12 hindsight, but --
13 Q. Yeah.
14 A. -- you know, for another percent and a half of
15 overall gas costs you could have -- you could have had two
16 and a half times the coverage.
17 Q. Of course, obviously nobody knew what the gas
18 prices were going to do for sure?
19 A. Nobody could have dreamed \$10.
20 JUDGE WOODRUFF: That's all the questions I
21 have then, so we'll go to recross beginning with Staff.
22 MR. BATES: Thank you, your Honor.
23 RECROSS-EXAMINATION BY MR. BATES:
24 Q. Mr. Mathews, would you please turn to
25 Schedule 6-2 in Mr. Sommerer's Surrebuttal Testimony?

1 A. Did you say 6-2?

2 Q. Right.

3 A. Uh-huh. Yes, sir.

4 Q. Now, does this schedule show the cash flows

5 from purchases and sales of options by Laclede?

6 A. Actually, hang on a sec here. Okay. This --

7 this shows the cash over the period, yes, sir.

8 Q. Okay. What does the schedule show that the

9 cash balance was after the sale on November 27th, 2000?

10 A. On what date? November --

11 Q. 27th, 2000.

12 A. 6,912,350.

13 Q. Okay. And how many --

14 A. This is an eye test. I apologize.

15 Q. How much did Laclede spend on options in

16 December 2000 and January 2001?

17 A. Let me go to a different schedule, Mr. Bates,

18 and --

19 MR. PENDERGAST: Your Honor, I thought this

20 recross was supposed to be basically limited to questions

21 from the Bench and I'm not sure what questions from the

22 Bench there are that are eliciting these questions.

23 JUDGE WOODRUFF: Would you respond?

24 MR. BATES: Your Honor, I think Commissioner

25 Gaw asked Mr. Mathews several questions about buying and

1 selling on the part of Laclede.

2 JUDGE WOODRUFF: I don't think he asked
3 anything in this great specificity. Is this leading
4 somewhere?

5 MR. BATES: Yeah.

6 JUDGE WOODRUFF: Okay. I would, of course,
7 like to move things along today and if there's a way to do
8 this short of asking him to read tiny numbers off of
9 schedules that are in evidence, I'd certainly prefer you do
10 it that way. I'm going to allow you the discretion to ask
11 your questions as you wish, but keep in mind we do need to
12 move this along.

13 MR. BATES: Thank you.

14 THE WITNESS: Okay. You would like a separate
15 number of how much money we spent on purchases in the month
16 of December and the month of January?

17 BY MR. BATES:

18 Q. Right. On options.

19 A. Okay. Subject to checking these numbers, and
20 I'll do it at our next break, could I throw these out --

21 Q. Yes.

22 A. -- that I rather quickly --

23 JUDGE WOODRUFF: You either know it or you
24 don't. I can't let you say subject to check.

25 THE WITNESS: I've gone down through the

1 schedule and I think -- let me just double check.

2 JUDGE WOODRUFF: You don't need to double

3 check it. Say as best you can give me the information.

4 THE WITNESS: My 10-key skills --

5 JUDGE WOODRUFF: There may not be another

6 break to check.

7 THE WITNESS: Let me just check. Real quick

8 ballpark check to make sure I didn't miss anything.

9 JUDGE WOODRUFF: That's fine.

10 THE WITNESS: I apologize. It didn't look

11 right on the face of it, so this will be real quick.

12 Okay. \$2.8 million in December and 559,800 in

13 January.

14 BY MR. BATES:

15 Q. Would you agree with me that funding Laclede's

16 further option purchases did not require any sales in

17 December?

18 A. I would not agree that funding -- what we had

19 uncovered would have required that. We -- we could have

20 very well spent a lot more money which ultimately would have

21 had little or no value.

22 Q. Let me ask you one last question. Going back

23 to Schedule 6-2 of Mr. Sommerer's Surrebuttal Testimony,

24 would you look at December 19th and would you read the

25 figure that Laclede had on hand for cash at the end of

1 December 19th, 2000?

2 A. Give me it -- David Sommerer --

3 Q. Surrebuttal.

4 A. -- Surrebuttal.

5 Q. Schedule 6.

6 A. The same series of numbers we were --

7 Q. Right.

8 A. At the end of which day?

9 Q. December 19th, 2000.

10 A. December 19th, 2000. And you want the end of

11 the after -- after that day of trades?

12 Q. Right.

13 A. \$14,180,350.

14 Q. So that's \$14,180,350?

15 A. Correct.

16 Q. Okay. Based upon -- excuse me. One more.

17 Based upon the portfolio approach you

18 discussed in answer to Commissioner Gaw's question, could

19 Laclede have purchased a fixed price for part of its supply

20 for the winter of 2000/2001?

21 A. We didn't have authority to do so. We would

22 have had to have gotten -- well, we would have had to have

23 pursued board authority. Certainly the board of directors

24 would have needed to know the risks associated with such a

25 purchase. We -- had we had an understanding or cooperation

1 on the part of the parties, we would have quickly achieved
2 such authority.

3 Q. So the authority that you were lacking was
4 from your own board, not from anyone else?

5 A. I don't believe that to be the case. I
6 believe that we were in an environment where -- and I don't
7 mean for this to be harsh, but I think the Staff picked a
8 poor time to quit pre-approving programs. And that's
9 exactly what happened that summer.

10 We came forward with a lot of really
11 innovative ideas which would have been extremely valuable in
12 hindsight, would have provided great amount of protection
13 under any of the circumstances, any of the proposals we
14 raised. And I -- I -- I believe that at that point in time
15 we were in an environment where the parties, although they
16 didn't always agree, had -- had -- had had an expectation of
17 cooperation and cooperative decisions.

18 Q. But your answer was that the authority that
19 you lacked was from the board --

20 A. The authority --

21 Q. -- of Laclede?

22 A. -- would have been -- I would not have been in
23 a position, Mr. Neises would not have been in the position
24 to go to our board without the cooperation of Staff because
25 that had become an expectation, because we were under all

1 programs that before we would go out into the hedging
2 market, we would have an understanding as to what the
3 parameters that the Missouri Public Service Commission could
4 live with on those purchases.

5 Q. But the authority was from the board? Those
6 were the people that would have given you the authority?

7 A. We could have -- we could have gone to the
8 board of directors had we had cooperations from the Staff.
9 The authority would have actually come from both.
10 Technically we didn't have either.

11 Q. But there was nothing in the agreement --
12 nothing in the program that prohibited you from going to the
13 board?

14 A. There was nothing in this program as it
15 existed that gave us authority to do anything except call
16 options. This program did prohibit anything but call
17 options. We were asking for the authority to expand this
18 program beyond call options.

19 MR. BATES: Thank you.

20 JUDGE WOODRUFF: Mr. Micheel?

21 RECROSS-EXAMINATION BY MR. MICHEEL:

22 Q. Mr. Mathews, Commissioner Gaw asked you some
23 questions about the concept of savings. Do you recall those
24 questions?

25 A. Yes.

1 Q. And I believe in part of your answer you said
2 that the company did not have enough funding so it rolled
3 out of positions; is that correct?

4 A. In that discussion, certainly.

5 Q. Okay. I want you to assume for me that you
6 got -- I guess Public Counsel gives authority and so does
7 the Staff. You got our authority to increase the funding
8 for that program for \$10 million. The authority that --

9 A. To \$10 million?

10 Q. Yeah. And that's the level that the company
11 had requested, is it not, the \$10 million?

12 A. In our filing we -- the parties -- Public
13 Counsel and Staff and the company discussed a number of
14 different levels that all the -- ultimately is what we filed
15 for.

16 Q. So assume that the company was granted that
17 request and we saw our way clear and the Staff did and we
18 did a unanimous stipulation and gave you a funding level of
19 \$10 million. Can you make that assumption?

20 A. I can make that assumption.

21 Q. Would you agree with me that irrespective of
22 the funding level, we would still have this problem with
23 respect to how you define savings before the last three days
24 of the NYMEX contracts?

25 A. I believe that it -- you have to make a

1 determination as to what -- what all the modifications that
2 we put into place at that point in time are.

3 Q. Right. But in response to Commissioner Gaw's
4 question you indicated that you rolled out of your
5 positions --

6 A. Correct.

7 Q. -- because you didn't have enough funding?

8 A. Correct.

9 Q. And I'm saying assume that you had the funding
10 level that Laclede wanted, the \$10 million --

11 A. Correct. And that's all we're going to
12 change? Is that the only changing we're making in the
13 program in this case?

14 Q. Yes, sir.

15 A. So, in other words, we have opted out --

16 Q. Yes, sir.

17 A. -- and we have changed the MRA from 4 to 10.
18 You want me to assume that?

19 Q. Yes, sir.

20 A. And then --

21 Q. My question is, assuming that funding level,
22 we still have this issue like on that chart of when you --
23 how to define savings since you opted out of the price
24 protection program for the trades that you did prior to the
25 last three days in the NYMEX contract, don't we?

1 A. I don't know what we would have had. I can
2 tell you we would have purchased options totally
3 differently. We would not have been in the -- we would not
4 have had the same mind set for option liquidation. We may
5 very well not have been here today.

6 Q. Let me ask you this. Is it your testimony
7 that if the funding level had been at the \$10 million that
8 Laclede requested, that it would have held all of its
9 options until the last three days of trading?

10 A. That is not my testimony.

11 MR. MICHEEL: Thank you, Mr. Mathews.

12 JUDGE WOODRUFF: Redirect?

13 MR. PENDERGAST: Thank you, your Honor.

14 REDIRECT EXAMINATION BY MR. PENDERGAST:

15 Q. Just a couple of questions, Mr. Mathews.
16 Mr. Bates asked you a question about falling prices and can
17 falling prices hurt consumers. Do you recall that?

18 A. Yes.

19 Q. Well, let me give you a scenario. If you have
20 purchased some options --

21 A. Okay.

22 Q. -- and you have purchased them at a certain
23 amount and they have achieved, say, a certain value, let's
24 say they've achieved a \$3 value. Are you following me?

25 A. Okay.

1 Q. If falling prices then occur and you do not
2 sell that option but continue to hold onto them, is there a
3 possible for -- possibility for customer detriment there?
4 A. In that case, I would consider that to be a
5 detriment to the customer.
6 Q. And can you please explain how that detriment
7 can occur?
8 A. On -- on its own that -- the value of that
9 option which appeared for a short amount of time would
10 disappear.
11 Q. Okay. And was that kind of detriment ever
12 experienced by the company in prior years of its price
13 stabilization program?
14 A. You mean where prices remained low in previous
15 years and the value of the insurance was simply insurance
16 value?
17 Q. Yes.
18 A. That is correct.
19 Q. And were there any instances where options had
20 a value at one point but because of falling prices they lost
21 that value?
22 A. Absolutely, yes.
23 Q. Okay. And, secondly, can falling prices also
24 have an impact on customers if you don't let them have those
25 falling prices by locking in a fixed price?

1 A. That would be correct.

2 Q. And is that the main point of your testimony
3 when you indicated that because we had these additional call
4 options, that the company had purchased -- or through its
5 contribution of \$4 million to the subsequent year that it
6 was able to forego fixed prices?

7 A. In that subsequent year when -- when others
8 were fixing prices at a higher priced environment, being
9 able to supplement the -- being able to essentially double
10 the coverage ended up producing a substantial benefit that's
11 the \$30 million.

12 Q. And because the company had call options
13 rather than fixed prices, were customers able to fully
14 participate in those price declines?

15 A. In year -- in year three because of the --
16 yes, we ultimately bought substantially cheaper gas supplies
17 in the -- in the year that the options didn't -- didn't end
18 up providing anything more than insurance.

19 Q. Okay. And, in your view, was it the
20 additional call option protection or not that you were able
21 to get during that third year because of your intermediate
22 trading activity that allowed you to forego those fixed
23 price instruments?

24 A. Absolutely was.

25 Q. Okay. And if there was somebody -- or if

1 somebody wanted to go ahead and say that the definition of
2 savings under the overall cost reduction wasn't entirely
3 clear and needed to be fleshed out, would it be fleshed out,
4 in your opinion, appropriately to say that that \$30 million
5 in savings should also be eligible for sharing with the
6 company?

7 A. I would say that my \$30 million analysis is
8 virtually analogous to the type of analysis that the Staff
9 has done in this case.

10 MR. PENDERGAST: May I approach the witness?

11 JUDGE WOODRUFF: You may.

12 BY MR. PENDERGAST:

13 Q. You were asked a number of questions about
14 various option purchases and we're talking about specific
15 results here -- well, let me just ask you the number rather
16 than giving dollar amounts.

17 Is what I've handed you a summary of the
18 option purchases and sales that Laclede, in fact, made
19 during the 2000/2001 ACA period?

20 A. Yes, it is. Sorted by date.

21 Q. Okay. And does it generally show that at
22 least for its initial sales of options, that -- and I was
23 thinking of sales that occurred between 8/9/2000 and
24 10/12/2000 -- that Laclede sold those prior to the last
25 three business days?

1 A. That is correct.

2 Q. Okay. And if Laclede had not sold those
3 during the last three business days, do you have an opinion
4 or do you know whether or not they would have fallen in
5 value and Laclede would not have achieved as much if it held
6 them until the last three business days?

7 A. If I can have a second. It appears that most
8 of those would have -- would have had little or no value.
9 Just a second.

10 There's -- all of those would have expired
11 without value except -- except one.

12 Q. Okay. And so would it be fair to say that by
13 selling them out early, Laclede had more money available
14 later on to purchase additional insurance than if it had
15 held them?

16 A. Would you ask that again, please?

17 Q. Yeah. So is it fair to say that by trading
18 them early, prior to the last three business days, not
19 holding them until the last three business days, that
20 Laclede was in a better position at the end of that month
21 and had more funds to purchase additional insurance?

22 A. Yeah. This period produced quite a bit of
23 funding and, yes -- the answer's yes.

24 Q. And if could direct your attention to sales
25 that took place in November. And I won't go into specific

1 dollar amounts, but the first four sales reflected there by
2 dates were ones that the company made before the last three
3 business days; is that correct?

4 A. That -- that is correct.

5 Q. And that amounts to a couple hundred thousand
6 dollars; is that correct?

7 A. Nearly, yes, 100 and -- yes, 195, I believe.

8 Q. Okay.

9 A. Roughly.

10 Q. And then if we move along, the next one, two,
11 three, four, five, six, seven, eight sales were sales that
12 Laclede made during the last three business days; is that
13 correct?

14 A. That is correct.

15 Q. Okay. And that amounts to several million
16 dollars; is that correct?

17 A. Yes. Well over \$2 million --

18 Q. Okay.

19 A. -- for those 8 trades, yes.

20 Q. In fact -- I'm sorry. And then Laclede made
21 another one, two, three, four, five, six trades and were
22 they all --

23 A. Another couple million dollars, yes.

24 Q. And those were all during the last three
25 business days?

1 A. That is correct.

2 Q. So Laclede was certainly proceeding under this
3 where, in these stages, it was holding these until the last
4 three business days; is that correct?

5 A. Significant amounts of protection.

6 Q. And is that because you thought that's the
7 approach and that's the strategy that would produce the best
8 overall result for Laclede's customers?

9 A. Absolutely.

10 Q. Okay. You were asked a couple of questions
11 about Staff Data Request No. 64. Do you recall those, by
12 Mr. Bates?

13 A. Yes. Yes, I do.

14 Q. Okay. And he asked you questions about
15 whether the company's response to these data requests
16 provided the company's rationale for the various -- or its
17 state of mind and that sort of thing for the various option
18 purchases and sales that it made; is that correct?

19 A. That is correct.

20 Q. And in your response -- or in Laclede's
21 response to that you say the company provided the Staff for
22 its review over 3,000 pages of market and pricing
23 information that the company considered in its option
24 purchase and sales decisions; is that correct?

25 A. That is correct.

1 Q. And is that information that was assessed by
2 the company and had an influence on its state of mind when
3 it made these decisions?

4 A. Yes.

5 Q. Now, you didn't re-make or copy these 3,000
6 pages all over again and provide them in response to this,
7 did you?

8 A. I did not.

9 Q. And can you tell me why you didn't make them
10 over again?

11 A. Well, the -- the lion's share of it was
12 information that we needed to get permission to copy, first
13 of all. I mean, obviously it was voluminous, but we had
14 given it to Staff and they had it for review for almost a
15 year and a half on the premises here and we got it back last
16 fall.

17 Q. Okay. So that was information that had
18 already been provided to Staff?

19 A. That -- the 3,000 pages was actually provided
20 I think 17 months prior to a date when Mr. Cline picked the
21 volumes up last-- last summer or fall.

22 Q. Okay. And subsequent to that, did we make
23 that available to Staff if they wanted to come and see it?

24 A. Certainly, yes.

25 Q. And then you go on in your response to discuss

1 some of the more general considerations that formed the
2 company's state of mind; is that correct?

3 A. That is correct.

4 Q. Okay. And in that response you do talk about
5 the September 1st, 2000 Stipulation and Agreement; is that
6 correct?

7 A. That is correct.

8 Q. And you state that Staff was aware and had
9 been advised from the outset that the remaining provisions
10 of the PSP, including the incentive aspects of the overall
11 cost reduction incentive, were to remain in effect; is that
12 correct?

13 A. Could you ask me that again, please? I'm
14 sorry. I was kind of reading again.

15 Q. Yes. Let me focus your attention on the
16 second page.

17 A. Okay.

18 Q. And you discuss there the September 1st, 2000
19 Stipulation and Agreement; is that correct?

20 A. That is correct.

21 Q. And in that 2000 September -- or that
22 September 1st, 2000 Stipulation and Agreement that was the
23 one where the 70 percent requirement was eliminated; is that
24 correct?

25 A. That is correct.

1 Q. Okay. And then you go on to say that but that
2 Stipulation and Agreement kept all other provisions of the
3 PSP program description in effect; is that correct?
4 A. That's correct.
5 Q. Except for the price protection incentive?
6 A. That is correct.
7 Q. And then you go on to say, As Staff was aware
8 and had been advised from the outset, these remaining
9 provisions included the incentive aspects of the overall
10 cost reduction incentive; is that correct?
11 A. That is correct.
12 Q. And I think you also indicated in a
13 question -- or a response to Mr. Bates that Staff was aware
14 of that as a result of that June 9th meeting that we've
15 talked about?
16 A. That -- that is correct. I mean, that's
17 contemporaneous notes that I have from -- from that meeting
18 indicate Mr. Sommerer asked that question very directly to
19 Mr. Neises, whether the overall cost reduction incentive
20 would continue to be in effect and Mr. Neises answered,
21 Absolutely. And that's right from the notes.
22 MR. PENDERGAST: May I approach the witness?
23 JUDGE WOODRUFF: You may.
24 You're offering this as an exhibit, I assume?
25 MR. PENDERGAST: Yes.

1 JUDGE WOODRUFF: It will be 21.

2 MR. MICHEEL: Your Honor, are we going to get
3 a chance to cross-examine him with respect to this exhibit?
4 I mean, because this is redirect and under Commission rules,
5 you know, I'm out of luck. And, you know, it doesn't seem
6 to me if that's going to be the Commission -- and I don't
7 know what it says yet, but I'm not --

8 JUDGE WOODRUFF: It's not been offered yet
9 either.

10 MR. MICHEEL: I understand that, but I just --

11 JUDGE WOODRUFF: Okay. At this point I'm just
12 marking the exhibit. You can make your objection at the
13 appropriate time.

14 (EXHIBIT NO. 21 WAS MARKED FOR
15 IDENTIFICATION.)

16 BY MR. PENDERGAST:

17 Q. If I could direct your attention to what I
18 have just handed out and what has been marked as exhibit --

19 MR. PENDERGAST: I'm sorry, your Honor.

20 JUDGE WOODRUFF: It's 21.

21 BY MR. PENDERGAST:

22 Q. -- 21. You'd indicated in your response your
23 recollection of having had this direct conversation with the
24 Staff regarding the overall cost reduction incentive
25 remaining in effect wasn't based just on your recollection,

1 but also on contemporaneous notes taken at the time?

2 A. That -- that is correct. This from the

3 6/9/2000 meeting here in Jefferson City. And it's --

4 there's a number of subjects discussed, the slides that we

5 presented, talking about different price strategies and

6 there are some PGA notes in here. But there's the one

7 specific and it says, Sommerer asked, Do we want to still

8 have the incentive on the cost savings aspect? And Ken

9 said, Absolutely.

10 Q. And when it says, Ken said, Absolutely, that's

11 referring to who?

12 A. That is referring to Kenneth J. Neises.

13 Q. And are those notes consistent with your

14 recollection?

15 A. Absolutely.

16 Q. And are these notes an accurate summary of

17 your understanding and recollection of what transpired at

18 that meeting?

19 A. They certainly hit all the facets of that

20 meeting and what -- what was discussed on the various

21 different things we came down to talk about on the price

22 side and then -- and then they touch on the PGA side.

23 Q. Okay. Thank you.

24 MR. PENDERGAST: I have no further questions

25 and I would request that Exhibit 21 be received into

1 evidence.

2 JUDGE WOODRUFF: All right. 21 has been

3 offered.

4 MR. MICHEEL: I would object, your Honor, to

5 the extent that I think it's inappropriate to put exhibits

6 in during recross examination when other parties don't have

7 a chance --

8 JUDGE WOODRUFF: You mean redirect?

9 MR. MICHEEL: Or redirect when other parties

10 don't have a chance to cross-examine according to Commission

11 rules.

12 JUDGE WOODRUFF: Would you like to voir dire

13 the witness about the exhibit?

14 MR. MICHEEL: I'll just make my objection for

15 the record, your Honor.

16 JUDGE WOODRUFF: Okay.

17 MR. PENDERGAST: Your Honor, if I could

18 respond?

19 JUDGE WOODRUFF: Go ahead.

20 MR. PENDERGAST: First of all, I believe that

21 Staff entered some exhibits that they wanted to put onto the

22 record after -- or when they did redirect examination. Or

23 maybe I'm confusing that with what they put on the record in

24 their cross-examination. I don't know. It's Friday, it's

25 late.

1 MR. SCHWARZ: If I might for the record, the
2 exhibit that Staff put in on redirect was the schedule that
3 Commissioner Gaw had requested.

4 MR. PENDERGAST: That's true. That's true.
5 That's true. That's correct. But it's been my recollection
6 that parties have put exhibits in and I believe Public
7 Counsel has on redirect before.

8 And the fact of the matter is these were all
9 matters that were opened up by answers and responses that
10 were given. They are consistent with the responses that
11 Mr. Mathews provided. It's two pages. It could be easily
12 looked at.

13 He's verified that they're an accurate
14 contemporaneous note of his recollection and I see
15 absolutely no reason why they aren't perfectly permissible
16 as material that is being provided in conformance with a
17 proper question and answer on redirect.

18 JUDGE WOODRUFF: Further response?

19 MR. MICHEEL: I didn't mean to get
20 Mr. Pendergast that worked up this late in the day and I
21 apologize, Mike. I wanted to make my objection and part of
22 the reason I wanted to make that objection is to point out
23 my belief that the idea that we can't do recross
24 cross-examination after redirect and after exhibits go in, I
25 think is a violation of due process and a violation of my

1 right, Mr. Pendergast's right, Mr. Bates's right to put on
2 his case.

3 And that's why I said I made the objection for
4 the record and just to point out that I think that is an
5 inappropriate rule that we have at this Commission. And
6 that's the objection.

7 JUDGE WOODRUFF: I don't know of any formal
8 rule to that effect, but I agree with you. So you're not
9 just making it for the record.

10 It is unfair to make this kind of exhibit --
11 to bring this kind of exhibit in at this stage of the
12 hearing because parties don't have a chance to recross. In
13 addition, I think that the document is mostly hearsay. It
14 certainly is to the question of what Mr. Neises may have
15 said at this meeting. On both basis I'm going to deny
16 admission to the document.

17 MR. PENDERGAST: I'd like to make an offer of
18 proof, if I could then, your Honor.

19 JUDGE WOODRUFF: Certainly.

20 MR. PENDERGAST: Thank you very much. I,
21 therefore, make my offer of proof.

22 JUDGE WOODRUFF: And, of course, it's in the
23 record at this point. It's just not admitted into evidence.

24 MR. PENDERGAST: I understand. Thank you very
25 much.

1 JUDGE WOODRUFF: Okay. I believe you can step
2 down then.

3 THE WITNESS: Okay. Thank you.

4 JUDGE WOODRUFF: And you can call your next
5 witness.

6 MR. ZUCKER: We call Michael Cline.

7 MR. BATES: Your Honor, while Mr. Cline's
8 taking the stand, do you have any idea what our schedule
9 will be for the remainder of the day?

10 JUDGE WOODRUFF: We'll go until five o'clock
11 and see. I understand you have something going on in
12 Columbia you said earlier.

13 MR. BATES: That's fine. I can make other
14 arrangements if I can give them a little notice, but
15 five o'clock should be fine.

16 JUDGE WOODRUFF: We'll reassess it at
17 five o'clock.

18 Go ahead and take the stand.

19 (Witness sworn.)

20 JUDGE WOODRUFF: You may be seated.

21 And you may inquire.

22 MICHAEL CLINE testified as follows:

23 DIRECT EXAMINATION BY MR. ZUCKER:

24 Q. Good afternoon, Mr. Cline.

25 A. Good afternoon.

1 Q. Can you state your full name and business
2 address?
3 A. Michael T. Cline, Laclede Gas Company, 720
4 Olive Street, St. Louis, Missouri 63101.
5 Q. And are you the same Michael T. Cline who
6 caused to be filed in this matter Rebuttal and Surrebuttal
7 Testimony premarked as Exhibits 7 and 8?
8 A. Yes, I am.
9 Q. And do you have any changes to your Rebuttal
10 Testimony?
11 A. I do not.
12 Q. Do you have any changes to your Surrebuttal
13 Testimony?
14 A. Yes, I do. I have a change on page 4 of my
15 Surrebuttal Testimony, that's Exhibit 8, specifically,
16 line 9. And this is due to a correction that Mr. Sommerer
17 made to his testimony yesterday. This is just to make my
18 testimony consistent with his correction.
19 Line 9, the first two words "arithmetic
20 average" -- or first three words "arithmetic average of"
21 should be stricken. And the word "lowest" should be
22 inserted between "the" and "closing" and the "s" on the end
23 of price for prices should be struck -- should be struck at
24 well.
25 So line 9 would now read, The lowest closing

1 price of such option during the.

2 Q. And is that the only change to your
3 Surrebuttal Testimony?

4 A. Yes, it is.

5 Q. If I asked you all of the other questions and
6 answers in your Rebuttal and Surrebuttal Testimony today,
7 would your answers be the same as provided therein?

8 A. Yes, they would.

9 Q. And are those answers true and correct to the
10 best of your knowledge and belief?

11 A. Yes, they are.

12 MR. ZUCKER: Judge, I offer Exhibits 7 and 8
13 into evidence.

14 JUDGE WOODRUFF: All right. Exhibits 7 and 8
15 have been offered into evidence. Are there any objections
16 to their receipt?

17 Hearing none, they will be received into
18 evidence.

19 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
20 EVIDENCE.)

21 MR. ZUCKER: Tender the witness for cross.

22 JUDGE WOODRUFF: All right. Beginning with
23 Staff.

24 MR. BATES: Thank you, your Honor.

25 CROSS-EXAMINATION BY MR. BATES:

1 Q. Good afternoon, Mr. Cline.

2 A. Good afternoon.

3 Q. Would you agree with me the price

4 stabilization program that's set out in Tariff Sheets 28-E

5 through G is based upon the proposal set out in Laclede's

6 testimony in Case No. GO-98-484?

7 A. Those tariff sheets originally, as they were

8 filed with the Commission, were a direct outcome of the

9 Commission order in that case and there have been a couple

10 tariff sheets modified since that time.

11 Q. All right. Do you know which tariff sheets

12 have been modified?

13 A. Yes. Sheet 28-E has been modified. Sheet

14 28-F is the original sheet that was filed. And Sheet 28-G

15 was the original sheet that was filed.

16 Q. What has been modified on 28-E?

17 A. Actually, I should say one other thing too. I

18 believe 28-G, the copy I have in front of me, isn't the most

19 recent version. I believe that 28-G also was modified. The

20 reason I don't have it in front of me right is because it

21 was not in effect, I don't believe, during the ACA period

22 that is the subject of this proceeding.

23 But as far as 28-E specifically, what was

24 modified on there was -- most importantly, what's modified

25 there was the reference to the terms modified by the

1 September 1st, 2000 Unanimous Stipulation and Agreement and
2 the reference to the company's notice of opting out of the
3 price protection feature in year two of the program.

4 Q. Would you agree with me that the PSP tariffs
5 were approved for three heating seasons?

6 A. Yes, I agree with that.

7 Q. Would you agree with me that the program
8 approved by the Commission in Case No. GO-98-484 contained
9 the price protection incentive as well as the overall cost
10 reduction incentive?

11 A. That the program approved by the Commission
12 definitely included two incentive and distinct components --
13 incentive components.

14 Q. Would you agree with me that the description
15 of the incentive price stabilization program is incorporated
16 by reference in the Tariff Sheet 28-E?

17 A. Yes. I think that's made clear by the first
18 paragraph on 28-E. There's a reference to the program
19 description. And to a large extent that was due to our
20 desire to keep a lot of the terms of the program at that
21 time confidential because of their sensitive marketing
22 nature.

23 Q. Okay. Would you agree with me that the winter
24 heating season of 1999/2000 was the first heating season of
25 the program?

1 A. I believe that was the first heating season
2 that was -- heating season that was subject to the incentive
3 based price stabilization program, that's correct.

4 Q. And would it be -- would you agree with me
5 that LGC could opt out of the price protection incentive if
6 the market conditions were changed radically?

7 A. There was the opt-out feature. There was a
8 certain window. This wasn't -- it wasn't like there were no
9 restrictions on the opt-out feature. There was a definite
10 time frame during which the company had the right to
11 exercise that opt-out provision so as to ensure that there
12 were -- would be no -- it would not be exposed to very
13 adverse financial consequences.

14 Q. And you don't disagree that Laclede exercised
15 the opt-out provision regarding the price protection
16 incentive during the 2000/2001 ACA period?

17 A. No, I do not disagree that we opted out of
18 that component. I think that was -- that was made clear in
19 the June 2nd, 2000 letter, I believe, from Laclede to the
20 Commission or the Staff. I think it was clear there that
21 that was the only component that was -- that we deemed to be
22 inoperable as a result of our decision.

23 Q. Okay. Now, I'm correct in thinking that
24 you're the director of the tariff and rate administration at
25 Laclede?

1 A. That is correct.

2 Q. Okay. And you're responsible for preparing,
3 filing and administering Laclede's tariffs that are on file
4 here at the Public Service Commission?

5 A. Yes. That is correct.

6 Q. And, therefore, I concede you're an expert at
7 developing tariffs?

8 A. I am probably the -- I -- I -- I would not go
9 so far as to say I'm an expert, but I'm -- I certainly feel
10 like I'm qualified to do that.

11 Q. I agree. And would you agree that it's
12 important to have precise definitions for all important
13 terms of a tariff provision?

14 A. I believe it's important to have definitions
15 for terms where there may be some ambiguity or if there are
16 some new terms, terms that are not in use in common
17 language.

18 But I'm also familiar with many parts of our
19 tariff as well as tariffs of other companies where there is
20 not necessarily a section in the tariff that's preceded by a
21 definition section. And, in fact, you know, we've had
22 recent changes to our tariff that did not necessarily get
23 into certain definitions.

24 So I think it all depends on the technical
25 nature of the language that's being -- that's being

1 inserted. However, in this case with a particular tariff
2 that we're dealing with here, I don't believe there's any
3 ambiguity. I think those terms are -- the terms used in
4 that tariff are pretty well understood.

5 Q. You'd agree with though for the tariffs in
6 questions, which are Sheets 28-E through G, there is no
7 separate definition section?

8 A. There is no separate definition section within
9 that tariff. Now, I believe the program description which,
10 as you point out, is referenced in the tariff sheet, we
11 did -- we did actually define certain costs and gains within
12 that program description.

13 I'm trying to think here quickly if there's
14 any other things -- certainly I can say this much, there is
15 no separate definition section. I won't say there's not a
16 single term in here where there's not a parenthetical
17 afterwards that says this is what we mean by that. There
18 could be something like that, but there's no separate
19 section.

20 Q. Did you develop and design the PSP tariffs?

21 A. Yes, I did.

22 Q. Okay. Did you do that by yourself or in
23 concert with other people?

24 A. No. I definitely did that in concert with our
25 gas supply group. Those are the personnel at Laclede who

1 are -- who developed this program, who are most familiar
2 with the workings of the program. And my involvement was
3 one of getting it into a form -- having them educate me on
4 what the program was about and getting it into a form that I
5 thought was suitable for what we need in a tariff to --
6 to -- in order to implement those provisions down the road.

7 Q. But you were the person that was ultimately
8 responsible for their design?

9 A. As far as the initial drafting. Obviously I
10 can't -- I did not sign off on these on my own. I report to
11 others who have to approve these.

12 Q. Did you develop and design the program
13 description?

14 A. That was -- I had very little involvement with
15 that. My main involvement with that was one of doing what I
16 mentioned before. And that is specifying -- since we had a
17 desire to keep certain terms confidential, we wanted to make
18 sure that those terms were defined adequately in the program
19 description so that they tied one to one to the tariff. And
20 I'm speaking particularly of the reference to type one gain,
21 type two gain and so on.

22 Q. Okay. Did you design the cost reduction
23 incentive portion of the PSP?

24 A. Did I design -- design the tariff or the
25 particular provision in the program description or --

1 Q. That particular provision. I think it's
2 referred to in paragraph 4 of the PSP tariffs, the overall
3 cost reduction incentive.

4 A. If you're talking about the tariff, the tariff
5 section itself, I did -- I did -- I did devise that
6 language. And obviously I made sure that it was -- I'm
7 certain that I had that reviewed and -- by the gas supply
8 person once again to make sure it was consistent with what
9 was -- what was their understanding of what was set forth in
10 the program description.

11 Q. How many people were involved in this gas
12 supply group that you consulted with?

13 A. Several.

14 Q. Do you recall who they were?

15 A. Yes, I do. I do recall.

16 Q. Who were they?

17 A. Scott Jaskowiak, Steve Mathews, George
18 Godette.

19 Q. Is that an inclusive list or might there be
20 others?

21 A. Those are the ones who I talked to, consulted
22 with as far as on a technical -- on a technical level. And
23 then obviously this, as I said before, would have had to
24 have been reviewed and approved by the people I report to.

25 Q. And who were those people?

1 A. I report to Larry Sherwin who, in turn,
2 reports to Kenneth Neises.

3 Q. Okay. I don't think Mr. Sherwin's name has
4 come up before. What is his position at Laclede?

5 A. He's assistant vice president of regulatory
6 administration.

7 Q. Okay. Does the tariff define the MRA?

8 A. From what I can see here right now, I do not
9 believe that it does. That is another -- in fact, that's
10 another term that we did -- term we did want to keep highly
11 confidential. We did not want the outside world knowing how
12 much money was being devoted to this program. So that
13 was -- that would have been by -- we would have relied on a
14 reference to the program description, I believe.

15 Q. Okay. Is the term "net cost of price
16 stabilization" defined in the tariff anywhere?

17 A. No. The net cost of price stabilization is
18 not defined in the tariff and -- nor do I think it's
19 necessary to define in the tariff. That's one of those
20 terms I mentioned before where I think it's -- I think
21 it's -- from my perspective, it's self-explanatory. And I
22 think I discuss that in my testimony -- in my Rebuttal
23 Testimony.

24 Furthermore, I guess I would just add this,
25 you know, I would -- I would -- I have to assume that there

1 is -- there was not a need to -- to define it any further
2 than we have done here in our tariff for two reasons.

3 Number one, this is -- as you know, this
4 tariff was reviewed by the Staff before it was -- before it
5 was put into effect and there was no discussion I recall at
6 that time about there being any -- any lack of clarity. And
7 I'm certain if there would have been, we would have -- we
8 would have -- we would have heard.

9 Secondly, I was -- I was encouraged to hear
10 today from Mr. Sommerer that he -- he I think apparently
11 understood this term and how this section was -- was being
12 administered by us as he discussed how the Staff interpreted
13 this section with respect to the first year of the program.

14 Q. Would you agree with me that one possible
15 definition of the term "net cost of price stabilization"
16 would be the cost of option premiums reduced by any savings
17 from early trading in order to obtain \$4 million worth of
18 price protection?

19 A. You're going to have to repeat that again.
20 That was a little too much for me at one time.

21 Q. Do you agree with me that one possible
22 definition of the term "net cost of price stabilization"
23 would be the cost of option premiums reduced by any savings
24 from early trading in order to obtain \$4 million worth of
25 price protection?

1 A. Well, I don't think -- I don't think
2 necessarily -- I think the definition is far simpler than
3 that. I don't think you need to necessarily refer to -- to
4 \$4 million in the definition.

5 The net cost of price stabilization is -- is
6 really nothing more than the -- the -- the cost we incurred
7 to purchase the premium -- to purchase the options or the
8 premiums paid less the premiums we received as we sold those
9 options. And I think that -- and that as we -- as we
10 pointed out in the handout on the first day of this -- of
11 this hearing, comes to \$24,576,550.

12 Q. I appreciate that. But would you agree with
13 me that it could also assume the definition that I just
14 read?

15 A. I -- I don't think -- from what I recall what
16 you read, I think it's somewhat different than how we
17 described it in our -- in our tariff in that I think you --
18 in that tariff we talk about taking the net cost of price
19 stabilization and then backing out of that any gains or cost
20 covered by the price incentive component of the program.

21 And maybe you -- maybe you got there in a
22 shorthand way but, like I said, I didn't really -- I just
23 didn't -- don't necessarily agree with your reference to the
24 term of \$4 million of coverage in that -- in that
25 definition. I stand by my, I think, much more

1 straightforward definition.

2 Q. Okay. Thank you.

3 Where is the definition of "net cost of price
4 stabilization" found in the tariff in the event Laclede opts
5 out of price protection?

6 A. There is no separate definition that applies
7 whether we're in or out of the price incentive component. I
8 think that it is the same mechanics that apply in either
9 case.

10 Q. What, in your mind, would be the definition of
11 net cost of price stabilization in the event Laclede opts
12 out of price protection? Not where this time, but what
13 would it be?

14 A. What would it be in words?

15 Q. Yes.

16 A. It's what I described before. It would be --
17 it would be the -- the -- the cost of the premiums paid to
18 purchase options less the amounts of premiums received from
19 the sale of those options.

20 Q. What about the term "savings"? Where is the
21 definition of savings found in the tariff in the event
22 Laclede opts out of price protection?

23 A. In the tariff the -- the -- there is no
24 reference to savings, per se. I would -- I would equate
25 that though to cost reduction. That's, in fact, what that

1 component is all about, is what it's termed.

2 And that definition is simply the difference
3 between the cost reduction or savings, which I think are
4 synonomous in this case, is the difference between the
5 maximum recovery amount and the net cost of price
6 stabilization exclusive of the gains and costs that were
7 covered by the price incentive component.

8 Q. So do I understand then -- I think you may
9 have just answered my question in part, but what would be
10 the definition of savings in the event Laclede opts out of
11 price protection? I think you may have equated it with
12 something. Did you say it was cost reduction?

13 A. I was describing savings under this component
14 of the overall cost reduction component. That's what I
15 referred to -- that's how I would characterize savings or
16 cost reduction under this component. It's the terminology I
17 just ran through with you.

18 Q. Okay. So that would be your answer to the
19 question of what is the definition of savings in the event
20 Laclede opts out of price protection?

21 A. With respect to the overall cost reduction
22 component. Obviously we also had -- even though we opted
23 out of the -- of the price incentive component, there
24 were -- there were savings to the customers that -- none of
25 which we took a share of.

1 Q. Okay. And what were those savings?

2 A. Those -- those savings were approximately

3 \$11,506,000, as I recall.

4 Q. How would you define the -- excuse me.

5 Is the PSP tariff language clear in stating

6 that in the event that Laclede opts out of price protection,

7 the cost reduction incentive is still operable?

8 A. The -- since the tariff, I don't believe,

9 refers to the -- other than in the overview section and the

10 opt -- the notes of opting out protection incentive feature,

11 the tariff doesn't really address what happens to the

12 overall cost reduction incentive. And I think that what --

13 you know, that -- that what we can conclude from there is

14 that that thing -- that section is still obviously a section

15 that's up and running and valid in full force and effect.

16 MR. BATES: Thank you, Mr. Cline.

17 JUDGE WOODRUFF: Thank you.

18 And, Mr. Micheel?

19 MR. MICHEEL: In light of the time, I'm not

20 going to have any questions today for Mr. Cline.

21 JUDGE WOODRUFF: All right. Thank you.

22 I have no questions from the Bench so there's

23 no recross.

24 Any redirect?

25 MR. ZUCKER: Very briefly.

1 JUDGE WOODRUFF: All right.

2 REDIRECT EXAMINATION BY MR. ZUCKER:

3 Q. Good afternoon again, Mr. Cline.

4 A. Good afternoon.

5 Q. In your experience, do tariffs have sunset
6 provisions if they're not expected to continue?

7 A. If -- if tariffs do not -- if tariffs are not
8 expected to continue, do they have sunset provisions? They
9 generally do.

10 Q. And if a certain portion is not expected to
11 continue, would it also have a sunset provision?

12 A. I would think that would be correct.

13 MR. ZUCKER: That's all I have.

14 JUDGE WOODRUFF: All right. Thank you. And
15 you may step down.

16 And I believe that concludes all the testimony
17 in this case. Only item remaining is briefing schedule.
18 Let me bring up my calendar here so we can look at some
19 dates.

20 The transcript I believe would be after
21 10 days, so we're looking at initial briefs in mid-March.
22 Anybody have a preference as to day of the week when the
23 briefs are due?

24 MR. MICHEEL: My support staff would prefer no
25 Mondays, so --

1 JUDGE WOODRUFF: No Mondays.
2 MR. MICHEEL: No Mondays.
3 MR. PENDERGAST: Your Honor, would it be
4 possible to move that to the following week? I have a
5 vacation scheduled right around there and I don't mean to
6 push things off --
7 JUDGE WOODRUFF: Okay.
8 MR. PENDERGAST: -- I just wonder if we can
9 make that the following week?
10 JUDGE WOODRUFF: We'd be looking at, like,
11 March 25th for initial briefs?
12 MR. PENDERGAST: Yes. If that would work for
13 everybody.
14 JUDGE WOODRUFF: Okay. And then replies let's
15 say about -- let's say April 10th, that's a Thursday.
16 MR. PENDERGAST: Is that okay with you guys?
17 JUDGE WOODRUFF: Okay. We're looking at
18 initial briefs on Tuesday, March 25th with reply briefs on
19 Thursday, April 10. All right. And I'll do an order or a
20 notice indicating that on Monday.
21 Anything else while we're on the record?
22 All right. Thank you all very much then. We
23 are adjourned. Thank you.
24 WHEREUPON, the hearing was adjourned.
25

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