

Exhibit No.:

Issues: Prudence of
1995 Mid-Kansas/Riverside Contracts

Witness: David M. Sommerer

Sponsoring Party: MoPSC Staff

Type of Exhibit: Surrebuttal Testimony

Case No.: GR-96-450

Date Testimony Prepared: July 18, 2001

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

DAVID M. SOMMERER

FILED²

JUL 18 2001

Missouri Public
Service Commission

**MISSOURI GAS ENERGY,
a division of
SOUTHERN UNION COMPANY**

CASE NO. GR-96-450

Jefferson City, Missouri

July, 2001

****Denotes Highly Confidential Information****

NP

Surrebuttal Testimony of
David M. Sommerer

1 acquire KPC. In May of 2001, Enbridge Inc. announced the completion of a merger
2 transaction with Midcoast Energy Resources Inc.

3 Q. Mr. Langston criticizes what he calls Staff's basis for the proposed
4 disallowance on page 5, lines 3-5. Do you agree?

5 A. No. First of all, the entire basis for the adjustment was not described in
6 direct testimony. The difference between Williams Pipeline Central (Williams) rates and
7 Mid-Kansas/Riverside is so striking (approximately double) that the Staff's goal in its
8 direct testimony was to raise a reasonable doubt about the prudence of the
9 Mid-Kansas/Riverside contract. In Kansas Power and Light Company Case No.
10 GR-89-48 the Commission indicated that the Company "has the burden of showing its
11 proposed rates are just and reasonable." The Company "has the burden of showing the
12 reasonableness of costs associated with its rates for gas." Further it stated, "The standard
13 is that when some participant in a proceeding creates a serious doubt as to the prudence
14 of an expenditure, then the company has the burden of dispelling those doubts and
15 proving that the questioned expenditure was prudent". Therefore the Staff's direct case
16 presented and viewed the alarming difference in price between two pipelines that provide
17 essentially the same quality of firm transportation service as meeting the standard for
18 "raising serious doubt". Second, the rates charged under the Missouri Agreement are
19 excessive, and MGE's cost of gas should be adjusted accordingly, which is consistent
20 with the 1996 Stipulation and Agreement where it was stated, "In addition, the
21 Signatories agree that the rates charged pursuant to the Missouri Agreements shall not be
22 the subject of any ACA prudence review until the case associated with the audit period
23 commencing July 1, 1996, and ending June 30, 1997."

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1 Q. At page 5 of his testimony Mr. Langston states that the simple fact that
2 price levels are different under two contracts is not in and of itself a reasonable basis for a
3 prudence disallowance. How do you respond?

4 A. While the statement is true, it misses the point in this case. For example,
5 Staff has not suggested that the Panhandle transportation contract is imprudent, even
6 though Panhandle rates are higher than Williams. The key element in this case is that
7 MGE replaced a KPL contract that the Commission has found imprudent with a contract
8 that contains the same imprudent terms and conditions. The damages to Missouri
9 ratepayers have been mitigated somewhat by the addition of some favorable gas supply
10 terms, and the Staff has recognized that improvement. But the contract remains
11 imprudent for the same reasons noted by the Commission in Case No. GR-93-140.

12 Q. What is your comment about the sentence from paragraph 5 of the May,
13 1996 Stipulation and Agreement that Mr. Langston references on page 6 of his rebuttal
14 testimony?

15 A. Regrettably, subsequent experience has proven that Staff's acceptance of
16 this one sentence has given MGE an opening to extend the boundaries of the settlement.
17 However, the Staff's rebuttal testimony in this case has shown clearly that although MGE
18 made numerous attempts to remove the Missouri Agreements from a prudence review,
19 this entire attempt proved unsuccessful and MGE had to settle with a "muddying of the
20 waters". Now, MGE is trying to succeed by offering up stretched interpretations of the
21 settlement.

22 Q. Do you have anything further to add regarding your interpretation of the
23 1996 Stipulation and Agreement?

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1 A. Yes. Besides my rebuttal testimony which provides an extensive analysis
2 of the documents leading up to the May 2, 1996 Stipulation and Agreement, I reviewed
3 the Case files from GR-94-228. Unfortunately there was little discussion in the
4 transcript about the May 2, 1996 Stipulation. Furthermore, there was no Staff
5 memorandum in support of the Stipulation and Agreement. Mr. Hack did file a cover
6 letter with the filing of the May 2, 1996 Stipulations which is attached as Schedule 1.
7 In that letter Mr. Hack states, "Because this Stipulation and Agreement, if adopted,
8 affects a number of other cases in addition to those referenced above, (specifically, Case
9 Nos. GR-94-227, GR-95-82, and GR-96-78). I request that a copy of this letter and a
10 copy of the Stipulation and Agreement be placed in each of those case files." As in the
11 Stipulation and Agreement, Mr. Hack lists those cases that the Stipulation affects. It
12 would have been an easy matter to reference other cases affected, but not yet docketed.
13 This was not done because no other ACA periods were covered by the Stipulation and
14 Agreement.

15 Q. What were other steps you took to review the background of the
16 negotiations?

17 A. I attempted to retrieve e-mails from that time period for further support.
18 E-mails prior to late 1997 were not recoverable.

19 Q. Could you further clarify the Staff's prudence disallowance in this case?

20 A. Although the history of the contracting process is extensive, Staff's
21 concerns are straightforward. Western Resources Inc. (WRI, also known as Kansas
22 Power and Light) signed the original agreement in 1990 (see Gas Purchase Agreement in
23 Wendell Putman rebuttal schedule WCP 1 pages 17 through 31). This contract was

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1 effective from 1-15-1990 to 12-31-1992. This agreement contained a price cap in
2 Article 5.3 that capped Mid-Kansas prices at Williams' rates. The section reads as
3 follows:

4 Notwithstanding the price provisions set forth in Section 5.2 of this
5 Agreement, Buyer shall not in any month pay Seller a price at the
6 Delivery Point in excess of the Williams Natural Gas Company
7 posted Rate Schedule F-2 price less 15 cents per Dth. If the F-2
8 Rate Schedule is replaced or superseded by a rate having a demand
9 charge, WNG's rate, for purposes of such comparison, shall be
10 determined by calculating KPL's average unit cost for gas
11 purchased from WNG in the Kansas City Metropolitan Area.

12 Q. What was the next step?

13 A. In October of 1991 WRI and Mid-Kansas/Riverside amended the Gas
14 Purchase Agreement to remove the price cap and extend the term to 10-31-2009. The
15 parties replaced the price cap with a new Article 5.4 that reads as follows.

16 Should any regulatory authority having jurisdiction over the rates
17 charged by Buyer for gas service at any time deny Buyer the right
18 to recover any amount paid to Seller hereunder, Buyer shall notify
19 Seller of such denial within thirty day thereof, and Seller shall
20 reduce its rates and charges to Buyer for the affected service to the
21 level approved for recovery retroactive to the first date of service
22 for which recovery is denied. In the event such rate reduction is
23 required, KPL and Seller will adjust the term of this Agreement to
24 ensure that overall revenues generated hereunder are adequate to
25 allow Seller to recover its costs of operation and its financing
26 costs, including principal, interest, and applicable financing fees,
27 associated with the above level of service.

28 Q. What was the Commission's view of this contract?

29 A. In WRI Case No. GR-93-140, the Commission found that WRI's decision
30 to allow removal of the price cap was imprudent. In that Order the Commission stated
31 that WRI's decision to enter into an agreement allowing removal of the price cap
32 provision was imprudent because WRI produced no compelling evidence to counter the

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1 conclusion that removal of the price cap was imprudent. The Commission cited the
2 advice of Mr. Jack Roberts, a consultant and former gas supply manager for KPL, that
3 removal of the price cap would be imprudent on KPL's part. The Commission further
4 stated that the evidence did not demonstrate that removal of the price cap was necessary
5 to retain Mid-Kansas as competitors to Williams Natural Gas Company.

6 Q. What happened in 1994?

7 A. MGE purchased the Missouri properties from WRI early in 1994. As part
8 of that purchase, MGE willingly accepted an allocation of various gas supply and
9 transportation contracts. The allocations from WRI included the assignment of 100% of
10 the Mid-Kansas/Riverside Agreements. On November 17, 1994, the Staff filed its
11 rebuttal testimony in Case No. GR-93-140. The case went to hearing in early February
12 1995. On February 24, 1995, just after the hearing on the prudence of the 1991 contract
13 terms, MGE executed two new agreements with Mid-Kansas/Riverside. These
14 agreements, and the rates resulting from them, are the subject of this proceeding. These
15 agreements essentially continued the high rates that resulted from the pancaking of
16 several Mid-Kansas/Riverside affiliated intrastate pipelines in Kansas. The term of the
17 agreement still ends on October 31, 2009. There was some temporary mitigation that the
18 Staff has already recognized as part of the commodity pricing offset. The process leading
19 up to the May 1996 Stipulation and Agreement is described more fully in Staff witness
20 Shaw's rebuttal and surrebuttal testimony. The Commission in its order of June 11, 1996
21 approved the Stipulation that was filed in May of 1996.

22 Q. Please further describe the February 24, 1995 agreements.

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1 A. MGE signed two contracts on February 24, 1995. The first was a sales
2 contract that contained, along with the excessive transportation rates, a favorable gas
3 supply commodity rate. Unfortunately this favorable gas supply rate ended June 1998
4 based upon the movement over to the "transportation only" contract (the second
5 February 24, 1995 contract) after the FERC asserted jurisdiction over
6 Mid-Kansas/Riverside. Besides carrying over the high rates from the previous contracts,
7 the 1995 contracts continued the use a "regulatory disallowance" provision, Article 4.3,
8 set out in Wendell Putman's schedule WCP 4 page 13. There is no "price-cap"
9 protection.

10 Q. What is the effect of changing the price cap for the possibility of a
11 regulatory disallowance?

12 A. As a KCC Staff witness explained in testimony filed in a 1997 case at the
13 KCC:

14 Q. By removing the price protection from the contract,
15 how did the risks change?

16 A. By removing the market price-cap protection from
17 the contracts, Western and KPP displaced essentially all of KPP's
18 business risk onto Western's ratepayers. Rather than the contract
19 protecting the ratepayers through a market price-cap, the burden of
20 protecting the ratepayers shifted to the Commission. Since all costs
21 incurred under the contract, absent regulatory disallowance, flow
22 through Western's PGA directly to the ratepayers, Western
23 continued to face little risk. At the same time, KPP shed all of its
24 market risk of remaining price competitive with existing providers
25 in the territory as required by its certificate. All of this market risk
26 was transferred to the ratepayers. The only mitigation of this risk is
27 "regulatory oversight" and paragraph 5.4 of the amended contract
28 and equivalent language in the new contracts. Admittedly,
29 paragraph 5.4 of the amended contracts and equivalent language in
30 the new contracts (while still providing Western protection from
31 risk) transfers some risk back to KPP through the regulatory

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1 process. However, the risk to KPP is much lower under the
2 regulatory oversight of paragraph 5.4 and than the risk to KPP
3 under the market price-cap provision. (David R. Springe, Kansas
4 Corporation Commission Docket No. 97-WSRG-312-PGA
5 Rebuttal Testimony)

6 The same results affect Missouri ratepayers, a substantial reduction in the protection
7 provided by recitation of a specific, reasonable transportation rate.

8 Q. Do you have any comments regarding the testimony of Mid-Kansas
9 witness Joan W. Schnepf?

10 A. Yes. Ms. Schnepf cites MGE's increased volumes over the
11 Mid-Kansas/Riverside Pipeline system as a benefit. This benefit was short-lived. Below
12 is a summary of MGE's takes over this system.

13	ACA period	Volumes taken (MMBtu)
14	1996-1997	8,835,570
15	1997-1998	8,884,517
16	1998-1999	4,170,000
17	1999-2000	2,195,000

18 Unfortunately for MGE's customers, the rates paid to Mid-Kansas/Riverside are based on
19 straight-fixed-variable rate design, a method that collects the majority of costs through
20 the reservation charge regardless of consumption.

21 Q. Do you agree with Mr. Langston's conclusion on page 13 of his rebuttal
22 testimony that "...it is unrealistic to think that MGE could have negotiated rates on the
23 Mid-Kansas/Riverside system down to levels comparable to the Williams system, much
24 less to terminate the agreement in total"?

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1 A. No. The Kansas experience is illustrative here. Kansas Gas
2 Service (KGS), the successor to WRI/KPL for service to Kansas City, Kansas has been
3 subject to the same high rates that MGE pays. The Kansas Corporation
4 Commission (KCC) Staff made similar arguments as the Missouri Staff regarding the
5 1991 amendments. Mr. Glenn Smith of the KCC staff on page 16 of his direct testimony
6 in KCC Case No. 97-WSRG-312-PGA (a copy is attached as Schedule 2 to my
7 testimony) states as follows:

8 Q. If the Commission finds that the transportation
9 component of the KPP contracts is unreasonable and imprudent,
10 what action would you recommend that the Commission consider?

11 A. Regarding the transportation rate, I would
12 recommend that the Commission consider one of these actions:

13 First, a finding that the contract (s) is (are)
14 excessive, unreasonable and adversely impact the public interest,
15 and as such should be abrogated.

16 The second possible action is to find that the
17 transportation rate is unreasonable and imprudent and that PGA
18 pass through of the excess in not permitted.

19 Q. How did the above referenced 1997 KCC case end?

20 A. The parties entered into a Settlement Agreement on July 9, 1997. This
21 agreement was subsequently approved by the KCC in Case No. 97-WSRG-312-PGA on
22 July 29, 1997. I am attaching as Schedule 3 to my testimony the prepared direct
23 testimony of William G. Eliason on behalf of Kansas Gas Service Company filed in
24 FERC Docket No. RP99-485-000 that references and explains the Kansas actions. I am
25 also attaching, as Schedule 5, the hearing transcript and Kansas Gas Service's corrections

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1 to that transcript. This transcript excerpt does not include the entire hearing in FERC
2 Docket No. RP99-485-000 but is the entire portion of Mr. Eliason's examination.

3 Q. Why do you believe this testimony is relevant to this case?

4 A. Mr. Eliason describes much of the regulatory history of
5 Mid-Kansas/Riverside proceedings in the state of Kansas. He indicates that on May 21,
6 1999, Kansas Gas Service filed suit in Case No. 99C06574 in Johnson County District
7 Court against KPC. This case involves the 1997 KCC settlement. He indicates that one
8 of the highlights of that 1997 Stipulation and Agreement was that beginning August 1,
9 2001, KPC would decrease its rates to competitive rates, which the parties agreed would
10 be the WGPC (Williams) firm rates for deliveries into Kansas City and Wichita.

11 Q. Please continue.

12 A. In one of the questions and answers Mr. Eliason describes a comparison
13 between the Williams competitive alternative and the KPC rate. This discussion follows:

14 Q. Mr. Langley has made extensive comments
15 regarding the competitive benefits brought about by his efforts to
16 establish KPC as a going concern. Do you agree with his
17 assessment?

18 A. Yes and no. I agree with Mr. Langley that Western
19 was actively encouraged by the KCC to develop competitive
20 alternatives to WGPC and its predecessors. KPC was one of the
21 options which Western was encouraged by the KCC to consider. I
22 will agree that for the period from 1988 through 1994, KPC's rates
23 were fairly equivalent to the rates charged by WGPC. Since 1994,
24 KPC's rates have become significantly higher than the rates
25 charged by WGPC. For example, for gas delivered into Wichita,
26 the demand rate currently being charged by KPS is
27 \$11.456/MMBtu and the comparable demand rate charged by
28 WGPC is \$5.895/MMBtu. For deliveries into Kansas City, Kansas
29 and Johnson County, the demand rate currently being charged by
30 KPC is \$19.965/MMGtu and the comparable demand rate charged

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1 by WGPC is \$18.857 [subsequently corrected to \$8.857 at FERC
2 hearings] for gas delivered over all three zones on KPC's system.

3 Q. Does Mr. Eliason agree with KPC's various characterizations of KPC's
4 service being superior to that of Williams?

5 A. No. He discusses the fact that William's has extensive storage capability,
6 while KPC does not. This is indeed the case. I am also not aware of any complaints
7 against Williams pertaining to quality of service issues in Kansas City, Mo.

8 Q. What is the status of FERC Case No. RP99-485-000?

9 A. It has been briefed but no final decision has been made regarding KPC's
10 rates. Alarming, it is conceivable that MGE's current contract rates to KPC, the rates
11 under discussion in this case, may greatly exceed rates paid for the same service in
12 Kansas City, Kansas, and the ultimately FERC approved rates. August 1, 2001 will be a
13 watershed date in Topeka, Kansas. One of the many common threads between Kansas
14 and Missouri is the pattern of signing Stipulation and Agreements that ultimately end up
15 in court because of differences in opinion on the meaning of key provisions.

16 Q. Have you had discovery issues with MGE and Mid-Kansas/Riverside?

17 A. Yes. The bulk of staff's data requests were issued on or around March 28,
18 2001. Answers to those requests have been received throughout April and May.
19 Numerous requests, however, are still outstanding from Mid-Kansas/Riverside and many
20 responses were received late and/or have just recently been received. MGE and
21 Mid-Kansas/Riverside have objected to several key data requests. The Staff is still
22 considering motions to compel for this information.

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1 Q. Did MGE settle any litigation with Mid-Kansas/Riverside regarding the
2 1995 contracts?

3 A. Yes. A copy of that settlement is attached as Schedule 4.

4 Q. Does this conclude your direct testimony?

5 A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of)	
Missouri Gas Energy's)	Case No. GR-96-450
Gas Cost Adjustment Tariff Revisions)	
to be reviewed in its 1996-1997 Annual)	
Reconciliation Adjustment Account.)	

AFFIDAVIT OF DAVID M. SOMMERER

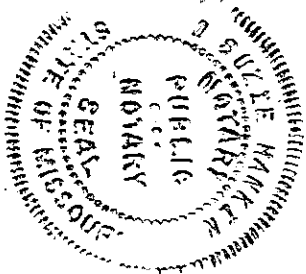
STATE OF MISSOURI)	
)	ss.
COUNTY OF COLE)	

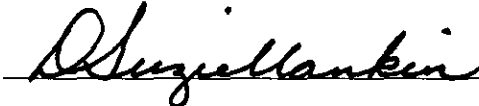
David M. Sommerer, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 12 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



David M. Sommerer

Subscribed and sworn to before me this 17th day of July 2001.





D SUZIE MANKIN
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXP. JUNE 21, 2004



Commissioners

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Chair

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M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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May 2, 1996

DAVID L. RAUCH
Executive Secretary

SAM GOLDAMMER
Director, Utility Operations

GORDON L. PERSINGER
Director, Policy & Planning

KENNETH J. RADEMAN
Director, Utility Services

DANIEL S. ROSS
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CECIL I. WRIGHT
Chief Administrative Law Judge

ROBERT J. HACK
General Counsel

FILED

MAY 2 - 1996

MISSOURI
PUBLIC SERVICE COMMISSION

Mr. David L. Rauch
Executive Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. GR-94-101/228 - Gas Service/Missouri Gas Energy

Dear Mr. Rauch:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **Stipulation and Agreement**. Because this Stipulation and Agreement, if adopted, affects a number of other cases in addition to those referenced above (specifically, Case Nos. GR-94-227, GR-95-82 and GR-96-78). I request that a copy of this letter and a copy of the Stipulation and Agreement be placed in each of those case files. Sufficient extra copies have been provided for that purpose.

This Stipulation and Agreement does not resolve the entire case; at this point, the issue set out in the hearing memo filed last Friday, April 26, 1996, will need to be tried. In addition, this Stipulation and Agreement is not unanimous because it has not been executed by all parties. However, Williams Natural Gas, one of the non-signatory parties, has provided a letter indicating its lack of opposition (attached hereto). The other non-signatory, Missouri Gas Users Association, has also provided a letter (attached) indicating that it will not oppose the Stipulation and Agreement.

Also, as a housekeeping matter, the parties filed a unanimous Stipulation and Agreement on December 14, 1995 in this docket resolving a number of other issues. I understand that Stipulation and Agreement will be taken up by the Commission as it makes its decision in this case.

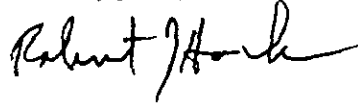
96

David L. Rauch
May 2, 1996
Page 2

This filing has been mailed or hand-delivered this date to counsel of record for all parties to all of the dockets listed in this letter.

Thank you for your attention to this matter.

Sincerely yours,



Robert J. Hack
General Counsel
573/751-8705
573-751-9285 (Fax)

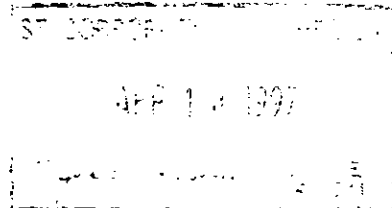
RJH/clw

Enclosure

cc: Counsel of Record
ALJ Derque

In the Matter of the Partial Suspension of
Western Resources Monthly Purchased Gas
Adjustment (PGA).

)
) 97-WSRG-312-PGA
)



TESTIMONY

PREPARED BY

GLENN D. SMITH

UTILITIES DIVISION

STATE CORPORATION COMMISSION

**** Denotes Confidential Material**

1 Q. Would you please state your name?

2 A. My name is Glenn D. Smith. My business address is 1500
3 Southwest Arrowhead Road, Topeka, Kansas 66604.

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

5 A. I am employed by the Kansas Corporation Commission as Chief
6 of Natural Gas Operations.

7 Q. Please state your educational and employment background.

8 A. I received a Bachelor of Science Degree in Electrical
9 Engineering from Wayne State University, Detroit, Michigan
10 and a Masters Degree in Business Administration from the
11 University of Nebraska at Omaha. For approximately 20 years
12 I was employed by Northern Natural Gas Company (Enron
13 Corporation) in professional positions in operations and
14 engineering. Included in the positions were those of
15 district operations manager, manager of technical and
16 administrative services, and manager of pipeline facility
17 planning. Presently I am employed by the Kansas Corporation
18 Commission as Chief, Natural Gas Operations. In this
19 position I am responsible for several functions including
20 natural gas engineering, pipeline safety, and gas
21 operations.

22 **INTRODUCTION AND BACKGROUND**

23 Q. What is the purpose of your testimony?

24 A. My testimony is intended to demonstrate that certain costs
25 that Western Resources Inc. (WRI) attempted to include in
26 their December, 1996 Purchased Gas Adjustment (PGA) are

1 unreasonable and imprudent, and that WRI should not be
2 permitted to pass them through to ratepayers in December or
3 in succeeding months.

4 Q. Will you please describe the development of "competition"
5 in the natural gas market in Kansas by summarizing the 1985
6 certification of Phenix and Kansas Pipeline Company LP?

7 A. On January 1, 1985, the Commission issued an Order granting a
8 limited certificate of convenience and authority to Kansas
9 Pipeline Company L.P. (KPCLP) to do business as a public
10 utility in the transportation and sale of natural gas with
11 deliveries to be made through the physical facilities of
12 local distribution companies. In this Order the Commission
13 set out the "minimum requirements of certificability"
14 wherein it stated:

15 "Finally, Applicant must make an adequate showing of
16 its ability to maintain adequate service at rates lower
17 than those prevailing in the territory to be
18 served." (citation omitted), Order, Jan 1, 1985, In re:
19 Kansas Pipeline Company, L.P., KCC Docket No. 142,683-U,
20 at 14.
21

22 In May, 1985 the Commission issued an Order and
23 Certificate to Phenix transmission Company with identical
24 language. Order, May 29, 1985, In re: Phenix Transmission
25 Company, KCC Docket No. 143,306-U Paragraph 32.

26 Such a showing was necessary for the Commission to
27 determine if the proposed service was required by public
28 convenience and necessity or whether the service would be a
29 wasteful and useless burden to the community and the public.

1 That inquiry remains as relevant today as it did in 1985.

2 Q. Will you describe the contract history of gas purchase by
3 WRI from KPP (and its predecessors)?

4 A. WRI and KPP entered first into a gas purchase contract in
5 January, 1987 for a three month period. To my knowledge no
6 gas flowed under that contract. In August, 1988 another gas
7 purchase contract(Exhibit GDS-1) was signed and gas moved
8 under that contract starting in November, 1988. The duration
9 of the contract was through January, 1993.

10 Q. What were the price terms of the 1988 contract?

11 A. The price terms were as follows;

12 **
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____

**

21 Q. Will you describe the situation in the gas industry in the
22 fall of 1991?

23 A. The situation in the fall of 1991 was one of uncertainty. It
24 was widely recognized that the Federal Energy Regulatory
25 Commission(FERC)was about to issue an order based, in part,
26 on public comments to a Notice of Proposed Rulemaking(FERC
27 Docket RM 91-11). It was believed that there would be
28 further steps toward competition, but the exact nature of
29 those steps were unknown. Fixed price long term gas purchase
30 contracts were no longer common. Gas purchase contract

1 durations were becoming shorter, and typically the price of
2 the gas was tied to a market index. WRI was receiving bids
3 for gas supply tied to an index at least as early as
4 November, 1990, according to a response to a staff data
5 request¹ to WRI.

6 Q. What types of actions was WRI taking during this time?

7 A. In November, 1990, WRI signed their first long term gas
8 purchase contracts that were tied to an index. This was a
9 contract with Amoco for, what is commonly known as, Tight
10 Sands gas. The basic terms for the gas price was a monthly
11 demand(or reservation) charge of ** _____

12 _____ **
13 The commodity charge was ** _____ **

14 Additionally, WRI entered into a gas purchase contract with
15 Oxy for Tight Sands gas, ** _____

16 _____ **
17 WRI's transportation and full service contracts with WNG
18 were about to expire, and the parties agreed, in 1991 and
19 early 1992, to extend them until a time that it was
20 reasonably certain that FERC would have issued their order
21 on restructuring².

22 Q. After FERC Order 636 was issued on April 18, 1992 and WRI and
23 WNG recontracted for service, what was the duration of the

¹ Docket 97-WSRG-312-PGA DR-5 March 11, 1997

² Docket 97-WSRG- 312-PGA DR-4 March 11, 1997

1 contract?

2 A. The duration of the transportation contracts ranged from **
3 _____** Under FERC rules promulgated in Order
4 636, those who were contracting for no-notice bundled
5 service prior to the issuance of Order 636 had first rights
6 to retain no-notice(but unbundled) service. They could
7 offer less than full tariff rate and/or less than a 20 year
8 term for the service, but could lose the service if another
9 entity made an offer that had a higher economic value. The
10 original customer then had the opportunity to match (or
11 exceed)the offer and retain the service. At least some of
12 the capacity contracted for the longer terms were necessary
13 to match offers by others for no-notice service. **
14 _____
15 _____
16 _____

17 In summary, WRI did not contract with WNG for long time
18 periods post 636 unless there were strong business reasons
19 to do so. Contract durations were, and are, minimized.

20 Q. Is it accurate to say that WRI and KPP entered into a
21 contract modification and extension, as well as entering
22 into new long term contracts in the midst of great industry
23 uncertainty?

24 A. Yes.

25 Q. How long was the contract extension ?

26 A. ** _____**

1 Q. What were the price terms of the amended contract?

2 A. Paragraph 5.2 of the amended contract contains the price
3 terms. They are as follows:

4 ** _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____ **

13 Q. Did WRI management have reason to question the prudence of
14 entering into the contracts with KPP which extended the
15 duration of the contract, and immediately increased the
16 costs?

17 A. Mr. Bill Johnson, then President and CEO, Gas Service
18 Division of KPL Gas Service, received a letter dated
19 February 22, 1991 from Mr. Jack Roberts, a KPL consultant,
20 alerting the company of both the imprudence of the contract
21 generally, but also of the specific imprudence of distinct
22 terms contained within the proffered contract(s).

23 Q. Did Mr. Roberts have qualifications that permitted him to
24 comment knowingly on the prudence of the proposed
25 contract(s)?

26 A. Yes, he had been a long term manager for WRI in the gas
27 supply area, and previously had contract approval authority.

28 Q. Could you cite examples of specific warnings that Mr.
29 Roberts made to Mr. Johnson?

30 A. On page 3 of his letter of February 22, 1991(attached as

Exhibit GDS-2), with reference to the proposed price term amendment of the August 8, 1988 contract, Mr. Roberts observed:

**

**

Q. Was this comment the only one that Mr. Roberts made regarding the prudence of the proposed contract terms?

A. No. There were multiple contracts addressed in this memo as the proposals covered five proposed new/amended contracts. The references sometimes addressed similar provisions in different contracts. Additionally, he commented on the perceived imprudence of certain provisions contained in the proposals on aspects of the contracts that are not a topic of this PGA docket.

Q. Is there evidence that WRI considered that there was a potential that Mr Roberts might be correct, and that the Commission might disallow pass-through of some costs associated with these contracts?

A. Yes, in Section 5.4 of the terms and conditions of the amended contract (Exhibit GDS-3) and contained in the terms of the new contracts (Exhibit GDS-4) is the proviso that;

**

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____ **
7 Q. Is this term, or one functionally equivalent, present in
8 contracts between WNG and WRI?

9 A. No, Staff reviewed WRI's contracts currently in place for
10 service by WNG, and could not find a functionally equivalent
11 clause.

12 Q. Based on your industry knowledge, is a similar clause common
13 in contracts between pipelines and local distribution
14 companies?

15 A. No, I am not aware of any other instances where a similar
16 clause exists.

17 Q. Can you be more specific as to the costs that are
18 unreasonable and imprudent?

19 A. The unreasonable and imprudent costs include that portion
20 which represents the excess cost between KPP and the
21 competitive alternative of both the transportation and gas
22 commodity purchased from Kansas Pipeline Partnership (KPP).

23 **TRANSPORTATION COSTS**

24 Q. Why are a portion of the transportation costs unreasonable
25 and imprudent?

26 A. As previously described, in October, 1991, WRI and KPP
27 amended an existing gas purchase contract that had as its
28 price term that the cost was to be ** _____
29 _____

1 _____
2 _____
3 _____ ** The immediate
4 impact was to increase the costs by ** _____

5 _____ ** There was no
6 way to seek competitive alternatives during that period. A
7 subsequent rate increase has created a wide gap between the
8 cost to transport gas on KPP, and on the alternative
9 pipeline.

10 Q. **Didn't the KCC approve those rates, thus making them**
11 **reasonable?**

12 A. No, although the KCC approved those rates for KPP to charge
13 based on its Cost of Service, it is not necessarily
14 reasonable for WRI to pay those rates if cheaper
15 alternatives are available.

16 Q. **Are the unreasonable and imprudent actions limited to the**
17 **amended contract?**

18 A. No, at the same time WRI and KPP increased the contract term
19 by 18 years and removed the price cap, they also contracted
20 for additional volumes. Some were transportation and some
21 were sales volumes. There were provisions for some of these
22 additional volumes to be shifted between sales and
23 transportation. These additional contracts contained terms
24 and conditions that were functionally the same as the
25 amended contract. ** _____

26 _____ **

1 Q. Why is the transportation rate unreasonable and imprudent?

2 A. It is unreasonable and imprudent as there is no control on
3 the price to assure that the rate is competitive with the
4 alternative pipeline, and WRI is locked in for 18 years, so
5 there is no way to seek a less costly alternative for an
6 extended period of time for this portion of WRI's supply
7 needs. The resultant cost presently exceeds the competitive
8 alternative by a factor of more than three. Exhibit GDS-5
9 graphically demonstrates the unit transportation costs on an
10 annual basis for volumes transported on WNG and KPP for the
11 4 years, 1993-1996. It is readily apparent that the
12 difference in unit costs have increased over the 4 years,
13 and for the year 1996 the unit cost on KPP is \$2.14/ Mmbtu.
14 For 1996 the WNG unit cost was \$0.61 /Mmbtu.

15 Q. Didn't the KCC have the power to control KPP's rate under
16 the 1991 contracts?

17 A. No, the KCC must set KPP's rates based on KPP's cost of
18 service. The KCC cannot reduce the rates to reflect the
19 rates of other jurisdictional(or non-jurisdictional)
20 companies.

21 Q. Does that mean that the only way that the KCC can control
22 the passthrough on the PGA is to abrogate the contract?

23 A. No, the contract contains the provision, described above,
24 that adjusts the contract price to reflect the actual amount
25 the KCC permits WRI to pass through its PGA, irrespective of
26 KPP's Commission approved cost-of service based rate.

1 COMMODITY COSTS

2 Q. What are the terms of the commodity component of the KPP
3 contracts?

4 A. The commodity rate that WRI is to pay to KPP under the
5 contracts is the actual rate paid by KPP to purchase the
6 commodity.

7 Q. Why does Staff believe that the costs are imprudent?

8 A. There are several reasons. First, the result is egregious.
9 In January, 1995, subsequent to the October, 1991 signing of
10 the gas purchase contract with WRI, KPP entered into a gas
11 purchase contract with an affiliate (Margasco) to purchase
12 gas at **_____** That rate is excessive and clearly does
13 not represent the rate that would be achievable in an arms-
14 length negotiation. Additionally, that contract was amended
15 to permit the rate to go higher than **_____** if actual
16 cost exceeded that amount³. There is no definition of whether
17 this cost is a weighted average cost of gas, or whether a
18 single package of gas would trigger the provision. Secondly,
19 WRI has failed to audit the costs, and never filed a
20 complaint with the Commission upon learning that the rate
21 being billed was not the result of an arms-length
22 negotiation. While it is true that WRI personnel have
23 mentioned the problem to Staff, it remains the
24 responsibility of WRI to initiate a complaint. The mere

³KCC Docket 97-WSRG-312-PGA DR-6

1 mentioning of a problem does not shift the responsibility to
2 initiate action to Staff. It is common to hear "gripes" from
3 one party regarding actions or inactions on the part of
4 another entity. WRI has been both the initiator and
5 recipient of formal complaints in the past, and is well
6 aware of the procedures.

7 Q. **What is the basis for Staff's contention that the rate is**
8 **not representative of an arms-length negotiation?**

9 A. First, there is no evidence that KPP attempted to negotiate
10 a gas supply contract with any entity other than their
11 affiliate. In response to Staff data request #7 KPP claimed
12 that no bid solicitations were retained for the period 1991-
13 present. It stretches the imagination to believe that even
14 for the current heating season no documentation was
15 retained, unless there were no bids requested from other
16 suppliers. Secondly, the price that is being charged is not
17 what one would pay for short term gas supplies from other,
18 non-affiliated suppliers.

19 Q. **What evidence does Staff offer to support that contention?**

20 A. Western Resources contracts for long term gas supplies in
21 addition to winter season, 30 day supplies, and daily
22 supplies. Exhibits GDS-6 and GDS-7 list the bids that
23 Western Resources received in response to requests for
24 proposal for gas supply for winter seasons into the Transok
25 pipeline (as well as others). Transok is the transmission
26 line which feeds KPP in Oklahoma. Thus, these offers are

1 good proxies for the price that Western Resources should be
2 paying KPP. These prices are considerably lower than KPP
3 prices. They average \$0.10/MMbtu demand charge and have an
4 average commodity cost of Index +\$0.015/MMbtu. For the 1995-
5 96 winter season WRI purchased approximately **____** Mmbtu
6 from KPP. The cost of gas purchased from KPP would have
7 averaged **____** Mmbtu more than the proxy. This would have
8 amounted to approximately **____** more than purchasing on a
9 competitive basis. These calculations are shown on Exhibit
10 GDS-8.

11 Q. Is there other evidence to support the contention that the
12 gas commodity price is not representative of an arms-length
13 negotiation?

14 A. Yes, Margasco was one of the marketers that WRI solicited
15 proposals from for spot supplies into Transok. In 1996
16 Margasco bid to supply 30 day spot supplies to WRI for the
17 months of June, July, and October. For these 3 months
18 Margasco's bids ranged from a low of **_____

19 _____**

20 Q. Was Margasco the low bidder for any of the 3 months?

21 A. No, but the bids were competitive, and they generally fell
22 within the range of other bidders.

23 Q. How did the Margasco spot bids for these 3 months compare to
24 the KPP contract price for the same time period?

25 A. The results are shown in the table below. It is apparent
26 that the KPP contract price is approximately \$0.23/ Mmbtu

1 more costly than the Margasco spot bid price. This is in a
2 market where winning or losing a bid often is a difference
3 of \$0.0025 /Mmbtu or less. Clearly, the KPP contract with
4 Margasco is not an arms-length negotiation equivalent.
5

	June, 1996	July, 1996	October, 1996
6 Index of 5	\$2.0383	\$2.17	\$1.68
7 pipeline			
8 average			
9 KPP price ⁴	** _____ **	** _____ **	** _____ **
10 PEPL Index	\$2.05	\$2.18	\$1.69
11 Margasco	** _____ **	** _____ **	** _____ **
12 bid price			
13			
14			

15 **IMPACT OF CONTRACT(s)**

16 Q. What has been the impact of the KPP contracts on Kansas
17 ratepayers?

18 A. For the period 1992-1996 Kansas ratepayers have paid in
19 excess of an additional \$48 million as a result of the KPP
20 contracts as compared to the competitive alternative.

21 Q. How is the \$48 million figure calculated?

22 A. The \$ 48 million was determined by first calculating the
23 cost/MMbtu for all volumes delivered utilizing WNG,
24 including all direct bills and refunds. Next the identical
25 calculations were performed for all volumes delivered over

⁴ KPP contract price is 114% of the 5 pipeline average index

1 KPP. The difference/MMbtu was computed by taking the
2 difference in the unit costs. Finally, the total variance
3 was figured by multiplying the difference/MMbtu by the
4 volumes moved over KPP.

5 Q. **What was the source of the data used in this analysis?**

6 A. WRI provided the data in response to a staff data request.
7 Staff performed the calculations, and the data and
8 calculated values are contained in exhibit GDS-9.

9 Q. **How did the rates compare prior to the revising of the**
10 **contract in 1991?**

11 A. For the period November, 1988-December, 1991, by buying gas
12 from KPP and transporting it over the KPP pipeline, WRI paid
13 \$1.9 million more than they would have paid had they
14 purchased the gas on the open market and transported those
15 volumes over WNG. This equates to an average excess of
16 about \$0.16 /Mmbtu.

17 Q. **There is a significant change between the two periods of**
18 **time. To what is the change attributed?**

19 A. The change is attributed to a sharp increase in the cost of
20 KPP services. At the end of 1991 the cumulative rate of
21 commodity plus transport services over KPP was approximately
22 \$3.21/MMbtu, and the WNG rate was approximately \$3.05/MMbtu.
23 By year-end 1996 the KPP cumulative rate had increased to
24 \$4.12, while the WNG rate was \$3.00/MMbtu. This change is
25 shown even more clearly if one compares the rate for the
26 year 1996. The combined commodity and transportation rate

1 on KPP was \$5.70/MMbtu, and the WNG rate was \$3.21/MMbtu.

2 **Possible Commission Actions**

3 Q. If the Commission finds that the transportation component of
4 the KPP contracts is unreasonable and imprudent, what action
5 would you recommend that the Commission consider?

6 A. Regarding the transportation rate, I would recommend that
7 the Commission consider one of these actions:

- 8 • First, a finding that the contract(s) is(are) excessive,
9 unreasonable and adversely impact the public interest,
10 and as such should be abrogated.
- 11 • The second possible action is to find that the
12 transportation rate is unreasonable and imprudent and
13 that PGA pass through of the excess is not permitted.

14 Q. What portion of the transportation rate is excessive?

15 A. There are at least 3 ways of calculating the excess.

- 16 • First is to use the average cost of transportation over
17 WNG as the standard.
- 18 • The second is to use the highest priced WNG firm
19 transportation tariff as the standard.
- 20 • The third alternative is to use a value between the two
21 as the standard of a competitive alternative.

22 Q. Do you have a recommendation regarding these three
23 alternative transportation rates?

24 A. I believe that the appropriate level of transportation
25 charge pass through should be the weighed average cost of
26 WNG transportation, including GRI and ACA charges. The least

1 appropriate comparison is the WNG firm transportation
2 tariff, plus GRI and ACA. An average of the two alternatives
3 discussed above would be a reasonable compromise position,
4 and would fall within the range of reasonableness.

5 Q. Do you have a recommendation on a Commission finding
6 regarding the commodity portions of the WRI-KPP contracts?

7 A. The evidence presented heretofore is clear: the rates paid
8 by WRI for the commodity are unreasonable as they do not
9 represent prices that are attainable in an arms-length
10 transaction. WRI should not be permitted to pass through
11 more than the competitive alternative. It has been shown
12 that the competitive alternative is Index + \$0.115 /Mmbtu,
13 where the Index is the arithmetic average of the Inside FERC
14 price for the five pipelines (WNG, NNG, ANR, PEPL, and NGPL).

15 Q. Does this complete your testimony?

16 A. Yes.

Exhibit GDS-1

Gas Purchase Agreement

Confidential

Exhibit GDS-2

Letter to Bill Johnson from Jack Roberts

Confidential

Exhibit GDS-3

AMENDMENT TO GAS PURCHASE AGREEMENT

Confidential

Exhibit GDS-4

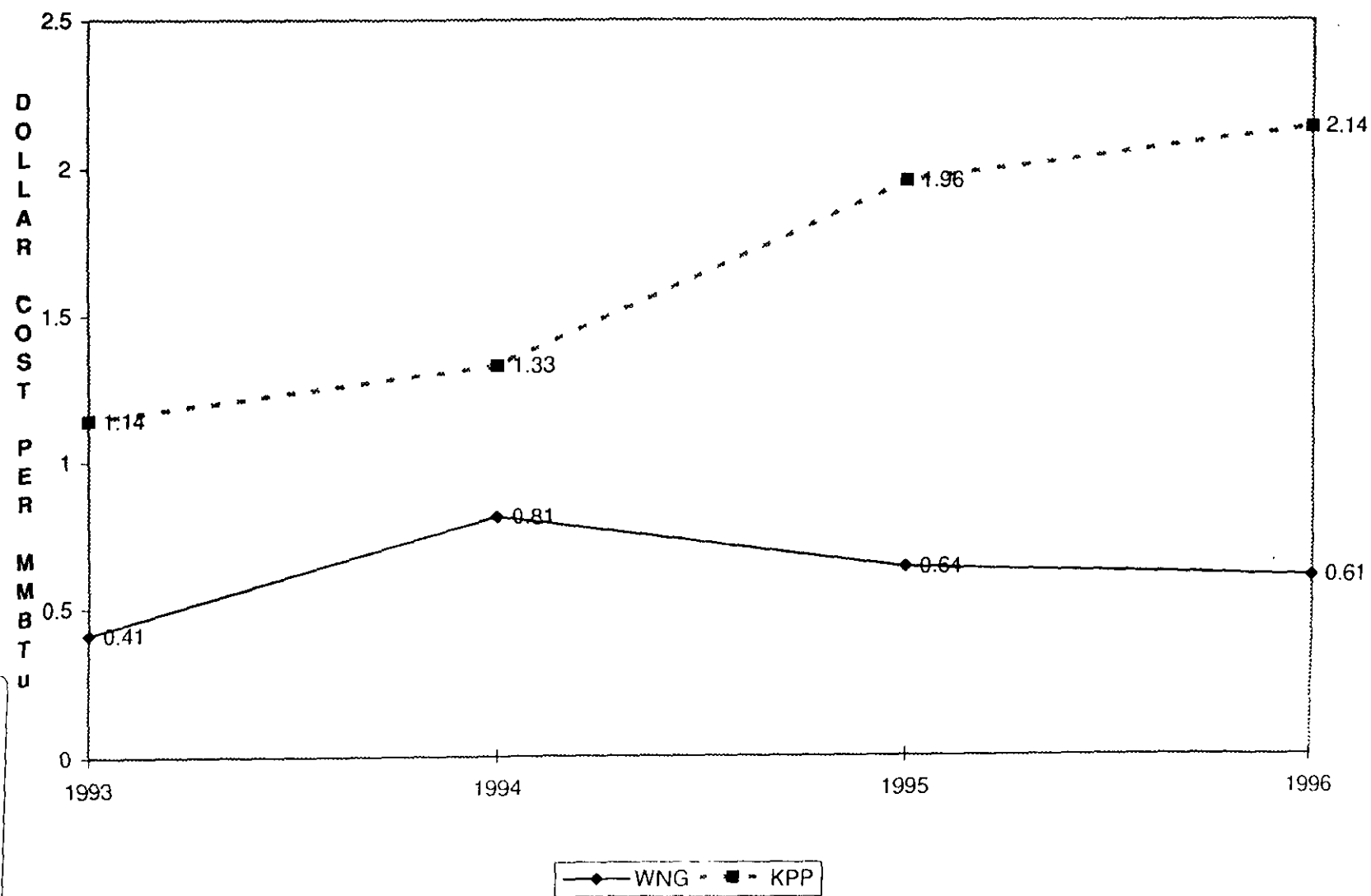
GAS TRANSPORTATION SERVICE AGREEMENT

GAS PURCHASE AGREEMENT

GAS TRANSPORTATION SERVICE AGREEMENT

Confidential

COST COMPARISON OF WRI TRANSPORTATION THROUGH WNG & KPP



Western Resources Winter Gas Supply Offers, Winter, 1993-1994

Confidential

Exhibit GDS -7

Western Resources Winter Period Gas Supply Offers for Winter 1995-1996

Confidential

7/11/97

INDEX PER MMBTU DRY

DATE	ANR PPLNE CO. (OK)	NATURAL GAS PPLNE CO. OF AMERICA (OK) (1)	(ARKLA) NORAM GAS TRANS. (AR, OK) (2)	NORTHERN NATURAL GAS CO. (TX, OK, KS)	PANHANDLE EASTERN PPLNE CO. (TX, OK, MAINLINE)	WILLIAMS NATURAL GAS CO. (TX, OK, KS)	AVERAGE PRICE OF INDEX
JANUARY '93	1.900	1.910	1.920	1.900	1.950	2.030	1.9350
FEBRUARY	1.600	1.600	1.600	1.500	1.610	1.650	1.5933
MARCH	1.820	1.840	1.820	1.750	1.830	1.850	1.8183
APRIL	2.080	2.080	2.080	1.950	2.100	2.070	2.0600
MAY	2.620	2.580	2.550	2.450	2.550	2.570	2.5533
JUNE	1.950	1.800	1.800	1.710	1.850	1.750	1.8100
JULY	1.790	1.800	1.810	1.710	1.790	1.730	1.7717
AUGUST	1.910	1.930	2.000	1.810	1.930	1.860	1.9067
SEPTEMBER	2.200	2.170	2.280	2.050	2.180	2.100	2.1633
OCTOBER	1.900	1.850	1.910	1.800	1.900	1.830	1.8650
NOVEMBER	1.900	1.880	1.980	1.810	1.900	1.830	1.8833
DECEMBER	2.230	2.220	2.250	2.260	2.230	2.250	2.2400
JANUARY '94	1.960	1.930	1.970	1.890	1.970	1.940	1.9433
FEBRUARY	2.120	2.090	2.150	1.970	2.120	2.100	2.0917
MARCH	2.140	2.140	2.170	2.030	2.140	2.110	2.1217
APRIL	1.810	1.800	1.830	1.730	1.800	1.760	1.7883
MAY	1.840	1.840	1.920	1.730	1.840	1.770	1.8233
JUNE	1.590	1.560	1.670	1.470	1.570	1.530	1.5650
JULY	1.670	1.680	1.780	1.600	1.650	1.610	1.6650
AUGUST	1.570	1.590	1.680	1.530	1.570	1.550	1.5817
SEPTEMBER	1.400	1.400	1.410	1.360	1.410	1.330	1.3850
OCTOBER	1.300	1.300	1.310	1.220	1.310	1.240	1.2800
NOVEMBER	1.510	1.520	1.520	1.440	1.520	1.450	1.4933
DECEMBER	1.600	1.600	1.600	1.570	1.600	1.600	1.5950
JANUARY '95	1.510	1.500	1.520	1.460	1.510	1.510	1.5017
FEBRUARY	1.270	1.260	1.320	1.210	1.270	1.230	1.2600
MARCH	1.260	1.270	1.280	1.200	1.270	1.240	1.2533
APRIL	1.340	1.340	1.350	1.260	1.340	1.270	1.3167
MAY	1.450	1.440	1.460	1.370	1.450	1.400	1.4283
JUNE	1.460	1.450	1.480	1.390	1.470	1.440	1.4483
JULY	1.250	1.240	1.280	1.200	1.250	1.230	1.2417
AUGUST	1.190	1.200	1.220	1.170	1.200	1.180	1.1933
SEPTEMBER	1.410	1.410	1.430	1.380	1.410	1.420	1.4100
OCTOBER	1.500	1.500	1.500	1.460	1.500	1.490	1.4917
NOVEMBER	1.610	1.610	1.620	1.570	1.610	1.600	1.6033
DECEMBER	1.880	1.880	1.890	1.840	1.890	1.880	1.8767
JANUARY '96	2.020	2.000	2.010	1.930	2.000	2.030	1.9983
FEBRUARY	1.790	1.790	1.830	1.730	1.810	1.840	1.7983
MARCH	1.900	1.900	1.900	1.870	1.900	1.900	1.8950
APRIL	2.140	2.140	2.150	2.060	2.140	2.150	2.1300
MAY	2.010	2.010	2.020	1.950	2.000	2.000	1.9983
JUNE	2.050	2.050	2.070	1.980	2.050	2.030	2.0383
JULY	2.180	2.180	2.200	2.100	2.180	2.180	2.1700
AUGUST	2.140	2.140	2.160	2.030	2.130	2.140	2.1233
SEPTEMBER	1.670	1.670	1.680	1.570	1.670	1.670	1.6550
OCTOBER	1.690	1.690	1.690	1.640	1.690	1.680	1.6800
NOVEMBER	2.500	2.490	2.430	2.480	2.510	2.500	2.4850
DECEMBER	3.600	3.620	3.550	3.520	3.610	3.680	3.5967
JANUARY '97	4.200	3.950	4.110	4.080	4.100	4.300	4.1233
FEBRUARY	2.770	2.760	2.730	2.730	2.770	2.810	2.7617
MARCH	1.630	1.620	1.610	1.560	1.640	1.630	1.6150
APRIL							0.0000
MAY							0.0000
JUNE							0.0000
JULY							0.0000
AUGUST							0.0000
SEPTEMBER							0.0000
OCTOBER							0.0000
NOVEMBER							0.0000
DECEMBER							0.0000

(1) - USED MID-CONTINENT ZONE FOR NGPL SINCE MARCH 1996

(2) - USED WEST ZONE FOR NORAM SINCE MARCH 1995

SOURCE: INSIDE F.E.R.C.'S GAS MARKET REPORT. PRICES OF SPOT GAS DELIVERED TO PIPELINES, FIRST ISSUE EACH MONTH

Schedule 2-26

GDS-9

CONFIDENTIAL

Schedule 2-27

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Kansas Pipeline Company) Docket No. RP99-485-000

PREPARED DIRECT TESTIMONY OF
WILLIAM G. ELIASON
ON BEHALF OF
KANSAS GAS SERVICE COMPANY,
A DIVISION OF ONEOK, INC.

1 Q. Please state your name and business address.

2 A. My name is William G. Eliason. My business address is 200 S.W. Sixth
3 Street, Topeka, Kansas 66203.

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

5 A. I am employed by Kansas Gas Service Company, a Division of ONEOK,
6 Inc. (Kansas Gas Service or the Company), as Vice President, Gas
7 Strategy.

8 Q. Please describe your educational background and professional experience.

9 A. I received a degree in civil engineering from the University of Nebraska in
10 1974. Since that time, I have been employed in the natural gas industry.
11 I was employed by Peoples Natural Gas Company for 14 years. My
12 responsibilities at Peoples included engineering, marketing, and gas

1 supply. After leaving Peoples, I was employed for six years by Rangeline
2 Corporation, where, ultimately, I assumed the position of Chief
3 Operations Officer. Rangeline was the unregulated gas marketing
4 subsidiary of Western Resources, Inc. (Western). At Rangeline, I was
5 involved directly with the marketing of natural gas. I moved to Western
6 in July 1994 and assumed responsibility for gas transmission and supply.
7 In December 1997, I became an employee of Kansas Gas Service. In my
8 current position, I am responsible for the Gas Supply Department, the
9 Transportation Services Department, FERC Regulatory Department and
10 the Marketing (Business Development) Department.

11 Q. What is the purpose of your testimony?

12 A. My testimony will provide the background for the business and
13 contractual relationships between Kansas Gas Service and Kansas
14 Pipeline Company (KPC) (throughout my testimony, my references to
15 KPC include all of its affiliates and their predecessor companies). In the
16 course of this general discussion, I will briefly discuss the July 9, 1997
17 Settlement Agreement entered into by Kansas Gas Service, KPC and the
18 Staff of the Kansas Corporation Commission (KCC), and Kansas Gas
19 Service's lawsuit filed against KPC in the State District Court of Johnson
20 County, Case No. 99C06574. I will also testify regarding certain items

1 contained in KPC's filing such as deferred service cost, acquisition
2 premium, depreciation and outside services.

3 Q. Will other witnesses testify on behalf of Kansas Gas Service?

4 A. Yes. Mr. Richard Tangeman will testify regarding KPC's claim that it is
5 entitled to deferred service costs as a result of delays by Western in
6 entering into new agreements with KPC. Mr. Tangeman will also testify
7 regarding certain aspects of KPC's depreciation and negative salvage
8 costs. Mr. William E. Brown will testify regarding the negotiations which
9 Mr. Langley alleges he had with Mr. Brown.

10 Q. Please provide a general description of Kansas Gas Service.

11 A. Kansas Gas Service is a division of ONEOK, Inc., which is headquartered
12 in Tulsa, Oklahoma. ONEOK, Inc. provides natural gas distribution
13 service to approximately 1.4 million natural gas customers in Kansas and
14 Oklahoma. It is the eighth largest natural gas distribution company in
15 the United States.

16 Q. How did Kansas Gas Service become part of ONEOK, Inc.

17 A. In late 1996, ONEOK and Western entered into an agreement to combine
18 the natural gas properties of the two companies. Western had
19 approximately 635,000 natural gas customers located in Kansas and
20 northeast Oklahoma. Western also had approximately 500,000 electric

1 customers in Kansas. Pursuant to the agreement between Western and
2 ONEOK, Western contributed all of its natural gas assets and liabilities to
3 a wholly-owned subsidiary, WAI, Inc. ONEOK then merged into WAI,
4 Inc. and WAI, Inc. was then renamed ONEOK, Inc. Western received
5 common stock from ONEOK, giving it a 9.9% ownership interest in
6 ONEOK. Western also received preferred stock in ONEOK which could be
7 converted into an additional 35% of the common stock of ONEOK, giving
8 Western potentially a 45% interest in ONEOK. The transaction between
9 Western and ONEOK closed on November 26, 1997.

10 Q. Please give a brief description of Western's gas business before entering
11 into the agreement with ONEOK.

12 A. Western initially was involved in the natural gas business as Kansas
13 Power and Light (KPL). KPL owned a transmission line which ran from
14 the Hugoton Gas field in southwest Kansas to the northeast portion of the
15 state, serving approximately 110,000 customers. Under the KPL system,
16 KPL was responsible for buying its own gas, transporting it and
17 distributing it to the end use customer. In 1983, KPL bought the Gas
18 Service Company, which served approximately 900,000 natural gas
19 customers and was almost exclusively a pure natural gas distribution
20 company. Its customers were located in Kansas, Missouri and Oklahoma.

1 Its primary service centers were Kansas City, Missouri. Kansas City,
2 Kansas, Wichita, Kansas, Topeka, Kansas and Johnson County, a heavily
3 populated county bordering Kansas City, Missouri and Kansas City,
4 Kansas. In 1993, Western sold its Missouri properties, representing
5 approximately 450,000 customers, to the Southern Union Company. This
6 transaction closed on January 31, 1994.

7 Q. How did the Gas Service Company acquire the gas it delivered to
8 customers?

9 A. The Gas Service Company acquired gas from an interstate pipeline,
10 Williams Gas Pipelines Central, Inc. (WGPC) and its predecessor
11 companies. As discussed by Mr. Langley, WGPC was previously part of
12 the Cities Service organization, as was the Gas Service Company. These
13 two entities were separated in the 1940s, not the 1950s, as suggested by
14 Mr. Langley. The Gas Service Company acquired all of its gas from
15 WGPC and its predecessors under full requirements contracts. In the
16 mid-1980s, Western, as the successor to the Gas Service Company, began
17 the process of securing supplies of gas from alternative sources, either by
18 purchasing gas from producers and marketers and transporting the gas
19 over WGPC or by buying gas from alternative sources such as KPC's
20 predecessors. Later in my testimony, I will discuss several reasons why

1 KPC should not recover any deferred service cost for shortfalls in the sale
2 of gas by KPC to Western in the 1989 to 1991 time frame. As will be
3 shown in the testimony of Richard Tangeman, such shortfalls were not
4 caused by inaction on the part of Western/Gas Service, as such delays
5 were in great part caused by KPC itself. Mr. Tangeman will discuss in
6 greater detail Western's efforts to obtain conversion and reduction rights
7 from WGPC in the late 1980s. In August 1988, Western entered into the
8 first major contract with KPC. A second contract was entered into in
9 1990, and several other contracts were entered into on October 3, 1991.

10 Q. Please describe the contracts currently in effect between Kansas Gas
11 Service and KPC.

12 A. All of the contracts in effect were signed by Kansas Gas Service's
13 predecessor companies and by the predecessor companies of KPC. There
14 are nine contracts in effect today. The contracts are described below:

- 15 1. Contract dated August 8, 1988, with a contract demand of 35,000
16 MMBtu/day and a termination date of October 31, 2009, originally
17 signed by KPL and Kansas Pipeline Company, L.P. The contract is
18 labeled a Gas Purchase Agreement, but, as a result of the
19 Settlement Agreement dated July 9, 1997, which I will discuss later
20 in my testimony, the contract became a transportation only

1 agreement. The agreement provides that the price to be charged
2 shall be equal to KPC's maximum rates but that the parties may
3 agree to a lesser rate. Service under this agreement is for deliveries
4 to the Kansas City metropolitan area on the Kansas side.

5 2. Gas Transportation Service Agreement dated October 3, 1991, with
6 a contract demand of 48,668 MMBtu/day and a termination date of
7 October 31, 2009, originally signed by KPL and KansOk. The
8 agreement provides that the price to be charged shall be equal to
9 KPC's maximum rates but that the parties may agree to a lesser
10 rate. This represents deliveries from TransOk in Oklahoma to
11 Riverside at the Kansas/Oklahoma state line.

12 3. Service Agreement dated October 3, 1991, Rate Schedule FT, with a
13 contract demand of 48,668 MMBtu/day and a termination date of
14 October 31, 2009, originally signed by KPL and Riverside Pipeline
15 Company. The agreement provides that the price to be charged
16 shall be equal to KPC's maximum rates but that the parties may
17 agree to a lesser rate. This gas is received from KansOk (No. 2
18 above) carried across the state line and delivered to Kansas Natural
19 Partnership (No. 4 below).

- 1 4. Gas Transportation Service Agreement dated October 3, 1991, with
2 a contract demand of 48,668 MMBtu/day and a termination date of
3 October 31, 2009, originally signed by KPL and Kansas Natural
4 Partnership. The agreement provides that the price to be charged
5 shall be equal to KPC's maximum rates but that the parties may
6 agree to a lesser rate. This gas is received from Riverside (No. 3
7 above), with deliveries up to 21,100 MMBtu/day to Wichita and up
8 to 27,568 MMBtu/day to Kansas Pipeline Partnership (No. 5 below).
- 9 5. Gas Transportation Service Agreement dated October 3, 1991, with
10 a contract demand of 27,568 MMBtu/day and a termination date of
11 October 31, 2009, originally signed by KPL and Kansas Pipeline
12 Partnership. The agreement provides that the price to be charged
13 shall be equal to KPC's maximum rates but that the parties may
14 agree to a lesser rate. This gas is received from Kansas Natural
15 Partnership (No. 4 above) and delivered to the Kansas City
16 metropolitan area on the Kansas side.
- 17 6. Gas Purchase Contract dated February 28, 1995, with a contract
18 demand of 6,857 MMBtu/day and a termination date of October 31,
19 2009, originally signed by Western and Kansas Pipeline
20 Partnership. The contract is labeled a gas purchase contract, but,

1 as a result of the Settlement Agreement dated July 9, 1997, the
2 contract became a transportation only contract. The price is tied to
3 Panhandle Eastern's no-notice service. Service under the contract
4 is for the cities of Paola and Osawatomie

5 7. Gas Purchase Contract dated February 28, 1995, with a contract
6 demand of 6,900 MMBtu/day and a termination date of October 31,
7 2009, originally signed by Western and Kansas Pipeline
8 Partnership. The contract is labeled a gas purchase contract, but,
9 as a result of the Settlement Agreement dated July 9, 1997, the
10 contract became a transportation only contract. The price is tied to
11 WGPC's no-notice service. Service under the contract is for the city
12 of Ottawa.

13 8 Gas Purchase Contract dated February 28, 1995, with a contract
14 demand of 5,700 MMBtu/day and a termination date of October 1,
15 2007. Originally signed by Western and Kansas Pipeline
16 Partnership. The contract is labeled a gas purchase contract, but,
17 as a result of the Settlement Agreement dated July 9, 1997, the
18 contract became a transportation only contract. The contract
19 provides that the price to be charged shall be equal to KPC's
20 maximum rates through October 31, 2002. Thereafter, through

1 October 31, 2007, the price is tied to WGPC's rate for firm
2 transportation service. Service under the contract is for Johnson
3 County.

4 9. Gas Transportation Service Agreement dated February 28, 1995,
5 with a contract demand of 62,568 MMBtu/day between Western
6 and Kansas Pipeline Partnership. Transportation service under
7 this agreement begins on November 1, 2009 and continues through
8 October 14, 2014. The contract provides that the price to be
9 charged shall be the lesser of KPC's maximum rate or WGPC's rate
10 for firm transportation service. Service under this agreement is for
11 delivery to the Kansas City metropolitan area on the Kansas side.

12 Q. Is KPC still providing sales service to Kansas Gas Service?

13 A. No.

14 Q. Did this change occur when KPC became subject to FERC jurisdiction on
15 May 11, 1998?

16 A. No. The merchant portion of these contracts was terminated on July 11,
17 1997, pursuant to paragraph 1.4 of the July 9, 1997 Settlement
18 Agreement.

19 Q. Please describe the July 9, 1997 Settlement Agreement entered into by
20 KPC, Western and the Staff of the KCC.

1 A. The July 9, 1997 Settlement Agreement was entered into by KPC,
2 Western and the Staff of the KCC to resolve many disputes involving the
3 rates and charges of KPC. A copy of the Settlement Agreement is attached
4 as Exhibit WGE-2. The primary focus of this settlement was to move KPC
5 from an uncompetitive, to a competitive position, vis a vis WGPC, while at
6 the same time maintaining KPC in a sound financial position to enable it
7 to continue as a viable competitor to WGPC. The Settlement Agreement
8 was designed to make KPC live up to its promise, which it had made for
9 years, that its presence would be a positive competitive benefit for Kansas
10 natural gas consumers. From 1994 onward, KPC had lost any right to
11 claim that its presence was beneficial to consumers in the State of Kansas.

12 Q. What happened in 1994?

13 A. On March 25, 1994, KPC filed a rate case at the KCC to increase
14 substantially its rates and charges and to combine certain of its
15 subsidiaries operating on an intrastate basis within the state of Kansas,
16 KCC Docket No. 190,362-U. Specifically, KPC proposed an annual
17 revenue increase of \$11 million and, in addition, sought to direct bill
18 Western for \$55.6 million. KPC's proposed rate base of \$114 million
19 included deferred charges (primarily market entry costs) of \$62 million.
20 KPC also sought to have its rates converted from a volumetric charge to a

1 straight fixed variable charge. The Commission granted KPC the
2 authority to begin charging its cost of service on a straight fixed variable
3 basis beginning in June of 1994. On March 17, 1995, the KCC issued an
4 order authorizing KPC to increase its rates substantially. A significant
5 part of this very long and difficult case included KPC's attempt to recover
6 market entry costs ("deferred service costs" in this case). The March 17,
7 1995 decision significantly reduced the amount of market entry costs
8 (deferred service costs) to be recovered from KPC's customers, but still
9 incorporated a substantial amount in rate base for KPC's benefit. The
10 March 17, 1995 Order was eventually appealed to the Kansas Court of
11 Appeals on the ground that the market entry costs were assets of a prior
12 company and were not purchased in 1988 and 1989 by KPC. On June 26,
13 1996, the Kansas Court of Appeals expressed serious concern as to the
14 propriety of KPC recovering these market entry costs, which had been
15 incurred by a predecessor company, and remanded the case back to the
16 KCC for further review and determination as to when and how the market
17 entry costs were purchased from KPC's predecessors. *Williams Natural*
18 *Gas Co. v Kansas Corporation Commission*, 22 Kan. App. 2d 326. (Opinion
19 issued June 19, 1996; review was denied by the Kansas Supreme Court on
20 July 25, 1996.) On remand, KPC filed a Motion with the KCC on

1 November 13, 1996, asking the KCC to reopen the record in Docket No.
2 190,362-U and to recover market entry costs for the period November 1,
3 1988 through March 17, 1995. A copy of the Motion is attached as Exhibit
4 WGE-3. On December 30, 1996, the KCC issued its Order on Remand,
5 denying KPC recovery of any market entry (deferred service) costs and
6 ordering a refund by KPC to Western of approximately \$7.5 million
7 previously collected under the March 17, 1995 Order permitting KPC to
8 recover market entry costs. KPC's Petition for Reconsideration of the
9 December 30, 1996, KCC Order was denied by the KCC on February 3,
10 1997. KPC appealed the December 30, 1996, and February 3, 1997, KCC
11 decisions and, in a June 20, 1997 Opinion upholding the Commission's
12 Order on Remand, the Court of Appeals stated as follows:

13 We have examined the record, and we see no abuse of
14 discretion by the KCC in its decision not to reopen the record
15 and not to hear additional evidence.

16 As the KCC noted:

17 The record made in this proceeding is extensive
18 (the official record contained 17,364 pages
19 reflecting the testimony of 29 witnesses during
20 17 days of hearings and containing 64 motions,
21 39 separate orders, 12 post hearing motions,
22 and 11 separate post hearing orders), and the
23 initial briefs and reply briefs have provided
24 substantial assistance in reviewing the record
25 and understanding the arguments for and

1 against the acquisition or incurrence of market
2 entry cost.

3 If a party finds itself unable to squeeze all of its evidence on
4 the issue into a record of this size, then it is beyond our help.

5 *Kansas Pipeline Partnership v. Kansas Corporation Comm'n.* 24 Kan
6 App.2d 42, 50 (1997).

7 Following the issuance of the Court of Appeals decision, KPC filed an
8 appeal to the Kansas Supreme Court.

9 Q. Were there other dockets which were addressed in the Settlement
10 Agreement?

11 A. Yes. On February 5, 1997, two days after the Commission issued its
12 Order denying KPC's Petition for Reconsideration in Docket No.
13 190,362-U, KPC filed a tariff sheet with the KCC, seeking to direct bill
14 Western for \$11.1 million of project development costs, commonly referred
15 to as Linchpin Development Costs. KPC stated that it was authorized to
16 direct bill these Linchpin Development Costs pursuant to the Orders of
17 the Court of Appeals approving certain agreements between Western and
18 KPC by operation of law. *Kansas Pipeline Partnership v. Kansas*
19 *Corporation Comm'n*, 22 Kan App. 2d 410 (1996) (hereafter the "1996 KPP
20 case"). The KCC suspended the tariff filing and set it for hearing in
21 Docket No. 97-KPPG-460-TAR. The KCC denied KPC's tariff filing in an

1 Order issued on May 5, 1997, stating that the Court of Appeals decision in
2 the 1996 KPP case did not authorize KPC to direct bill Western, as such
3 project development costs were initially included in rates approved by the
4 KCC in Docket No. 190,362-U, which rates became permanent as a result
5 of the court's opinion in the 1996 KPP case. A copy of the May 5, 1997
6 Order is attached as Exhibit WGE-4. On June 11, 1997, the KCC denied
7 KPC's Petition for Reconsideration. In conjunction with the activities of
8 the KCC in Docket No. 97-KPPG-460-TAR, KPC filed a Petition for Writ
9 of Prohibition with the Court of Appeals on March 12, 1997.

10 Q. It appears that there was significant activity before the KCC and the
11 Kansas Court of Appeals in the late 1996 and early 1997 time period.
12 Were there other dockets before the KCC involving KPC in that time
13 frame?

14 A. Yes. On November 25, 1996, KCC Staff requested the partial suspension,
15 effective December 1, 1996, of the Purchased Gas Adjustment (PGA) of
16 Western for the purpose of investigating the prudence of the costs to be
17 passed through for transportation and purchase of natural gas from KPC.
18 The suspension related to the agreements entered into on October 3, 1991
19 and the August 8, 1988 agreement, which was also amended on October 3,
20 1991. The KCC granted Staff's requested suspension on December 2,

1 1996, thereby initiating Docket No. 97-WSRG-312-PGA. In response to a
2 Request for More Definite Statement, the KCC filed the Affidavit of Glenn
3 Smith on March 3, 1997. In his affidavit, Mr. Smith stated that, as a
4 result of the 1991 contracts entered into by KPC and Western, Kansas
5 consumers, during the 1994 through 1996 time period, had incurred more
6 than \$25 million in additional costs than they should have. KPC and
7 Western both opposed the Suspension Order and filed Petitions for
8 Reconsideration of the Suspension Order, and the matter was set for
9 hearing on June 30, 1997. A copy of Mr. Smith's affidavit is attached as
10 Exhibit WGE-5.

11 Q. Please summarize the status of the relationship of KPC and Western
12 before the KCC and the Court of Appeals as of June 1997.

13 A. At that time, KPC had been ordered to refund approximately \$7.5 million
14 in market entry costs in Docket No. 190,362-U, which order had been
15 upheld by the Kansas Court of Appeals and had been appealed to the
16 Kansas Supreme Court; KPC's request to direct bill Western for \$11.1
17 million in project development costs had been denied by the KCC in
18 Docket No. 97-KPPG-460-TAR, as such amounts had already been
19 included in rates being recovered by KPC pursuant to orders of the KCC
20 in Docket No. 190,362-U; and Western's PGA was partially suspended by

1 the KCC on the grounds that the 1991 agreements between KPC and
2 Western were costing customers approximately \$8 million a year. A
3 hearing was scheduled on that matter for June 30, 1997.

4 Q. Were there also issues under consideration at the Federal Energy
5 Regulatory Commission (FERC) at about the same time?

6 A. Yes. The FERC had determined that KPC was subject to its jurisdiction
7 in a November 2, 1995, Order in Docket No. RP95-212, 73 FERC ¶ 61,160.
8 The November 2, 1995 Order also required KPC to file an application for
9 certificate authorization under section 7 (c) of the Natural Gas Act. On
10 December 8, 1995, the FERC issued an order staying the effectiveness of
11 the November 2, 1995 Order until 60 days after the issuance of an order
12 on the merits of requests for rehearing of the November 2, 1995 Order.
13 On January 23, 1996, KPC filed the Application required by the
14 November 2, 1995 Order, thereby initiating the CP96-152 Docket.

15 Q. What happened next at the state level?

16 A. KPC, the Staff of the KCC and Western entered into settlement
17 discussions, attempting to resolve these issues, which culminated in the
18 July 9, 1997 Settlement Agreement.

19 Q. Could you please summarize the Settlement Agreement?

1 A I can, but I believe the best summary of the Settlement Agreement is
2 found in the transcript of the hearing held on July 18, 1997 before the
3 KCC, a copy of which is attached as Exhibit WGE-6. At this hearing,
4 Mr. Martin Bregman, an attorney for Western, speaking on behalf of all
5 parties, went over the Settlement Agreement, paragraph-by-paragraph,
6 explaining its terms. Attorneys for KPC indicated their approval of all
7 statements made by Mr. Bregman and his responses to questions asked by
8 the KCC Commissioners. The Settlement was approved by the KCC in
9 Docket No. 97-WSRG-312-PGA on July 29, 1997. A copy of the July 29,
10 1997 KCC Order is attached as Exhibit WGE-7. Among the highlights of
11 the Settlement Agreement are that: (1) Western would pay KPC rates
12 based on a cost of service of \$31 million for a period of 4 years from
13 August 1, 1997 through July 31, 2001; (2) KPC would refund
14 approximately \$7.5 million to Western ordered to be paid in Docket No.
15 190,362-U; (3) KPC would cease its merchant function immediately; (4) on
16 August 1, 1998, there would be a slight step down in the Zone 3
17 Reservation rate resulting from including the contract demands for the (a)
18 Paola/Osawatomie, (b) Ottawa and (c) 5,700 MMBtu contracts; (5)
19 beginning August 1, 2001, KPC would decrease its rates to competitive
20 rates, which the parties agreed would be the WGPC firm rates for

1 deliveries into Kansas City and Wichita; (6) on August 1, 2004, the
2 Settlement Agreement allowed KPC to file for an increase in rates up to a
3 cost of service of \$27.9 million; KPC, however, could not collect any
4 increased rates on an interim basis; (7) KPC agreed that it would not
5 include market entry costs in its rate base; (8) in consideration for the
6 long term reduction in rates, Western made a payment of approximately
7 \$7.5 million to KPC; (9) KPC agreed to cooperate fully to promptly execute
8 any supplementary documents that may be necessary to give effect to the
9 provisions of the Settlement Agreement; (10) the Staff of the KCC agreed
10 not to challenge Western's prudence during the remaining term of
11 Western's contracts with KPC; (11) KPC also agreed to cease resisting
12 FERC jurisdiction.

13 Q. Following the approval of the Settlement Agreement at the KCC, please
14 provide a brief description of the events at FERC.

15 A On October 3, 1997, the Commission issued an Order affirming its
16 assertion of jurisdiction and establishing KPC's initial cost of service at
17 \$21.8 million with a rate base of \$39 million. 81 FERC ¶ 61,005. On
18 November 3, 1997, KPC filed a request for rehearing of the October 3,
19 1997 Order and, on November 10, 1997, KPC filed an Emergency Motion
20 for Extension of Stay, claiming that the initial rates approved by the

1 FERC could have devastating financial consequences for KPC. The FERC
2 granted the November 10, 1997 Motion on November 25, 1997. On
3 December 2, 1997, KPC filed a Petition for Review of the Commission's
4 October 3, 1997 Order in the United States Court of Appeals for the
5 District of Columbia Circuit. On February 27, 1998, Dennis Langley sent
6 a letter to all of the FERC Commissioners along with a Motion acceding to
7 FERC Jurisdiction and Requesting Interim Relief. KPC requested the
8 FERC, among other things, to allow KPC to continue charging the rates
9 agreed to by Kansas Gas Service and approved by the KCC, and to permit
10 such rates to remain in effect until KPC filed a Section 4 rate case. On
11 April 30, 1998, the FERC granted KPC's February 27, 1998 Motion, and
12 KPC became subject to FERC jurisdiction on May 11, 1998.

13 Q. Has KPC honored its contractual obligations under the Settlement
14 Agreement?

15 A. No.

16 Q. Has Kansas Gas Service filed suit against KPC in Johnson County
17 District Court?

18 A. Yes. On May 21, 1999, Kansas Gas Service filed suit. A copy of the
19 Petition filed in that case, Case No. 99C06574 is attached as Exhibit
20 WGE-8.

1 Q. Has KPC done anything else since the filing of the lawsuit to indicate that
2 it did not intend to live up to the Settlement Agreement?

3 A. Yes. I believe KPC's actions in this rate case are replete with breaches of
4 the Settlement Agreement. KPC's rate case does not even mention the
5 Settlement Agreement or the step-down in the Zone 3 rate which should
6 have occurred on August 1, 1998, or the step-down in rates which should
7 occur on August 1, 2001. The filing proposes that KPC's rates should be
8 increased to a cost of service of \$34.6 million and that such increase shall
9 be assessed only against Kansas customers. KPC's attorneys have
10 indicated that KPC intends to collect the increased charges from Kansas
11 Gas Service. This increase represents a further breach of KPC's
12 agreement not to charge rates to Kansas Gas Service in excess of a cost of
13 service of \$31 million agreed to in the Settlement Agreement. Also, KPC's
14 inclusion of market entry costs (deferred service costs) in its filing and
15 their indication that they intend to bill Kansas Gas Service for the full
16 increase represents another breach because KPC is trying to raise again
17 an issue which was disposed of in the Settlement Agreement. KPC's
18 intention to recover the costs of prior rate cases from Kansas Gas Service
19 also constitutes a breach of paragraph 1.3 D of the Settlement Agreement.

1 Q. Mr. Eliason, I realize that Kansas Gas Service takes the position in the
2 Kansas state court that there should be no continuing business
3 relationship between the parties and that Kansas Gas Service should be
4 excused from performance of the Settlement Agreement and all other
5 service contracts with KPC, but has Kansas Gas Service attempted to
6 estimate what the value of the Settlement Agreement would be if it were
7 given full effect for the remainder of its term?

8 A Yes we have. We have attempted to estimate what the annual cost of
9 service would be on a fixed basis through October 31, 2009 by present
10 valuing the higher rates incorporated in the Settlement Agreement
11 through July 31, 2001, the lower rates beginning August 1, 2001, and
12 KPC's rates following the completion of a rate case that may be filed in
13 2004. We believe that the present value of the Settlement Agreement for
14 Kansas Gas Service can be expressed in terms of a KPC cost of service
15 between \$20.6 million and \$22.1 million per year through October 31,
16 2009. This valuation is based on the cost of service methodology which
17 the parties used in the Settlement Agreement. This analysis is based on
18 our assumptions of what Kansas Gas Service would pay KPC from
19 October 1, 2000 through October 31, 2009, if KPC honored the
20 commitments it made in the Settlement Agreement. First, we assumed

1 that Kansas Gas Service would pay rates based on a cost of service of \$31
2 million through July 31, 2001. At August 1, 2001, Kansas Gas Service
3 would pay the comparable WGPC rate except that for the 5,700
4 MMBtu/day contract, Kansas Gas Service would continue to pay the
5 current full KPC tariff rate until October 31, 2002, when the rate under
6 that contract would also reduce to the WGPC rate. For purposes of
7 determining the WGPC comparable rate, we utilized the current WGPC
8 rate. We assumed that KPC would file a rate case on August 1, 2004,
9 which they are permitted to do under the Settlement Agreement, and that
10 any increase proposed in such rates would not be charged to Kansas Gas
11 Service until such increased rates became final, which we assumed would
12 occur by August 1, 2006. We further assumed that the cost of service
13 approved in that rate case could range from \$22 million to \$27.9 million,
14 the maximum amount on which KPC could base its charges to Kansas Gas
15 Service under the Settlement Agreement. This element of the analysis
16 creates the range of the total present value. Finally, we assumed that the
17 rates ultimately determined from the rate case filed on August 1, 2004
18 would remain in effect from August 1, 2006 through October 31, 2009. In
19 determining the present value, we utilized a discount rate of 10%. In
20 making this analysis, we fully realize that we made assumptions such as

1 (1) the current WGPC rate would remain at its present level; (2) that it
2 would take two years for a rate case filed on August 1, 2004 to become
3 final, and (3) that the FERC would determine the cost of service to be
4 between \$22 million and \$27.9 million. We feel however, that such
5 assumptions are valid and reasonable.

6 Q. Why are you informing the Commission of the Settlement Agreement and
7 its present value?

8 A. As the Commission determines the cost of service of KPC, Kansas Gas
9 Service believes it is helpful to compare the cost of service being
10 determined now to the rates that KPC voluntarily agreed to charge
11 Kansas Gas Service over time. Also, the rates that KPC agreed to charge
12 Kansas Gas Service in the Settlement Agreement were based on
13 competitive alternatives. Since KPC's unfulfilled promise to Kansas
14 customers has been that it would provide a competitive alternative, the
15 rates (and associated cost of service) to which KPC agreed in the
16 Settlement Agreement should be compared to the cost of service and rates
17 that KPC proposes in this rate case. Moreover, this present value analysis
18 makes it clear that the commitments which KPC made in the Settlement
19 Agreement were based on an average cost of service far below what it
20 proposes in this rate case.

1 Q. Is Kansas Gas Service requesting the FERC to implement the Settlement
2 Agreement in this rate case?

3 A. No. The Settlement Agreement is a contract between Kansas Gas Service
4 and KPC, and the parties' contractual disputes are pending before the
5 state court in Kansas. As a result of KPC's repudiation of the Settlement
6 Agreement and fraudulent inducement, Kansas Gas Service has sought a
7 declaration from the court that it be released from the underlying
8 transportation agreements. If the court ultimately determines that
9 Kansas Gas Service should not be released from the underlying
10 transportation contracts, we will abide by the agreement and pay the
11 rates set forth in the Settlement Agreement, unless this Commission
12 determines that those rates are too high.

13 Q. Mr. Eliason, will you please provide your recommendation regarding
14 KPC's request to recover deferred service costs?

15 A. Kansas Gas Service requests that the FERC reject KPC's request for a
16 return of and a return on deferred service costs.

17 Q. Could you identify deferred service costs?

18 A. KPC identifies deferred service costs as costs never recovered by KPC that
19 were incurred between late 1989 and December 1991. KPC states that
20 these costs were incurred as a result of three barriers to KPC's entry into

1 the market: (1) limitations on KPC's certificate of public convenience and
2 necessity in Kansas which prevented KPC from delivering gas directly to
3 end users by requiring such deliveries to be made through the local
4 distribution company; (2) delays by Western in agreeing to new contracts
5 and new interconnects with KPC; and (3) WGPC improperly attempting to
6 bar KPC from entering the market.

7 Q. Why do you think that deferred service costs should be rejected?

8 A. There are several reasons why deferred service costs should be rejected.
9 First, they are nothing more than out-of-period costs. (KPC is attempting
10 to recover money today for expenses incurred approximately ten years
11 ago.) Second, as stated above, the Settlement Agreement entered into by
12 KPC, Western and the Staff of the KCC prevents KPC from recovering
13 market entry (deferred service) costs. Third, the KCC and the Kansas
14 Court of Appeals have rejected their recovery.

15 Q. How have the KCC and the Court of Appeals rejected their recovery?
16 Mr. Langley states on page 53, lines 7 and 8, of his testimony that KPC
17 has never tried to recover deferred service costs. Is it possible that he is in
18 error?

19 A. Absolutely. Exhibit WGE-3 demonstrates that KPC did attempt to
20 recover deferred service costs from the KCC. Mr. Langley attempts to

1 hide this fact by changing the name of these costs from market entry costs
2 to deferred service costs. This sleight-of-hand should be rejected.
3 Furthermore, Mr. Lubow's statement, on page 27 of his direct testimony,
4 that the reason that KPC did not request the recovery of these costs was
5 because KPC thought it would recover the costs in Docket No. 190,362-U,
6 is equally specious. First, they did in fact attempt to recover the costs, as
7 shown in Exhibit WGE-3. Second, Docket No. 190,362-U was filed on
8 March 25, 1994, over two years after KPC allegedly incurred these costs.
9 The exasperation of the Kansas Court of Appeals, expressed in its decision
10 described above, that KPC could not produce evidence to support its claim
11 after 17,364 pages on the record, demonstrates that KPC's claims are
12 groundless.

13 Q. Is there any meaningful difference between market entry costs and
14 deferred service costs?

15 A. No. Mr. Langley attempts to create a distinction between market entry
16 costs and deferred service costs by claiming that market entry costs were
17 those incurred by the prior owners of KPC from whom KPC purchased the
18 assets that now comprise KPC. KPC claims that deferred service costs
19 are those costs which accrued as a result of delays imposed on the current
20 owners of KPC, i.e., Mr. Langley (prior to the recent acquisition by

1 Midcoast). Again, Exhibit WGE-3 dispels that notion. A significant
2 portion of the record in Docket No. 190,362-U is devoted to KPC's attempt
3 to recover market entry costs, and KPC attempted to recover market entry
4 costs up through March 17, 1995. Furthermore, I must point out that the
5 testimony filed by Mr. Langley in this case regarding deferred service
6 costs is very similar in scope to the testimony filed by Wendell Putman, on
7 March 25, 1994, in Docket No. 190,362-U at the KCC. Exhibit No. 1 to
8 Mr. Langley's testimony, the April 8, 1986 letter from Jack Roberts to
9 Wendell Putman is also the first exhibit to Mr. Putman's March 25, 1994
10 testimony. Perhaps most importantly, Mr. Langley realizes that the
11 Settlement Agreement specifically provides that KPC shall not recover
12 any market entry costs. To avoid any claim that KPC is breaching the
13 Settlement Agreement for requesting recovery of market entry costs, he
14 just changes the name.

15 Q. Mr. Eliason, did Western delay entering into contracts and interconnects
16 with KPC?

17 A. No. Mr. Tangeman will provide a detailed accounting of efforts to enter
18 into new contracts with KPC. Much of the delay was the fault of KPC and
19 the fact that Western had contractual obligations with WGPC before
20 taking service from KPC. KPC knew of these limitations or should have

1 made itself knowledgeable of these limitations when it proposed to do
2 business with Western. Further, Mr. Brown's testimony shows that
3 Mr. Langley's undocumented recollections of almost ten years ago should
4 not serve as the basis for including \$10 million of deferred service costs
5 (pre-depreciation; \$5 million after depreciation) in cost of service
6 calculations and rate base. Finally, as to KPC's repeated references to the
7 testimony of Mr. Greg Geisler and Wade Norvell in Docket No. 190,362-U
8 regarding the alleged refusal of Western to do business with Phenix,
9 which represented the great majority of KPC's claim for market entry cost
10 in Docket No. 190,362-U, Kansas Gas Service refers the Commission to
11 paragraph 29 of the December 30, 1996 Order on Remand, where the KCC
12 stated

13 Additionally, Phenix's failure to generate higher earnings
14 was attributed, in part, to its poor business plan, poor
15 management and inability to attract capital. (R. Vol. 43, p.
16 11990; R. Vol. 61, p. 16296). Phenix was given the
17 opportunity to earn its established rate of return. Simply
18 because a public service commission has an established rate
19 of return does not mean that the company is guaranteed its
20 rate of return. See e.g. *FPC v. Natural Gas Pipeline*
21 *Company*, 315 U.S. 575, 590 (1942). 'The proper response for
22 a utility faced with net losses is to apply to the Commission
23 for a rate increase'. *Sunflower Pipeline Co. v. Kansas*
24 *Corporation Comm'n*, 5 Kan. App. 2d 725, 719 (1981), rev.
25 denied, 229 Kan. 671 (1981). Phenix never sought a rate
26 increase to allow the recovery of additional market entry or
27 start-up costs.

1 Q. Should the certificate limitations, as Mr. Langley claims, provide any
2 basis for allowing deferred service costs?

3 A. No. KPC knew of the limitations when it entered the business. Any
4 delays it encountered were the result of its own errors and contractual
5 limitations on Western, which should have been known by KPC when it
6 entered the business.

7 Q. Mr. Eliason, would you please provide your recommendation regarding
8 KPC's request to recover an acquisition premium?

9 A. The Commission should reject KPC's request for a return of and a return
10 on acquisition premium.

11 Q. What is the acquisition premium for which KPC seeks recovery?

12 A. I will not try to reconstruct the entire corporate history of KPC for the
13 Commission from beginning to end and all of its various purchases,
14 mergers, joint ventures and partnerships to explain the acquisition
15 premium. I believe that the best place in KPC's testimony on this subject
16 matter is to review Mr. Lubow's testimony on page 21, lines 6 through 16,
17 where he states:

18 Briefly, in August of 1988, Bishop obtained a 25 percent
19 ownership in KPP. Bishop's interest had originally been
20 acquired with an investor group (the Omega Group). When it
21 became clear to Mr. Langley that the Omega Group did not
22 share his vision nor his determination to penetrate the

1 Kansas City market, Mr. Langley sought another investment
2 partner, joining forces with OKM. On June 22, 1990, Bishop
3 and OKM acquired the remaining 75 percent of KPP. Later,
4 in 1991, Bishop bought out OKM's interest. When
5 Mr. Langley and OKM joined forces to buy out Omega's
6 interest, they paid a price in excess of the undepreciated cost
7 reflected on the books of KPP. It is that 'premium' or full
8 purchase price, for which KPC seeks recovery in this
9 proceeding.

10 Q. Could you provide some more elaboration about that acquisition and other
11 acquisitions by Mr. Langley during this time frame?

12 A. Yes. In June 1990, when Omega's interest in the KPP line was purchased
13 by Mr. Langley and OKM, Mr. Langley was already a partner with Omega
14 in ownership of that line. The transaction essentially involves a
15 combination by Mr. Langley and OKM to buy out a partnership owned by
16 Mr. Langley and Omega at above book value. That initial partnership of
17 Mr. Langley and Omega had previously bought the KPP line at book
18 value. The stated goal of Mr. Langley in buying out Omega at that time
19 was to link up the KPP line with the Phenix line, which transported gas
20 from Western Kansas, and deliver the gas from these two lines to Kansas
21 City. Mr. Langley had previously purchased the Phenix line in October
22 1989 at book value. In the June 1990 transaction to combine with OKM to
23 buy out Omega's interest in the KPP line, Mr. Langley sold 50% of his
24 interest in the Phenix line to OKM. Finally, in October 1991, Mr. Langley

1 and Chase Manhattan Credit Corp. bought out OKM's interest in the KPP
2 line and the Phenix line. As of the date of the sale by Mr. Langley to
3 Midcoast, Mr. Langley owned all of the interests in KPC. Through this
4 convoluted series of transactions, Mr. Langley obtained a very valuable
5 benefit, complete control of a pipeline which he ultimately sold for great
6 profit to Midcoast. None of the acquisition premium requested here
7 represents the building of a pipeline, it only represents the buying out of a
8 partner's interest in a line so that Mr. Langley could fulfill his "vision."
9 Ultimately, what the Commission is being asked to approve is not an
10 acquisition premium, but a finder's fee. Mr. Langley attempts to justify
11 the transactions and his request for the recovery of an acquisition
12 premium by claiming that the KPC line created through these
13 acquisitions was cheaper than building a new line, that KPC provided a
14 valuable benefit to consumers in Kansas by providing less expensive gas
15 to Kansas City, thus putting downward pressure on the prices of WGPC,
16 and that KPC provided a more flexible, higher quality of service for LDCs
17 in the Kansas City area. As I will discuss below, these justifications do
18 not deserve merit.

1 Q. Mr. Langley has made extensive comments regarding the competitive
2 benefits brought about by his efforts to establish KPC as a going concern.
3 Do you agree with his assessment?

4 A Yes and no. I agree with Mr. Langley that Western was actively
5 encouraged by the KCC to develop competitive alternatives to WGPC and
6 its predecessors. KPC was one of the options which Western was
7 encouraged by the KCC to consider. I will also agree that, for the period
8 from 1988 through 1994, KPC's rates were fairly equivalent to the rates
9 charged by WGPC. Since 1994, KPC's rates have become significantly
10 higher than the rates charged by WGPC. For example, for gas delivered
11 into Wichita, the demand rate currently being charged by KPC is
12 \$11.456/MMBtu and the comparable demand rate charged by WGPC is
13 \$5.895/MMBtu. For deliveries into Kansas City, Kansas and Johnson
14 County, the demand rate currently being charged by KPC is
15 \$19.965/MMBtu and the comparable demand rate charged by WGPC is
16 \$18.857/MMBtu for gas delivered over all three zones on KPC's system.

17 Q. Do you agree with Mr. Langley's statement on page 48, lines 12 through
18 15 of his prepared direct testimony, which states as follows: "KPC
19 provided high quality, hourly, daily, bundled and monthly load following
20 services to Western Resources. It also provided Western Resources'

1 peaking service. To my knowledge, none of these services were available
2 to Western Resources from WNG [now WGPC]."

3 A. No. In the early years of service from KPC and its predecessors, Western
4 had significant concerns over the quality of KPC's service. These
5 problems are addressed in the testimony of Richard Tangeman. Our
6 experience with these problems contributed in part to the delays in
7 obtaining additional contracts with KPC. During the early years of our
8 relationship with KPC, WGPC also provided a bundled service of gas sales
9 and transport. The fact that WGPC terminated its merchant function
10 while KPC both sold and transported gas as an intrastate pipeline did not
11 make KPC any more valuable, and in fact it was less valuable, to Western
12 than WGPC. WGPC has also provided superior hourly, daily, monthly
13 and peaking services compared to KPC throughout the entire period of
14 Western's contractual relationship with KPC. Finally, WGPC provided
15 storage service, while KPC did not, and does not, provide such service. In
16 sum, from a customer's point of view, Mr. Langley's claims that KPC
17 provided service superior to WGPC are completely unfounded.

18 Q. Please comment on Mr. Langley's reference to testimony by
19 Mr. Tangeman about price benefits associated with KPC's presence.

1 A. On page 44, lines 7 through 20 of his testimony, Mr. Langley makes
2 reference to the testimony of Richard Tangeman in KCC Docket No.
3 97-WSRG-312-PGA, as support for his claim that KPC provided price
4 benefits. In this testimony, Mr. Tangeman points out that customers
5 received savings under the August 8, 1988 contract between KPC and
6 Western. Mr. Langley only obliquely identifies the source and date of
7 Mr. Tangeman's testimony. As I testified above, Docket No.
8 97-WSRG-312-PGA was an investigation begun by the Staff of the KCC
9 claiming that costs incurred by Western from KPC should not be allowed
10 to be passed through because they were too high and, according to
11 Mr. Smith's affidavit, attached as Exhibit WGE-5, Kansas consumers had
12 overpaid by approximately \$25 million from 1994 through 1996 as a result
13 of Western's purchases from KPC. As I said before, Western strenuously
14 objected to the inquiry of Staff, but Western did have to acknowledge that
15 KPC's costs were high. In his testimony filed in Docket No.
16 97-WSRG-312-PGA, which was actually filed on May 23, 1997, not
17 October 11, 1996, as alleged by Mr. Langley, Mr. Tangeman did make the
18 statement referenced by Mr. Langley. But Mr. Tangeman also stated
19 that, while KPC had provided savings of over \$2.5 million during the
20 November 1988 through September 1993 time frame, during the period of

1 1994 through 1996, KPC's costs were \$5.4 million higher in 1994, \$8.7
2 million higher in 1995, and \$10.4 million higher in 1996. Richard
3 Tangeman's testimony, Docket No. 190,362-U at p. 8. (These cost
4 estimates should be compared to Glenn Smith's estimated overages of \$9.1
5 million in 1994, \$14.2 million in 1995 and \$18.4 million in 1996, as
6 provided in his April 14, 1997 testimony, which were much higher than
7 the \$25 million originally claimed in his affidavit filed on March 3, 1997,
8 in Docket No. 190,362-U (see Exhibit WGE-5).

9 Q. Notwithstanding these prices, didn't the KCC allow KPC to recover an
10 acquisition premium in Docket No. 190,362-U?

11 A. Yes it did, but the KCC's March 17, 1995 Order allowing KPC to recover
12 an acquisition premium hardly constitutes a ringing endorsement of KPC
13 when it stated:

14 While the Commission is mindful that a comparison of
15 system demand charges would indicate that Applicants' rates
16 are nearly three times the demand charges of WNG for gas
17 delivered in the Kansas City area and nearly twice as much
18 as WNG for gas delivered in the Wichita area, the
19 Commission believes this may be justifiable with Applicants
20 holding only 10 percent of the market share.

21 Order, KCC Docket No. 190,362-U, March 17, 1995, pp. 71-72.

22 I believe that this strained logic reflects how far the KCC was willing to go
23 to stay the course it charted in 1985, when it granted KPC's predecessors

1 their certificates of public convenience and necessity in order to stimulate
2 competition. In the KCPLP order, the KCC stated:

3 The Commission further finds that the sales and services
4 proposed by [KCPLP] will result in competitive pressures
5 being placed on present suppliers to decrease their prices to
6 reflect current market clearing levels, and that such will
7 result in a benefit to Kansas customers.

8 *Kansas Pipeline Company, L.P.*, Docket No. 142,683-U, Order, at 30-31
9 (January 11, 1985).

10 Similarly, in the Phenix case, the Commission stated:

11 The Commission also finds, as it did in the *Kansas Pipeline*
12 case that, in general, the sales and services proposed by
13 [KCPLP] will result in competitive pressures being placed on
14 present suppliers to decrease their prices to reflect current
15 market clearing levels, and that such will result in a benefit
16 to Kansas customers without promoting ruinous competition.

17 *Phenix Transmission Company*, Docket No. 143,3006-U, Order; at 50
18 (May 29, 1985).

19 With KPC's rates for the last five years and KPC's current filing, the
20 KCC's prognostication as to the benefits of KPC have proven to be
21 erroneous. This Commission is not trapped by a body of orders that
22 inevitably led to high rates. The KCC vigorously sought to promote
23 competition and gave KPC rate increases, resulting in rates far in excess
24 of the pipeline with which KPC was supposed to compete, just to keep
25 KPC alive to compete in the future. The rates proposed by KPC do not

1 represent a competitive threat to anyone, because they are double the
2 rates of their competitor.

3 Q. What is your recommendation regarding KPC's proposed depreciation
4 rates?

5 A. Although I am not an expert on depreciation, I believe that KPC's
6 proposals on depreciation should be rejected, and its current depreciation
7 rates should be retained. KPC's current depreciation rates for accounts
8 367, 368 and 369 were set at 2.3% in KCC Docket Nos. 188,933-U and
9 188,933-U. In their application to establish their rates in those dockets,
10 KPC's predecessors stated in both dockets as follows:

11 6. In a recent Order issued by the Commission
12 regarding United Cities Gas Company (Docket No.
13 181,940-U), in response to an Application filed in 1992, the
14 Commission ordered a forty (40) year average Service Life for
15 Distribution Mains (Account 376). Separately, Williams
16 Natural Gas Company, an interstate natural gas
17 transmission company regulated by the Federal Energy
18 Regulatory Commission, with facilities in the same
19 geographic area as KNP has, for several years, recorded
20 Transmission Plant depreciation over an average Service Life
21 of forty-three (43) years, with an annual depreciation rate of
22 2.3%

23 WHEREFORE, KNP respectfully requests that the
24 Commission issue an Order authorizing, directing, and
25 ordering KNP, commencing January 1, 1992, to record
26 depreciation for Transmission Plant Account No. 367, 368,
27 and 369, for both Equipment in Existence Prior to Purchase
28 by KNP, and for New Purchases of Equipment, over a Service

1 Life of forty-three (43) years, and a Depreciation Rate of 2.3%
2 annually.

3 The KCC approved KPC's predecessors' application in Docket Nos.
4 188,933-U and 188,934-U on October 19, 1993. WGPC, KPC's competitor
5 with facilities in the same geographic area as KPC, currently continues to
6 have a depreciation rate of 2.3% for transmission plant (see WGPC FERC
7 Form No. 2, at p. 338, December 1998).

8 Q. Besides the specific recommendation outlined above, do you have any
9 general comments regarding KPC's filing for depreciation?

10 A. KPC's filing represents a continuation of KPC's disregard for the concerns
11 of the customer. Essentially, KPC witness Edward Feinstein is telling us
12 that there will not be any gas available. KPC, however, told everyone that
13 they would be a competitive alternative to WGPC. How can they be a
14 competitive alternative to WGPC if they are not going to have access to a
15 long term supply of gas, as Mr. Feinstein suggests¹? Furthermore, as

¹ Dan Tutcher, President of Midcoast, appears to contradict Mr. Feinstein's concerns over supply with the following statement at a November 9, 1999 conference call with financial analysts, announcing Midcoast's acquisition of KPC, when he stated: "The pipeline on the supply side connects up with TransOk and Panhandle Eastern and ANR in central Kansas and Northern Oklahoma and the Panhandles of Texas and Oklahoma. So the supply side of the pipeline is extremely diverse as well."

1 demonstrated in the testimony of Richard Tangeman in this case, it
2 appears that KPC has failed to realize that it still needs its Ottawa
3 compressor station to satisfy the needs of its customers. The early
4 retirement and accompanying increase in costs through salvage value and
5 increased depreciation rates would prevent KPC from meeting its
6 requirements under its contracts with Kansas Gas Service. With
7 Mr. Feinstein's recommendations, it appears that the goal of KPC is to get
8 as much money out of Kansas Gas Service as soon possible before the
9 contracts with Kansas Gas Service expire.

10 Q. Please comment on KPC's level of outside services.

11 A. They are too high, involve too many attorneys and reflect an out-of-test
12 period adjustment. In his direct testimony on page 25, lines 4 through 10,
13 regarding Adjustment 13, KPC witness Robert Welchlin adjusts KPC's
14 outside services from \$1,081,041 to \$2,500,000. Mr. Welchlin states that
15 outside services are abnormally low during the test period and that they
16 should be adjusted upwards to \$2.5 million. Mr. Welchlin states that \$2.5
17 million is more reflective of KPC's outside services during the 1996
18 through 1998 time period and KPC's budget for 1999. Kansas Gas Service
19 cannot agree with the utilization of either substitute measurement period.
20 As to the 1996 through 1998 time period, many of those expenses involve

1 legal bills or consulting fees primarily focused on matters before the KCC,
2 to which KPC is no longer subject or KPC's lawsuit with Panhandle
3 Eastern Pipeline Company, a matter which KPC claims is non-
4 jurisdictional. See KPC Workpapers, Adjustment 13. For 1996 through
5 1998, KPC's legal bills for their KCC counsel were as follows:

	1996	1997	1998
7 Smithyman & Zakoura	\$232,763	\$234,475	\$2,450
8 Logan & Logan	\$103,480	\$147,488	\$6,251

9 As can be seen from the above, KPC's expenses at the KCC declined
10 dramatically. Furthermore, KPC's former outside general counsel, Tino M.
11 Monaldo, Chartered, will no longer serve as general counsel for KPC after
12 the acquisition by Midcoast. His annual expenses were as follows:

	1996	1997	1998
14 Tino Monaldo	\$146,4770	\$185,033	\$307,615

15 KPC utilized the law firm of Bryan Cave in 1998 in KPC's lawsuit against
16 Panhandle Eastern, which KPC claims is a non-jurisdictional matter, and
17 their expenses were \$314,000. Also, KPC utilized the services of National
18 Economic Research Associates (NERA) in its litigation with Panhandle,
19 and their expenses were as follows:

	1996	1997	1998
NERA	\$50,027	\$209,453	\$457,212

The total of these five groups of lawyers and consultants, which provided services in areas no longer relevant to KPC's FERC-jurisdictional activities, is approximately \$800,000 per year. The workpapers for Adjustment 13 show an annual average for outside services before adjustments of \$2,000,000. The net average for KPC is then \$1,200,000 for the time period, which is very close to the \$1,081,041 incurred during the same time period. As to the budget for 1999 contained in the workpapers for KPC, KPC shows expenses of \$750,000 for Bryan Cave, \$135,000 for Fred Logan and \$300,000 for Tino Monaldo. The expenses for Bryan Cave and Fred Logan are related to Kansas Gas Service's lawsuit against KPC. Kansas Gas Service finds it highly objectionable for KPC to charge Kansas Gas Service for defending against Kansas Gas Service's lawsuit against KPC, which was created by KPC's repudiation and breach of the Settlement Agreement. In addition, Mr. Monaldo, whose well-paid services as general counsel of KPC were budgeted for \$300,000 for 1999, will no longer be utilized by KPC after the acquisition by Midcoast. By deleting these expenses from KPC's 1999 budget, KPC's budget is reduced to \$1,460,000, which is close to the \$1,081,041.

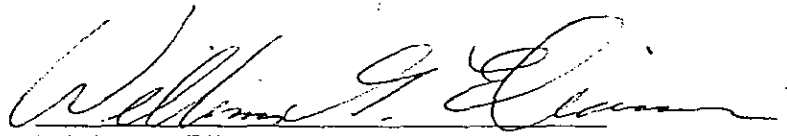
1 Q. Does this conclude your testimony?

2 A. Yes.

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Before me, the undersigned Notary Public in and for the said county in said state, personally appeared William G. Eliason, who being by me first duly sworn deposes and says that he is the individual identified and responding to questions in the attached direct testimony and that the same is true and correct to the best of his/her knowledge, information and belief.

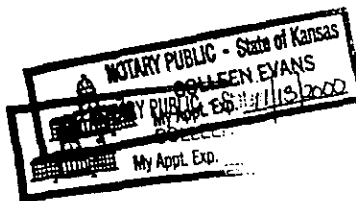

William G. Eliason

Sworn to and subscribed before me on this 17th day of April, 2000.


Notary Public

My Commission expires:

November 13, 2000



SCHEDULE 4

HAS BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

- - - - -X
IN THE MATTER OF: : Docket Number
KANSAS PIPELINE COMPANY : RP99-485-000
:
- - - - -X

Hearing Room 5
Federal Energy Regulatory
Commission
888 First Street, NE
Washington, DC

Wednesday, October 18, 2000

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 a.m., October 18, 2000,
before:

THE HONORABLE JUDITH A. DOWD
ADMINISTRATIVE LAW JUDGE

APPEARANCES AS HERETOFORE NOTED

Schedule 5-1

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1 transport gas, they might have a competitive cost of
2 service.
3 Q Mr. Berman asked you questions about who drafted
4 the July 9, 1997 settlement agreement. You've read the
5 settlement agreement?
6 A Yes, I have.
7 Q Are you familiar with section 5.7 of the
8 settlement agreement, which appears on page 15 of KCC-13?
9 A 5.7? I could read it into the record.
10 Q Why don't you read it, and then I'll ask you a
11 question.
12 PRESIDING JUDGE: You're on page 15 of the
13 settlement agreement?
14 MS. MYERS-KERBAL: Yes, paragraph 5.7, your
15 Honor.
16 PRESIDING JUDGE: You want the witness to read in
17 that particular paragraph?
18 BY MS. MYERS-KERBAL:
19 Q I would just ask, Mr. Bell --
20 PRESIDING JUDGE: Or you want him to read it to
21 himself?
22 MS. MYERS-KERBAL: He could read it into the
23 record.
24 PRESIDING JUDGE: Mr. Bell, do you want to read
25 that paragraph into the record that you've been referred to

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1 Kansas Gas Service's witness, Mr. William G. Eliason.
2 PRESIDING JUDGE: Is Mr. Eliason here?
3 Whereupon,
4 WILLIAM G. ELIASON
5 was called as a witness and, having first been duly sworn,
6 was examined and testified as follows:
7 PRESIDING JUDGE: Please have a seat,
8 Mr. Eliason, and if you would speak into the microphone and
9 give your full name and address, either home or work. And
10 if you have a title that you think is relevant, you can
11 give that as well.
12 THE WITNESS: My name is William G. Eliason. My
13 business address is 200 Southwest Sixth Street, in Topeka,
14 Kansas. I work for Kansas Gas Service, where my title is
15 vice president, gas strategy.
16 PRESIDING JUDGE: I just lifted up Kansas Gas
17 Service's testimony. Behind it was KCC. That explains
18 that mystery.
19 Do you have any representations to make,
20 Mr. Martin?
21 MR. MARTIN: Yes, your Honor.
22 DIRECT EXAMINATION
23 BY MR. MARTIN:
24 Q Mr. Eliason, do you have before you what has
25 previously been marked and filed as Exhibit KGS-1, with

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1 by your counsel?
2 THE WITNESS: Thank you.
3 Paragraph 5.7 is entitled "legal advice." It
4 reads "in entering into this agreement, all parties
5 represent that they have relied upon the legal advice of
6 their attorneys or attorney of their own choice, that the
7 terms of this agreement have been completely read and
8 explained to them by their attorneys, and those terms are
9 fully understood and voluntarily accepted by them."
10 BY MS. MYERS-KERBAL:
11 Q Thank you, Mr. Bell. I believe Mr. Berman asked
12 you earlier about the predecessor companies of Kansas
13 Pipeline Company. And so this paragraph would apply to the
14 signatory predecessor companies to the settlement
15 agreement.
16 Is that your understanding?
17 A Yes.
18 MS. MYERS-KERBAL: Thank you, your Honor.
19 PRESIDING JUDGE: Any recross?
20 MR. BERMAN: No.
21 PRESIDING JUDGE: Thank you very much, Mr. Bell,
22 for coming and giving us your time and your testimony, and
23 you can be excused.
24 THE WITNESS: Thank you.
25 MR. MARTIN: Your Honor, I think we now bring on

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1 several attached exhibits?
2 A Yes, I do.
3 Q Is KGS-1 a true and accurate copy of the
4 testimony prepared by you or under your supervision for use
5 in this proceeding?
6 A Yes.
7 Q Do you have any prepared corrections to your
8 prepared testimony?
9 A I have corrections on three pages. The first
10 page I would refer you to is page 18. At line 17, at the
11 very end of that line, I would like to delete "(a)," delete
12 the closing paren.
13 PRESIDING JUDGE: I'm sorry, would you give that
14 again, line 17?
15 THE WITNESS: Line 17, omit the very last item
16 that appears on that line, which is (a). Beginning on line
17 18, delete the very first couple words, which are
18 "Paola/Osawatomie." The very next item that appears is
19 (b). I would change that to (a). Lastly, I would change
20 two words over from that, line 18, change (c) to (b) so
21 that it reads -- line 17 reads (a) Ottawa and (b) 5700
22 MMBtu contracts.
23 My second corrections are on page 33, at line
24 16. The "1" should be omitted that appears on that line
25 16. Instead of "18.857," it should read "8.857."

Schedule 5-2

23 (Pages 2055 to 2058)

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1 My next page with corrections is page 37. At
2 line 2 of page 37, about halfway across the line, the word
3 or acronym KCPLP should be deleted and replaced with
4 KPCLP. An exact similar change should take place on line
5 4, where KCPLP is replaced with KPCLP. Line 8, toward the
6 end of the line after the word "at," I would like to
7 include the word "pages," so it now reads "at pages
8 30-31."

9 At line 13, the first word or the acronym KCPLP
10 should be replaced with the word "Phenix," and that should
11 remain in brackets. Lastly, on page 17 -- line 17, at the
12 very end of it, after the word "at," I would like to
13 include the word "paragraph," so it reads "at paragraph
14 50."

15 And that concludes my corrections.

16 PRESIDING JUDGE: Let's go off the record a
17 minute.

18 (Discussion off the record.)

19 PRESIDING JUDGE: We got a small misunderstanding
20 corrected here and we all have corrected copies of the
21 direct testimony of the witness, William G. Eliason.

22 Anything else?

23 BY MR. MARTIN:

24 Q With those corrections, Mr. Eliason, if you were
25 asked the same questions today under oath, would your

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1 1 to 2, you first worked for a company named People's
2 Natural Gas Company?

3 A That's correct.

4 Q At some point, you went to Rangeline; is that
5 correct?

6 A That is correct.

7 Q When did you join Rangeline?

8 A In 1988.

9 Q You worked at Rangeline until when?

10 A 1994.

11 Q In 1994, you switched to Western?

12 A That's correct.

13 Q And do I understand that Western is basically the
14 company that has now become Kansas Gas Service?

15 A That is correct.

16 Q Have your responsibilities been essentially the
17 same during the period 1994 to the present?

18 A Yes, they have.

19 Q Prior to 1994 -- do I understand correctly that
20 Rangeline is a marketing affiliate of Western?

21 A At the time, yes, it was.

22 Q Prior to 1994, from 1988 to '94, you were working
23 at this marketing affiliate; is that correct?

24 A That is correct.

25 Q During that period, were you personally involved

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1 answers be the same?

2 A Yes.

3 Q Do you adopt Exhibit KGS-1, with its attached
4 exhibits, as your sworn testimony in this proceeding?

5 A Yes, I do.

6 MR. MARTIN: Your Honor, I ask that KGS-1 with
7 the attached exhibits as corrected be admitted into
8 evidence.

9 PRESIDING JUDGE: Any objections?

10 MR. BERMAN: No objection.

11 PRESIDING JUDGE: Kansas Gas Service Exhibit 1 is
12 admitted, and the attachments thereto.

13 (Exhibit KGS-1 received.)

14 MR. MARTIN: Your Honor, the witness is tendered
15 for cross-examination.

16 PRESIDING JUDGE: Do you have any questions of
17 this witness, Mr. Berman?

18 MR. BERMAN: Yes, your Honor.

19 CROSS-EXAMINATION

20 BY MR. BERMAN:

21 Q Hello, Mr. Eliason.

22 A Good afternoon.

23 Q I'd like to first turn to your background.

24 There's something I want to understand. You discuss that
25 on pages 1 to 2 of KGS-1. As I read what you say on pages

Page 2062

1 in the negotiations and discussions concerning Kansas
2 Pipeline Company and its involvement with Western or its
3 predecessors?

4 A No.

5 Q Let's move on later in your testimony, page 24 of
6 KGS-1.

7 A I'm there.

8 Q On page 24, there's a question, starting at line
9 6 and starting at line 8, and you state you believe it is
10 helpful in this rate case for the Commission to compare the
11 cost of service of Kansas Pipeline Company to be provided
12 for in what we've been calling the KCC settlement?

13 A Are you reading directly from that?

14 Q No, I'm not. I'm paraphrasing.

15 PRESIDING JUDGE: If you don't accept his
16 paraphrase, you can clarify it.

17 THE WITNESS: I do not accept that paraphrase.

18 PRESIDING JUDGE: Referring to that testimony,
19 can you tell us what you did mean?

20 THE WITNESS: With regard to that testimony, I'm
21 saying that I'm comparing a cost of service being
22 determined now with the rates that were bargained for in
23 the 1997 settlement.

24 BY MR. BERMAN:

25 Q Do you believe that the rates in that settlement

Schedule 5-3

24 (Pages 2059 to 2062)

Page 2063

1 are something that the Judge and the FERC should take into
2 account in rendering their decisions?

3 A I'm not sure I know the answer to that.

4 PRESIDING JUDGE: There's no one answer. It's
5 your opinion. Is this something that you think the FERC
6 should do or I should do, or is it something you don't
7 think they should do?

8 THE WITNESS: Should they be considered in making
9 a decision in this docket as to what the rates are? I
10 would generally say -- there are many aspects to that
11 question, but I would say, generally not. You're trying to
12 set just and reasonable max rates in this proceeding here,
13 which are different than what was bargained for under the
14 terms of the settlement agreement.

15 BY MR. BERMAN:

16 Q Do I understand from what you're saying, or is it
17 correct from what you're saying, that notwithstanding
18 whatever rates are provided for in the KCC settlement, that
19 in your view, the FERC and the Judge can determine the just
20 and reasonable rate based on application of standard
21 ratemaking principles without regard to whatever is
22 specified in the KCC settlement?

23 A Generally speaking, that's correct. There are
24 probably some terms within the settlement that may be
25 considered as you go down the road, but certainly, we're

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1 WGE-8.

2 MR. BERMAN: I'm sorry, your Honor.

3 MR. MARTIN: Maybe the court reporter has an
4 extra copy you can use.

5 MR. BERMAN: If I could borrow that. I have an
6 incomplete version with me.

7 Thank you.

8 BY MR. BERMAN:

9 Q Just so we can get some clarity in the record,
10 the settlement agreement that we've been referring to is
11 marked as WGE-2, as an attachment to your Exhibit KGS-1; is
12 that correct?

13 A That's correct.

14 Q We previously heard Mr. Bell describe the parties
15 to this agreement. Do you have the same understanding
16 about the parties; that is, that the Bishop entities and
17 also the entity KPP that are referred to throughout the
18 settlement, that Kansas Pipeline Company is successor and
19 interest to those entities?

20 A That is my understanding, sir.

21 Q And that Western, which is referred to throughout
22 the settlement, that Kansas Gas Service is the successor
23 and interest to Western?

24 A Yes.

25 Q Do you know who drafted this document?

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1 trying to establish something completely different than
2 what was established in the form of the settlement.

3 Q Are there any terms in the settlement that have
4 to be considered today by the Judge or the FERC in
5 determining the just and reasonable rate to be charged by
6 Kansas Pipeline Company?

7 A At this moment in time, I can't think of any.

8 Q I'd like you to look at the settlement. That's
9 been previously admitted into evidence as Exhibit KCC-13.
10 And I can hand you a copy of KCC-13 if you don't have
11 that.

12 A It's attached as an exhibit.

13 PRESIDING JUDGE: It's attached to Mr. Eliason's
14 testimony.

15 MR. BERMAN: Your Honor, just to be clear,
16 attached to Mr. Eliason's testimony is an order by the
17 Kansas Corporation Commission addressing the settlement.
18 The settlement document itself is not --

19 MR. MARTIN: No, it is -- that and several other
20 items related to the KCC settlement, including a transcript
21 of the hearing before the Kansas Corporation Commission.

22 PRESIDING JUDGE: There's a little bit more to
23 it. If I have the same documents you do, I have one
24 entitled "settlement agreement." It's in KGS-1.

25 MR. MARTIN: Exhibit WGE-2, and continued through

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1 A As I recall, it was compiled from all three
2 parties. I speak loosely when I say Kansas Pipeline was
3 one party, because in the signatory pages, you'll see that
4 there are many, but all three parties were very much a part
5 of drafting this contract.

6 Q Why don't we turn to section 1.2 of this
7 document, page 3 of this document. Section 1.2 states that
8 "for seven years from the date the KCC approves this
9 agreement in KCC docket number 97-WSRG-312-PGA, KPP shall
10 not file a rate case seeking a new cost of service with
11 FERC."

12 Is it your contention that Kansas Pipeline
13 Company has violated this provision that I just read?

14 A No, sir. In the course of our negotiations of
15 this agreement, it was contemplated that a rate case such
16 as this would be possible, if not likely. I believe the
17 transcript of the KCC hearing, where we discuss and
18 ultimately approve the settlement we're talking about here
19 that you read from discusses that specifically, that there
20 may be a rate case exactly like this resulting from Kansas
21 Pipeline acceding to FERC jurisdiction. And attorneys for
22 both Kansas Pipeline and Western Resources address that
23 matter.

24 Q If I understand you correctly, even though it
25 says there "KPP shall not file a rate case," it was your

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1 understanding that KPP could, in fact, file a rate case
2 under certain circumstances?

3 A It was always the understanding of the three
4 parties negotiating the contract that that terminology
5 related to a unilateral filing by Kansas Pipeline, and
6 that's not what we have here.

7 Q What we have here does not reflect the
8 understanding you've just described. You have to
9 understand more deeply what the parties have discussed in
10 order to understand this contract. Is that what you're
11 saying, this document?

12 A I don't know if I agree with that. I think the
13 document speaks for itself, and it's always been my
14 understanding, and was at the time and is now, that the
15 document and/or negotiations in the course of drafting that
16 document meant a unilateral filing by Kansas Pipeline.

17 Q Why don't we turn to section 1.5 of this
18 document, at page 7. It says "Western and KPP have entered
19 into a multiple delivery point agreement, a copy of which
20 is attached as appendix B, which resolves the FERC tariff
21 issues."

22 Would you describe for me the current status of
23 that multiple delivery point agreement?

24 A It's the best of my knowledge that the agreement
25 itself, if I'm not mistaken, may have been excluded, or

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1 was ultimately used to alter or amend the general terms and
2 conditions of Kansas Pipeline's agreements, such that they
3 now pretty much conform. It isn't like it was purely
4 rejected. A majority of the terms of that agreement are
5 part of the general terms and conditions of the Kansas
6 Pipeline agreement.

7 From our perspective at Kansas Pipeline, the
8 agreement itself may not have survived, if that's the right
9 term, but the terms have. With regard to your question of
10 are there others; nothing comes to mind right now, sir.
11 There may be. I can't think of anything else that would
12 fall into that category.

13 Q You said that the majority of the terms of the
14 agreement are now effective through the FERC filed tariff;
15 is that correct?

16 A I don't know if -- much of them are. Many of
17 them are, yes.

18 MR. MARTIN: Your Honor, I think we've been
19 patient so far, but we are going well beyond the scope of
20 his testimony on this.

21 PRESIDING JUDGE: I've permitted some of this
22 because I did with the previous witness. Again, this is a
23 very sort of difficult kind of cross-examination, because
24 he attached this document, and they're asking for his
25 general understanding of it. And that's all he can testify

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1 rejected, so to speak, by the FERC in this proceeding.

2 PRESIDING JUDGE: I've read your background
3 again, Mr. Eliason. As I understand it, you are not a
4 lawyer; am I correct?

5 THE WITNESS: That's correct. I appreciate you
6 bringing that to my attention. Sometimes I get carried
7 away.

8 (Laughter.)

9 PRESIDING JUDGE: Actually, you answer as well as
10 any lawyer might have answered on the stand, and I don't
11 mean to suggest that there was anything in your answer. I
12 just wanted to make that point on the record clear, while
13 you're being asked for an interpretation of this agreement,
14 you are not yourself a lawyer, but actually, probably have
15 lawyers on your staff who do this kind of interpretation
16 for you.

17 THE WITNESS: Thank you.

18 BY MR. BERMAN:

19 Q I think what you just said, Mr. Eliason, the
20 multiple delivery point agreement was rejected, so to
21 speak. Are there any other portions of this document that,
22 to your knowledge, were rejected, so to speak?

23 A That "rejected, so to speak," it sounds a little
24 harsh when you say it that way. First of all, in clarity,
25 most of what was in the multiple delivery point agreement

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1 to, is his general understanding. And if that's not what
2 the official position of the KGS is, you'll have to bring
3 that out on redirect.

4 BY MR. BERMAN:

5 Q If I could turn your attention to appendix -- is
6 it appendix B of this settlement? It's a multiple delivery
7 point agreement that's attached -- just for the record --
8 right after the agreement and all the signature pages.
9 There's an appendix A, and then there's a -- the next page
10 after that starts "multiple delivery point agreement"; is
11 that correct?

12 A I believe that's correct. Let me make sure I'm
13 in the right spot here. I have what looks to be a
14 multi-delivery point agreement here in front of me.

15 Q If I could turn you to paragraph 10 on page 4 of
16 that agreement. If you could read that briefly and tell me
17 if, in fact, it was your intention that this agreement
18 would govern over Kansas Pipeline's FERC gas tariff no
19 matter what FERC gas tariff may say? Is that your
20 contention?

21 PRESIDING JUDGE: Why don't you take some time
22 and read this, Mr. Eliason, if it's been some time since
23 you've read it before. Would you like to?

24 THE WITNESS: Yes, I'd like a few minutes.

25 PRESIDING JUDGE: Why don't we go off the record

Schedule 5-5

26 (Pages 2067 to 2070)

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1 and allow you to read paragraph 10.

2 (Discussion off the record.)

3 THE WITNESS: Would you please repeat your
4 question?

5 BY MR. BERMAN:

6 Q If you could tell me if it was, in fact, your
7 intention that this agreement would govern over Kansas
8 Pipeline's FERC gas tariff, no matter what the FERC gas
9 tariff may say.

10 A I'll preface this answer by saying I'm not an
11 attorney, but I will say that the last sentence of that
12 paragraph in question indicates that this agreement, in the
13 event of a conflict, would be -- the provisions of this
14 agreement would prevail.

15 Q Just to clear something up, I want to be sure.
16 You signed this agreement; right?

17 A That's correct.

18 Q If we could go back to paragraph 1.7 of the main
19 body of the settlement and agreement.

20 A 1.7?

21 Q Yes, on page 8. It says there, in the second
22 sentence, "no party is restricted from taking any position
23 in the FERC proceeding, no matter what level cost of
24 service is requested."

25 Was it your intention that any parties would be

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1 I'll suggest that there may not be any language that
2 specifically addresses the positions that could be taken by
3 the two parties. By that, I mean no specific reference to
4 this type of a rate case. There is, however, very specific
5 reference as to what the two parties will support at the
6 FERC. I believe it's Kansas Gas Service's position that we
7 must and will and have supported a cost of service for
8 Kansas Pipeline of 31 million in this particular
9 proceeding.

10 Q Is it your position that it's impermissible for
11 Kansas Pipeline Company to seek a cost of service in this
12 proceeding based on a revenue requirement greater than 31
13 million?

14 A It's my opinion, sir, that Kansas Pipeline can
15 file for a cost of service greater than 31 million.
16 However, pursuant to the terms of this settlement, they are
17 not able to charge that cost of service to Kansas Gas
18 Service in Kansas.

19 Q To your knowledge, does the FERC-approved tariff
20 for Kansas Pipeline Company permit Kansas Pipeline Company
21 to charge Kansas Gas Service anything other than the just
22 and reasonable rate level determined by the FERC in this
23 case?

24 A Again, I'm not an attorney or an authority on
25 this matter. It's generally my opinion that those tariffs

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1 able to take any position in the FERC proceeding
2 whatsoever, no matter what level cost of service is
3 requested?

4 A Sir, I think that paragraph needs to be read in
5 context with the rest of the document here.

6 If you would give me just a second, please.

7 PRESIDING JUDGE: We'll go off the record for a
8 few minutes.

9 (Discussion off the record.)

10 PRESIDING JUDGE: Back on the record.

11 THE WITNESS: This agreement contemplates the
12 Kansas Pipeline filing, unilaterally filing a rate case
13 sometime after year 7. And I believe this sentence would
14 indicate that no party is restricted from taking a position
15 in that rate case.

16 BY MR. BERMAN:

17 Q It's your position that sentence relates to only
18 after year 7?

19 A That's correct.

20 Q Could you explain, to your knowledge, whether
21 there's any paragraph here that explains what positions may
22 be taken by the parties in rate cases that may be ordered
23 by the FERC immediately in the first few years of the
24 agreement?

25 A I don't believe, without searching the document,

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1 would allow for that. And certainly, when I was party to
2 the negotiations of this contract, Kansas Pipeline made it
3 very clear that they could and would be able to live to the
4 terms of this contract, either through more than -- there
5 were means by which the Pipeline would be able to
6 accommodate the terms of this contract when it entered into
7 FERC jurisdiction.

8 Q Does that mean, Mr. Eliason, when you say that
9 the "tariffs would allow for that," that Kansas Pipeline
10 Company would provide a discount for Kansas Gas Service
11 below the just and reasonable level determined by the FERC
12 in this proceeding?

13 A I can't speak to the proper term of discount.
14 I'm not that authoritative on FERC issues. It's my
15 understanding there are means. And I believe a "discount"
16 is actually a proper term in this instance; whereas, we use
17 "discount" when we go to the five-and-dime store.

18 I guess my answer to that is, it was the
19 understanding of the parties, as it was described to us by
20 Kansas Pipeline at the time, that they would have a means
21 to charge us the rates delineated in the settlement
22 agreement. And I don't know if that means that the term --
23 the proper term "discount" or some other way of doing it, I
24 don't know.

25 Q Is that explained somewhere in the settlement

Schedule 5-6

27 (Pages 2071 to 2074)

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1 agreement?

2 A As to how they would do it? As to how Kansas
3 Pipeline would make these rates available to us?

4 Q Yes.

5 A The closest reference we have to that, I believe,
6 is the -- and its very vague -- but the paragraph at 5.8,
7 where the parties agree to cooperate fully to execute and
8 supplement documents that may be necessary to give effect
9 to the provisions of this agreement. And there was no
10 specific reference as to what those documents would be,
11 what filings would be necessary at FERC.

12 And once again, I suspect because that's maybe --
13 I'm going to speculate -- it's something of a liquid thing,
14 and we were assigning this in 1997. Clearly, the hearing
15 for jurisdiction wouldn't happen the next day. There may
16 be some differences as to how to do it.

17 To pre-describe in detail what those documents
18 and filings might be may have been onerous at the time, but
19 that is the reference where the parties agree that all
20 parties will cooperate in full to implement the rates
21 prescribed within the terms of the settlement.

22 Q I'd like to turn your attention to paragraph 1.6
23 of the agreement; that's at the bottom of page 7. And
24 turning to the top of page 8, there's a reference here to
25 determining comparable rates. It refers to using the

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1 Q If Williams were to frame different rate
2 schedules framed in a different manner, how would it be
3 that someone would figure out the comparable Williams rate
4 to be applied to Kansas Pipeline Company?

5 A It turns out this is a means of price in
6 transportation on this pipeline that had been
7 preestablished in earlier contracts; so we have a precedent
8 for it. What would happen is, you would identify what
9 these services would cost from Williams to get gas at the
10 points of receipt here under this contract, or these
11 contracts, and use that as the comparable rate.

12 If they chose to change their tariff from FTS-P
13 to QTS-P, for example, if the QTS-P, whatever that means,
14 is the rate that would otherwise be used, the comparable
15 rate for getting gas to these receipt points, then that
16 would be the tariff that would be used.

17 Q Would the same Williams rate be applicable to all
18 contracts between KGS and Kansas Pipeline Company?

19 A No.

20 Q So there are different Williams rates that apply
21 to different contracts?

22 A Yes.

23 MR. MARTIN: Your Honor, I'm going to have to
24 object. I think --

25 PRESIDING JUDGE: There's no question now,

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1 cost-based recourse firm transportation service rate in
2 effect at the time KPP makes such charges to Western.

3 Can you say right now what the comparable rate
4 will be when the comparable rates go into effect, what the
5 actual rate level will be?

6 A I don't believe I can, sir, no.

7 Q And why is that?

8 A They will be based on the rates of -- as this
9 says, the rates of Williams Pipeline, Williams Natural Gas
10 at this time, and those rates may change between now and
11 the time in August of next year.

12 Q It says there, "which is currently provided under
13 rate schedules FTS-P and FTS-M," and I guess "currently"
14 refers to the time of execution of this document.

15 Does Williams still have a rate schedule FTS-P
16 and FTS-M?

17 A Yes, I believe they do.

18 Q To your knowledge, will Williams continue to have
19 a rate schedule FTS-P and FTS-M into the future?

20 A To the best of my knowledge, they will.

21 Q But when you reference "which is currently
22 provided under those rate schedules," were you trying to
23 take into account the notion that they might form different
24 rate schedules that were framed in a different manner?

25 A Yes, I believe that was the intent.

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1 Mr. Martin. It's been asked and answered.

2 MR. MARTIN: I think this whole line of
3 questioning is not designed to bring out anything --

4 PRESIDING JUDGE: I can't go behind what counsel
5 is going to do. So far as I've heard, I don't hear any
6 objectionable questions that anyone has raised any
7 objection about. I think we have a limited interest in
8 this particular area.

9 MR. BERMAN: Your Honor, I won't be too much
10 longer.

11 PRESIDING JUDGE: Whatever that means.

12 BY MR. BERMAN:

13 Q If FERC determines that the just and reasonable
14 cost of service for Kansas Pipeline Company is a lower
15 level than the \$31 million, is it your contention that
16 Kansas Gas Service gets charged something less than the \$31
17 million?

18 A I believe that -- and I don't know if this is
19 possible within the rules established here at FERC, but if
20 the rules would provide for the rate to be established at
21 below 31 million prior to August of next year, that Kansas
22 Gas Service, if the filings or whatever is necessary that
23 would allow for Kansas Pipeline to charge us a rate greater
24 than the max rates, if they were in place and the FERC
25 recognized them, I would say yes, the 31 million would

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1 prevail, if the FERC allows for that. I don't know if
2 that's possible.

3 Q Let me be sure I understood that. You're saying
4 that even if FERC determines a number lower than 31
5 million, you think that Kansas Gas Service should pay the
6 31 million? Is that what I heard you say?

7 A I'm not sure that is possible, sir. I'm just
8 saying that we bargained for 31 million, and we bargained
9 for the rates prescribed in years -- the rates in there.
10 To the extent, between now and August, we think that --
11 well, once again, I don't know if the FERC would allow for
12 that, sir. I guess I don't know if that's viable.

13 Q Is it your position that FERC should determine a
14 rate lower than \$31 million for Kansas Pipeline Company in
15 this proceeding?

16 A No, sir. It's our filed position and mine that
17 we support 31 million, sir.

18 MR. BERMAN: Your Honor, I'm going to have marked
19 for identification Exhibit KPC-76.
20 (Exhibit KPC-76 identified.)

21 MR. BERMAN: Your Honor, for the record, this
22 document is the answer of Kansas Gas Service Company to a
23 motion of Kansas Gas Pipeline Company in docket number
24 CP96-152-000, et al., at FERC, and it's a file stamped
25 "copy" that was filed with the Office of the Secretary at

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1 a protest of Kansas Gas Service company submitted in docket
2 number CP96-152-012. And again, it's a file stamped "copy"
3 from the FERC Commission's records, file stamped August 25,
4 1998.

5 For the record, as was true for the previous
6 document, the signatory list includes Herb Martin and John
7 DeCoursey.

8 I would move the admission of this document on
9 the same basis as the prior document.

10 PRESIDING JUDGE: If I read this through, there
11 would be statements in here that would be somewhat
12 different from what the witness testified to?

13 MR. BERMAN: Yes, your Honor.

14 PRESIDING JUDGE: Any objection?

15 MR. MARTIN: Yes, your Honor. KPC-77 is woefully
16 incomplete. It is not the entire filing that was attached
17 to the protest.

18 PRESIDING JUDGE: That's a legitimate objection.
19 I'm going to hold this in abeyance until you get that
20 settled, if you can. If not, it will have to be rejected.

21 MR. BERMAN: Your Honor, I see that there was an
22 appendix that's not attached here. We'll get a copy of the
23 appendix.

24 PRESIDING JUDGE: If you're going to do this, you
25 have to do the whole document and not just portions

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1 FERC on March 16, 1998.

2 I would ask that we go through the same
3 procedures we went through.

4 PRESIDING JUDGE: Tell me how this ties into the
5 witness's testimony.

6 MR. BERMAN: This document discusses legal issues
7 related to the impact of the KCC settlement, and what it
8 means and what it does not mean, and its bearing on the
9 assertions that are made by the witness concerning the KCC
10 settlement. It's really the same --

11 PRESIDING JUDGE: There would be differences from
12 what he testified to, are you saying?

13 MR. BERMAN: Your Honor, I think that the
14 positions that have been taken have not been entirely
15 consistent through time, and we'd like to argue them on
16 brief. I'd rather not burden the record with going through
17 in detail the discussions that are actually in here.

18 PRESIDING JUDGE: Any objection to 76?

19 MR. MARTIN: No, your Honor.

20 PRESIDING JUDGE: 76 is admitted.

21 (Exhibit KPC-76 received.)

22 MR. BERMAN: Your Honor, I'd like to also have
23 marked for identification and hand out KPC-77.

24 (Exhibit KPC-77 identified.)

25 MR. BERMAN: Your Honor, for the record, this is

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1 thereof.

2 MR. BERMAN: We'll get copies of that and provide
3 it to you. I will note these are all in the Commission's
4 records.

5 PRESIDING JUDGE: I understand that, but if we're
6 going to have portions of it, we better put the whole thing
7 in and -- especially if the other side has suggested that
8 it is material that should be in.

9 MR. BERMAN: We will get that material.

10 PRESIDING JUDGE: In the meantime, that's held in
11 abeyance. Anything else?

12 MR. BERMAN: With that, your Honor, I'm through.

13 PRESIDING JUDGE: Do you have any redirect,
14 Mr. Martin?

15 MR. MARTIN: I do, your Honor. Is this a good
16 time to take a few minutes?

17 PRESIDING JUDGE: Yes, if you would like to have
18 that time, I think it would be an excellent idea.

19 Is 15 minutes sufficient for you, Mr. Martin?

20 MR. MARTIN: Certainly.

21 (Recess.)

22 PRESIDING JUDGE: Mr. Martin, do you have any
23 redirect for this witness?

24 MR. MARTIN: I do have a few, your Honor. Thank
25 you.

Schedule 5-8

29 (Pages 2079 to 2082)

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1 PRESIDING JUDGE: Surely.

2 REDIRECT EXAMINATION

3 BY MR. MARTIN:

4 Q Mr. Eliason, counsel for Kansas Pipeline asked
5 you earlier whether Kansas Pipeline has the authority to
6 charge Kansas Gas Service any rate other than the maximum
7 just and reasonable rate, or maximum rate now in effect.
8 Are you familiar with the nonconforming service agreements
9 that have been accepted by the Commission, the agreements
10 between Kansas Pipeline and Kansas Gas Service?

11 A Yes, I am.

12 Q Do those nonconforming service agreements include
13 provisions which allow Kansas Pipeline to charge a rate
14 lower than the maximum just and reasonable rate, or the max
15 rate sent by the Commission?

16 A Yes, they do.

17 Q Counsel also asked you what, in your view, would
18 be the rates that should be charged to Kansas Gas Service
19 in the event that this Commission were to establish rates
20 based on a cost of service of less than 31 million a year
21 in this proceeding.

22 Could you tell us what -- in your view, what
23 rates should be charged to the Kansas Gas Service in that
24 event?

25 A Well, as I said earlier, the just and reasonable

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1 PRESIDING JUDGE: It was obvious -- when you said
2 "max," you meant maximum?

3 THE WITNESS: Yes.

4 PRESIDING JUDGE: No, I just wanted to make sure
5 that everybody was clear on that. It's hard to pick up for
6 the court reporter.

7 THE WITNESS: I'm sorry.

8 PRESIDING JUDGE: It's perfectly understandable.

9 BY MR. MARTIN:

10 Q Just to continue that point, counsel also asked
11 you, or at some point earlier in your testimony, you
12 testified that Kansas Gas Service, in this proceeding, is
13 supporting the cost of service based on the 31 million, or
14 rates based on the cost of service of 31 million.

15 Is that, in fact, your testimony, or Kansas Gas
16 Service's position in this proceeding?

17 A It is. And it's pretty clear in my direct that
18 between now and next August, we're supporting rates for
19 Kansas Gas Service that are equivalent to a 31 million cost
20 of service. That's the extent of what we're supporting.
21 After that point in time, we drop down to competitive rates
22 for three years.

23 MR. MARTIN: I have no further questions, your
24 Honor.

25 PRESIDING JUDGE: Any recross, Mr. Berman?

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1 rates are max rates. To the extent that is the rate at the
2 present time, those are max rates, then we would pay the
3 lesser of the -- the rates, as prescribed in the settlement
4 or the max rates.

5 I alluded to the fact earlier that I'm not real
6 clear about where we are on various filings, but the bottom
7 line is, we would pay the minimum or the lesser of those
8 two rates, whether it be the settlement rate or the just
9 and reasonable rate established here.

10 Q When you testified now to some other possible
11 filing, in other words, could you tell us what you had in
12 mind there?

13 A Well, I've probably been around too many lawyers
14 here lately.

15 PRESIDING JUDGE: It's infectious.

16 THE WITNESS: There may be some provisions. I'm
17 not prepared to address them in any great detail, but it's
18 my understanding there may be some provisions, some
19 negotiated rate provisions that have, in the past, allowed
20 parties to pay more just and reasonable rates. But that
21 could only apply between now and August of next year,
22 because after August of next year, the settlement
23 prescribes it will be at comparable rates. The
24 opportunities for that to come into effect is less than a
25 year old or a year in length, I should say.

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1 MR. BERMAN: No, your Honor.

2 PRESIDING JUDGE: Then I think this witness can
3 be excused.

4 MR. MARTIN: Except are you going to say, your
5 Honor --

6 PRESIDING JUDGE: We still have the matter of the
7 one pending exhibit, but that doesn't need the presence of
8 the witness.

9 MR. MARTIN: Thank you, your Honor.

10 Thank you, Mr. Eliason.

11 PRESIDING JUDGE: Thank you, Mr. Eliason. I
12 appreciate your time and your effort in coming here and
13 your testimony. Thank you very much.

14 MR. MARTIN: Your Honor, I wonder if at this
15 time, it might be appropriate to stipulate in the testimony
16 of another witness for Kansas Gas Service.

17 PRESIDING JUDGE: It's a good day to stipulate.

18 MR. MARTIN: As I understand it, the Pipeline has
19 waived cross-examination of Kansas Gas Service witness
20 Richard H. Tangeman. We have previously marked and filed
21 and provided to your Honor and to the reporter copies of
22 Exhibit KGS-2, which is the testimony -- prepared direct
23 testimony of Richard H. Tangeman. And attached to that are
24 two exhibits designated as RHT-2 and RHT-3.

25 Your Honor, I would move the admission of this.

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1 PRESIDING JUDGE: I assume it's been agreed, you
2 have no objection to the admission of this evidence?
3 MR. BERMAN: Your Honor, we waive cross and have
4 no objection to the admission of Mr. Tangeman's testimony
5 and supporting exhibits.
6 PRESIDING JUDGE: KGS-2, with the supporting
7 exhibits that are marked RHT-2 and RHT-3, are admitted.
8 (Exhibit KGS-2 received.)
9 MR. MARTIN: We had one other witness who had
10 prepared direct testimony.
11 PRESIDING JUDGE: Is that William Brown?
12 MR. MARTIN: William Brown, who we mentioned
13 previously, your Honor. Mr. Brown passed away, and
14 obviously, is not available for cross-examination.
15 PRESIDING JUDGE: Clearly not.
16 MR. MARTIN: I would offer it.
17 PRESIDING JUDGE: Have you had a chance to review
18 Mr. Brown's testimony?
19 MR. BERMAN: Yes, your Honor, and we object to
20 its admission into evidence. Mr. Brown addresses and
21 discusses his personal knowledge, apparently -- or I think
22 contends it's his personal knowledge -- concerning the
23 events that were involved in the contracting with Kansas
24 Pipeline Company or its predecessors in the late 1980s and
25 early 1990s.

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1 And there are items in his testimony that we
2 wanted to cross-examine him on, and given that he's not
3 available for cross-examination, we believe it's improper
4 and inappropriate to allow his testimony into evidence.
5 There's no exception to the hearsay rule that
6 would allow admission into the evidence of testimony when
7 there was no opportunity for appropriate cross-examination
8 of the witness. And the fact that the witness is deceased
9 does not make it fall within my exception of the Rules of
10 Evidence that allows its admission.
11 PRESIDING JUDGE: Do you have any agreement on
12 that?
13 MR. MARTIN: I would, your Honor. Some of the
14 points that were made in Mr. Brown's testimony were
15 accepted in Mr. Langley's rebuttal testimony, and caused
16 him to make some corrections, which I think are tantamount
17 to --
18 PRESIDING JUDGE: It's one more little quirk in
19 the evidence that we have to deal with. To the extent that
20 Mr. Langley disputed that, do you want to leave that in, or
21 do you want to withdraw that?
22 MR. BERMAN: Your Honor, what counsel is
23 referring to is, you may recall -- it was several weeks
24 ago -- but Mr. Langley made several corrections to his
25 prefiled testimony, describing who he had contacted and

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1 worked with and negotiated with back several years ago. In
2 fact, he made those corrections. And I'm not intending to
3 alter in any way the corrections that Mr. Langley made on
4 the stand to his testimony.
5 PRESIDING JUDGE: KGS-3 is rejected because the
6 witness is not available for cross-examination.
7 (Exhibit KGS-3 rejected.)
8 PRESIDING JUDGE: Is there any other --
9 MR. MARTIN: Nothing further, your Honor.
10 PRESIDING JUDGE: We have then concluded your
11 case; am I correct? Kansas Gas is resting?
12 MR. MARTIN: Yes.
13 PRESIDING JUDGE: Not literally.
14 MR. MARTIN: None of us will rest.
15 PRESIDING JUDGE: Not until we end this.
16 Let's go off the record.
17 (Discussion off the record.)
18 PRESIDING JUDGE: It being very close to 4:30, we
19 are going to recess for the evening and commence the
20 hearing again in the morning at 10:00 a.m.
21 Thank you very much, and I'll see you tomorrow
22 morning.
23 (Whereupon, at 4:20 p.m., the hearing was
24 adjourned, to reconvene at 10:00 a.m., on Thursday, October
25 19, 2000.)

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CONTENTS

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
CARMEN MORRISSEY				
by Mr. D'Alessandro	1973		2007, 2011	
by Mr. Berman	1977		2014	
JOHN S. BELL				
by Ms. Myers-Kerbal	2027		2054	
by Mr. Berman	2031			
WILLIAM G. ELIASON				
by Mr. Martin	2057		2083	
by Mr. Berman	2060			
RECESSES: A.M. - 2001				
NOON - 2010				
P.M. - 2051, 2082				

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1 (FERC - KANSAS PIPELINE COMPANY; DOCKET NUMBER
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3 OCTOBER 18, 2000.)
4

5 EXHIBITS

6 NUMBER DESCRIPTION IDENTIFIED RECEIVED

7
8 KPC 71 - Austin Affidavit 1971
9 PSC 55 - Morrissey Answering Testimony 1977
10 PSC 56-69 - Support Exhibits to PSC-55 1977
11 KPC 72 - Responses to KPC-1.15 and
12 KPC-1.17 1979 1983
13 KPC 73 - Response to R2-MoPSC-CJM-5-6 2002 2005
14 PSC 1-14 - Bible, Adam, Gilbert Exhibits 2024
15 KCC 1-7 - Smith Exhibits 2026
16 MGE 1-37 - All MGE Exhibits 2026
17 KCC 8 - Bell Direct Testimony 2031
18 KCC 9-13 - Support Exhibits to KCC-8 2031
19 KPC 74 - KCC Filed Answer 03/16/98 2049 2051

20 --continued--
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1 (FERC - KANSAS PIPELINE COMPANY; DOCKET NUMBER
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3 OCTOBER 18, 2000.)
4

5 EXHIBITS (CONTINUED)

6 NUMBER DESCRIPTION IDENTIFIED RECEIVED

7
8 KPC 75 - KCC Comments 08/25/98 2052 2053
9 KGS 1 - Eliason Direct Testimony 2060
10 KPC 76 - KGS Answer 03/16/98 2079 2080
11 KPC 77 - KGS Protest 08/25/98 2080
12 KGS 2 - Tangeman Exhibits 2087
13 KGS 3 - Smith Exhibits rejected 2089
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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Kansas Pipeline Company)

Docket No. RP99-485-000

PROPOSED TRANSCRIPT CORRECTIONS
OF KANSAS GAS SERVICE COMPANY

Pursuant to Rule 501(b) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.510(b) (2000), and the procedural schedule set by Presiding Administrative Law Judge Dowd, Kansas Gas Service Company, a division of ONEOK, Inc., respectfully submits its proposed corrections to the transcript of the hearing conducted in the above-referenced docket.

<u>Page</u>	<u>Line</u>	<u>Correction</u>
224	24	"William Geliason" should read "William G. Eliason."
323	17	"annunicated" should read "enunciated."
325	16	"orders" should read "order."
345	17	"provide" should read "provides."
346	8	"Are you" should read "You are."
358	7	"Court" should read "Judge."
471	6	"1999" should read "1998."
477	25	"19999" should read "1999."
925	9	insert the word "should" before "be."

937	16	"32 31 2" should read "312."
1255	5	"cover" should read "recover."
1257	18	"20" should read "22."
1258	11	insert the word "bill" after the word "direct."
1259	11	insert the word "it" before "did."
1259	17	insert the word "it" before "did."
2058	23	"corrections are" should read "correction is."
2065	18-19	"successor and interest" should read "successor in interest."
2065	22-23	"successor and interest" should read "successor in interest."
2074	3	"live to" should read "live up to."
2075	14	"assigning" should read "signing."
2077	5	"price in" should read "pricing."
2083	15	"sent" should read "set."
2084	20	"more just" should read "more than just."

Respectfully submitted,

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Attorneys for Kansas Gas Service,
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November 6, 2000
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that on this, the 6th day of November, 2000, a copy of the foregoing Proposed Transcript Corrections of Kansas Gas Service Company was served by first class mail, postage prepaid, upon all parties listed on the official service list compiled by the Commission for this proceeding.

Herbert J. Martin

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