

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

P R O C E E D I N G S

ALJ DERQUE: We're on the record. I believe we left off on your cross-examination, Mr. Swenson.

MR. SWENSON: That's correct, your Honor.

ALJ DERQUE: You may proceed.

MR. SWENSON: Yes, your Honor.

WITNESS J. DAVID GLYER RESUMED THE STAND
CROSS-EXAMINATION (CONTINUED) BY MR. SWENSON:

Q. Good morning, Dr. Glycer.

A. Good morning, Mr. Swenson.

Q. I do have some questions left, so I hope we're all well rested and ready to go.

A. Thank you.

Q. I'd like to start out by coming up with another hypothetical, if I might. Can we assume that we have a customer that's currently a full requirements customer on KCP&L standard tariffs, and that he has a constant 10 megawatt load?

A. We're back to -- so his load factor is 100 percent, and he's taking full requirement service from KCPL.

Q. That's right. And he's considering whether he wants to install onsite generation to serve one megawatt of his load.

A. Uh-huh.

1 Q. Would he take the presence of the access
2 charge into account in deciding whether or not to install
3 that generation to serve the one megawatt load?

4 A. Yes.

5 Q. And how would he go about determining what
6 the access charge would be?

7 A. The components of the access charge are the
8 price of the base tariff that he's on, which he knows. He
9 knows the current value. He actually just has to make
10 expectations about the current -- the future values, just
11 like you always have to of where the supplier is, plus
12 estimates of what the expected marginal cost would be,
13 which are reflected in real time prices.

14 And there are pretty good proxies available
15 for those. For instance, the two-part time of use tariff
16 is based on those, and therefore, it's easy to back out.
17 That has a different adder, but it's a straightforward task
18 to just back out that adder. And that gives the company's
19 best estimate of what a weighted average of those marginal
20 costs would be, and I'm sure the company would be willing
21 to assist the customer in understanding how to construct a
22 weighted average so that they can do a calculation that
23 might be a little bit more relevant to them. In any case
24 that it's different, the flat load would make it pretty
25 easy.

1 Q. Okay. And does he need to know his CBL to
2 make the calculation?

3 A. The CBL. He knows his CBL in this case.
4 It's a contractual element that's something that must be
5 agreed to by the parties.

6 Q. As you understand the working of the SQF
7 tariff, what amount would be the proper amount to agree to
8 in this CBL?

9 A. From what you've given, since, you know, I
10 presume you've given all the relevant facts, it's the
11 10 megawatts of load.

12 Q. Okay. Thank you. Now, let's assume that
13 he's going to go ahead and install his one megawatt
14 generator.

15 A. Uh-huh.

16 Q. He's switched over to the SQF tariff, and
17 he's now had two years of experience with his one megawatt
18 generator. And he's considering whether he wants to
19 install an additional 7 megawatts of generation that just
20 happens to match his steam load. Are we clear on that so
21 far?

22 A. Yeah, generally, although there are a lot
23 of facts that we may need to come back to review.

24 Q. Sure. If you need to know more, just let
25 me know. At that point when he's making his decision

1 whether to install the next 7 megawatts of -- or the next
2 additional increment generation to serve that 7 megawatts
3 of load, would he have to take into -- let me rephrase the
4 question. Would there be an additional access charge
5 involved?

6 A. What -- a different access charge? No.
7 The access charge is still the -- still got the same form.

8 Q. And the access charge, whatever it was
9 before, would continue to be the same?

10 A. The access charge.

11 Q. Okay. So --

12 A. Unless the company has demonstrated, as we
13 discussed, below some significant changes like external
14 changes in the CBL.

15 Q. I understand. So when he's trying to make
16 his decision about the existing 7 megawatt -- adding the
17 additional 7 megawatts of generation, would he just have to
18 take into account the marginal cost price that --

19 A. It's the same calculus he had before, the
20 same -- the same elements updated for the current periods
21 that he was having to deal with before.

22 Q. But this time he's already paid the
23 access -- the access charge is basically --

24 A. No. The access charge he paid was in a
25 previous period. The access charge he's paying going

1 forward is exactly the same form. All you're doing is
2 changing the way that he would do usage. You're not
3 changing the access charge.

4 Q. But if he stays with the one megawatt of
5 generation that he already had installed, he would pay a
6 certain access charge. Is that correct?

7 A. That's correct.

8 Q. And if he adds the 7 megawatts of
9 generation, would he pay a different access charge?

10 A. No. The access charge --

11 Q. So that -- the access charge would not
12 influence his decision as to whether to install the
13 additional 7 megawatts or not?

14 A. That's not true.

15 Q. Okay. Why isn't it true?

16 A. It isn't true because the access charge
17 gives the customer the right incentive to judge whether the
18 costs and benefits of that additional 7 megawatts are
19 justified with the reference point being what the market
20 value of generation and capacity are.

21 Q. Well, this is where I'm totally lost,
22 because I see he's got an access charge. We'll call it X.
23 He's paying it under option one, which is stay with the
24 one megawatt of generation. His option two is to add
25 7 megawatts, and he pays that same access charge X. So why

1 does that influence his decision at all with regard to
2 whether he wants to take option one or option two?

3 A. I just replied to your question. It's
4 exactly the same question. It gives them exactly the right
5 incentives. When he decides -- when he does the calculus,
6 what happens to all of my expenses and what happens -- he
7 just nets out. It's the same calculation. I don't see --
8 you're confusing -- I don't know what access charge means
9 in your head. But the access charge is a very dynamic
10 component, and it just fits as that formula. It's dynamic
11 in the sense that it's a function of the prices as they
12 come out, and that access charge just -- it sits there and
13 gives the right basis of comparison.

14 Q. I just can't understand the answer. That's
15 my problem. Can you illuminate more? Because I see -- I
16 think you're saying you pay the same charge that -- the
17 answer to my question was he pays the same access charge in
18 either case. I understand that you're saying he might look
19 at his marginal costs and that the access charge might
20 allow the utility to only -- to have them only look at the
21 marginal cost and not have to take into account other
22 costs. But I'm just trying to focus on the access charge.

23 A. For that customer, if -- let's go back to
24 the situation where you just had the one megawatt. Now, do
25 you understand why the tariff structure gives the customer

1 the right incentive on, let's say, the 700th hour of the
2 year when they get the marginal cost base price, that it's
3 3 cents; and the customer then can say, okay, well, my cost
4 of generating is 2 1/2 cents, so I can save money by
5 generating -- or 3 1/2 cents, so I will save money by
6 buying from the utility? Do you understand that?

7 Q. Well, I think you just asked me two
8 different questions. I'm not testifying, but I think I
9 understand what you're trying to say.

10 A. Okay. For the customer, whatever his cost
11 was in that hour that he was using to make the decision of
12 whether it's most economic to generate or buy is exactly
13 the same type of decision he has to make with respect to
14 that same 7 megawatt additional generator, because for him
15 that 7 megawatt generator is at the margin as well as the
16 anticipated production cost.

17 So it's exactly the same decision. If you
18 understand the one case, you should understand the second.
19 If you don't understand that first case, I can't help you,
20 and I don't think any economist can help you if you can't
21 understand how to judge which of two costs is higher.

22 Q. Well, I just thought you said that the
23 CBL -- the access charge isn't higher in either the first
24 or second case; it's the same. Is that correct?

25 A. It's the whole set of costs that you

1 consider. It's not the access charge.

2 Q. Okay. What change --

3 A. The access charge is part of that calculus.

4 Q. What changes -- when he decides he's going

5 to go with the 7 megawatts -- or watts aside, whether

6 7 megawatts changes, what's going to change with regard to

7 his rates? It's not the access charge. Is that correct?

8 A. What changes is what the customer's putting

9 in the margin. He has to make a decision on what thing

10 he's going to buy. Is he going to buy his own capacity and

11 energy, or is he going to buy the energy and capacity from

12 the utility?

13 Q. Okay. What's the additional cost of the

14 energy and capacity from the utility? He already has one

15 megawatt in place. He's already paying the access charge,

16 and now he wants to figure out what the additional cost for

17 buying capacity and energy from utility are.

18 A. The RTP price --

19 Q. Okay. Thank you.

20 A. -- has energy and the market value of

21 capacity.

22 Q. So that's the price --

23 A. That's the price.

24 Q. Excuse me?

25 A. That's the price of it.

1 Q. Okay. And he compares that against his own
2 total costs involved with installing and operating the
3 7 megawatts generation?

4 A. Since those are his incremental costs, yes.

5 Q. Okay. Thank you. Now, let's say he's got
6 his one megawatt of generation. He's added his 7 megawatts
7 of generation. He's been operating with that for a year,
8 and he wants to determine whether he should go ahead and
9 install enough generation to abandon KCP&L altogether.
10 Okay?

11 A. Is there a question here?

12 Q. I'm just trying to set up the facts for
13 the --

14 A. Okay.

15 Q. Keep the question a little simpler.

16 A. Okay.

17 Q. What costs would he avoid at that point if
18 he put in his own generation and left KCP&L?

19 A. The decision to completely leave the system
20 is fundamentally -- it's got a few fundamental differences
21 from the other circumstances, and since what we're dealing
22 with is the regulated tariff, it only has to do with the
23 regulated tariff. Dr. Proctor has given an example of what
24 you're speaking of now. I think you should go read his --
25 I believe it's his rebuttal testimony and gives exactly

1 this case. So it's already sketched out in the record.

2 Q. But I'm asking you. You're an expert in

3 this area, are you not?

4 A. Yes.

5 Q. Okay. So what I want to know from you is

6 not what the differences are, but what would the costs that

7 the customer would avoid if you went ahead and installed

8 enough additional generation to leave KCP&L altogether in

9 the hypothetical we're dealing with?

10 A. The cost that he would avoid is he would

11 avoid his bill from KCPL.

12 Q. And would that bill consist of the access

13 charge plus whatever he had been paying based on the RTP

14 prices for the marginal energy use?

15 A. That's correct.

16 Q. Thank you. Can you turn to page 13, lines

17 16 and 17 of your surrebuttal testimony, please, Dr. Glycer?

18 A. Give me the page again.

19 Q. Page 13, lines 16 and 17.

20 A. Okay.

21 Q. Do you see there -- do you state that the

22 economist standard interpretation of plentiful and less

23 plentiful is in terms of total resource cost involved?

24 A. Yes.

25 Q. Is that the lay definition of plentiful?

1 A. I don't know if you're asking me if that's
2 the best lay definition. I don't think I'm here as an
3 expert on the best lay definition.

4 Q. Well, are you asserting it's also the
5 lay -- the best lay definition --

6 A. I'm not necessarily asserting. I'm just --
7 the statement stands as it's written.

8 Q. Well, when you say "not necessarily," are
9 you or aren't you?

10 A. Am I or am I not what?

11 Q. Asserting that the term plentiful -- the
12 best definition -- the best lay definition of plentiful is
13 the same thing as the economist's definition --

14 A. I'm saying the economist's standard
15 interpretation of plentiful, unless plentiful was in terms
16 of the total resource cost involved, that's what this
17 statement says.

18 Q. I understand what that says. Are you also
19 saying it's the best lay definition?

20 A. I already indicated that I am not an expert
21 on the best use of the English language, so I'm not going
22 to answer that question.

23 Q. Well, I think you're going to answer the
24 question. You just tell me --

25 A. I can't answer the question about whether

1 it's the best lay definition.

2 Q. I'm not asking whether --

3 A. Yes, you just did.

4 Q. No, I didn't, sir. I asked you whether or

5 not --

6 ALJ DERQUE: Dr. Glycer?

7 THE WITNESS: I don't under --

8 ALJ DERQUE: Mr. Swenson, go on. He's

9 answered it.

10 BY MR. SWENSON:

11 Q. Okay. With regard to the signals provided

12 to customers from the SQF tariff, does the signal -- does

13 the effectiveness of the signal depend on the price that

14 the customer's paying or the money actually going to KCP&L?

15 A. The signal that the customer gets depends

16 on the prices that the customer's paying.

17 Q. Okay. So with regard to the access charge,

18 could we send the revenues recovered by the access charge

19 to the state to reduce taxes or use it for some other

20 general beneficial purpose and not affect your efficiency

21 goal?

22 A. No, you couldn't. And I'll explain why,

23 because it's a very important and useful point. With

24 respect to there are multiple ways in which this tariff is

25 efficient, and that's very important. One of the ways that

1 it's efficient is that it gives the customer the correct
2 decision point; should they install capacity or not, should
3 they operate their capacity or not.

4 Another feature it does is by putting -- by
5 getting the revenues there that are part of KCPL's revenue
6 requirements, it reduces the necessity to raise revenue
7 other places, and as such, it diminishes distortions that
8 might exist between marginal cost and tariff prices. And,
9 therefore, it increases efficiency in that regard as well.
10 So it's actually a win/win situation. It's really
11 absolutely the best place to put that collection of
12 revenue.

13 Q. Dr. Glyer, are you aware of any backup
14 tariff or standby tariff for onsite generation that has
15 been approved with the same features you're proposing here
16 in other jurisdictions?

17 A. We are really pretty much the experts in
18 this area, and I'm not really aware of them. And I think
19 I've -- I've got a couple of things here. I think if there
20 were, I probably would. But in the same vein, back in,
21 say, '74, there weren't time of use rates. They were
22 implemented because of the efficiency considerations. Back
23 in '88 there hadn't been any two-part RTP tariffs.

24 They've now been implemented and are widely
25 utilized. And in fact, the British form of real time

1 pricing is almost identical to that form, and that's in a
2 competitive market circumstance. And so the lack of having
3 other jurisdictions have this form does not in my mind
4 indicate any lack of natural advantage for this form.

5 Q. Okay. In the United States with regard to
6 these RTP tariffs that you were just referring to in your
7 answer, are those ever offered such that that's the only
8 alternative the customer has to your knowledge?

9 A. To my knowledge it's not the only option
10 the customer has. I suspect that that may soon change.

11 Q. Have you performed or seen any other
12 studies or analyses that address how many onsite generation
13 products would meet your definition of economic efficiency?

14 A. No, I haven't, but I can make some guesses
15 as to the types of situations that will and won't.

16 Q. Can you give me an example of any concrete
17 existing onsite generation project in Missouri that would
18 be efficient under your definition?

19 A. Missouri -- no, I do not, because Missouri
20 doesn't have some of the natural things like, say, Texas
21 and Oklahoma, where there are a lot of energy industries
22 where there's a lot of sort of by-product that PURPA was
23 developed to try to encourage. And I'm sure that there may
24 be some in Missouri, but it isn't nearly so prevalent so
25 it's not going to be so common.

1 Q. Earlier I believe you testified that you
2 thought that it may be happening in the future that
3 customers are left with only the choice of going to real
4 time pricing or your -- the type of two-part access
5 pricing. Is that correct?

6 A. I think that there may be some instances we
7 see where that that's the only offer one company makes.

8 Q. Okay. Do you have any reason as to why it
9 wouldn't be appropriate to switch everyone over to that
10 sort of pricing ultimately?

11 A. Well, yes, I do. For instance, let's say
12 you've got residential households, and the metering costs
13 may overcome the efficiency benefits. And, for instance,
14 that's what we found in all the time of use experiments
15 that were done with residential households, that there were
16 efficiency gains from it, but because the size of the usage
17 was small enough, that cost -- the administrative costs
18 were not being adequately paid except for a minor subset of
19 the customers.

20 Q. Is there any other factor other than size
21 of use that you can think of that would make it
22 inappropriate?

23 A. Another thing, if you look at the
24 households, is that some of the pluses and minuses in terms
25 of the tariff structure, that there's relatively more

1 variability in the nature of the household. So it's a
2 little -- it's harder to go get data and do all of that,
3 because you don't have the hourly metering data,
4 et cetera.

5 Q. I'm not sure I -- you don't have the hourly
6 metering data, because they're too small to make it
7 worthwhile to put the meter in? Is that --

8 A. Right.

9 Q. Is that going back to the size issue?

10 A. Yeah. Well, on related issues.

11 Q. I understand.

12 ALJ DERQUE: Mr. Swenson?

13 MR. SWENSON: Yes, sir.

14 ALJ DERQUE: Hold it for a moment. While
15 you're looking, off the record.

16 (A recess was taken.)

17 ALJ DERQUE: On the record. Mr. Swenson?

18 MR. SWENSON: Your Honor, I have no further
19 questions for this witness. However, Mr. French has some
20 matters to discuss.

21 ALJ DERQUE: Mr. French?

22 MR. FRENCH: Yes. We'd like to introduce a
23 confidential exhibit which consists of a response by Kansas
24 City Power and Light to a data request by Trigen-Kansas
25 City regarding the customer, which has been discussed

1 during this hearing, who is on the current Schedule QF
2 rate. The answer, which is complete in this exhibit,
3 details the contract with that QF customer, which is the
4 only customer on the -- cogenerating customer on the system
5 now. It also includes all documents that KCPL provided in
6 that data request in support and also the data request
7 itself, which requested the information.

8 So it's a complete exhibit, and I'd like to
9 mark it and introduce it as a data request answer of Kansas
10 City Power and Light.

11 ALJ DERQUE: Okay. Do you have any other
12 cross-examination?

13 MR. FRENCH: No. This will conclude our
14 cross-examination of KCPL's witnesses.

15 ALJ DERQUE: Okay. Do we need to go
16 in-camera for that?

17 MR. FRENCH: All I need to do is mark it as
18 a confidential exhibit, Judge.

19 ALJ DERQUE: And enter it?

20 MR. FRENCH: Yeah. If KCPL --

21 ALJ DERQUE: Okay. You don't need to go on
22 the record with any testimony regarding that?

23 MR. FRENCH: Not unless there's an
24 objection. We have the author of the data request response
25 here in the room, but I don't see any reason to put him on

1 the stand.

2 MR. RIGGINS: Actually, your Honor, I do
3 have an objection, but I think I can make it in open
4 session without going into in-camera.

5 ALJ DERQUE: Okay. We will mark that
6 No. 14HC. Off the record.

7 (Off the record.)

8 (EXHIBIT NO. 14HC WAS MARKED FOR
9 IDENTIFICATION.)

10 ALJ DERQUE: We're back on the record. I
11 have what is marked No. 14HC. Mr. French?

12 MR. FRENCH: Yes. I would move the
13 admission of Exhibit No. 14HC.

14 ALJ DERQUE: Is there any objection to the
15 admission of No. 14HC?

16 MR. RIGGINS: Yes. I have an objection,
17 your Honor. If I may, KCPL does not dispute that the offer
18 of the highly confidential exhibit is a response to a
19 Trigen data request.

20 My objection is that it has not been timely
21 offered in the sense that the subject matter of this data
22 request was something that Mr. Giles testified about
23 yesterday in response to cross-examination from Trigen in
24 this area, and the appropriate time to have offered that
25 into evidence or to have questioned a KCPL witness about it

1 would have been at that time.

2 Mr. Glyer, although Trigen has concluded
3 their cross-examination of him, in any event was not
4 involved at all in the preparation of this response and has
5 not looked at it to my knowledge and, therefore, is unable
6 to act as a conduit to get it into evidence. So my
7 objection does not go necessarily to the subject matter but
8 to the timeliness of its being offered by Trigen.

9 MR. FRENCH: May I respond?

10 ALJ DERQUE: Sure.

11 MR. FRENCH: There's no indication in this
12 document that Mr. Giles has any connection to this document
13 as well. The data request response provided by Mr. Charles
14 Locke, senior regulatory analyst for KCP&L, the response is
15 at least an admission against interest by KCPL and is
16 admissible on that matter alone.

17 It's also clearly relevant to the issues
18 presented not only by Mr. Giles in his testimony but also
19 by Mr. Glyer concerning the efficacy and efficiency of the
20 Schedule SQF rate. The contract contained in the exhibit
21 represents the only negotiated rate currently charged by
22 KCPL to incur on a cogeneration customer. Therefore, it's
23 clearly relevant evidence this Commission should consider.

24 I tried not to burden the record with
25 confidential information by merely admitting the document

1 into the record and allowing the parties to respond -- to
2 discuss the four corners of the document and the supporting
3 documentation, all of which were provided by Kansas City
4 Power and Light. There's no information here which is
5 Trigen-Kansas City information. And allow the parties to
6 respond to it in the briefs, where the information may be
7 more closely controlled.

8 Therefore, I think the document is
9 relevant. It should be admitted.

10 ALJ DERQUE: The objection is overruled.
11 Mr. Riggins, I don't think there is any -- this is an
12 administrative hearing. As such, there's a good deal more
13 leeway in entering evidence. I understand the relevance of
14 it is quite in Trigen's cross-examination. 14HC is
15 admitted into evidence and identified as a power supply
16 agreement.

17 (EXHIBIT NO. 14HC WAS RECEIVED IN
18 EVIDENCE.)

19 ALJ DERQUE: Redirect, Ms. Cunningham?
20 Mr. Riggins?

21 MR. RIGGINS: I'll do the redirect, your
22 Honor. And I just have one question, I believe.

23 REDIRECT EXAMINATION BY MR. RIGGINS:

24 Q. Dr. Glyer, yesterday in response to a
25 question from counsel for Trigen, I believe the line of

1 questioning was that, wouldn't the average customer pay
2 more to KCPL under the proposed SQF tariff than under the
3 standard rate. Do you recall that line of questioning?

4 A. It was a somewhat complicated line of
5 questioning.

6 Q. Well, my question is, even though there may
7 be a situation in which the average customer, if you will,
8 will pay more to KCPL under the proposed SQF than under a
9 standard rate, will that customer's total cost go down?

10 A. It's -- yes. The customer's total cost is
11 the relevant element, so that's -- the customer wants to
12 make the comparison of the total cost. The relevant issue
13 is not how much they pay specifically to KCPL.

14 Q. So that -- the fact that the average
15 customer may pay more to KCPL under the SQF tariff than
16 under the standard rate does not mean that the average
17 customer will be worse off under the SQF rate than under
18 the standard rate?

19 A. You're correct. Those two things do not
20 relate directly to each other in any causal way.

21 MR. RIGGINS: Thank you. That's all I
22 have, your Honor.

23 ALJ DERQUE: Thank you, Dr. Glycer.

24 THE WITNESS: Thank you, your Honor.

25 (Witness excused.)

1 _____
2 ALJ DERQUE: Let me see. Next witness is
3 Dr. Proctor. Is that correct?
4 MR. WOODSMALL: You are correct.
5 ALJ DERQUE: In that case, let's take about
6 a ten minute break. Off the record.
7 (A recess was taken.)
8 ALJ DERQUE: Back on the record.
9 Mr. Woodsmall?
10 MR. WOODSMALL: Yes. At this time Staff
11 would call Mr. Proctor to the stand. And I need to mark
12 those exhibits.
13 (Witness sworn.)
14 _____
15 ALJ DERQUE: Thank you, sir. I have the
16 direct, rebuttal, and surrebuttal. Is that correct?
17 MR. WOODSMALL: Yes.
18 ALJ DERQUE: Okay. Those would be No. 15,
19 No. 16, and No. 17. We're off the record.
20 (Off the record.)
21 (EXHIBIT NOS. 15, 16, AND 17 WERE MARKED
22 FOR IDENTIFICATION.)
23 ALJ DERQUE: Back on the record. I have
24 what's -- go ahead, Mr. Woodsmall.
25 MICHAEL S. PROCTOR testified as follows:

1 DIRECT EXAMINATION BY MR. WOODSMALL:

2 Q. Would you state your name for the record,
3 please?

4 A. My name is Michael Proctor.

5 Q. And by whom are you employed and in what
6 capacity?

7 A. I'm employed by the Missouri Public Service
8 Commission. I'm manager of the economic analysis
9 department.

10 Q. And did you prepare what has been marked
11 Exhibits 15, 16, and 17?

12 A. I did.

13 Q. And do you have any corrections to make to
14 those at this time?

15 A. Yes. In Exhibit 17, rebuttal testimony,
16 page 47, at line 14, "Mr. Ryan's proposal" should read
17 "Mr. Kind's proposal." And I apologize to Mr. Ryan Kind.

18 And similarly, on line 16 where it says
19 "Ryan" it should read "Kind."

20 Q. Okay. Other than those corrections, if I
21 were to ask you the same questions that are contained in
22 Exhibits 15, 16, and 17, would your answers be
23 substantially the same?

24 A. Yes, they would.

25 Q. And are those answers true and correct to

1 the best of your knowledge and belief?

2 A. Yes, they are.

3 MR. WOODSMALL: At this time I'd offer
4 Exhibits 15, 16, and 17 and tender the witness for
5 cross-examination.

6 ALJ DERQUE: Thank you. I have what's
7 marked Exhibit No. 15, the direct of Dr. Proctor; No. 16,
8 the rebuttal of Dr. Proctor; and 17, the surrebuttal of
9 Dr. Proctor. Are there any objections?

10 (No response.)

11 ALJ DERQUE: Seeing none, they will be
12 admitted.

13 (EXHIBIT NOS. 15, 16, AND 17 WERE RECEIVED
14 IN EVIDENCE.)

15 ALJ DERQUE: Ms. Cunningham?

16 CROSS-EXAMINATION BY MS. CUNNINGHAM:

17 Q. Good morning, Dr. Proctor.

18 A. Good morning.

19 Q. I'm going to start off with just a few
20 questions that will hopefully clarify the record in terms
21 of positions that I think the Company and Staff at one
22 point disagreed on, but I want to see if I can't clear them
23 up to show that we have acceded to Staff's direction on
24 those issues.

25 First of all, with regard to the standby

1 Star tariff, you had recommended in your testimony that
2 there not be a discount of the access charge as we had
3 proposed. Do you recall that testimony?

4 A. Yes, I do.

5 Q. And you have read in Mr. Giles's testimony,
6 haven't you, that we have accepted that recommendation?

7 A. Yes.

8 Q. So that's no longer an issue between the
9 parties, is it?

10 A. It's no longer an issue.

11 Q. With regard to the special contract tariff,
12 you had recommended in your testimony that tariff
13 applicability be restricted to the two conditions that
14 customers have either competitive alternatives or require a
15 special form of service. Do you recall that testimony?

16 A. Yes.

17 Q. And are you aware that in Mr. Giles'
18 testimony he accepted that recommendation of yours?

19 A. Yes.

20 Q. Similarly, with regard to the special
21 contract tariff, you had recommended that, with regard to
22 contract documentation, that we include the category of
23 other economic benefits to the area. You also recommended
24 that a copy of the contract be provided to the Commission
25 Staff prior to the effective date of the contract. Do you

1 recall that testimony?

2 A. Yes.

3 Q. And you're aware, aren't you, that

4 Mr. Giles in his rebuttal testimony accepted both of those

5 recommendations?

6 A. Yes.

7 Q. You also expressed some concerns about

8 KCPL's proposed language regarding a minimum contract term,

9 did you not, in your rebuttal testimony?

10 A. Yes, I did.

11 Q. And you're aware, are you not, that KCPL

12 agreed to eliminate any mention of contract term limits?

13 A. Yes.

14 Q. You had also, in your rebuttal testimony,

15 recommended that additional language for the special

16 provision section of the special contract tariff be

17 included. Do you remember making that recommendation?

18 A. Can you give me a reference on that?

19 Q. Page 48 of your rebuttal testimony. This

20 has to do with requesting that there be further

21 clarification in the tariff that the revenue collected from

22 each customer will exceed the incremental cost of serving

23 that customer.

24 A. Yes.

25 Q. If KCPL would agree to adopt the language

1 similar to what you recommended, would your concerns be
2 satisfied?

3 A. Yes, they would.

4 Q. And furthermore, you were here yesterday
5 when Mr. Giles testified, weren't you?

6 A. Yes, I was.

7 Q. And did you -- do you recall Mr. Giles
8 emphasizing several times that, consistent with language
9 already contained in that tariff, that KCPL intended to
10 maximize the customer's contribution to margin?

11 A. Yes.

12 Q. And you have no reason to think, do you,
13 that Mr. Giles would not follow that intent?

14 A. I have no reason to believe that he
15 wouldn't.

16 Q. You were also here when he indicated that
17 at no time KCPL will collect less than the marginal costs.
18 Did you hear that testimony?

19 A. I heard that.

20 Q. Okay. Now, turning to page 45 of your
21 rebuttal testimony --

22 A. Yes.

23 Q. -- you make a recommendation there that the
24 contract tariff include a condition that any customer on
25 the special contract service tariff be allowed to

1 renegotiate the price terms for generation in the contract
2 at the time when all retail customers are given access to
3 competitive sources of generation. Do you see that in your
4 testimony?

5 A. Yes.

6 Q. And basically that recommendation was made
7 in response to a concern expressed by Office of the Public
8 Counsel. Is that right?

9 A. That's correct.

10 Q. Would you agree with me, Dr. Proctor, that
11 in the types of special contracts that we're talking about
12 for these purposes and that KCPL has already entered into,
13 that we're talking about entering into contracts with
14 customers that have some level of sophistication?

15 A. Yes.

16 Q. We're basically talking about large
17 customers, aren't we?

18 A. Yes.

19 Q. And as a matter of fact, we could be
20 talking about customers like DOE and Trigen, who are
21 involved in this case?

22 A. Yes.

23 Q. And both of those parties in this case
24 are -- have retained counsel and are fully participating in
25 cross-examination?

1 A. That's correct.

2 Q. And you would probably agree with me to the
3 extent that you can -- and I'm not speaking specifically,
4 more hypothetically -- that they would probably be able to
5 take care of themselves in a negotiation situation?

6 A. Yes.

7 Q. Would you agree with me that the type of
8 customer we're dealing with also is probably aware of major
9 industry issues that might affect them?

10 A. Yes.

11 Q. I guess, keeping all that in mind,
12 Dr. Proctor, I'm curious why you would feel that this
13 special contracts tariff would require some special form of
14 protection for that type of customer.

15 A. I don't think I was making this
16 recommendation on the basis of providing protections to
17 customers. That wasn't the issue that I was attempting to
18 address here. Mr. Kind's concern was that KCPL would
19 attempt to capture customers, therefore, foreclosing
20 opportunities that they might have when markets were open
21 to -- competitive markets were open to them. That's what I
22 was attempting to respond to.

23 In essence, I don't think the tariff should
24 read that it forces the customer or KCP&L to renegotiate.
25 I'm saying what the tariff ought to say is that the

1 customer would be allowed to do that. Now, a customer
2 negotiating with KCP&L could certainly, say, give up that
3 right when they negotiate a contract with KCP&L.

4 So I'm not saying that they should be
5 forced to do that. I'm saying that they be given the
6 opportunity to do that. The way I see it in the
7 negotiation process is if the customer says, "I'm going to
8 forego that. I have that option. The tariff gives me that
9 option. I'm going to forgo that option," they would use
10 that as a part of their negotiation with KCP&L. I think
11 you always have market-out clause as an option in a
12 contract.

13 If I'm -- I don't know if I'm being clear,
14 but I'm not saying put this on the tariff as something
15 that's forced. I'm just saying put it on the tariff to
16 make it clear that that's an option for the customer.

17 Q. Then to the extent that the language that
18 you actually proposed might be ambiguous and I might be
19 reading that in a different way than you're describing on
20 the stand, is that something -- is having that type of
21 language something Staff would be willing to work with the
22 Company on, conveying what you're communicating now on the
23 witness stand?

24 A. I just -- yes. I just want something in
25 the contract that clarifies that. Okay? And I think

1 that's what you're asking me.

2 Q. Correct.

3 A. Yes.

4 Q. As a last series of questions, Dr. Proctor,

5 I'm going to join the bandwagon here of people who are a

6 little bit confused about the purpose of the access charge,

7 and I think you were present when both Mr. Giles

8 testified -- I think you agreed to that already -- and I

9 believe you were also present when Dr. Glyer was on the

10 stand.

11 A. Yes.

12 Q. And I've got a couple of questions for you

13 with regard to the access charge.

14 MR. SWENSON: Your Honor, is this going to

15 be friendly cross?

16 ALJ DERQUE: Well, I don't know. It

17 doesn't sound friendly so far. We'll wait and see. And

18 you can make your objection when it becomes too friendly to

19 suit you, Mr. Swenson. Go right ahead.

20 BY MS. CUNNINGHAM:

21 Q. Okay. Does the access charge have an

22 impact on a customer's decision to install generation?

23 A. Yes.

24 Q. Okay. Does the access charge have an

25 impact on the amount or size of self-generation?

1 MR. SWENSON: Your Honor, I've got to
2 object, because I think yesterday it was stated by KCP&L's
3 witnesses that they have the exact same position on the
4 access charge. This is just asking about the effects of
5 the access charge, and I didn't see any disagreement in the
6 testimony that's been put in to date on this issue between
7 KCP&L. And I don't think any -- and Staff -- and I didn't
8 see anything in the cross yesterday that indicated any
9 difference.

10 MR. PHILLIPS: Your Honor, I would also
11 object. I can't concede that counsel for KCPL would admit
12 here on the record that they are confused about the access
13 charge, since they're proposing it. But if they want to
14 make that stipulation on the record, we'll be happy to join
15 in with them.

16 MS. CUNNINGHAM: I'll withdraw the
17 question. That's fine.

18 ALJ DERQUE: Okay.

19 MS. CUNNINGHAM: KCPL has nothing further
20 at this time.

21 ALJ DERQUE: Thank you. Mr. Mills?

22 MR. MILLS: Thank you, your Honor. I do
23 have a few questions.

24 CROSS-EXAMINATION BY MR. MILLS:

25 Q. Dr. Proctor, are you familiar with the

1 Commission's promotional practices rule?

2 A. Yes.

3 Q. Are they generally designed to prevent what

4 was viewed as destructive competition between regulated

5 utilities in Missouri?

6 A. Yes.

7 Q. Are you also familiar with the concept of

8 flex rates for natural gas distribution companies?

9 A. Yes.

10 Q. Are those flex rates generally designed to

11 allow natural gas distribution companies to compete with

12 other forms of energy suppliers?

13 A. Yes.

14 Q. Are they designed to allow natural gas

15 distribution utilities to compete with regulated electric

16 utilities?

17 A. No.

18 Q. Would using flex rates for that purpose be,

19 in your view, contrary to the intent of flex rates that are

20 in place for most, if not all, of the metro gas utilities

21 in this state?

22 A. I believe it would be contrary to the

23 intent, yes.

24 Q. Should special contracts by electric

25 companies such as the one -- the tariff proposed in this

1 case be used to allow electric utilities such as KCPL to
2 compete with regulated natural gas utilities for a
3 customer's load?

4 A. I don't believe that's the intent here. I
5 think we're talking about different kinds of loads. The
6 intent is to allow them to compete for electric --
7 electricity when that electricity is offered by an
8 alternative supplier that's outside the service territory.

9 Q. So in your view, the tariff language should
10 be constructed so that it would not allow KCPL to compete
11 with a regulated natural gas utility on the basis of price
12 by special contracts?

13 A. Well, I don't know -- I suppose if you want
14 to carry it to that extent that that be included in the
15 tariff language, I would not object to that. If you're
16 asking would I sponsor or put that kind of language in, no.

17 Q. You don't believe it's necessary, but you
18 don't think it's objectionable. Is that what you're
19 saying?

20 A. I don't think it's necessary, but I
21 wouldn't object to it. Yes.

22 Q. Okay. Let me ask you to turn, if you
23 would, please, to page 47 of your testimony?

24 A. Direct?

25 Q. I'm sorry. Your rebuttal.

1 A. Yes.

2 Q. The language you have there at lines 4
3 through 9 talks about the circumstances under which special
4 contracts are available to customers. Is that correct?

5 A. That's correct.

6 Q. The way you envision this language working,
7 would a customer who has special needs but no alternative
8 supplier be allowed to enter into a special contract for
9 price discounts?

10 A. Yes. That has special needs but no
11 alternative supplier, yes.

12 Q. All right. So that if, for example, a
13 customer simply wanted super firm power, they would be
14 allowed to -- KCPL would be allowed to discount to that
15 customer, even though that customer has no alternative
16 supplier?

17 A. Well, if you look at the conditions that
18 have to be met, the eight conditions, okay, they would not
19 meet those eight conditions. So would KCP&L be able to
20 discount to them? The answer is no. Would they be able to
21 enter into a special contract with them? The answer is
22 yes.

23 Q. So, essentially, the language that you
24 propose there on page 47 is subordinate to your list of
25 eight conditions?

1 A. Yes.

2 Q. And where are those eight conditions? Are
3 those in your direct testimony?

4 A. Yes, they are.

5 Q. Okay. Now, I believe you testified earlier
6 that you were here when Mr. Giles was on the stand
7 yesterday?

8 A. Yes.

9 Q. There were some questions of him about a
10 customer who had -- 90 percent of the customer's load was
11 for lighting, for example, and 10 percent was for space
12 conditioning. And so that in that event they had -- this
13 particular customer had an alternative supplier for only
14 10 percent of its load and did not have an alternative for
15 90 percent of its load.

16 And Mr. Giles' interpretation of your
17 proposal would allow KCPL to discount the entire load
18 rather than simply the 10 percent load. Is that the way
19 that you intended that?

20 A. Well, first of all, that's not the answer
21 that I heard from Mr. Giles. What I heard was that they
22 would enter into a contract for 100 percent of the
23 customer's load. You would only discount on the basis of
24 what the customer's alternatives are.

25 Again, I go back to the eight conditions.

1 If you discounted on that other 90 percent and there was no
2 competitive reason to do that, then you would, in essence,
3 be in violation -- in my mind would be in violation of the
4 tariff.

5 As we come into a rate case, the Staff
6 would very strongly take the position that the company's in
7 violation of the tariff and that there's a real problem.
8 And we would impute revenues to them. I don't know what
9 else. I don't know what the other legal remedies are, but
10 I know in a rate case we would certainly impute revenues to
11 them on that basis.

12 I'm also a little bit disturbed by the
13 example, because the way it was split up, the conditions of
14 it, he's got competitive alternatives for space
15 conditioning. Are those competitive alternatives outside
16 the service territory? Are they -- you know, it gets back
17 to the question you asked earlier. Is the competition with
18 a gas company in the service territory? Then I'm going to
19 have some -- I'll even have problems with the 10 percent --

20 Q. Okay.

21 A. -- at that point.

22 Q. It wasn't my example, but as I understood,
23 it was competition with a gas company in the service
24 territory.

25 A. The portion of the load is an issue or

1 question where, say -- let's say we're talking about a
2 company that's producing air products, for example. And
3 they have capacity in the KCPL territory to produce X
4 amount of their product. What they -- they get a
5 competitive alternative in Pennsylvania. And what they're
6 talking about is shifting a portion of their production
7 from KCP&L's service territory from that plant to another
8 plant that they have in Pennsylvania. So maybe they're
9 going to shift 50 percent of their production to that other
10 plant.

11 That's what I was thinking of in terms of a
12 portion of their load, and that would be the portion of it
13 which you would then -- KCP&L could do competitive
14 negotiations. But I think it would be a contract for the
15 entire load.

16 Q. Okay. Now, to follow up on that example
17 you just gave of the air products company, would you -- in
18 your view would entering into a special contract be
19 appropriate under those circumstances, if, instead of
20 shifting its load to Pennsylvania, the customer was
21 shifting its load from KCPL to another Missouri regulated
22 electric utility?

23 A. I think it would be -- I think both -- I
24 would treat both in a comparable way.

25 Q. Uh-huh. And if, for example, the other

1 Missouri regulated electric utility also had a special
2 contract tariff, then could you see the potential for
3 destructive competition among Missouri electric regulated
4 utilities on the basis of special contracts?

5 A. Yeah. There's a potential there for it. I
6 wouldn't disagree with that. I don't think there's -- I
7 don't think it's a vast potential. Okay? I think
8 companies tend to locate not multiple plants within that
9 close of a geographic region to try to make these
10 distinctions.

11 One example does come to mind and -- where
12 I would give KCP&L, without any question, without any
13 doubt, the ability to compete, and that is on pipelines,
14 where generators -- or excuse me, compressors have been
15 built and oversized and put into different jurisdictions on
16 purpose by the pipeline and in particular have been put
17 into, say, where they could be served by cooperatives.

18 Cooperatives aren't constrained by having
19 set tariffs on the book. They can go out and make a deal,
20 and they can negotiate with the customer. And they can
21 negotiate a special rate, and if that compressor is
22 oversized, they can turn off the compressor in KCP&L's
23 service territory, run the compressor that's in, let's say,
24 the co-op's service territory. I think KCP&L should have
25 the ability to compete when that type of situation exists.

1 Q. Okay.

2 A. And my mind wouldn't change about that if
3 we were talking about another investor-owned Missouri
4 utility.

5 Q. Then in that example, if it was another
6 investor-owned utility, how is the public interest served
7 by keeping the customer on KCPL's system rather than
8 another Missouri investor-owned electric utility company?

9 A. In what con--

10 Q. In the context that the -- we'll use your
11 compressor example, the gas pipeline that has the
12 compressor in KCPL's territory, that it could run, or it
13 could run another one in another investor-owned utility.
14 How is the public interest served by allowing KCPL to offer
15 a special contract to induce that customer to run the
16 compressor in KCPL's service territory rather than the
17 compressor in another electric utility service territory?

18 A. Okay. I believe the public interest is
19 served in the sense that you get to that provider of energy
20 that has the most efficient way to provide that service to
21 the customer. That's what that would -- that's what that
22 would do in a public interest sense.

23 I agree with you that there's the other
24 side of the question. Well, what about coverage of fixed
25 costs for those? And in my mind you've picked an example

1 of where those two things are at odds; they're in conflict
2 with one another. Is one utility going to lose a
3 contribution -- or probably both of them lose a
4 contribution to fixed costs that other ratepayers are going
5 to have to pick up or whatever?

6 And that's the conflict, and that's in
7 terms of the public interest. But that's not the same as
8 some of the destructive competition that was occurring that
9 brought about the promotional practices rule.

10 Q. In the answer you just gave it seems to me
11 that you pointed out the possible detriment, but I'm not
12 sure that I understood how you identified the benefit to
13 the public interest.

14 A. That the most efficient provider is the one
15 who will get -- who will serve the customer.

16 Q. Okay. In the example of the two
17 compressors, wouldn't it be -- at least in 1997 in
18 Missouri, wouldn't it just as likely be that the utility
19 that has a special contract tariff, rather than the most
20 efficient provider?

21 What I'm suggesting is that the other
22 investor-owned utility may not have the ability under its
23 current tariffs to discount the way KCPL does.

24 A. I guess the broader question is, should all
25 of the electric utilities have special contract tariffs or

1 have the ability to enter into special contracts with
2 customers. Is that -- I agree with your -- I agree with
3 you that, if certain utilities don't have it and others do,
4 then there -- that may determine who gets to do it. But I
5 think the pressures would be there for all the utility
6 companies to come in and ask for special contract -- to be
7 able to enter into special contracts.

8 What you would be seeing is just kind of a
9 lag. I think even on the -- when we first did the flex
10 rates, we did it for one gas company first, and then
11 several of the other gas companies then came in and
12 requested the ability to flex their -- flex their rates
13 down too, not because necessarily they were in competition
14 with each other. That wasn't the issue. But they were in
15 competition with oil. They were in competition with the
16 pipelines, bypass. And that was a solution for them.

17 Q. Is the special contract tariff the kind of
18 filing that you would envision that could be made outside
19 of a general rate case or a rate design case?

20 A. Yes.

21 Q. In order for the benefit that you've
22 identified to occur, which is customers going towards the
23 best supplier or the most competitively priced supplier,
24 isn't it necessary that you be able to identify the costs
25 accurately of each supplier?

1 A. That who would identify that?

2 Q. The person evaluating whether the public
3 interest was served. What I'm getting at is, isn't it
4 important that the documentation be there to enable someone
5 such as the Staff or Public Counsel, who wants to review
6 what exactly happened, to be able to determine that the
7 prices offered to the customer were actually based on cost
8 plus a contribution to fix costs?

9 A. Yes.

10 Q. All right. Are you familiar with the
11 recent MGE rate case in which the question of documentation
12 on the flex rate issue --

13 A. Yes.

14 Q. So you're conscious that there's at least a
15 possibility that documentation may be lacking?

16 A. Yes.

17 Q. On -- in your rebuttal testimony on
18 page 18, lines 6 to 7 there's a sentence that says, "In
19 order for the customer to be eligible for a special
20 contract, the customer must have an alternative supplier."

21 Is that at least partially inconsistent
22 with your statement at lines 4 through 9 on page 47?

23 A. Not in the context that it's being used
24 here. The context is one where Dr. Shanker had said that
25 KCP&L is the dominant supplier, and he was concerned about

1 that. Okay. So that's the context in which I was
2 putting --

3 Q. So in this context you're not even
4 considering the customer with special needs?

5 A. No.

6 Q. Okay.

7 A. That's a more straightforward way of saying
8 it, yes.

9 Q. We discussed earlier what you refer to as
10 your eight requirements.

11 A. Yes.

12 Q. Are those the seven requirements on the
13 schedule attached to Schedule 6 to your direct testimony?

14 A. That's seven of the eight, yes.

15 Q. Okay.

16 A. That's a copy of a Schedule 1 that was in
17 earlier testimony for KCP&L's request for special contract,
18 and the eighth condition that was added is in the
19 testimony.

20 Q. Is there any reference or have you proposed
21 any reference in KCPL's tariffs to those eight conditions?

22 A. Those eight conditions should be on KCP&L's
23 tariff. They're included as a part of the tariff.

24 Q. Are those conditions intended to be
25 availability conditions or conditions for review of the

1 prudence of the contract itself or both?

2 A. Well, I view availability as an issue
3 related to the customer. Okay. And so there are
4 availability conditions laid out.

5 If the question is, can KCP&L -- if a
6 customer meets those availability conditions but KCP&L
7 doesn't do the documentation, does that make the customer
8 ineligible, I don't know the answer to that.

9 What I do know the answer to is if they
10 don't -- if they don't meet and fill out those eight
11 requirements, information requirements is the way I would
12 put it, they're there for review when you come up to the
13 next rate case to make a determination of did they really
14 need to enter into this special contract.

15 Q. Okay.

16 A. I think I've answered your question but --

17 Q. Well, I think you probably answered the
18 question I meant to ask, which is even better.

19 MR. MILLS: And that's all the questions I
20 have. Thank you.

21 ALJ DERQUE: Thank you, Mr. Mills.
22 Mr. Phillips?

23 MR. PHILLIPS: Yes. Thank you.

24 CROSS-EXAMINATION BY MR. PHILLIPS:

25 Q. Dr. Proctor, as a follow up to a question

1 that Mr. Mills asked, you were talking about a possible
2 tariff violation and the recommendation to the Commission
3 relating to the treatment of that violation.

4 A. Yes.

5 Q. And you also mentioned certain legal
6 remedies, but you didn't know what those legal remedies
7 might be. Is that because you would make a determination
8 on those remedies by talking to or seeking out counsel from
9 your counsel staff?

10 A. Yes.

11 Q. Who else would you have to talk to in that
12 regard, if this were a real situation in response to what
13 he, Mr. Mills, mentioned to you?

14 A. Well, typically what's in the kind of
15 situation I think he's talking about, there would be some
16 documentation there. Okay. And in the review of that
17 documentation, the Staff would determine -- make some
18 determination this -- you know, they discounted this rate
19 too far or they shouldn't have discounted it at all or
20 something along that line.

21 And the way that that would really come to
22 play, at least in my mind, would be in KCP&L's next rate
23 case, where we would say, "Commission, we need to impute
24 some revenues to this contract. It's out of line."

25 Now, what I would need to talk to the

1 attorneys about is, suppose KCP&L filed this thing
2 beforehand, before they entered into the contract and we
3 reviewed it, and based upon what we were looking at we
4 said, "This doesn't -- this doesn't -- it looks out of
5 line." I would go to our attorneys and say, "This thing
6 looks out of line. Where do we go from here?"

7 I don't know that we've got the process set
8 out, but I think Mr. Giles testified yesterday one of the
9 things for sure we do is contact the Company and say, "We
10 don't think it's fitting here, here, and here." And we
11 would sit down and talk to the Company about it to make
12 sure we understood it, what was going on.

13 Q. So you're in a rate case with KCPL, and you
14 would go to Mr. Giles for assistance?

15 A. No. No. No. No. No. I said if we got
16 the contract and we were asking to get the contract and the
17 documentation before the Company signs off and starts
18 charging this tariff. So that's a different situation.

19 And I thought maybe the question related to
20 what would the Staff do if they got one of these things and
21 they said this is out of line. And I could tell you
22 there's no process that's exactly set up for that that I'm
23 aware of.

24 But one thing for sure is I'd go to my
25 attorney and say, "This thing is out of line or appears to

1 be out of line. What should we do at this point?" The
2 answer might be, "Nothing. It will come up in a rate
3 case." I don't know what --

4 Q. So you would go to Mr. Joyce [phonetic
5 sp.]? Or would you go to someone in particular or someone
6 else?

7 A. I don't know which attorney I would go to.

8 Q. Okay.

9 A. Maybe I would go to Mr. Woodsmall.

10 Q. Okay. I'm sure he would appreciate that.
11 You filed a lot of pages here in your testimony,
12 Dr. Proctor. I want to ask you just about a few of those
13 pages.

14 But in your -- I think it's in your
15 surrebuttal testimony, if you would turn to that, has a
16 green cover -- all of your testimony has green covers. The
17 last green covered testimony that you filed. And you have
18 in there either -- I can't tell if that's a quote or a
19 paraphrase. It starts maybe about line 14 on page 6. Do
20 you see that?

21 A. Okay.

22 Q. That's your surrebuttal.

23 A. Yes.

24 Q. Exhibit 17.

25 A. Yes. I've got that.

1 Q. Is that a quote or a paraphrase?
2 A. I believe it's a quote.
3 Q. But it's not set out in quotes, is it?
4 A. No. It's not set out in quotes.
5 Q. Do you know where the quote starts?
6 A. Where it's indented.
7 Q. And where does it end?
8 A. After "customers."
9 Q. And do you know? Have you quoted the
10 entire statute there, or is there -- are there other parts
11 to the PURPA statute?
12 A. The entire statute, no.
13 Q. So this is not the entire --
14 A. No.
15 Q. -- statute? You also refer, I think, over
16 on the next page Case No. EO-78-161. Do you see that?
17 A. Yes.
18 Q. Did you participate in that, Doctor?
19 A. Yes, I did.
20 Q. Am I correct that you've been trained as an
21 economist, Dr. Proctor, and not as an attorney?
22 A. That's correct.
23 Q. Do you know that if Section 201 and 210 of
24 PURPA are part of the ratemaking standards of PURPA that
25 you refer to in your surrebuttal testimony at page 6?

1 A. This related to -- this whole case and this
2 related to ratemaking, yes.

3 Q. Do you recall if in case EO-78-161 if the
4 Staff advocated marginal cost based rates?

5 A. It depends upon your definition of marginal
6 cost based rates. Yes. I would say yes. I'm not sure
7 that the DOE's witness in that case would have agreed with
8 me.

9 Q. Would you stand on the Staff brief filed in
10 that case as to whether or not you advocated marginal cost
11 based rates or not?

12 A. It depends upon the context again, and the
13 term marginal cost based rates took on a meaning in this
14 particular case that costs were being allocated to classes
15 based upon marginal cost, and that was not the Staff's
16 position. So you might well find it in the brief that the
17 Staff opposed that particular conceptualization of marginal
18 cost based rates.

19 Q. Do you recall doing a de novo model study?

20 A. Yes.

21 Q. Do you recall the position of Kansas City
22 Power and Light in that docket?

23 A. Oh, I think so.

24 Q. Did they argue that PURPA is
25 unconstitutional?

1 A. I don't remember.

2 Q. Did Kansas City Power and Light advocate

3 embedded cost rates in that docket?

4 A. Yes.

5 Q. And do you recall in that docket if the

6 Commission adopted the ratemaking standards?

7 A. I don't recall.

8 Q. You don't recall that they failed to adopt

9 the standards and recommended that they be taken up in

10 ER-83-49?

11 A. I -- what I do recall is that they failed

12 to make any shifts in the class revenue requirements or any

13 rate design changes and put those into another case, but I

14 don't recall with respect to the ratemaking standards.

15 Q. Do you recall participating in ER-83-49?

16 A. Yes.

17 Q. But you don't have a present memory as to

18 whether or not the Commission adopted any or all of the

19 standards in that case?

20 A. No. I'd have to go back and review it.

21 Q. Do you recall when the decision was made in

22 that docket?

23 A. The time of the decision?

24 Q. Well, the date.

25 A. Not exactly but generally.

1 Q. Something you can check?

2 A. Yeah.

3 Q. If I represented to you it was decided on
4 July 8th, 1983, would you accept that?

5 A. That sounds approximately correct.

6 Q. Would you agree that the Commission's rule
7 relating to qualifying --

8 MR. WOODSMALL: Your Honor, I think at this
9 point we're getting into an abundance of questions about
10 the Commission order. I think the Commission order can
11 speak for itself. I think he's thoroughly taxed
12 Dr. Proctor on a Commission order that is 15 years old.
13 He's obviously demonstrated that he doesn't have knowledge
14 of what the Commission did in particulars.

15 MR. PHILLIPS: Dr. Proctor raised that
16 order in his surrebuttal testimony.

17 ALJ DERQUE: Yeah. This is fair cross. I
18 don't even think he's begun to tax Dr. Proctor yet.

19 (Laughter.)

20 ALJ DERQUE: The objection is overruled.
21 Mr. Phillips, try to stay on the point.

22 MR. PHILLIPS: We're not here to tax
23 anyone. The surrebuttal testimony of this witness relates
24 to a number of things, and we're cross-examining him
25 directly as it relates to that.

1 ALJ DERQUE: I understand. I overruled the
2 objection.

3 BY MR. PHILLIPS:

4 Q. Do you know if the Commission's rule
5 relating to cogeneration and qualifying facilities was
6 adopted prior to July 8th, 1983?

7 A. I believe so. I believe it was adopted
8 around 1980, but I'm not real good on date trivia.

9 Q. Would you agree that the Commission's rule
10 and Section 201 and 210 of PURPA requires Kansas City Power
11 and Light to sell power to qualifying facilities?

12 A. I believe that's correct. Section 210 is
13 one of the numbers that comes to mind.

14 Q. Are you familiar with Part 292 of the PURPA
15 regulations?

16 A. No, I'm not.

17 Q. Okay. If I were to say to you 18 CFR
18 Part 292, that would have no meaning to you as an economist
19 or as an expert witness?

20 A. No.

21 Q. You didn't --

22 A. I mean, I -- again, in terms of specific
23 numbers --

24 Q. Okay. I understand.

25 A. -- that's not something I keep.

1 Q. And you don't recall reviewing that in
2 preparation for your testimony?

3 A. Well, I've reviewed some things, but
4 whether I can relate it to specific section numbers, at
5 this point I can't.

6 Q. Okay. Would you agree, Dr. Proctor, that
7 the Commission's rule and PURPA does not impose an
8 obligation on the part of Kansas City Power and Light to
9 establish rates for self-generators which are not qualified
10 facilities?

11 A. That's correct.

12 Q. Are there differences between qualifying
13 facilities and non-qualifying facilities?

14 A. My understanding is that there are.
15 There's certain conditions that facilities have to meet to
16 be called a qualifying facility.

17 Q. So in order to meet, that is, to qualify as
18 a QF, does a self-generator have to meet certain criteria?

19 A. Yes.

20 Q. Let me ask you this: Would you agree that
21 electric utilities currently face a risk of lost sales from
22 a customer which reduces its consumption due to
23 concentration efforts on its part?

24 A. Yes.

25 Q. And would you agree that electric utilities

1 currently face a risk of lost sales from a customer which
2 might close its facility and leave the service territory of
3 the Company?

4 A. Yes.

5 Q. Would you agree that electric utilities
6 currently face a risk of lost sales from a customer which
7 reduces its own production in the case of an industrial
8 customer?

9 A. Yes.

10 Q. Would you agree that utilities currently
11 face a risk of lost sales from a customer that installs
12 either qualifying facility or non-qualifying facility
13 self-generation?

14 A. Yes.

15 Q. Would you agree that retail wheeling
16 involves a utility transmitting power from a remote source
17 to its retail customer?

18 A. No.

19 Q. What, in your opinion, would retail
20 wheeling involve?

21 A. Well, first of all, it wouldn't necessarily
22 be --

23 Q. Well, let me ask you this: Would it be
24 partly right, and is there more than that?

25 A. Yes.

1 Q. Okay. Would you then explain what --

2 A. Yeah. It may not be a utility that's
3 providing energy from a remote generating unit, and it may
4 not be a remote generating unit. It may be one that's
5 located geographically in the same areas where the customer
6 is. But what makes it retail competition is that the
7 customer is -- has a choice about who he buys his
8 generation from, his electricity from.

9 Q. And would the electric utility be
10 transmitting that electricity irrespective of the source?

11 A. Certainly a utility would be distributing
12 that electricity. I think it's very likely that a utility
13 or a group of utilities would be transmitting that
14 electricity.

15 Q. Does this Commission, the Missouri
16 Commission, currently require Kansas City Power and Light
17 to provide retail wheeling?

18 A. No.

19 Q. Either with the narrow definition I gave
20 you or with the expanded interpretation and definition that
21 you had?

22 A. It does not.

23 Q. So Kansas City Power and Light currently
24 doesn't face a risk of lost sales due to a customer
25 purchasing power from a remote source and have it wheeled

1 by Kansas City Power and Light, for example?

2 A. To its location within Kansas City Power
3 and Light service territory, does not face that risk.

4 Q. If at some time in the future Kansas City
5 Power and Light were required to provide retail wheeling,
6 it would have to face the risk of lost sales, wouldn't it,
7 for remote competitors?

8 A. That's correct.

9 Q. Does this case involve a proposal by Kansas
10 City Power and Light that -- wherein required retail
11 wheeling is involved?

12 A. No.

13 Q. Under the access charge that Kansas City
14 Power and Light's proposing in this case in its QF standby
15 tariff, would standby customers be forced to pay all of the
16 stranded costs related to qualifying facility production,
17 or would these costs be spread among all customers or all
18 classes of customers? Do you know?

19 A. The stranded costs that are included in the
20 access charge would be the stranded costs of that customer
21 based on their -- or determined by their baseline load.
22 And they would pay those stranded costs. No other customer
23 would pay those stranded costs.

24 Q. Or any part of them?

25 A. Or any part.

1 Q. So they would all be exclusively allocated
2 to that customer. Is that right?

3 A. Yes.

4 MR. PHILLIPS: Thank you. That's all I
5 have.

6 ALJ DERQUE: Thank you, Mr. Phillips.
7 Trigen?

8 MR. SWENSON: Yes, your Honor.

9 CROSS-EXAMINATION BY MR. SWENSON:

10 Q. Good morning, Dr. Proctor.

11 A. Good morning.

12 Q. Could you please turn to page 6 of your
13 surrebuttal testimony?

14 A. Yes.

15 ALJ DERQUE: Before we -- let's go off the
16 record a minute.

17 (Discussion off the record.)

18 ALJ DERQUE: Mr. Swenson?

19 BY MR. SWENSON:

20 Q. At page 6 of your surrebuttal testimony, do
21 you see where you discuss Section 115 of PURPA?

22 A. Yes.

23 Q. Do you know whether the principle
24 established with respect to sales of QFs -- excuse me. Do
25 you know whether that the principle expressed in

1 Section 115 is with regard to sales to QFs or to sales
2 generally?
3 A. Sales generally.
4 Q. Does the language you quoted appear as a
5 part of a provision entitled cost of service?
6 A. I'd have to go back.
7 Q. Would you accept subject to check?
8 A. Yes.
9 Q. Do you know whether that provision --
10 ALJ DERQUE: No. No. There won't be any
11 subject to check. I want a yes or no.
12 THE WITNESS: Okay. I said I don't know.
13 ALJ DERQUE: Okay. If you want to check,
14 we'll let you check.
15 THE WITNESS: Okay.
16 BY MR. SWENSON:
17 Q. Has KCPL proposed a two-part rate for all
18 its customers?
19 A. No.
20 Q. Do two customers with identical load
21 patterns impose the same cost of service on KCPL?
22 A. Yes.
23 Q. In general would you expect the customer
24 under the SQF tariff to pay the same amount for service as
25 a customer with an identical load pattern but is served

1 under a standard tariff?

2 A. No.

3 Q. If we have a customer under the SQF tariff
4 and he's considering whether or not to put in some demand
5 side management equipment, would he face the same economic
6 signals as a full requirements customer that's taken under
7 standard tariff, who's considering putting in DSM
8 equipment?

9 A. That's a difficult question to answer,
10 because KCP&L has demand side manage-- has a demand side
11 management program, and the purpose of that program is to
12 provide customers with those kinds of price signals. What
13 causes the difficulty is the SQF tariff, in addition, does
14 a real time pricing thing that the -- that if a customer
15 wasn't on that tariff would not see.

16 So I would say in principle the idea is to
17 give them both the same kinds of price signals, but because
18 of the real time pricing feature of the SQF, it's going to
19 be a better -- a sharper price signal than the other
20 customer might get.

21 Q. Has the Commission run a bill frequencies
22 to determine what percentage of customers have incremental
23 use in the tail-blocks that you refer to on page 8, line 18
24 of your surrebuttal testimony?

25 A. No.

1 Q. Could you please turn to page 9, line 10 of
2 your surrebuttal testimony? Is it correct that you state
3 there that "I believe that the elimination of a fixed
4 energy price is justified by cost differences which exist
5 between a customer with generation versus customer without
6 generation"?

7 A. That's correct.

8 Q. Can you explain to us what fixed energy
9 price is being eliminated?

10 A. For example, the tail-block in the tariff.
11 Every tariffed rate has a fixed set of energy prices. The
12 only time those prices change is when the tariff is
13 changed. The tariff is changed not very often.

14 Q. With regard to this elimination of the
15 fixed energy price, it was my understanding that the
16 testimony we've heard so far was that, in fact, the
17 embedded cost rates would still be available to -- or I
18 should say standard rates would still be available to
19 onsite generation customers. Is that also your
20 understanding of how it worked?

21 A. That's my understanding, yes.

22 Q. So in that sense is the fixed energy price
23 being eliminated?

24 A. I think the question is, are we giving the
25 customer an option in which the fixed energy price is

1 eliminated, and my answer is, we would like to give them
2 that option.

3 Does he still have the option of taking on
4 the standard rate? The answer is yes. So are we trying to
5 eliminate the option of a fixed energy price for a QF or
6 someone with self-generation? The answer is no.

7 Q. Can you turn to page 20, line 3 of your
8 surrebuttal testimony, please, sir?

9 A. Yes.

10 Q. Would you say that that portion of your
11 testimony is discussing the -- whether allocative
12 efficiency is important under PURPA as expressed through
13 avoided costs?

14 A. Yes.

15 Q. Can you tell us whether the avoided cost
16 standard applies to sales of powers to QFs by utilities?

17 A. Yes, it does. Sale of power by QF to
18 the --

19 Q. No. Sales of power to QFs by utilities.

20 A. Oh. No, it doesn't. It applies to sale of
21 power by the QF to the utility.

22 Q. Once a QF is built, is it entitled to be
23 paid the purchasing utility's avoided cost plus all the
24 QF's fixed costs including profit?

25 A. No.

1 Q. What would a QF have to pay for power from
2 the utility if the utility avoided cost for the standard?

3 A. Would you repeat the question?

4 Q. Sure. If the rates for QFs purchasing
5 power for utilities were governed by the avoided cost
6 standard, how would you characterize that rate?

7 A. I suppose that they would pay the utility
8 its avoided cost for power.

9 Q. Would that be the utility's marginal cost?

10 A. Could be.

11 Q. What else could it be?

12 A. Well, there can be differences between
13 avoided cost and marginal cost.

14 Q. Can you explain that to us?

15 A. Avoided costs can be calculated on the
16 basis of a specific amount of load. In this case it could
17 be the specific amount of load that the utility would have
18 to provide to this QF in your example. And so you would
19 essentially do a calculation or a run where the utility's
20 expected load with and without that QF sale is in there and
21 take the difference in cost, would be the avoided cost.
22 Marginal cost is typically not done on a specific load
23 increment. That's the difference.

24 Q. Well, if you summed up all the marginal
25 costs with regard to each of the kilowatt hours that were

1 being sold to the QF, would it add up to the avoided cost
2 amount?

3 A. Typically, marginal cost is calculated at
4 the margin at a very small increment of power. And all I'm
5 saying is that there's a difference between avoided cost
6 and marginal cost. Avoided cost is calculated on the basis
7 of a certain amount of load, where marginal cost is
8 calculated on the margin.

9 Q. What I'm trying to get at is -- let's say
10 it was 100 kilowatt hours of electricity that was being
11 sold at the avoided cost standard.

12 A. Right.

13 Q. And if you went to figure out the marginal
14 cost and you sold them one kilowatt, in the first kilowatt
15 hour you would figure the marginal cost for that and then
16 get to the next kilowatt hour. If the marginal cost
17 changed, you would have to come up with a new marginal
18 cost. Is that correct?

19 A. In a concept, yes.

20 Q. And if you kept going on down the line and
21 you added up all the different marginal costs for each
22 kilowatt hour, would that sum up to the same thing as the
23 avoided cost?

24 A. Yes.

25 Q. Thank you. Would you please look at line 3

1 of page 20?

2 A. Yes.

3 Q. I'm sorry. It's line 3 of page 21. Do you
4 see where you state, "The success of least-cost planning as
5 a method for achieving allocative efficiency has only
6 recently been called into question"?

7 A. Yes.

8 Q. What's your position with regard to the
9 success of least-cost planning as a method for achieving
10 allocative efficiency?

11 A. I think it's been successful in certain
12 instances in certain service territories -- excuse me,
13 certain states where it's been done well. I think it's
14 been not very successful in other states where it has not
15 been done very well. I think it can be successful.

16 Q. Where does Missouri fit into that spectrum
17 here?

18 A. I think we have been fairly successful. I
19 don't think we are the most successful, but I think we've
20 been fairly successful.

21 Q. I -- could you use a term other than
22 fairly? My wife and I always get into -- whenever I say
23 fairly, she thinks it's horrible and I think it's great.
24 So --

25 A. Do you want to do it on a scale of one to

1 ten?

2 Q. That would be great.

3 A. Okay. I think we're around eight, seven.

4 Q. Are KCP&L's current rates in excess of

5 market rates?

6 A. Yes.

7 Q. Can we turn to -- well, look at line 16 at

8 page 21. There you refer to the Energy Policy Act of

9 1992. Is that correct?

10 A. Yes.

11 Q. Did the Energy Policy Act of 1992 expressly

12 modify the rate provisions of PURPA in any way?

13 A. I don't recall.

14 Q. Could you please turn to Schedule 10 of

15 your surrebuttal?

16 A. Yes.

17 Q. Can you tell me whether the -- well, first

18 of all, what does the phrase real time prices refer to on

19 the left-hand column?

20 A. The real time prices would be the hourly

21 marginal cost or hourly market prices that are faced by

22 KCP&L.

23 Q. As determined in any particular way at this

24 point?

25 A. I'm sorry. I don't understand your

1 question.

2 Q. Well, are you trying to refer to a specific
3 methodology that already exists when you say that's what
4 real time prices are, or is this just a general
5 conceptual --

6 A. I think this is more of a general
7 conceptualization here.

8 Q. Okay. Are the real time prices referred to
9 in each of the rows the same real time prices?

10 A. Yes.

11 Q. Still dealing with Schedule 10 and
12 discussing stranded cost implications, do your various
13 price alternatives actually affect the amount of stranded
14 costs?

15 A. What's affecting the amount of stranded
16 cost is the access charge. I'm sorry. Let me back up to
17 understand your question. Stranded costs -- costs that are
18 actually stranded or a conceptualization of stranded cost?

19 Q. Well, what I'm trying to do is understand
20 when it says that price -- real time price of any access
21 charge will maximize stranded costs. Do they actually
22 strand any costs? Because then you go on in the chart to
23 say other ratepayers are going to cover the access charge
24 amount.

25 A. Uh-huh.

1 Q. So --

2 A. Right.

3 Q. Are there any costs stranded?

4 A. If -- it's the amount of costs that are

5 stranded by that customer.

6 Q. I'm not sure I understand. I mean,

7 stranded cost, I thought, was a concept where a utility is

8 unable to recover its costs. Are you just saying it's

9 unable to recover its costs for some costs from that

10 customer?

11 A. Right. And those costs would be -- if

12 those costs are stranded at that point in time, then they

13 would be -- what I'm saying here is the utility would

14 require other ratepayers -- or would ask to have other

15 ratepayers pick up those stranded costs.

16 Q. And the stranded --

17 A. It's no different than talking about any

18 stranded cost recovery. I mean, the fact that there's some

19 recovery of stranded cost, I suppose, in concept means

20 they're no longer stranded but --

21 Q. Why do you assume that, when those costs

22 are stranded, that other ratepayers will be required to

23 cover the amount?

24 A. If the Commission has a tariff and that

25 tariff allows the utility to price at whatever the prices

1 are on that tariff and the utility carries that pricing out
2 and you come into a rate case and the utility has a total
3 revenue requirement that it has to pick up from all of its
4 tariffs, it seems to me like you have got no argument
5 whatsoever that, since this is an approved tariff and it's
6 just and reasonable, that now I'm going to have to impute
7 some revenues so that other ratepayers don't have to pick
8 it up. I don't see how you could argue that, because
9 they're just following the tariff that's been approved by
10 the Commission as just and reasonable rates. So that's the
11 basis for my assumption.

12 Q. Well, is KCP&L guaranteed a certain level
13 of return on all of its investments?

14 A. No. Guaranteed?

15 Q. Right.

16 A. No.

17 Q. Is it guaranteed a certain level of return
18 on its prudent cost and investments?

19 A. You're using the word guaranteed. No.

20 Q. Why isn't it guaranteed? What's the --

21 A. They're allowed the opportunity to recover
22 a certain level. They're not guaranteed.

23 Q. And the exception is if the market won't
24 bear the rate? Is that what -- when aren't they
25 guaranteed? Under what circumstances don't they get a

1 certain level of return, some reasonable level of return on
2 all of their prudent costs and investments?

3 A. Well, first of all, there's -- those rates
4 are set on a historical test year. Okay. And the -- when
5 those rates go into effect, there may be lots of
6 differences that are there that weren't known and
7 measurable at the time those rates were set, and it would
8 cause a utility to have some variation in their earnings.

9 So there is no formula set in rates that
10 would say, "Gee, since you didn't recover exactly this,
11 we're going to put into effect some change in rates, or
12 we're going to do something else."

13 At that point it's up to the utility to
14 file a rate case and say, "Hey, I'm under-earning. My cost
15 went up. Gas prices went up this summer. When we did the
16 test year, it was based upon gas prices that we thought
17 were going to be in effect, but we faced higher gas prices
18 than what we thought. And we need" -- we don't have a fuel
19 adjustment clause in Missouri, so we need -- so they face
20 the risks on both the cost side, and perhaps the load was
21 different.

22 Q. Well, suppose that after they come back and
23 they ask for higher rates because the fuel prices were
24 higher and so forth and everything --

25 A. Right.

1 Q. -- the market won't bear those rates, and
2 people say they're going to leave the state of Missouri; or
3 they're just not going to buy the power and so forth. And
4 then what happens next?

5 A. We haven't faced that situation. I
6 suppose, first of all, the special contracts tariff is a
7 way to deal with that particular situation or instance.
8 But I don't know what would happen next, you know.

9 Q. So would you need some sort of proceeding
10 to determine what should happen next?

11 A. I would suspect that would be the case,
12 yes.

13 Q. Does charging an access fee actually
14 eliminate stranded costs, or does it just assign them to a
15 particular customer?

16 A. It assigns it to a particular customer.

17 Q. Can we turn to page 28, line 20 of your
18 surrebuttal testimony, please? Is it correct to summarize
19 your testimony there as stating that you do not -- that you
20 believe that new customers should have the identical
21 pricing policy as charging old customers?

22 A. Lines? I'm sorry.

23 Q. I'm sorry. Page 28, lines -- starting at
24 line 20.

25 A. Okay. That's correct.

1 Q. So does that mean a new customer would also
2 face the access charge?

3 A. Yes.

4 Q. And would it be based on the customer's
5 total load as if he had no generation at the site?

6 A. Yes.

7 Q. Is that an economically efficient approach
8 with new customers?

9 A. In the sense that the customer would build
10 the generation not because he was cheaper than the
11 utility's embedded cost but because he was cheaper than the
12 market cost, it would be efficient, yes.

13 It would be inefficient for the customer to
14 build self-generation, say, that costs 4 cents when the
15 utility's embedded rate was 5 cents and the market was at
16 3 cents. So in that context and in that situation, that is
17 the most efficient thing to do, yes.

18 Q. What about the customer that would be
19 willing to pay KCP&L's marginal cost plus some contribution
20 to its fixed costs, but it's not willing to come in and
21 have to pay you the embedded cost rates or an access charge
22 plus the marginal cost?

23 A. A customer that would go on -- for example,
24 on KCP&L's special contract.

25 Q. I don't know what you would do. I'm just

1 asking if the SQF approach is the right approach for that.

2 A. Well, the SQF tariff isn't meant for that
3 approach. I guess I'm not understanding the question. I
4 think the SQF tariff is meant to provide customers with a
5 better alternative than the standard tariff in lots of
6 different ways, but a better alternative than the standard
7 tariff that would be a win/win situation for both the
8 customer and for KCP&L and the rest of its customers.

9 And if the customer has some other
10 conditions under which it would negotiate with KCP&L, I
11 think the special contracts tariff would allow them to do
12 that. Okay. And I think that the conditions that are laid
13 out in that special contracts tariff would have to -- KCP&L
14 would have to provide a justification for doing that.

15 Now, when you said the customer is willing
16 or unwilling to do something, I've got to know the specific
17 details of the circumstances, and that's where the special
18 contracts tariff comes into play. Okay. Because now we're
19 getting into, what are the special conditions? Why is the
20 customer willing or unwilling? And what implications does
21 it have? What implications does it have for employment in
22 the state of Missouri? What implications does it have for
23 whether you're going to attract the customer in? All of
24 those things come into play at that point.

25 Q. Without getting into a discussion of the

1 SQ -- I'm sorry, the QF special contract tariff, just to
2 summarize what you were just saying, is it true then what
3 you're saying is that the SQF tariff's not the appropriate
4 method for dealing with this situation and that there's
5 some other mechanism that would deal with it?

6 A. I believe so.

7 Q. Okay.

8 A. Again, knowing what -- I'd need to know the
9 special conditions, but, yes, that's what I'm saying.

10 Q. Are you aware of any utility that's
11 established a two-part rate, that is, the access fee and
12 marginal cost, in a manner similar to the SQF tariff for
13 customers with onsite generation?

14 A. No, I'm not.

15 Q. Can we turn to page 2, line 18 of your
16 rebuttal testimony?

17 A. Yes.

18 Q. Do you see there where it says, "The prices
19 set should allow the utility a reasonable opportunity to
20 recover costs which it has prudently incurred"?

21 A. Yes.

22 Q. Are KCP&L's tariffs typically designed to
23 cover the anticipated cost of serving all customers taking
24 service under each tariff?

25 A. Yes.

1 Q. Would the embedded cost based standard
2 tariff otherwise applicable onsite generator fully cover
3 the utility's prudently incurred cost with respect to those
4 class of generators -- customers?

5 A. Would the regular tariff?

6 Q. Right.

7 A. I believe that the KCP&L's -- the way
8 KCP&L's tariffs are currently designed, that it would, that
9 they would, yes.

10 Q. Would the total cost to the typical onsite
11 generator under the proposed SQF tariff be higher or lower
12 than the standard tariff?

13 A. Depends on the customer, but for our -- the
14 example that the Staff ran, which was the typical load
15 shape for a customer in the large power class, our
16 indication is that it would be lower on the SQF rate than
17 on the standard rate. And if you want me to refer to
18 specific calculations of that in the testimony, I can.
19 But --

20 Q. But that's your understanding for the
21 typical one? That's what I really want to know.

22 A. Yeah. It will vary by the customer's load
23 shape, but for the typical large power load shape our
24 calculations show that it's cheaper on the SQF tariff.

25 Q. Can you turn to page 20, line 4, of your

1 rebuttal testimony, please?

2 A. Yes.

3 Q. Do you see there that you've stated that

4 "potential self-generation would have at least five

5 options"?

6 A. Correct.

7 Q. Does Staff have a position with regard to

8 whether it would be lawful to offer onsite generation only

9 one option, that option being the SQF tariff?

10 A. Lawful in the sense of --

11 Q. Consistent with the Public Utility

12 Regulatory Policies Act --

13 A. Okay.

14 Q. -- and the state law and the regulations

15 that are made in the state at the FERC level.

16 A. Well, let me say that that would be

17 inconsistent with the Commission's rules; I know that.

18 That if the SQF tariff was all that was offered to

19 customers with onsite generation, that would not be

20 consistent with the Commission's rules. The Commission's

21 rules relate to the ability of the customer with onsite

22 generation to come and negotiate with KCP&L for a tariff or

23 rates for standby service.

24 So I viewed the SQF tariff as an option

25 that's available. It's not a mandatory rate for anybody

1 that has self-generation, so to the extent that the
2 Commission's rules reflect PURPA law, I would say, if we
3 did that and said the SQF tariff is the only thing
4 available, that it would not be lawful.

5 Q. I see. If the Commission changed that
6 rule -- or does it have the latitude to change that rule,
7 given the constraints of PURPA and state law, so that you
8 could whittle everything down to the SQF tariff?

9 A. I wouldn't recommend that they would do
10 that.

11 Q. I understand that, but you think that Staff
12 has a position with regard to whether it would be lawful or
13 not?

14 A. I don't know.

15 Q. Dr. Proctor, would you agree that the
16 signals provided by the SQF tariff are important with
17 respect to the fact that the customer has to pay the prices
18 associated with the SQF tariff rates?

19 A. Yes.

20 Q. Is it important that KCP&L receive the
21 access charge, or is it simply important that the customer
22 have to pay the access charge in order to be economically
23 efficient?

24 A. My testimony focused upon the customer
25 having to pay the access charge. KCPL's receipt of that

1 access charge, at least in my mind and in my testimony,
2 has -- relates directly to the impact that that would have
3 on other customers.

4 Now, the way it would work is, if KCP&L --
5 let's say the access charge is positive, which is, I think,
6 everyone's expectation, that it would be.

7 Q. That's a good assumption.

8 A. When KCP&L receives that -- the payment of
9 that access charge but -- and I'm going back to the rate
10 case type of thing. That means that it doesn't have to
11 increase rates for its other customers. The fact that it
12 was positive was because embedded costs for generation were
13 above marginal costs for generation.

14 So if it receives the access charge, it
15 doesn't have to raise the rates to other customers, moving
16 them further away from marginal cost. So there are some
17 efficiency implications. If the access charge was
18 negative, that would mean embedded cost is below marginal
19 cost, and you would get the opposite effect.

20 Q. That's based on the assumption they've got
21 to get their stranded cost from somebody. Is that correct?

22 A. That's correct.

23 Q. Has the Commission had to raise or been
24 asked to raise the rates for any other customer as a result
25 of any cogeneration or onsite generation that is in

1 existence today?

2 A. Not to my knowledge.

3 Q. Dr. Proctor, could you assume for a moment
4 that we have a self-generator that is taking service under
5 the SQF tariff, that that customer would be paying KCP&L an
6 access charge based on historical usage and a real time
7 price for actual usage at any given hour?

8 A. Okay.

9 Q. Does that sound like what actually would
10 happen, by the way?

11 A. That sounds like the SQF tariff or what the
12 Staff has proposed, yes.

13 Q. Okay. Would you characterize the RTP
14 prices as short-run or long-run marginal costs?

15 A. It has components of both. Certainly the
16 part of the RTP price that is looking at the energy costs
17 are short-run. The part of the RTP price that's looking at
18 capacity includes components of long-run marginal costs,
19 but then you get into whose definition of long-run and how
20 long is it. Okay? It may just be a year ahead rather than
21 five years ahead or ten years ahead.

22 Q. Could you use your definition and explain
23 what components there are in there?

24 A. Well, I would say -- I wouldn't put it in
25 terms of long-run and short-run. I would put it in terms

1 of it includes a capacity component and includes an energy
2 component, okay, and then explain where that capacity
3 component is coming from.

4 Clearly the energy component is short-run,
5 but the capacity component goes beyond just the short-run
6 in most people's minds. It's not a day ahead or a week
7 ahead capacity prices, but it's probably a season ahead.
8 And I would be very specific about that. Okay. A year
9 head, if you want to put it in those terms. And let people
10 that want to define long-run and short-run apply whatever
11 their definitions are to that.

12 Q. We're getting close to the end,
13 Dr. Proctor. I wouldn't have guessed that from our earlier
14 experience with some of the other witnesses, but I can
15 assure you we're getting close here.

16 Does the existence of a single alternate
17 supplier in the market eliminate the possibility of a
18 dominant supplier in that market?

19 A. A dominant supplier does not have anything
20 to do with the number of competitors. Did that --

21 Q. That's fine for an answer for me.

22 A. -- answer your question?

23 Q. I just didn't want to cut you off.

24 A. Okay.

25 Q. If a utility could sell some or all of its

1 assets at above book value but chooses not to, can it incur
2 stranded costs with respect to those assets?

3 A. I believe that was a data request --

4 Q. It was.

5 A. -- question. Do you mind if I look and see
6 what my answer was?

7 Q. No. Please do.

8 A. That was one -- that's a very -- that's a
9 question -- DR question I had to think about a lot, and I'm
10 not sure I've retained all of what my thinking was on it.
11 Do you remember the DR number?

12 Q. Sure.

13 A. Help me out.

14 Q. I can actually give you a copy, if you want
15 to read it.

16 MR. SWENSON: Is that all right, your
17 Honor?

18 ALJ DERQUE: Sure.

19 BY MR. SWENSON:

20 Q. Here is what we had. There's the question
21 (indicating).

22 A. N. Okay. Thanks. The question was, "If a
23 utility could sell some or all of its assets at above book
24 value but chooses not to, can it incur stranded costs with
25 respect to those assets?"

1 I'll read my answer. "The comparison
2 involves two alternatives. A, a certain profit, capital
3 gain, from the sale of generation assets at above book
4 value; and, B, an uncertain profit income from retaining
5 ownership of the generation assets and selling electricity
6 in a competitive market. Those are the alternatives the
7 utility is faced with."

8 "Given those two choices, the first option
9 clearly results in negative stranded costs. That is, if a
10 utility sells its assets, gets a capital gain, it has
11 negative stranded costs. If the utility wants to take on
12 the risk of retaining the generation assets, it should be
13 required to sell those assets to a non-regulated generation
14 subsidiary at market value and use the capital gain to
15 offset the customer distribution and transmission costs of
16 its regulated business."

17 Q. Okay. Thank you. Could you turn to
18 page 17 of your surrebuttal testimony, please?

19 A. Yes.

20 Q. On line 7 do you see where it says that
21 you -- that Dr. Thompson takes a position that when PURPA
22 uses the language optimization of the efficiency of use of
23 facilities --

24 THE REPORTER: You're going to have -- I'm
25 sorry. I can't understand you.

1 BY MR. SWENSON:

2 Q. Okay. I'll go real slow. Sorry. Do you
3 see at line 7 where you assert that Dr. Thompson takes the
4 position that when PURPA uses the language, quote,
5 optimization of the efficiency of use of facilities and
6 resources by electric utilities, closed quote, it is
7 focused on technical efficiency rather than allocative
8 efficiency?

9 A. Yes.

10 Q. Can you tell us where Dr. Thompson said
11 that?

12 A. Well, Dr. Thompson in his rebuttal
13 testimony. Are you wanting specific citations of his
14 rebuttal testimony?

15 Q. Yeah. I'm confused, because I don't think
16 Dr. Thompson ever said anything like that. Because I'm
17 trying to understand where we have a disconnect and your
18 understanding of Dr. Thompson's testimony, what you thought
19 he was testifying to or --

20 A. Okay. I said both Dr. Shanker and
21 Dr. Thompson.

22 Q. Right. Did you mean to say either or --

23 A. No, I didn't. I took -- I read their
24 testimony as a joint testimony on the part of Trigen, and I
25 was responding to that. I don't know whether Dr. Thompson

1 specifically got into that, but he sure did differentiate
2 between technical and economic efficiency in his testimony.

3 MR. SWENSON: Okay. Thank you. I have no
4 further questions, your Honor, but my colleague, I believe,
5 does on the --

6 ALJ DERQUE: Off the record.

7 (Discussion off the record.)

8 ALJ DERQUE: Mr. French?

9 MR. FRENCH: Thank you.

10 CROSS-EXAMINATION BY MR. FRENCH:

11 Q. Good morning, Dr. Proctor.

12 A. Good morning.

13 Q. I'd like to ask you some questions
14 regarding the SCS tariff --

15 A. Okay.

16 Q. -- that has been proposed by Kansas City
17 Power and Light. And am I correct in stating that, if this
18 Commission would adopt all of the recommendations contained
19 in your rebuttal -- I'm sorry, in your direct, rebuttal,
20 maybe even your surrebuttal testimony, you would recommend
21 approval of the SCS tariff as modified?

22 A. Yes.

23 Q. Okay. And would you agree with me that
24 KCPL is not now facing competition in the delivery of
25 electricity to retail customers?

1 A. Yes.

2 Q. And in discussing this, I'd like -- I'd
3 like to express my appreciation to Mr. Mills for kind of
4 plowing this ground ahead of me.

5 In your previous conversation with him
6 about some conditions contained in your direct testimony,
7 that I believe you testified that you expect KCP&L to meet
8 those conditions prior to adopting or entering into a
9 contract with a respective customer?

10 A. That they -- yes. That they would provide
11 that to the Staff and the Office of Public Counsel prior to
12 entering into that contract. Yes.

13 Q. Okay. And those conditions basically deal
14 with the documentation, which is contained in the latter
15 parts of that SCS tariff?

16 A. Yes. That's correct. Plus an additional
17 condition that we recommended.

18 Q. Yes. On page 45 of your rebuttal
19 testimony, you have a recommendation there that the SCS
20 tariff include a condition that any customer be allowed to
21 renegotiate the price terms for generation when competitive
22 access for retail customers is available. Is that correct?

23 A. Almost. My recommendation is that the
24 tariff would include that condition. --

25 Q. Okay.

1 A. -- that would give that customer that
2 right.

3 Q. All right. And I want to get into that.
4 Could you give me an idea of how this tariff language would
5 be presented? I mean, what -- because I'm kind of unclear
6 as to exactly what you are intending there --

7 A. Okay.

8 Q. -- as to be included in the tariff. Could
9 you take a shot at it?

10 A. I'll give it a shot. I don't like working
11 with words a lot of times just when the -- I was trying to
12 look, and I can't find real readily a copy of that tariff.
13 But in the -- I'm sure I have it here somewhere.

14 Q. I can provide you with one to look at.

15 A. Okay. Just -- yeah. In the term of
16 contract and termination conditions of the tariff, the
17 tariff currently reads -- or the proposed tariff by KCP&L
18 reads that "Customer is required to sign a contract for a
19 minimum duration of five years, unless special conditions
20 warrant otherwise." And my understanding is KCPL has
21 agreed to remove that sentence.

22 The next sentence says, "The customer may
23 return to service under a standard generally available
24 tariff that" -- I would just put in, you know, the customer
25 would have the right to renegotiate the terms of the --

1 price terms of the contract under the -- I like the word
2 advent, but it's the coming of retail competition.

3 One of the problems that you get into in
4 the wording is, what specific condition are you talking
5 about? You know, what do you mean by the advent of retail
6 competition? And so when you get into the terms of this
7 thing, it may be -- for example, we've seen proposals that
8 say let's phase into this; let's have 20 percent retail
9 open to competition the first year, another 20 percent the
10 next year. And, you know, well, which of those -- which of
11 those years apply? I mean, you do get into that kind of
12 complication when you're writing tariff language. So --
13 and I haven't sat down and thought about that.

14 Q. Would the advent of competition be when
15 that customer would be able to participate in retail -- in
16 the retail market?

17 A. That's the way I would interpret it.

18 Q. All right.

19 A. He would be eligible as a customer to
20 participate.

21 Q. Would you agree that it is at least a
22 possibility that KCPL may have little incentive to
23 renegotiate if competitive generation alternatives are less
24 expensive?

25 A. Less expensive than --

1 Q. What KCPL is now getting under the
2 contract.

3 A. I suspect that there is -- you know, the
4 context of the original contract -- if I have an
5 alternative at X number of dollars or at such and such a
6 rate and KCP&L enters into a negotiation, that is an
7 alternative that's in another state and whatever.

8 Now you've got a contract with this
9 customer. You're their provider, and I'm not saying that
10 KCP&L would not be that customer's provider. But because
11 the market's opened up, there are new alternatives
12 available. And of course, the supplier doesn't have a big
13 incentive to renegotiate. They wouldn't want to, but
14 that's the very reason that market-out clauses are put into
15 contracts, so that customers aren't stuck with that.

16 Q. That leads to my next question. Would you
17 agree then that a further provision might be necessary
18 which would allow the customer the market-out possibility
19 if renegotiation efforts are not successful?

20 A. Yes.

21 Q. In other words, be able to escape the
22 market? Escape might be the wrong word.

23 A. Priced at the market under the contract,
24 yeah.

25 Q. And that would go -- that language would go

1 in the same place that you previously indicated for the
2 renegotiation language?

3 A. Uh-huh.

4 Q. How would you -- now, you talked about
5 taking -- you took a shot at that language, and I
6 appreciate it. How would you see the actual language being
7 reviewed by the Staff? Do you see a refiling by KCPL at
8 the end of this case and further review by the Staff of the
9 language and so forth?

10 A. Yes. What would happen at the end of this
11 case, if the Commission approved this special contract
12 tariff and said we want these changes made and these things
13 put in, the KCP&L would do a compliance filing of the
14 tariff. They would file the tariff. The Staff would
15 review that, and they would make a recommendation or
16 determination of did that comply with the Commission order.

17 Q. All right. I'd like to turn now to your
18 proposed change to the availability section of the SCS
19 tariff set out on page 47 of your rebuttal testimony.

20 A. Okay.

21 Q. And as you might imagine, I have some
22 questions concerning the specific language of your proposed
23 change and specifically with the competitive portion of
24 that language.

25 As I understand it, there are two

1 conditions there that you're trying to put in there as
2 requirements before a customer may receive a special
3 contract. Is that correct?

4 A. That's correct.

5 Q. And the first is when that customer
6 requires a special form of service which is not available
7 in the company's standard tariffs?

8 A. That's correct.

9 Q. Would you agree with me that at least the
10 two major special contracts which KCPL has provided to this
11 Commission and which has been subject to review by this
12 Commission in the last couple of years have been those
13 types of contracts?

14 A. Yes, they have.

15 Q. Now, it's the second type of contract that
16 I'd like to talk with you about. And that is --

17 A. Okay.

18 Q. -- where the customer, as you have stated,
19 have sources of energy that are competitive for a portion
20 or all of their electric load requirements.

21 Now, I had a discussion with Mr. Giles
22 concerning this language, and I asked him about a situation
23 where the source of energy that was competitive for a
24 portion of the electric load requirements consisted of
25 competition for space heating requirements of that

1 customer.

2 A. Okay.

3 Q. Were you here for that discussion?

4 A. Yes.

5 Q. And I recall that Mr. Giles and even on

6 recross-exam-- redirect examination by the attorney for

7 Kansas City Power and Light, that Mr. Giles once again

8 stated that he believed that such competition would be

9 sufficient to allow KCPL to enter into a special contract.

10 Was that your understanding?

11 A. I don't recall specifically his testimony

12 but -- on that particular point.

13 Q. Well, let me ask you this: Based on the

14 answers you gave to Mr. Mills, is it correct that you do

15 not believe that that type of competition is the type of

16 competition you are referring to here as allowing the

17 customer to enter into a special contract?

18 A. If that competition would be in violation

19 of the Commission's rules, okay, promotional practices

20 rules, for example, then I would say that tariff doesn't

21 apply. So in -- and that's the context in which I was

22 speaking to Mr. Mills about.

23 Q. All right.

24 A. Does that make --

25 Q. Well, I take it you've added yet another

1 layer, which we probably need to discuss. Can you think of
2 an instance where Kansas City Power and Light's offering of
3 a lower electric rate in order to compete with the
4 provision of space heating services which competition
5 consists of tariffed rates from either the natural gas
6 provider or the steam provider --

7 A. Okay.

8 Q. -- where that would not violate the
9 promotional practice rule?

10 A. The promotional practice rule says that the
11 utility cannot offer consideration that's something of
12 value to the customer. Okay. That's the basis for it. So
13 I would -- I cannot -- I cannot think of an instance where
14 that's the case.

15 Let me back up. If a customer is trying to
16 make a decision about -- let's say they're building a new
17 building. They're trying to make a decision about using
18 services from utility A, B, or C, or whatever, your steam,
19 gas, and electric. That decision should be based, at this
20 point in my mind, based on their -- on the tariffed rates,
21 rates that are tariffed, not on a special contract for any
22 of those three utilities.

23 Now, at some point in the future I expect
24 that, with access, that to change and then -- but it's got
25 to be a level playing field, I guess, is what I'm saying.

1 It can't be utility A can offer something below it's
2 tariffed rate, but utility B has to offer its tariffed
3 rate. And I think that the purpose of the -- of our
4 promotional practices rule is to cause all utilities to be
5 offering it at their tariffed rate.

6 Q. So to summarize, if I may --

7 A. Yeah.

8 Q. -- the term sources of energy contained in
9 your proposal --

10 A. Right.

11 Q. -- does not, in your mind, include sources
12 from -- sources of energy from regulated utilities?

13 A. It doesn't include violating at this point
14 the Commission's promotional practices rule.

15 Q. And is it your intention here that the term
16 "sources of energy" would mean sources of energy which
17 either consist of alternative providers of electricity or
18 alternative providers of energy which substitutes --
19 perfectly substitutes for electricity? Is it that limited?

20 A. I wouldn't -- if I were trying to get at
21 this, what I would add to that condition is that, you know,
22 in no instance shall a company violate the Commission's
23 promotional practices rule. That's what I would add to
24 it. Rather than trying to define it narrowly so that the
25 things that are prohibited in that rule are prohibited in

1 the tariff. It's easier in my mind to link it to the rule.

2 Q. Given your answer, Dr. Proctor, do you
3 believe that there's any instance at the present time which
4 would justify KCPL entering into a special contract for the
5 customer on the basis of this second condition, second
6 competitive condition?

7 A. I'm sorry. The competitive energy
8 alternative?

9 Q. Yes. Yes.

10 A. Do I believe there are any?

11 Q. Yes.

12 A. Yes.

13 Q. In what instances?

14 A. I think I gave a couple of examples
15 before. The customer who has an alternative in another
16 service territory, another state that you're talking about
17 shifting production. In order to do that, you're talking
18 about loss of employment in an area, in a region to carry
19 that out and loss of contribution to fixed costs. That
20 would, in my mind, be the most dominant one.

21 I think the other thing I would say is
22 that, in order for this really to make sense, electricity
23 needs to be a pretty major portion of this customer's
24 cost. Okay. That's why I use air products as an example.
25 Electricity needs to be a major factor in their cost

1 structure, and I don't think I'm thinking that this tariff
2 is going to get applied to office buildings, for example,
3 at this point on the competitive basis.

4 Q. Other than the potential of the customer
5 leaving the service territory, given the current lack of
6 retail wheeling in KCPL's service territory, can you think
7 of any other instances where the competitive portion of
8 this tariff would be triggered?

9 A. Well, rather than saying the customer
10 leave, I would prefer to say that the load leaves, because
11 the customer may stay there but his load is just
12 substantially reduced.

13 Q. All right.

14 A. So --

15 ALJ DERQUE: Excuse me. In today's
16 environment, Dr. Proctor, how does the load leave and the
17 customer stay in your example involving the compressors --

18 THE WITNESS: They substantially reduce
19 production.

20 ALJ DERQUE: They shift production?

21 THE WITNESS: They shift production, yeah.

22 ALJ DERQUE: Okay. Thank you. Excuse me,
23 Mr. French.

24 THE WITNESS: That's where I see this
25 tariff applying in main part. I cannot think of another

1 example right off the top of my head.

2 BY MR. FRENCH:

3 Q. All right. Hypothetically if KCPL
4 improperly applied this availability requirement in an
5 effort to offer a discounted rate to a customer in order to
6 retain this customer for its future retail competition,
7 I've got several questions under that scenario.

8 A. Okay.

9 Q. First, could you tell me how this -- how
10 would this impropriety first be discovered in your opinion?

11 A. I want to make sure I understand the
12 impropriety in your view.

13 Q. Okay. Hypothetically.

14 A. Hypothetically they've entered into a
15 contract, and somehow the only purpose of that contract was
16 to retain that customer when retail competition occurs?

17 Q. Yes.

18 A. Okay. That tells me, first of all, this
19 customer had no competitive alternative right now.

20 Q. As we've discussed.

21 A. As we've discussed, yeah. And so when KCPL
22 submits its filing -- its filing I'm not sure is the right
23 word. Submits its materials to the Staff and the Staff
24 reviews it and we see there's no competitive alternative
25 currently existing for those customers, that would be --

1 now that would be the first indication of it.

2 Q. And what action would the Staff take at
3 that point?

4 A. I think that gets back to a discussion I
5 was having earlier. Probably the first action I would take
6 is to contact the company and say, "We don't think this is
7 the proper application of this." And then we would contact
8 our attorneys, and I don't know that we have a real
9 procedure set up for it at this point.

10 But I think the way that it's generally
11 thought of is that if the company does this, it's --
12 they're at risk. They're at risk in the next rate case.

13 Q. You keep saying the next rate case.

14 A. Uh-huh.

15 Q. Do you recall when the last rate case was?

16 A. Oh. No.

17 Q. It's been quite a while?

18 A. It's been a while, yeah.

19 Q. 1985, 1987?

20 A. That could be correct.

21 Q. I'm guessing myself.

22 A. Yeah.

23 Q. Does the tariff language contemplate any
24 requirement that the Staff okay the documentation provided
25 by KCP&L, or is KCP&L free to proceed under the tariff once

1 the documentation has been provided?

2 A. Once they've supplied the material to the
3 Staff, my understanding is they're free to go forward with
4 it. They're not waiting for some approval from the Staff
5 or approval from the Commission.

6 Q. Okay. And in this rate case, which may be
7 forthcoming in the future -- I believe you've already
8 testified to this, but I'll explore it a little further.

9 A. Okay.

10 Q. In your opinion, other than the imputation
11 of revenue requirement to KCPL's transaction -- I'm sorry,
12 imputation of revenues, which would increase the amount of
13 revenues available to meet KCPL's revenue requirement, are
14 you specifically aware of any other remedies which would be
15 available to the Commission or the Staff?

16 A. No.

17 Q. All right.

18 ALJ DERQUE: Let's go off the record a
19 minute.

20 (Discussion off the record.)

21 ALJ DERQUE: Mr. French?

22 MR. FRENCH: I have no further questions.

23 Thank you, Dr. Proctor.

24 ALJ DERQUE: Is my timing good or what?

25 Mr. Woodsmall, do you have redirect?

1 MR. WOODSMALL: Yes.

2 REDIRECT EXAMINATION BY MR. WOODSMALL:

3 Q. First off, could revenue imputation, as

4 you've described, be done in the context of an earnings

5 investigation?

6 A. Yes.

7 Q. And when was KCP&L's last earnings

8 investigation?

9 A. It was rolled into their rate design case.

10 Q. Okay. So that was effective July last

11 year?

12 A. Last year.

13 Q. Okay. Do you recall when the earnings

14 investigation before that one occurred?

15 A. No. But --

16 Q. Okay.

17 A. I don't -- I'm not very good on dates.

18 Q. Okay. You were asked several requests by

19 several parties regarding the -- I'll call it the

20 market-out clause to be included within the tariff?

21 A. Yes. Yes.

22 Q. Is it your testimony -- the tariff is not

23 meant to preclude such a contract provision being

24 negotiated in the special contract. Is that true?

25 A. Yes.

1 Q. Okay. The tariff is not meant to convey
2 rights other than what are contained within that special
3 contract?

4 A. I believe that's true.

5 Q. Okay.

6 A. Go ahead.

7 Q. If the contract is silent on the issue of
8 renegotiation --

9 A. Yes.

10 Q. -- would this tariff convey a right to one
11 of the parties?

12 MR. PHILLIPS: I object to that on the
13 grounds as calling for a legal response from the economist.

14 ALJ DERQUE: Yeah. That's sustained.

15 MR. WOODSMALL: Well, I'm asking his
16 intention behind the language to be included in the
17 tariff. It's not the legal -- it's not a legal
18 conclusion. It's his intention behind what --

19 ALJ DERQUE: No. You're calling for a
20 legal conclusion. It's sustained.

21 BY MR. WOODSMALL:

22 Q. Okay. Is it your intention to provide such
23 a right?

24 A. No.

25 Q. Okay. Would using the SCS tariff to offer

1 an economic development rate to a potential customer who is
2 deciding whether to locate in Missouri also be an
3 appropriate use of the SCS tariff? Could you use the
4 SCS --

5 MR. FRENCH: I'm going to object to that
6 question, unless Mr. Woodsmall would tell me what he means
7 by economic development rate. That would seem to be a term
8 of art in the state.

9 MR. WOODSMALL: Okay. I'll rephrase it.

10 ALJ DERQUE: Could you rephrase it?

11 BY MR. WOODSMALL:

12 Q. Could you use the SCS tariff to attempt to
13 attract a customer to Missouri?

14 A. Yes.

15 MR. WOODSMALL: Okay. I have no further
16 questions.

17 ALJ DERQUE: Thank you. May Dr. Proctor be
18 excused?

19 MR. WOODSMALL: Yes, he may.

20 (Witness excused.)

21

22 ALJ DERQUE: We will -- let's go off the
23 record.

24 (The noon recess was taken.)

25 (EXHIBIT NOS. 18, 19, AND 20 WERE MARKED

1 FOR IDENTIFICATION.)

2 ALJ DERQUE: We're on the record.

3 Mr. Woodsmall?

4 MR. WOODSMALL: Oh. Staff calls James

5 Watkins to the stand.

6 (Witness sworn.)

7 _____

8 ALJ DERQUE: Thank you, sir. Please be

9 seated.

10 MR. WOODSMALL: Thank you, your Honor.

11 JAMES C. WATKINS testified as follows:

12 DIRECT EXAMINATION BY MR. WOODSMALL:

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

14 please?

15 A. James C. Watkins.

16 Q. By whom are you employed and in what

17 capacity?

18 A. Missouri Public Service Commission,

19 regulatory economist.

20 Q. Did you prepare what has been marked

21 Exhibits 18, 19, and 20?

22 A. Yes, I did.

23 Q. Do you have any corrections to any of those

24 at this time?

25 A. Not other than the correction that was

1 attached to Exhibit 20.

2 Q. Okay. And can you tell us what was the
3 underlying cause for the corrections that have been made to
4 Exhibit 20?

5 A. In billing the example customer on Kansas
6 City Power and Light's power rate, the spreadsheet I used
7 inadvertently failed to incorporate the minimum demand
8 provisions.

9 Q. And the correction sheet that we've given
10 out accounts for that change?

11 A. Yes, it does.

12 Q. Okay. Taking that change into account, if
13 I were to ask you the same questions that are contained
14 within your testimony, would your answers be the same?

15 A. Yes.

16 Q. And are those answers true and correct to
17 the best of your knowledge and belief?

18 A. Yes, they are.

19 MR. WOODSMALL: At this time I'd offer
20 Exhibits 18, 19, and 20 along with the corrections to
21 Exhibit 20 and tender the witness for cross-examination.

22 ALJ DERQUE: Thank you. I have Exhibit 18,
23 the direct of Mr. Watkins; Exhibit 19, rebuttal; and
24 Exhibit No. 20, surrebuttal of Mr. Watkins. Are there any
25 objections to any of these being entered into evidence?

1 (No response.)
2 ALJ DERQUE: Seeing none, they will be
3 entered.
4 (EXHIBIT NOS. 18, 19, AND 20 WERE RECEIVED
5 IN EVIDENCE.)
6 ALJ DERQUE: Ms. Cunningham?
7 MS. CUNNINGHAM: No questions.
8 ALJ DERQUE: Mr. Mills?
9 MR. MILLS: No questions.
10 ALJ DERQUE: Mr. Phillips?
11 MR. PHILLIPS: No questions.
12 ALJ DERQUE: And Mr. Swenson?
13 MR. SWENSON: Yes, your Honor, we do have
14 some questions for this witness.
15 ALJ DERQUE: For the benefit of Chair
16 Zobrist, let me again restate that you are -- let me see.
17 Mr. French is dealing with the special contract, and you
18 are dealing with the SQF tariff?
19 MR. SWENSON: That's correct, your Honor.
20 CROSS-EXAMINATION BY MR. SWENSON:
21 Q. Good afternoon, Mr. Watkins.
22 A. Good afternoon.
23 Q. Is it true that on page 2 of your
24 surrebuttal testimony you assert that partial requirements
25 customers entitled -- are entitled to use full requirements

1 tariffs alternative to the SQF tariff?

2 A. I don't recall distinguishing between
3 partial requirements customers and full requirements
4 customers.

5 Q. Well, onsite generation customer then?

6 A. That's my belief, yes.

7 Q. How will the SQF promote efficiency if it
8 can be avoided by QFs through the use -- or onsite
9 generators through the use of embedded standard tariff?

10 A. I believe there's some underlying
11 assumptions there, and let me tell you what mine would be.
12 My assumption is that for certain types of customers with
13 self-generation, the SQF tariff will result in a lower bill
14 for them than service under the standard tariff. For those
15 customers, they would receive efficient pricing signals,
16 which are not available under the regular tariff.

17 Q. Okay. And for the other class, assume
18 there's another class that would get lower prices under the
19 embedded or the standard tariff than they would the SQF
20 tariff. Is that correct?

21 A. I can't answer you with a specific example
22 in mind, but theoretically that's the case. And I didn't
23 have any example in mind in the other case either.

24 Q. Okay. Are the standard tariffs designed so
25 as to take into account the typical characteristics of

1 onsite generation customers?

2 A. I'm not sure how to answer that, but let me
3 give you an answer and see if that works.

4 Q. Okay.

5 A. In KCPL's most recent rate design case,
6 which resulted in the tariffs that they have currently,
7 effective January 1 this year, there was no class in
8 anyone's cost of service study which was a class of
9 self-generating customers or hypothetical self-generating
10 customers, and there was no tariff specifically designed
11 for self-generators.

12 Q. Okay. Well, in your testimony is it
13 correct that you attempted to come up with what an
14 embedded -- a standard type tariff might look like if one
15 attempted to design one for onsite generators?

16 A. That wasn't really my intention. My
17 intention was to design a rate for a specific
18 self-generator.

19 Q. Okay. Would you think it would be
20 appropriate if you had a class of onsite generators and you
21 wanted to have a standard type tariff to design a standard
22 tariff especially for them, or could you simply adopt one
23 of the existing full requirements tariffs?

24 A. I'm not sure I understood all of the
25 assumptions. Again, because I think you assumed that you

1 wanted to achieve that result and then asked me if it was
2 appropriate, given I assumed that that's what we want to do
3 and that's what we did.

4 Q. Well, it would be convenient if I assumed
5 the answer, but I'm hoping not to do that. What I'm saying
6 is, if you had a group of onsite generators in the state
7 and you want to put them into an appropriate standard type
8 tariff, based on what you know about the load
9 characteristics of typical onsite generators, would you
10 expect to need to create a new tariff for them in order to
11 properly recover the cost of service associated with those
12 types of customers? Or could you lump them in fairly with
13 a full requirements customer that might have the same peak
14 load or whatever, for example, and put them in those
15 tariffs?

16 A. I think in Missouri that we know very
17 little about what typical customers with self-generators --
18 what their characteristics would be like, because there are
19 so few.

20 The answer to the second part of your
21 question, I believe, depends on what type of tariff you're
22 designing, whether it would be appropriate to bill
23 self-generators and not self-generators under that tariff.
24 And I think that what Dr. Proctor has proposed in this case
25 would be a tariff under which it would be appropriate to

1 bill self-generators and non-self-generators both.

2 Q. Do you have an understanding of what the
3 typical customer or the average customer under the large
4 power service tariffs load factor looks like?

5 A. I have a general idea what it is.

6 Q. Okay. And the general shape of their load
7 curve as well?

8 A. I have an idea of what the aggregate load
9 curve looks like.

10 Q. Okay. And what type or sort of load factor
11 would you expect generally for that aggregate group?

12 A. I believe that on an individual customer
13 basis every customer in that class has a load factor -- a
14 monthly load factor, which at least most every month
15 exceeds 360 hours-use which would be in excess of
16 50 percent load factor. I think the class as a whole
17 probably has a load factor of around 60 percent.

18 Q. Okay. Is it your understanding that
19 cogeneration facilities and other onsite generators would
20 typically operate with a capacity factor in the
21 neighborhood of 90 percent?

22 A. I'm not sure I understand. Would that be
23 the capacity factor of their own generation?

24 Q. That's right.

25 A. Or of their load?

1 Q. Of their own generation.

2 A. I don't have any idea. I know that
3 somewhere along the way I believe Trigen indicated that
4 90 percent availability might be the case for a
5 hypothetical project. We've all kind of latched onto
6 that --

7 Q. Okay.

8 A. -- and used that example. But I don't
9 really know.

10 Q. Well, if you imagined a customer that
11 otherwise would have this 50 or 60 percent load factor
12 under the large power service tariff and he installed
13 onsite generation on his -- to serve some part of that
14 load, the part of the load that's being served by onsite
15 generation, would you expect it to be significant -- have a
16 significantly different load factor with regard to the --
17 for purchases of backup power from KCPL than for purposes
18 of full requirement service?

19 A. I don't know. You haven't given me enough
20 information to tell me. I have to know how the onsite
21 generation is operated. That was one of the problems I was
22 trying to point out, that there's a lot of different ways
23 you could operate it. You could operate it to shave your
24 peak --

25 Q. Uh-huh.

1 A. -- in which case the loads that would be
2 served by KCPL would have a higher load factor than the
3 original load did. You could run it, you know, flat out
4 all the time. If you did that, the load faced by KCPL's
5 system would have a lower load factor, and it would depend
6 on the relative size of the generator relative to the
7 entire load, relative to the minimums in the load. I think
8 I would have to know more to really answer your question.

9 Q. Okay. But if they operate that generator,
10 it's going to tend to move it one way or another from the
11 60 percent load factor typically, you would expect?

12 A. I think it would typically be different
13 than it was when it started, yes.

14 Q. And is that load factor an important
15 element, something you would want to take into
16 consideration when you're designing a standard rate for a
17 service class?

18 A. That's one of the elements, that together
19 with size and any other cost-causing characteristics.

20 Q. I'd like to ask you a question about
21 something Dr. Proctor said on -- I think it's page 13,
22 line 14. It has to do with the calculation of the
23 transmission credits, which I think you would be more
24 familiar with. I think that's in the surrebuttal testimony
25 as well.

1 Do you see where Dr. Proctor said, "A
2 credit for a difference between the baseline and actual
3 load needs to be added to the tariff"?

4 A. Yes, I do.

5 Q. And then it goes on to say that Mr. Watkins
6 has done this unbundling and found what that's supposed to
7 be?

8 A. Yes.

9 Q. Could you explain to us how you did that,
10 please?

11 A. The numbers that Dr. Proctor has in his
12 testimony are coming from Schedule 1 in my direct
13 testimony.

14 Q. Okay. Can you just walk us through that
15 please?

16 A. It would be in the upper left-hand corner
17 of that table. \$1.59 in the summer for transmission and
18 the 59 cents in the winter for transmission. The basis for
19 those numbers was Staff's time of use allocation of
20 embedded transmission costs. The way those numbers were
21 derived were based on the class contribution to the summer
22 class loads in each hour applied to the transmission costs
23 that were allocated to that hour. And they were summed in
24 the seasons and divided by the billing KW to determine the
25 rate.

1 Q. Why is the credit higher in the summer than
2 the winter?

3 A. The basis for the allocator is something
4 that's referred to as capacity utilization. And that
5 results in a higher allocation to the summer than to the
6 winter, because the transmission system is being more fully
7 utilized in the summer than it is in the winter.

8 Q. Is that what capacity utilization means, is
9 that it's being more fully utilized, or is there a better
10 explanation you can give us?

11 A. Oh, I could probably give you a lot better
12 explanation, but I think for all practical purposes that's
13 sufficient. I mean, it's an allocator which results in a
14 higher allocation of costs to the summer than to the
15 winter, but not as high as if you used a single peak
16 allocator.

17 Q. Okay. Thank you. Mr. Watkins, what's your
18 understanding of what the status of the negotiated contract
19 option, that is, Schedule QF will be after we are done here
20 in this proceeding if the SQF schedule is adopted?

21 A. I'm not certain at this point. I think
22 that the -- there will have to be a determination made of
23 what its status is, and part of that determination will
24 depend on what the Commission orders to be the SQF tariff,
25 if there is one as a result of this case. My recollection

1 is that the current schedule and the provisions of the
2 contract provide that it is, in some sense, temporary until
3 the results of this case.

4 Q. Would you have any kind of recommendation
5 as to what should happen to that schedule?

6 A. I could give you a personal opinion, but I
7 couldn't give you Staff's view or a legal opinion either.

8 Q. Can I take it that Staff hasn't asked you
9 for your input on -- hasn't asked you for your opinion in
10 trying to reach its opinion?

11 A. We don't know the outcome of this case yet,
12 so it hasn't quite been the time to ask the question.

13 Q. Okay. Do you expect to have input?

14 A. Yes.

15 Q. And what input are you planning on having?

16 A. I plan to have input related to how that
17 contract relates to what's ordered in this case.

18 Q. Right. So you don't know what you're going
19 to recommend until you see how the order comes out? Is
20 that what you're saying?

21 A. That's correct.

22 Q. Okay. Well, if they approve the SQF tariff
23 as it's been recommended by Staff, what would your
24 recommendation be with regard to Schedule QF?

25 A. I'm sorry. I even get the letters

1 confused. Schedule QF is the current tariff?

2 Q. That's right. The one that's temporary, I
3 think.

4 A. I think I'd recommend that it be
5 eliminated.

6 Q. So at that point would the onsite generator
7 still have an option to a negotiated contract with KCPL?

8 A. I'm not sure what the options would be.
9 The customer now does have a contract that's been approved
10 by the Commission, and I think there's a provision that
11 that approval is somehow conditional on what happens in
12 this case. Whether that contract will be made permanent or
13 eliminated and replaced with a different contract is
14 something everybody will have to work out when they find
15 out what happens in this case.

16 Q. Mr. Watkins, can you turn to page 4,
17 line 10 of your rebuttal testimony, please? I'm sorry.
18 Line 13.

19 A. Rebuttal?

20 Q. Rebuttal.

21 A. I think I found that.

22 Q. Okay. Would it be correct to say that
23 you're asserting there that existing general application
24 tariffs encourage customers to install and operate
25 economically efficient generation where they do not require

1 standby service from KCPL?

2 A. I'm not sure I could say anything better
3 than I said there, but I think the intent was, going back
4 to your earlier question, that there's all kinds of
5 possibilities for what the loads and generation of
6 self-generators would be like and that there probably are
7 cases where the current tariffs are just fine in providing
8 the incentives for the self-generators to do the right
9 thing.

10 Q. So is it fair to say then, when you're
11 saying at line 13 they do in cases, you're not saying that
12 in all cases where the customers do not require standby
13 service from KCP&L, that you're just referring to some
14 cases where the customers do not require standby service
15 from KCP&L?

16 A. I hate to ask you to do this, but would you
17 repeat the question now that I've read more of what I
18 said?

19 Q. Absolutely. I'm -- the gist I got out of
20 what you say in response to the question is that the
21 general application tariffs encourage customers to install
22 and operate economically efficient generation so long as
23 they do not require standby services from KCPL.

24 However, I thought in response to my
25 questions you were indicating, in fact, it was only in some

1 cases where they do not require standby services that the
2 general application tariffs have this property. So I'm
3 asking you which is the correct interpretation of what
4 you're trying to say there.

5 A. What I was trying to say there was that,
6 because of the demand charge provisions in the general
7 application tariffs and in part due to the minimums and in
8 part due to the 30-minute integrated demand determining the
9 billing demand for the month, that a customer that doesn't
10 require a standby service can reduce his bill by the entire
11 demand charge every month on the general application
12 tariffs. Okay. But there are a lot of cases where if the
13 customer requires maintenance or backup power, the more
14 appropriate amount of demand charges may not be avoided.

15 Q. Well, I'm still confused as to whether
16 you're saying that the way the standard tariffs operate is
17 such that, where you don't require standby service at all,
18 they always give the economically efficient signal as to
19 whether to go ahead and engage in onsite generation or
20 not.

21 A. I realize that there's that implication
22 from what I said, and that wasn't really what I was trying
23 to address there. So I'm trying to think whether what I
24 said and what you're asking me is really true with respect
25 to economic efficiency.

1 Q. Okay.

2 A. Okay. The context in which these
3 statements were made were really looking from the viewpoint
4 of the self-generator, and I believe it's the case that
5 even in this situation where the customer doesn't require
6 backup service, the standard tariff really isn't sending
7 quite the right signal to him. He will install his own
8 generation if he can beat the Company's tariff. The true
9 test should be against market prices for economic
10 efficiency to result.

11 Q. Okay. So really it's -- in line 13 it's
12 they do not propose to do. Is that right?

13 A. I would say that, yes.

14 Q. Okay. Thank you. With regard to the use
15 of standard tariffs designed for full requirements
16 customers by onsite generators, it turns out that onsite
17 generators are outliers with regard to being -- having
18 different properties than a typical class member as a
19 whole. Would that tariff tend to result in either the
20 over-recovery or under-recovery of the cost imposed by
21 those customers?

22 A. Over-recovery or under-recovery requires
23 some standard to measure against, and I'm not sure what the
24 appropriate standard is there.

25 Q. Relative to the costs of providing service

1 to those customers.

2 A. The only thing that I would have to compare
3 to, okay, is if the customer's entire load were served
4 under the tariff, they would be paying the same as any
5 other customer with that same load under that same tariff.
6 If all of their generation were supplied to KCP&L at KCPL's
7 avoided cost, then I think both pieces of that are the
8 correct pieces.

9 Q. Let me try to ask the question this way.

10 A. Okay.

11 Q. If you had six members in a class and two
12 of them were high load factor customers, two of them were
13 medium load factor customers, and two of them were low load
14 factor customers and you were designing the rate to take
15 into account the load factor characteristics, you would
16 have to somehow average all the load factors in together
17 and come up with a rate for the class but not necessarily
18 appropriate for any of the individual customers themselves
19 if there weren't -- if they weren't part of that class. Is
20 that correct?

21 A. No. In fact, we try to design rates that
22 collect the appropriate amount from every customer within a
23 class even though there are those variations. The example
24 being the KCPL tariffs, their hours-use rates. So
25 individual customers' own load factors determine how their

1 energy's blocked. The same rate can apply to a fairly
2 disparate group of customers just fine. That was the point
3 of it.

4 Q. Okay. Is it your understanding if a large
5 power service Schedule LPS is currently available to onsite
6 generators at an alternative to the SQF tariff that's
7 adopted and the other options?

8 A. It's my understanding that that's one of
9 them.

10 MR. SWENSON: Your Honor, can I show the
11 witness a copy of the LPS service tariff?

12 ALJ DERQUE: Certainly.

13 BY MR. SWENSON:

14 Q. Do you see that we've circled some language
15 on that tariff, Mr. Watkins?

16 ALJ DERQUE: Let me interrupt to see -- for
17 purposes of the record the LPS tariff is Exhibit No. 6.

18 THE WITNESS: What's been presented to me
19 is not the large power tariff.

20 BY MR. SWENSON:

21 Q. All right. Well --

22 A. It is -- I could tell you what it is.

23 ALJ DERQUE: Would you like to ask him to
24 identify it, Mr. Swenson?

25 MR. SWENSON: Yes.

1 BY MR. SWENSON:

2 Q. Could you please identify it?

3 A. It is a specimen tariff contained in the
4 stipulation and agreement in case No. EO-94-199, and it
5 appears to contain the pricing provisions which were
6 initially in effect in phase one and have been revised as
7 of January 1, 1997, this year.

8 Q. Are the terms and conditions of the LPS
9 tariff different than what's on that specimen sheet?

10 A. I believe that the language you have
11 circled is exactly the same language that is on the tariff.

12 Q. Okay. And can you read that language
13 please?

14 A. Yes. "Standby, breakdown, supplementary,
15 temporary, or seasonal service will not be supplied under
16 this schedule."

17 Q. And it's your testimony that -- it's your
18 understanding that the LPS rate has that same term and
19 condition in it. Is that correct?

20 A. Yes. In the availability section.

21 Q. Right. So, now, how does that square with
22 what I thought you had told us a moment ago that onsite
23 generators would be able to purchase power under the LPS
24 tariff?

25 A. How does this language coincide with what I

1 told you was the case? Is that the question?

2 Q. Well, I thought you told us that if I was
3 an onsite generator, I could buy my backup power under the
4 LPS tariff, and now I've just heard you read some language
5 that says, "Standby, breakdown, supplementary, temporary,
6 or seasonal service will not be supplied under this
7 schedule."

8 I'm having trouble understanding how I
9 would get around that provision in order to go buy some
10 power under that with my onsite generation.

11 A. Okay. There's two parts of that answer.
12 One is, why is this language here, and the other part is,
13 how can you take service under this schedule if you're a
14 self-generator.

15 Q. That's fine. Break it up.

16 A. Okay. Because part of the answer is that
17 taking service from KCPL as a self-generator requires you
18 to contract with KCPL. Okay?

19 Q. Uh-huh.

20 A. In that contract with KCPL, you may well
21 choose to be served under this tariff.

22 Q. That's as a matter of right, or would you
23 have to negotiate with the utility for that option?

24 A. I'm not sure what you mean by a matter of
25 right, but I suspect both are true. I don't think there's

1 much negotiation to it.

2 Q. Okay. Well --

3 A. But let me tell you, the reason the
4 language is here, okay, is because a contract is required.
5 It is not -- this tariff is not generally available to
6 anybody that wants to hook up to it independent of
7 contracting with KCPL. And I believe those contracts are
8 primary for technical and engineering reasons.

9 Q. Okay. And that contract doesn't come about
10 through tariff in the QF schedule, or Schedule QF rather?
11 What is the route for the onsite generator to go get one of
12 these contracts that incorporates the large primary service
13 tariff if the Schedule QF is eliminated?

14 A. Well, I think there's -- that's kind of a
15 two-part answer to that one too.

16 Q. That's fine.

17 A. You call KCPL and tell them that's what you
18 want to do, and they will more than likely fix you up. If
19 they don't, the Commission rules require that KCPL contract
20 with qualifying facilities at least, and that if you can't
21 negotiate to your satisfaction what the rates ought to be,
22 the Commission will decide them for you.

23 Q. So it's a specific rule rather than a
24 tariff that entitles you to a negotiated contract. Is that
25 correct?

1 A. That's correct.

2 Q. Okay. Do you know what that rule is?

3 A. Somewhere.

4 Q. Your Honor --

5 A. That would be 4 CSR 240- 20.060.

6 Q. Is it your recommendation that the

7 Commission preserve that provision?

8 A. Of the rule?

9 Q. Right.

10 A. Yes. Do you want an explanation of why?

11 ALJ DERQUE: Not unless he asks,

12 Mr. Watkins.

13 BY MR. SWENSON:

14 Q. Does the rule you cited apply to purchases

15 from onsite generators or sales to onsite generators or

16 both?

17 A. Both.

18 MR. SWENSON: Your Honor, there was a

19 question that I asked about two or three questions ago, and

20 Mr. Watkins responded that there was -- going to break it

21 down into two parts, and I don't think we got answers to

22 both parts of the question. So I was wondering if we could

23 have the question reread off the record.

24 ALJ DERQUE: We can -- yeah. I can

25 probably go off the record and have it reread, but can't

1 you just restate it?

2 MR. SWENSON: I don't remember what -- he
3 broke it into the two parts, your Honor, and I forgot what
4 the two parts were.

5 ALJ DERQUE: Okay. Let's go off the
6 record.

7 (Discussion off the record.)

8 ALJ DERQUE: Do you remember the question,
9 Mr. Watkins?

10 THE WITNESS: I believe there were two
11 questions that I broke the answer down into two parts. One
12 was about the language which appeared to prohibit
13 self-generators from being served under the large power
14 tariff. I believe that I provided both parts of the answer
15 to that.

16 ALJ DERQUE: I remember that one. Yes, you
17 did.

18 THE WITNESS: The other question was how a
19 self-generator would go about entering into this negotiated
20 contract with KCP&L, and I indicated that there were kind
21 of two paths they could take, although they both may end up
22 at the same place, which -- and the two parts of that was
23 they should call KCPL and tell them what they want to do,
24 and if that works, that's fine. If they don't or if they
25 choose the other path, which is to file something with the

1 Commission to determine the rate, that's the other way they
2 end up with a negotiated contract.

3 BY MR. SWENSON:

4 Q. Okay. I understand now. Thank you for
5 your indulgence.

6 A few moments ago you cited to the
7 Commission's regulations in regard to this right to obtain
8 power from a utility at a negotiated rate. I'm just
9 wondering if whether you can read to us the specific
10 language from that regulation that provides that right.

11 A. I don't believe I have a copy of the rule
12 with me.

13 MR. FRENCH: Approach the witness?

14 ALJ DERQUE: Certainly. Referring to
15 20.060. Is that correct?

16 THE WITNESS: Yes. This version of the
17 rule is probably a newer version than mine, and things are
18 not in the same place on the page. So I'm having a little
19 difficulty in finding the reference.

20 MR. WOODSMALL: Your Honor, may I suggest a
21 specific cite? I think that may help us along.

22 ALJ DERQUE: Do you know where it is?

23 MR. SWENSON: Your Honor, I can't give a
24 specific cite, because the witness was the one that was
25 telling us the provision provides for it. I can't find

1 anywhere that provides that.

2 ALJ DERQUE: I tell you what. Why don't we
3 break till 2:30? Let's go off the record.

4 (A recess was taken.)

5 ALJ DERQUE: Mr. Watkins, did you find the
6 portion of the code?

7 THE WITNESS: I believe so, your Honor. I
8 think that my references are primarily to Section 2, C and
9 F. C provides "that every regulated utility which provides
10 retail electric service in this state shall enter into a
11 contract for parallel generation service with any customer
12 which is a qualifying facility upon that customer's
13 request," and goes on.

14 Section F says, "Every contract shall
15 provide fair compensation," and "if the utility and
16 customer cannot agree to the terms and conditions of the
17 contract, the Public Service Commission, PSC, shall
18 establish the terms and conditions upon the request of the
19 utility or the customer." And that's the basis for my
20 understanding that the rule provides for contracts.

21 BY MR. SWENSON:

22 Q. You initially said primarily. Are there
23 any other sections we should be referring to, or is that
24 it?

25 A. No. I think in addition to those sections

1 my overall interpretation of the rule, but I couldn't point
2 you to other specific areas.

3 Q. Okay. Can we just quickly go over the two
4 places you cited please? And the first one, is it correct
5 that after it says that "every regulated utility shall
6 enter into a contract for parallel generation service," it
7 goes on to say, "Where that customer may connect a device
8 to a utility's delivery and metering service to transmit
9 electrical power produced by that customer's energy
10 generating system into the utility's system"?

11 A. Yes, it does.

12 Q. Do you see any reference there where it's
13 talking about power produced by the utility into the
14 customer's load?

15 A. I missed something. The utility is
16 apparently connected to the customer's load through their
17 delivery and metering equipment.

18 Q. Are you finished? I can't tell whether
19 you're --

20 A. I didn't understand your question.

21 Q. Well, I'm just asking you what you think
22 the language at the bottom of Subdivision C where it talks
23 about the power flowing from the customer's energy
24 generating system into the utility system lends to the
25 meaning of this provision.

1 A. I misunderstood your original question.
2 What that lends to it is -- I suspect that parallel
3 generation service has some engineering, you know, very
4 explicit definition, but to me it means that the customer's
5 generation system and the utility's generation system are
6 directly interconnected simultaneously.

7 Q. I understand that parallel generation
8 part.

9 A. Okay.

10 Q. I'm asking you about the language I quoted
11 to you.

12 A. That the customer may connect a device for
13 delivery of energy into the utility's system?

14 Q. Do you read that section as saying that
15 it's going to allow a contract and that the purpose of that
16 contract is to permit the customer to connect the device to
17 the utility's delivery and metering service to transmit
18 electrical power in one direction, and that one direction
19 is from the customer's energy generating system into the
20 utility's system?

21 A. I'm still not sure I understand what you
22 mean. Section C appears to require contracts for any
23 customer that wants to connect to the utility's system.

24 Q. That's right.

25 A. Okay.

1 Q. And then what is the nature of that
2 contract under that provision?

3 A. It would appear that the nature of the
4 contract under that provision is that it would allow them
5 to connect.

6 Q. For what purpose?

7 A. Well, I interpret it as it allows them to
8 connect.

9 Q. Well, then what is the language at the end
10 that -- do you see the language that talks about
11 transmitting electrical power produced by the customer's
12 energy generating system into the utility's system? Do you
13 see that language in that provision?

14 A. Yes, I do.

15 Q. Do you see any language in that provision
16 that talks about the electricity flowing from the
17 customer's -- I'm sorry, from the utility to the customer's
18 energy generating system?

19 A. In the last section that you're talking
20 about?

21 Q. In the provision anywhere --

22 A. I think that's what parallel generation
23 service is, is that the electricity can flow either way.

24 Q. Well, do you have an opinion why that back
25 part is put onto this provision, the one that talks about

1 the electricity flowing from the customer into the
2 utility's system?

3 A. I'm really trying not to be dense, but I
4 don't think I understand your question. Interconnecting
5 would allow, in the event that the customer wanted to sell
6 electricity into the company's system, that they could do
7 that, and it also allows for the more or less instantaneous
8 backup of the customer's generation through the utility's
9 system.

10 Q. Is there any express language about the
11 electricity flowing in the opposite direction from the
12 customer -- I'm sorry, from the utility to the customer?

13 A. Express language?

14 Q. Okay.

15 A. I don't see any express language.

16 Q. We can deal with that in the brief. Let's
17 move to Subdivision F. You also cited to that, did you
18 not?

19 A. Uh-huh.

20 Q. You read the words "every contract shall
21 provide fair compensation." Is that correct?

22 A. Yes.

23 Q. Could you read the rest of the sentence
24 that goes with that language please?

25 A. "Every contract shall provide fair

1 compensation for the electrical power supplied to the
2 utility by the customer."

3 Q. Right. In what direction is that power
4 flowing?

5 A. I think that requires an interpretation,
6 and if you're talking about electrons flowing, I don't know
7 the answer to that.

8 Q. No. I --

9 A. But I know that one possible interpretation
10 is that the utility is actually buying all the power
11 produced from the customer.

12 Q. Okay. And what about -- where does it
13 cover the customer buying power from the utility in that
14 Provision F that you cited to us?

15 A. I thought you were -- let's step back a
16 minute. I thought your question was about where did I get
17 the idea that the rule required contracts. That was my
18 answer --

19 Q. No. I --

20 A. -- that I think I relied on part 2,
21 Section C, Section F about contracts.

22 Q. Okay.

23 A. The rule has provisions in -- I have
24 trouble with how to cite these. But there's a Section 5
25 for rates for purchases and a Section 6 for rates for

1 sales. Those talk about what the rates would be for those
2 transactions.

3 Q. What I was asking you at the outset of
4 this -- let's start with the question. What rule allows
5 you as a matter of right to go to a utility and say that
6 you want the LPS or whatever other full requirements tariff
7 terms that you wanted?

8 We decided that the tariff itself says you
9 can't have those terms and that you had to get some kind of
10 contract that would allow you to go and insist upon having
11 the LPS tariff or whatever other tariff you were choosing
12 to fit under, and we were trying to review how that process
13 works. And I'm asking you to tell me how Subprovision F
14 helps me get a contract from the utility whereby they will
15 sell me power at one of the standard tariffs.

16 A. Okay. I misunderstood your question. I'm
17 familiar with the way KCPL administers their tariffs. I
18 know that in the past they have made offers to potential
19 self-generators to supply them power under the standard
20 tariffs, and I was here yesterday when Chris Giles from the
21 Company indicated that that was the case, that they would
22 be willing to supply power to self-generators under the
23 standard tariff provisions.

24 Q. So it's their past willingness and not any
25 provision of the Commission's rules that informs you that

1 we'll be entitled in the future to go ahead and get a full
2 requirements tariff or standard tariff? Is that correct?

3 A. That's correct.

4 Q. I have four more questions for you. Those
5 questions are the same questions as we put forth to you in
6 Data Request No. 8. Do you have that data request?

7 A. I think the answer is yes. Found them.

8 Q. I think the fastest way to do this is if I
9 ask you to tell me what questions were asked of you in the
10 data request and what your answers are to those questions.

11 A. You want me to read the questions and --

12 Q. And your answers.

13 A. -- give you answers? This is Trigen's Data
14 Request No. 8.

15 Q. That's correct.

16 A. The first question is, "A, is it your
17 position that electric customers that install conservation
18 equipment are distinct from electric customers that install
19 onsite generation, because the customers with conservation
20 equipment never take such equipment out of service for
21 maintenance or due to failures of such equipment? Please
22 explain."

23 My response was, "No. There is no reason
24 to believe that a customer that installs onsite generation
25 might not also install conservation equipment. However,

1 the incentives provided by KCPL's general application
2 tariffs (with demands charges) are different for each,
3 because onsite generation equipment is less than
4 100 percent reliable. A more thorough discussion of these
5 incentives is found on pages 2 through 5 of my prepared
6 rebuttal testimony."

7 The second question is, "B, is it your
8 position that electric customers that take conservation
9 measures, such as lowering temperature settings for
10 electric heaters, never temporarily forego such measures
11 and consequently require additional service from KCPL?
12 Please explain."

13 Response, "No. There is no reason to
14 believe that a customer that lowers the temperature setting
15 on their thermostat in order to save energy and reduce
16 their utility bill wouldn't at some other point in time
17 raise the temperature setting to the previous level.
18 Lowering the thermostat will not reduce the customer's
19 monthly billing demand."

20 The third question is, "C, is it your
21 position that KCPL is not required to stand ready to serve
22 electric customers that, A, install electric conservation
23 equipment, or, B, take conservation measures in the event
24 that customers discontinue use of such equipment or
25 implementation of such conservation measures? Please

1 explain."

2 "No. KCPL has an obligation to serve all
3 electric customers."

4 Fourth question is, "D, on page 3 of your
5 testimony you refer to a MO PSC rule defining what does not
6 constitute discrimination. Please provide the full cite to
7 the specific portion of the rule that you are relying upon
8 for this statement and explain how the express language of
9 the rule supports your assertion."

10 Response, "On page 3 of my prepared
11 rebuttal testimony beginning on line 16 I assert, quote,
12 the rule [4 CSR 240-20.060 (6) (A)] provides that serving
13 qualified facilities under one of the same tariffs
14 available to the utility's other customers shall not be
15 considered to discriminate" -- shall not be considered to
16 discriminate is underlined -- "against qualifying
17 facilities. Cite added. The express language that rates
18 for sales shall not be considered to discriminate against
19 any qualifying facility to the extent that those rates
20 applied to the utility's other customers supports my
21 assertion."

22 Q. Okay. Thank you. Would those be your
23 answers to that if I asked you those same questions?

24 A. Yes.

25 Q. Okay. Would you assert that conservation

1 equipment and demand side management equipment is
2 100 percent reliable?

3 A. My notion is certainly that that equipment
4 is a hundred percent reliable in reducing demand on the
5 utility's system. That may be subject to failure, but in
6 the event of failure, the demand placed on the facility's
7 system tends to go to zero instead of spiking upward.

8 Q. So if someone had a critical motor in their
9 process, manufacturing process or whatever and they put on
10 some sort of efficiency equipment on that motor that would
11 help it operate a partial load more efficiently, it's your
12 understanding, if they don't set up a system that would
13 bypass, then the fail-safe mode wouldn't be to keep
14 operating the motor rather than take the motor out of
15 service?

16 A. I don't really know that much about how
17 they do it. That would make kind of sense.

18 Q. Okay. And when the customer -- in response
19 to the second of those four questions that we had worked
20 through, you said lowering the thermostat will not reduce
21 the customer's monthly billing demand. Is that correct?

22 A. That's what I said.

23 Q. Can you explain what that is and why it
24 doesn't get lowered?

25 A. Yes. The customer would have a piece of

1 equipment -- and, again, I'm not an engineer, but typically
2 the equipment tends to be on or off. And what the
3 thermostat determines is how long it runs and how
4 frequently. Okay. So lowering the thermostat would only
5 affect how long it runs and how frequently, but the fact
6 that it comes on at all creates the demand.

7 Q. I see. So if the customer went away to
8 Florida for the month of March and he turns his thermostat
9 down and the house temperature dropped to 56 degrees for
10 the month with no thermostat ever cycling on and he would
11 have kept it at 72 degrees had he been there, it's your
12 testimony that he wouldn't have a lower billing demand in
13 that month?

14 A. He set the thermostat low enough the
15 equipment never came on?

16 Q. That's right. He drops the thermostat down
17 to 40, and the temperature is just so the pipes don't
18 freeze or what have you. And the average temperature of
19 the house just stays around 50, 56, you know, in that
20 month. And he would have had it higher had he been home,
21 and the thing would have had to come on to keep the house
22 hot. What would happen?

23 A. If the equipment doesn't run, then the
24 billing demand would be reduced.

25 MR. SWENSON: Okay. I have no further

1 questions of this witness, your Honor. I don't know about
2 my colleague.

3 MR. FRENCH: No questions.

4 ALJ DERQUE: Mr. French, no questions.
5 Okay. Redirect, Mr. Woodsmall?

6 MR. WOODSMALL: Yes. Real quickly.

7 REDIRECT EXAMINATION BY MR. WOODSMALL:

8 Q. You were asked some questions about a
9 provision in the large power service tariff regarding its
10 use for standby and other services. Do you recall that?

11 A. Yes.

12 Q. Can you tell us why a utility wouldn't want
13 a self-generator taking standby services under such a
14 tariff?

15 A. Well, I addressed reasons in my testimony
16 about why a utility would want a contract in conjunction
17 with taking service under that tariff, and for a real good
18 answer, I'd have to go back to my testimony and find it.
19 But the compelling reason is that they need to know if
20 somebody has a generator connected to their wires when they
21 try to go out -- send people out to do work on it.

22 Q. And why is that?

23 A. Kills people.

24 Q. Okay. Can you tell us -- you were asked
25 several questions regarding other options available other

1 than just the SQF tariff. Can you tell us, based upon your
2 knowledge of KCP&L and its rate schedules, what are options
3 do you know of that would be available for a qualifying
4 facility?

5 A. As far as I know, in addition to entering
6 into a contract pursuant to the Commission's rules, that
7 any of the utility's tariffs are available to that customer
8 with the possible exception of the residential tariff,
9 unless the customer was a residential customer. It would
10 be any of the standards rates, the optional two-part time
11 of day rates, the real time pricing pilot rates. I think
12 the Company would make all those available.

13 Q. Finally, you were asked some questions
14 about Commission Rule 4 CSR 240-20.060. Do you recall
15 that?

16 A. Yes.

17 Q. And, in fact, you were asked specifically
18 for express language which provided for a contract for not
19 only sales but for purchases. Do you recall that?

20 A. I recall being asked about the rule.

21 Q. Okay. Would you read -- find that rule
22 first, and then I will ask you a question.

23 A. Found it.

24 Q. Okay. Would you read Subsection A of
25 Section 2 there and tell me if that would cover such a

1 concern? Would you read that out loud please?

2 A. Let me make sure I'm in the right place,

3 because I --

4 Q. It's labeled "applicability."

5 A. This method of numbering and lettering is

6 somewhat foreign to me. Is this the one that starts out

7 with "applicability"?

8 Q. Yes, it is.

9 A. Okay. That section. "Applicability. This

10 section applies to the regulation of sales and purchases

11 between the qualifying facilities and electric utilities."

12 Q. And it would be your contention that that

13 would provide for a contract for sales and purchases. Is

14 that correct?

15 A. Yes.

16 MR. WOODSMALL: Okay. No further

17 questions. Thank you.

18 ALJ DERQUE: Thank you, Mr. Watkins.

19 (Witness excused.)

20 _____

21 ALJ DERQUE: The next witness,

22 Mr. Woodsmall?

23 MR. WOODSMALL: Dan Beck, please.

24 ALJ DERQUE: Have one piece of testimony.

25 Is that correct?

1 MR. WOODSMALL: That's correct.

2 ALJ DERQUE: Do you intend to offer it?

3 MR. WOODSMALL: Yes, I do.

4 ALJ DERQUE: That would be the direct of

5 Beck, No. 21. Off the record.

6 (Off the record.)

7 (EXHIBIT NO. 21 WAS MARKED FOR

8 IDENTIFICATION.)

9 ALJ DERQUE: We're back on the record.

10 Mr. Woodsmall?

11 MR. WOODSMALL: Yes. Staff calls Dan Beck

12 to the stand.

13 (Witness sworn.)

14 _____

15 ALJ DERQUE: Thank you, sir. Please have a

16 seat.

17 DANIEL I. BECK testified as follows:

18 DIRECT EXAMINATION BY MR. WOODSMALL:

19 Q. Would you state your name for the record,

20 please?

21 A. Daniel I. Beck.

22 Q. And by whom are you employed and in what

23 capacity?

24 A. The Missouri Public Service Commission as a

25 utility regulatory engineer.

1 Q. And did you cause to be prepared what has
2 within marked Exhibit No. 21?
3 A. Yes, I did.
4 Q. And do you have any corrections to make to
5 that at this time?
6 A. No, I do not.
7 Q. If I were to ask you the same questions
8 contained within Exhibit 21, would your answers be
9 substantially the same?
10 A. Yes, they would.
11 Q. And are those answers true and correct to
12 the best of your knowledge and belief?
13 A. Yes.
14 MR. WOODSMALL: At this time I'd offer
15 Exhibit 21 into evidence and tender the witness for
16 cross-examination.
17 ALJ DERQUE: I have what's marked Exhibit
18 No. 21, the direct testimony of Daniel I Beck. Is there
19 any objection?
20 (No response.)
21 ALJ DERQUE: Seeing none, it will be
22 entered.
23 (EXHIBIT NO. 21 WAS RECEIVED IN EVIDENCE.)
24 ALJ DERQUE: Let's see. Ms. Cunningham or
25 Mr. Riggins?

1 MS. CUNNINGHAM: No questions.
2 ALJ DERQUE: Office of Public Counsel,
3 Mr. Mills?
4 MR. MILLS: No questions.
5 ALJ DERQUE: Mr. Phillips?
6 MR. PHILLIPS: No questions.
7 ALJ DERQUE: And Trigen?
8 MR. SWENSON: Yes, your Honor. Once again,
9 we'll save the day and ask some questions of this witness.
10 CROSS-EXAMINATION BY MR. SWENSON:
11 Q. Mr. Beck, good afternoon.
12 A. Good afternoon.
13 Q. We'll try to keep this short for you.
14 A. Appreciate that.
15 Q. In your performing of various data
16 collections and studies, have you had the opportunity to
17 study standby type loads?
18 A. No, I've not.
19 Q. Have you, in the course of your work,
20 developed an understanding of what typical standby load
21 curves might be expected to look like?
22 A. No, I have not.
23 MR. SWENSON: I have no further questions,
24 your Honor.
25 ALJ DERQUE: Mr. French?

1 MR. FRENCH: No questions.

2 ALJ DERQUE: Do you have any redirect?

3 MR. WOODSMALL: Nothing, your Honor.

4 ALJ DERQUE: Thank you, Mr. Beck.

5 (Witness excused.)

6 _____

7 MR. WOODSMALL: Staff would call Randy

8 Flowers. He has one piece of testimony, direct testimony.

9 ALJ DERQUE: That will be marked No. 22,

10 direct of Flowers. Off the record.

11 (Off the record.)

12 (EXHIBIT NO. 22 WAS MARKED FOR

13 IDENTIFICATION.)

14 ALJ DERQUE: Back on the record.

15 (Witness sworn.)

16 _____

17 ALJ DERQUE: Have a seat, sir.

18 Mr. Woodsmall?

19 MR. WOODSMALL: Thank you, your Honor.

20 RANDY L. FLOWERS testified as follows:

21 DIRECT EXAMINATION BY MR. WOODSMALL:

22 Q. Would you state your name for the record

23 please?

24 A. Randy L. Flowers.

25 Q. By whom are you employed and in what

1 capacity?

2 A. I'm employed as a regulatory engineering
3 assistant in the energy department.

4 Q. Of the Missouri Public Service Commission?

5 A. Yes, Public Service Commission.

6 Q. And did you cause to be prepared what has
7 been marked Exhibit No. 22?

8 A. Yes, I did.

9 Q. Do you have any corrections to make to that
10 at this time?

11 A. No, I do not.

12 Q. If I were to ask you the same questions
13 contained in Exhibit No. 22, would your answers be
14 substantially the same?

15 A. Yes.

16 Q. And are those answers correct to the best
17 of your knowledge and belief?

18 A. Yes.

19 MR. WOODSMALL: At this time I'd offer
20 Exhibit No. 22 into evidence and tender the witness for
21 cross-examination.

22 ALJ DERQUE: I have offered Exhibit No. 22,
23 the direct of Mr. Flowers. Any objections?

24 MS. CUNNINGHAM: No objections.

25 ALJ DERQUE: Seeing none, it will be

1 entered into evidence.

2 (EXHIBIT NO. 22 WAS RECEIVED IN EVIDENCE.)

3 ALJ DERQUE: Ms. Cunningham?

4 MS. CUNNINGHAM: No questions.

5 ALJ DERQUE: Mr. Mills?

6 MR. MILLS: No questions.

7 ALJ DERQUE: Mr. Phillips?

8 MR. PHILLIPS: No questions.

9 ALJ DERQUE: And Trigen?

10 MR. SWENSON: Your Honor, the --

11 MR. FRENCH: I do have one question on the

12 SCS tariff, and it's very, very brief, Mr. Flowers.

13 ALJ DERQUE: Mr. Swenson, do you have

14 any --

15 MR. SWENSON: I was going to say, I have no

16 questions. My colleague may.

17 ALJ DERQUE: Okay. Now, Mr. French, do

18 you?

19 MR. FRENCH: I apologize, your Honor.

20 ALJ DERQUE: I'm just trying to keep from

21 confusing myself is all.

22 CROSS-EXAMINATION BY MR. FRENCH:

23 Q. Mr. Flowers, would you look at the bottom

24 of page 6 of your Exhibit 22?

25 A. Yes.

1 Q. Are you aware that Dr. Proctor in his
2 direct and rebuttal testimony has proposed modifications to
3 the SCS tariff which has been discussed in these hearings?

4 A. Yes, I am.

5 Q. Because of those proposed modifications do
6 you believe that additional review by the Staff will likely
7 be required subsequent to the Commission order in this
8 case?

9 A. Yes, I do.

10 MR. FRENCH: I have no further questions.

11 MR. WOODSMALL: No redirect, your Honor.

12 ALJ DERQUE: Okay. Let's go off the record
13 for a minute.

14 (Off the record.)

15 (Witness excused.)

16 _____

17 (EXHIBIT NOS. 23 AND 24 WERE MARKED FOR
18 IDENTIFICATION.)

19 ALJ DERQUE: We're on the record.

20 Mr. French?

21 MR. FRENCH: Yes. I'd like to call Philip
22 Thompson to the stand, please.

23 (Witness sworn.)

24 _____

25 ALJ DERQUE: Thank you. Have a seat, sir.

1 ALJ DERQUE: I have what's marked Exhibits
2 Nos. 23 and 24, being the rebuttal testimony of Philip B.
3 Thompson and the surrebuttal testimony of Philip B.
4 Thompson. Mr. French?
5 MR. FRENCH: Thank you.
6 PHILIP B. THOMPSON testified as follows:
7 DIRECT EXAMINATION BY MR. FRENCH:
8 Q. Would you state your name for the record,
9 please?
10 A. Philip B. Thompson.
11 Q. And, Dr. Thompson, by whom are you employed
12 and in what capacity?
13 A. I'm a consultant with RT Associates.
14 Q. Have you caused to be filed in this case
15 rebuttal and surrebuttal testimonies on behalf of
16 Trigen-Kansas City Energy Corporation?
17 A. Yes.
18 Q. Do you have any changes to that testimony
19 at this time?
20 A. One sort of -- I don't know whether you'd
21 call it a typo. But on my rebuttal testimony, Exhibit
22 No. 23, the last line on the page 19 is identical to the
23 first line on page 20. So one of those lines should be
24 crossed out. Pretty obvious.
25 Q. Okay. With that change that you have just

1 stated, is the testimony contained in Exhibits 23 and 24
2 true and correct to the best of your knowledge and belief?

3 A. Yes, it is.

4 MR. FRENCH: Judge, I would offer
5 Exhibits 23 and 24 into the record and tender Dr. Thompson
6 for cross-examination.

7 ALJ DERQUE: Is there any objection to the
8 admission of Exhibit 23 or 24?

9 (No response.)

10 ALJ DERQUE: Seeing none, they will be
11 admitted.

12 (EXHIBIT NOS. 23 AND 24 WERE RECEIVED IN
13 EVIDENCE.)

14 ALJ DERQUE: Mr. Mills?

15 MR. MILLS: No questions.

16 ALJ DERQUE: Mr. Phillips?

17 MR. PHILLIPS: No questions.

18 ALJ DERQUE: Ms. Cunningham or
19 Mr. Riggins?

20 MR. RIGGINS: Thank you, your Honor.

21 CROSS-EXAMINATION BY MR. RIGGINS:

22 Q. Good afternoon, Dr. Thompson.

23 A. Good afternoon, Mr. Riggins.

24 Q. One point I'd like to start out with is in
25 your rebuttal testimony at page 15. Just to clarify the

1 record, at lines 2 and 3 you refer to, quote, KCPL's
2 designation of the access charge as stranded cost recovery,
3 end quote.

4 I'm wondering if you can refer me to
5 anyplace in KCPL's direct testimony where they designate
6 the access charge as stranded cost recovery?

7 A. I can't think of anyplace off the top of my
8 head, but certainly the discussion of stranded cost leads
9 me to believe that that is certainly a purpose behind the
10 access charge.

11 Q. Well, let's talk about the access charge
12 for a minute. I think it's -- yeah. At the bottom of
13 page 15, where we're at, the sentence that starts at the
14 bottom of that page and goes over to the next page says
15 that "the proposed Schedule SQF is entirely open-ended and
16 could very well permit KCPL to recover many times over the
17 stranded costs associated with any given customer." Do you
18 see that?

19 A. Yes.

20 Q. Are you referring to the access charge
21 there?

22 A. Yes. That's what I'm referring to.

23 Q. The access charge is a function of three
24 factors, standard tariffs, real time pricing, and the
25 baseline load. Is that consistent with your understanding?

1 A. Correct.

2 Q. Okay. And KCPL's standard tariffs are
3 subject to review by and are regulated by the Missouri
4 Public Service Commission?

5 A. That is correct.

6 Q. And the real time pricing is based upon a
7 formula that is contained in a KCPL tariff, and in fact a
8 portion of that formula itself relates back to the standard
9 tariff. Is that not correct?

10 A. That's correct.

11 Q. And the baseline load is something that's
12 negotiated between the customer and the Company. Is that
13 correct?

14 A. That's correct.

15 Q. All right.

16 A. If the historic load that appears in the
17 tariff is not used, that is.

18 Q. Well, doesn't the tariff provide that both
19 the customer and the Company have to agree upon the
20 customer baseline load?

21 A. Yes. Yes.

22 Q. Okay. Still on page 16 further down on
23 that page you talk about -- let's see. I guess it's at
24 line 17 and 19. "Nor do we have a recent demonstration
25 that its current rates are accurate reflections of its

1 embedded costs."

2 And, again, this statement of yours relates

3 back to the access charge, does it not?

4 A. It refers to stranded costs.

5 Q. Okay. And my understanding was that your

6 testimony is that KCPL is going to recover stranded costs

7 through the access charge.

8 A. That is correct.

9 Q. So it does relate back to the access charge

10 then?

11 A. There's a relationship, yes.

12 Q. Mr. Thompson -- excuse me, Dr. Thompson, is

13 it not true that KCPL has had three rate reductions in the

14 past three years?

15 A. I'm only aware of the latest one.

16 Q. And that was a little over three months

17 ago, wasn't it?

18 A. I believe so.

19 Q. Trigen was a party to that case. Do you

20 recall?

21 A. You're referring to which case?

22 Q. Well, I think the one you reference that

23 you were aware of was our last rate reduction in January of

24 this year, which was EO-94-199.

25 A. Yes.

1 Q. Moving on in your rebuttal testimony, I
2 think we're at page 18 now. And this is where you talk
3 about discrimination, and I'd like to visit with you a
4 little bit about that. You start out at the top of the
5 page by giving a couple of situations that in your view
6 constitute economic discrimination or discrimination as an
7 economist might find it?

8 A. Yes.

9 Q. And then you go on to say that through your
10 experience in proceedings before this Commission, I believe
11 that legally this last case is considered to be
12 discrimination but is judged to be, quote, not undue, end
13 quote, discrimination.

14 Is your understanding that the type of
15 discrimination that is illegal discrimination is the undue
16 discrimination that you're referring to there?

17 A. My understanding is that, if it's termed
18 undue discrimination, it would be considered illegal.

19 Q. Okay.

20 A. And the example that I give there is
21 that -- I may not be correct, but my understanding is that
22 legally discrimination is if two different people pay two
23 different rates. The economist would say, if they impose
24 different costs, then the different rates are okay, and
25 it's, therefore, not really discrimination. But legally

1 it's discrimination but not undue discrimination. I think
2 it may just be a difference in semantics between the
3 economist and the lawyer. I don't know.

4 Q. Well, I --

5 A. That's all I was trying to explain.

6 Q. I understand that you're not a lawyer.
7 It's just this reference -- and I think we probably agree.
8 Maybe I just didn't phrase the question too well. But the
9 legal standard for what is permissible or not permissible
10 discrimination is defined in terms of undue or unjust or
11 unreasonable. Is that your understanding?

12 A. Generally, yes, that's my understanding.

13 Q. Okay. And then you -- what you're really
14 testifying here to is how the economist views
15 discrimination. Is that correct?

16 A. Right. Right. My comments at the end of
17 that paragraph was just trying to make a bridge between the
18 way the economist discusses it and the way it may be
19 defined in legal terms.

20 Q. And you're not testifying that these
21 examples that you give forth here constitute illegal
22 discrimination; you're testifying that in the economist's
23 sense they constitute discrimination?

24 A. Which examples?

25 Q. Well, let's go on here. At the bottom of

1 the page you say that there's really two ways that the
2 tariff could be viewed as discriminatory, and the first
3 instance in which you think the tariff could be viewed as
4 discriminatory is because the generator is unable to choose
5 the standard tariff for standby service, whereas a
6 non-self-generator has that option. Is that your -- is
7 that your testimony?

8 A. That's correct.

9 Q. Okay. Now, I understand that we've had
10 some testimony in this case and I believe you were here
11 from witnesses for the Company, witnesses for the Staff,
12 who state that a self-generator would continue to have that
13 option in terms of taking standby service under standard
14 tariffs. Do you recall that testimony?

15 A. Yes.

16 Q. Okay.

17 A. Although, there was some confusion over
18 whether that actually was the case.

19 Q. Well, perhaps you're confused, but you
20 recall that testimony?

21 A. Yes.

22 Q. Okay. But let's assume for the moment that
23 the testimony that you have here is accurate and that, in
24 fact, the self-generator can only take service -- standby
25 service under the RTP tariff while non-generating customers

1 have other options. Okay?

2 A. The RTP or the SQF tariff?

3 Q. Well, you say that "a customer who chooses
4 to self-generate is restricted to the SQF tariff and, by
5 extension, the RTP tariff and is certainly unable to choose
6 the standard tariff for the pricing of supplemental,
7 backup, and maintenance service. Thus, a self-generator is
8 denied access to a rate" -- and I think you mean the
9 standard tariff there, don't you?

10 A. That's correct.

11 Q. -- "that other similarly situated customers
12 may choose." I take it those other similarly situated
13 customers, though, are not self-generators that you're
14 referring to?

15 A. Correct.

16 Q. Okay. So then is it your testimony that
17 there are no differences between the type of service that's
18 required by a self-generator and by a customer that has no
19 self-generation?

20 A. Say again.

21 Q. Because you're referring to generating --
22 self generating customers and non-self-generating customers
23 as similarly situated customers, is it your testimony then
24 that there are no significant differences between the type
25 of service required by a self-generating customer and the

1 type of service required by a customer who has no
2 self-generation?

3 A. Well, first, you'll have to define what you
4 mean by the word significant. I think the answer is
5 probably no, but I'm not sure what you mean by significant.

6 Q. Okay. That's fine. Dr. Thompson, were you
7 aware that in case No. EC-94-164, which is a complaint by
8 Trigen-St. Louis against Union Electric Company, that
9 Trigen's witness testified that standby services have
10 unique characteristics and are unique in critical ways?

11 A. I'm not familiar with that testimony, no.

12 Q. Okay. Let's talk about the second reason
13 you think this is discriminatory, and that's at the top of
14 page 19. And as I understand what you're saying there, is
15 that the proposed standby tariff is discriminatory at least
16 with regard to new customers, because the new customer is
17 forced to pay -- these are your words -- for past sunk
18 costs for which the customer cannot possibly bear any
19 responsibility. Is that correct?

20 A. That's what it says.

21 Q. Okay. Well, Dr. Thompson, couldn't you say
22 that about any customer on any rate? I mean, if that's
23 discriminatory, then all rates are basically
24 discriminatory, aren't they?

25 A. No. I don't think you could say that same

1 thing about any customer on any rate.

2 Q. Okay. Well, let me give you an example.
3 Let's say I move to Topeka, for example, and I build a new
4 house. My neighbor in the house next to me has been living
5 there for 35 years. We're, more likely than not, going to
6 be paying the same rate, are we not?

7 A. That's correct.

8 Q. Aren't I paying for past sunk costs that
9 the utility did not incur to serve me?

10 A. Yes.

11 Q. Well, then wouldn't that be discriminatory
12 under your definition?

13 A. In this case the new customer coming on
14 line is -- the two customers in question are both being
15 treated the same so that -- I guess you could define that
16 as discriminatory, yes.

17 Q. Okay. Thanks. I believe you were in the
18 hearing room yesterday when Mr. French made his opening
19 statement, and he referred to the fact that Trigen-Kansas
20 City had a non-compete agreement with KCP&L that prevents
21 Trigen-Kansas City from competing with KCPL as a supplier
22 of electricity. And I think from your previous testimony
23 on behalf of Trigen in case No. EO-95-181 you might recall
24 that that non-compete agreement runs until March 2000. Do
25 you recall that?

1 A. Yes.

2 MR. RIGGINS: That's all I have, your

3 Honor.

4 ALJ DERQUE: Mr. Woodsmall?

5 MR. WOODSMALL: Nothing, your Honor.

6 ALJ DERQUE: Redirect?

7 MR. SWENSON: Excuse me?

8 ALJ DERQUE: Redirect?

9 REDIRECT EXAMINATION BY MR. FRENCH:

10 Q. Dr. Thompson, Mr. Riggins directed you to

11 line 17 of page 18 of your testimony, of your rebuttal

12 testimony where you state that a customer who chooses to

13 self-generate is restricted to the SQF tariff. Do you see

14 that language?

15 A. Yes.

16 Q. And do you recall that Mr. Riggins then

17 asked you if you recall that Staff and KCPL witnesses had

18 testified that self-generators would be able to avail

19 themselves of standard tariffs? Do you recall Mr. Riggins

20 directing you to that fact?

21 A. Yes, I do. And I answered that they had

22 said that, but there was apparently some confusion over

23 whether that was actually the case.

24 Q. Yeah. And then Mr. Riggins said that you

25 may be confused. Do you remember that?

1 A. He may have said that. I think so, yes.

2 Q. Dr. Thompson, I'd like to hand you appendix
3 to the stipulation and agreement in EO-94-199 that sets up
4 the language of KCPL's various tariffs. As KCPL pointed
5 out, the rates may have changed in January, but is it your
6 understanding that the language is the same?

7 A. I believe that to be the case, yes.

8 Q. Dr. Thompson, I'd like you to look -- have
9 you look through KCPL's tariffs, and I would ask you to
10 look at the availability sections of these tariffs and
11 whether -- and determine whether or not standby, breakdown,
12 or supplementary service may be -- are prohibited from
13 being served under these tariffs. Could you go by the
14 tariffs one by one and please indicate which tariffs would
15 not be able to be used for standby service?

16 A. Starting with small general service here?

17 Q. Yes.

18 MR. RIGGINS: Just in the interest of
19 saving time, your Honor, I'll stipulate that the language
20 that was asked -- Dr. Watkins was asked to read into the
21 record is in those tariffs, just to save Dr. Thompson from
22 having to look through all of those to confirm that that
23 language is still in there. I mean, that's already been
24 established.

25 MR. FRENCH: In each of those tariffs,

1 small general service, large general service, medium
2 general service, large power service?
3 MR. RIGGINS: Yes.
4 MR. FRENCH: Okay.
5 ALJ DERQUE: Thank you. For purposes of
6 the record, Mr. Riggins or Mr. French, could you summarize
7 that language again?
8 MR. FRENCH: I can have Dr. Thompson read
9 it into the record.
10 ALJ DERQUE: Okay. Read it again. Because
11 I heard it the first time, and I couldn't tell you what it
12 said.
13 THE WITNESS: That one sentence there?
14 ALJ DERQUE: Yeah.
15 BY MR. FRENCH:
16 Q. Yes.
17 A. "Standby, breakdown, or supplementary
18 service will not be supplied under this schedule." And I
19 believe it appears exactly in the same words on all of the
20 tariffs. Yes. Medium general service, same sentence.
21 Same sentence.
22 Q. Thank you, Dr. Thompson.
23 Dr. Thompson, Mr. Riggins asked you about
24 Trigen-Kansas City's participation in EO-94-199, the rate
25 design case which was recently concluded. Do you remember

1 those questions?

2 A. Yes.

3 Q. Does the fact that Trigen-Kansas City
4 participated in that case and ultimately signed a
5 stipulation and agreement mean that any particular
6 determination made in that case Trigen was satisfied with
7 in your opinion?

8 A. I wasn't really involved in any of Trigen's
9 portion of the negotiations. I acted as an observer in
10 this case, so no. I can't say that.

11 Q. And would Trigen-Kansas City's signature
12 necessarily indicate that it believed that KCPL's current
13 rates accurately reflect embedded costs?

14 A. No.

15 Q. Dr. Thompson, do you believe, if onsite
16 generators were able to avail themselves of standard rate
17 options, standard rate tariffs, do you believe that those
18 tariffs were designed to properly reflect service to onsite
19 generators?

20 A. Did you say if they were available?

21 Q. Yes.

22 A. If they were available, there's been some
23 testimony that the load -- coincidence of the loads is
24 different and that, therefore, there probably ought to be a
25 separate tariff if you want to have an embedded cost

1 tariff.

2 Q. Is that -- does that difference which may
3 exist justify adoption of the SQF tariff in your opinion?

4 A. I'm not sure I understand the question.
5 Does the difference between the self-generator's load and
6 that of a typical LPS customer -- is that the difference
7 you're referring to?

8 Q. Yes.

9 A. Would that justify the adoption of the SQF
10 tariff?

11 Q. Yes. The qualifying facilities tariff at
12 issue in this case.

13 A. As I understand it, that's in no way the
14 reasoning behind the SQF tariff, so I don't think so. No.

15 MR. FRENCH: That's all I have. Thank you,
16 Dr. Thompson.

17 ALJ DERQUE: Thank you, Mr. French.

18 CHAIRMAN ZOBRIST: I don't have any
19 questions. I do want to advise the parties that I did
20 represent Kansas City Power and Light Company in a case
21 that was brought by Trigen-Kansas City against KCPL, I
22 think, back in the early part of 1995 that did deal with
23 the non-compete that Mr. Riggins mentioned, and I think we
24 tried the injunctive portion of that case before Judge Ely
25 in the District Court of Jackson County in Independence in

1 April of 1995. I just wanted everybody to know that. I
2 haven't decided if I'm going to participate in this case or
3 not, but I did want to state that on the record. Thank
4 you.

5 ALJ DERQUE: Mr. French?

6 MR. FRENCH: I'd like to call Dr. Roy
7 Shanker to the stand.

8 ALJ DERQUE: Thank you, Dr. Thompson.
9 (Witness excused.)

10

11 ALJ DERQUE: Dr. Shanker? I have three
12 pieces of testimony. Is that correct, Mr. French?

13 MR. FRENCH: Yes. Direct, rebuttal, and
14 surrebuttal.

15 ALJ DERQUE: That will be 25, 26, and 27.
16 Off the record.

17 (Off the record.)

18 (EXHIBIT NOS. 25, 26, AND 27 WERE MARKED
19 FOR IDENTIFICATION.)

20 ALJ DERQUE: Back on the record. I have
21 what's identified as Exhibit 25, the direct of Dr. Roy
22 Shanker; Exhibit No. 26, the rebuttal of Dr. Shanker; and
23 Exhibit No. 27, surrebuttal of Dr. Shanker. Mr. French?

24 MR. FRENCH: Yes. I call Dr. Roy Shanker
25 to the stand, please.

1 (Witness sworn.)
2 ALJ DERQUE: Thank you, sir. Please be
3 seated.
4 THE WITNESS: Thank you.
5 ALJ DERQUE: Mr. French?
6 ROY J. SHANKER testified as follows:
7 DIRECT EXAMINATION BY MR. FRENCH:
8 Q. Would you please state your name for the
9 record?
10 A. Roy J. Shanker.
11 Q. And by whom are you employed and in what
12 capacity?
13 A. I'm self-employed as an independent
14 consultant in the natural resources area.
15 Q. Dr. Shanker, have you caused to be filed in
16 this case on behalf of Trigen-Kansas City Energy
17 Corporation direct, rebuttal, and surrebuttal testimony
18 which have been marked as Exhibits No. 25, 26, and 27?
19 A. Yes, I have.
20 Q. Do you have any changes you'd like to make
21 to that testimony?
22 A. No.
23 Q. If I were to ask you the questions
24 contained in that testimony today, would your answers be
25 the same?

1 A. Yes, they would.

2 Q. Is that information contained in the
3 testimony true and correct to the best of your information
4 and belief?

5 A. Yes, it is.

6 MR. FRENCH: I would tender Dr. Shanker for
7 cross-examination and offer Exhibits No. 25, 26, and 27.

8 ALJ DERQUE: Any objection to Exhibit
9 Nos. 25, 26, and 27?

10 (No response.)

11 ALJ DERQUE: Seeing none, they will be
12 admitted into evidence.

13 (EXHIBIT NOS. 25, 26, AND 27 WERE RECEIVED
14 IN EVIDENCE.)

15 ALJ DERQUE: Mr. Mills?

16 MR. MILLS: I have no questions.

17 ALJ DERQUE: Mr. Phillips?

18 MR. PHILLIPS: No questions.

19 ALJ DERQUE: Mr. Cunningham, Mr. Riggins?

20 MR. RIGGINS: Thank you.

21 CROSS-EXAMINATION BY MR. RIGGINS:

22 Q. Dr. Shanker, I'm Bill Riggins with Kansas
23 City Power and Light. What's Trigen's interest in this
24 case?

25 A. Their direct interest as a matter of

1 business or strategy I'm not aware of. I have a general
2 understanding of their function in the marketplace, and I'm
3 here at their request to comment upon the application of
4 the Company and what ought to be the proper properties of a
5 standby rate.

6 Q. So is it your understanding that Trigen's
7 interest in this case is that of a competitor as opposed to
8 a customer or both?

9 A. I think potentially it's both.

10 Q. Okay. I think you were probably here in
11 the hearing room when we talked about the fact that
12 Trigen-Kansas City currently has a non-compete agreement
13 with Kansas City Power and Light for the supply of
14 electricity that runs until March of 2000. Do you recall
15 that?

16 A. I've heard it discussed, yes.

17 Q. Okay.

18 A. I haven't reviewed that.

19 Q. Is it not true that Trigen Energy
20 Corporation recently has purchased Ewing Power Systems,
21 which makes cogeneration systems?

22 A. I'm not aware of that.

23 Q. Okay. Would it be a fair statement that
24 your understanding is that Trigen is preparing to compete
25 against Kansas City Power and Light before it is actually

1 able to do so?

2 A. I have no knowledge of that.

3 Q. Okay. Well, let's talk for a moment about

4 Trigen-Kansas City, the customer. Isn't Trigen taking,

5 essentially, standby service now?

6 A. I'm really not aware of their

7 arrangements. My testimony was designed to respond to a

8 proposal put forward by the Company.

9 Q. Okay. So you don't know anything about

10 Trigen as a customer of Kansas City Power and Light

11 Company?

12 A. I mean, other than that they are, and even

13 that I'm taking your word on. No, I don't.

14 Q. Okay. So you couldn't tell me whether they

15 have a contract with KCPL to provide electric service?

16 A. No.

17 Q. Or what rate schedule they're served under?

18 A. That's correct.

19 Q. And you wouldn't know how often or when

20 Trigen comes on our system?

21 A. That's correct.

22 Q. Have you performed any analysis that

23 compares what Trigen currently pays for service from KCPL

24 and what it would pay under the proposed standby tariff?

25 A. No, I have not.

1 Q. Have you ever testified for any of Trigen's
2 affiliated companies before?

3 A. That's a good question. I don't believe I
4 have. I'm not -- not that immediately comes to mind.

5 Q. Have you ever been retained by a party for
6 a case involving Kansas City Power and Light Company?

7 A. The reason I'm hesitating is that at some
8 point in the historic merger activities I was asked some
9 questions and considered as a consultant and gave some
10 advice, but it was a trivial kind of engagement. It was a
11 several hour kind of thing.

12 Q. Okay.

13 A. But other than that, no.

14 Q. Have you ever testified in Missouri or in
15 Kansas before? Well, excuse me, before the Missouri Public
16 Service Commission or the Kansas Corporation Commission?

17 A. No, I've not.

18 Q. In light of your answers, I'm curious about
19 your statement that, quote, after about a decade of great
20 success by the cogeneration industry, KCPL has concluded
21 that it cannot secure a direct victory against its
22 competitors and potential competitors, end quote. That's
23 on page 22 of your direct.

24 Do you know how many self-generators we
25 have on our system?

1 A. Apparently one.

2 Q. Did you know that when you wrote the
3 testimony?

4 A. I knew that it was several, but that was my
5 impression, yes.

6 Q. Do you consider that evidence that KCPL is
7 losing a 10 year battle against cogenerators?

8 A. Well, I guess we could consider the
9 converse, that if you don't like my conclusion, then you've
10 been successful at excluding them from the market, which is
11 equally worrisome. I mean, it seems to me that the
12 absence -- the law was put in place in 1978, and the
13 rules --

14 Q. Well, excuse me.

15 MR. SWENSON: Your Honor, could he finish
16 answering the question please?

17 MR. RIGGINS: Well, he's already answered
18 the question, and he's answering some other questions now.
19 I'd actually like to get back to the answer to my question
20 which was whether he considers the fact that KCPL has
21 one -- he testified one, I believe, generator on its system
22 as evidence of the fact that KCPL is losing a 10 year
23 battle against cogenerators.

24 THE WITNESS: And I guess what I'm trying
25 to answer is my conclusion is based on the nature of the

1 need to put into place a tariff like this at this time.

2 And I guess what I was trying to point out is, we could
3 also consider the converse, is that if you have been
4 successful in this battle and your concern over
5 competition, then I find it equally troubling.

6 I'm concerned that you've undertaken
7 something like this, because it represents to me something
8 that's discriminatory and anti-competitive. And I think it
9 is that on its face. And I'm happy to explain why, and I
10 think the testimony goes at great lengths to describe that.

11 MR. RIGGINS: Your Honor, I'd like to move
12 to strike that response.

13 ALJ DERQUE: No. He was answering your
14 question regarding Trigen, so I will let him answer.

15 BY MR. RIGGINS:

16 Q. Okay. So now it's your testimony that KCPL
17 has been successful in its battle against cogenerators but
18 for the wrong reason. Is that what you just said?

19 A. No. What I said what is, my conclusion is
20 that the introduction of this tariff is indicative of
21 efforts to thwart competition in the form of onsite
22 generation, and that this is a new volley, a new initiative
23 in that manner, and it compliments that.

24 Q. Okay. Well --

25 A. I said, by comparison, if you don't agree

1 with that view and you find that that is not the case and
2 you think that the Company has been successful, I would
3 find that equally troubling.

4 Q. Okay. Well, let's talk a little bit about
5 some of your testimony regarding KCPL. You talk -- your
6 testimony is rife with references to KCPL's motives in this
7 case.

8 A. That's correct.

9 Q. You talk about KCPL's, quote,
10 anti-competitive goals, end quote, anti-competitive
11 objectives, anti-competitive motive and explicit strategy
12 to frustrate such competition. Those are all quotes from
13 your testimony, and those are just examples. There are
14 many others. Would you agree with that?

15 A. I believe that -- yes, I would agree with
16 that, and I agree with the statements.

17 Q. You don't have a single statement by KCPL
18 management to support those statements, do you, those
19 allegations?

20 A. That they're engaging in anti-competitive
21 practices? I wish I did. Is it --

22 Q. In fact, it's in your surrebuttal --

23 MR. SWENSON: Your Honor, he's still trying
24 to answer the question, I believe.

25 ALJ DERQUE: Mr. Riggins, let him finish

1 his answer. We've listened to doctors of economics and
2 other stuff go on and on and on here, and I'm going to let
3 this man go on and on and on too. Okay?

4 MR. RIGGINS: Okay.

5 ALJ DERQUE: Please let him answer the
6 question. Dr. Shanker?

7 THE WITNESS: What I have seen is
8 information that indicates great concern by the Company on
9 competition, a strategy by the Company to address that
10 competition by locking up customers in long-term
11 relationships. I see a tariff that I find to be on its
12 face anti-competitive and discriminatory. It attempts to
13 lock in customers to distort use of the system, not their
14 current use, tries to extract, I think, what even Staff has
15 acknowledged is essentially a type of stranded cost
16 recovery that is unique to this one form of customers in
17 the entire system based on historic use, not current use.

18 I find all of those indicative of a
19 strategy that looks like they are preparing for competition
20 in a fashion that takes advantage of their monopoly
21 position in the supply standby services. So I do indeed
22 see these as being anti-competitive.

23 BY MR. RIGGINS:

24 Q. Are you done?

25 A. Yes.

1 Q. Then let's get back to my question, which
2 was, isn't it true that you admit in your surrebuttal,
3 page 7, line 17 through 20, that you don't have any quotes
4 that KCPL's personnel regarding anti-competitive
5 motivations? Is that in your testimony, or isn't it?
6 A. Let me have the page number.
7 Q. Page 7 of your surrebuttal, line 20.
8 A. That's right. I don't have quotes from the
9 personnel.
10 Q. Thank you.
11 A. I stated what I did have.
12 Q. The fact is, Dr. Shanker, that your
13 allegations of KCPL's anti-competitive intent are nothing
14 but boiler plate?
15 A. Now, that --
16 Q. You don't know whether they have any
17 foundation in fact with regard to KCPL, do you?
18 A. No. I think that I said that I had seen
19 documents where the Company had expressed their concern
20 over competition, that they had developed long range --
21 excuse me. I'm starting to answer this, and I realize that
22 these were in the confidential materials.
23 ALJ DERQUE: Yes, they are.
24 THE WITNESS: Sorry.
25 ALJ DERQUE: Well, you can leave the --

1 they've started to develop plans, and we will stop there.
2 I understand. That's clear on the record.
3 THE WITNESS: Okay.
4 ALJ DERQUE: That's what you were going to
5 say?
6 THE WITNESS: Yeah.
7 ALJ DERQUE: That's good enough, unless you
8 want to go in-camera.
9 THE WITNESS: I don't know how much detail
10 to go into that.
11 ALJ DERQUE: Did you want to go in-camera,
12 Mr. Riggins?
13 MR. RIGGINS: No. He answered my question
14 a long time ago, your Honor.
15 BY MR. RIGGINS:
16 Q. Dr. Shanker, the allegations contained in
17 your direct testimony about KCPL's anti-competitive intent,
18 motivation, et cetera, are verbatim from your direct
19 testimony in New York in case No. 95-EEO-172, are they not?
20 A. Very similar, if not the same. I see the
21 rate design as being virtually identical.
22 Q. You deleted Niagara Mohawk, and you typed
23 in KCPL. Right?
24 A. For a lot of this, that's correct.
25 Q. Thank you. In light of your admission, I

1 think this question may be moot. But I'm going to ask it
2 anyway, because I'm curious about the answer.

3 If KCPL's standby tariff is designed by
4 KCPL to be anti-competitive as you allege, why is the MPSC
5 Staff generally supportive of the conceptual structural
6 aspects of the tariff that you find to be anti-competitive?

7 A. My judgment would be on this is that Staff
8 finds appeal in the purported efficiency of this, and that
9 certainly seems to be the case for Dr. Proctor. I've
10 discussed why I think the purported efficiency is
11 incorrect, and I think that no one, no party in this case
12 that supports the tariff has explained why that efficiency
13 is a reasonable objective in contravention of what the
14 federal direction is for this tariff.

15 But other than that, I would hope that
16 Staff would come to realize there are anti-competitive
17 elements of this. Possibly some of the confusion over
18 whether or not this is a mandatory tariff has something to
19 do with that.

20 But certainly on its face if this was to be
21 an exclusive tariff, that is, this is the only source which
22 would be a pre-condition to get the claimed efficiency, it
23 would be both anti-competitive; it would have very bad
24 properties with respect to encouraging cogeneration and
25 onsite generation, and it would be on its face

1 discriminatory. It charges customers for services -- it
2 doesn't charge customers for services they take; it charges
3 them for services that they used to take. And that
4 fundamentally violates what the law is all about with
5 respect to services.

6 Q. And you think Staff just hasn't figured
7 this out?

8 A. I think that Staff, as I said, probably,
9 one, thinks there's an appeal based on the competitive --
10 the marginal cost aspects of this, which I think they're
11 incorrect about; and, two, part of what's come up today, I
12 think, is the, quote, confusion about whether or not this
13 is a mandatory tariff. And I could see somebody who looked
14 at this as not being mandatory as saying why not.

15 But certainly the way I read what has come
16 forward today suggests to me that it is totally arbitrary
17 and to the discretion of the Company as to whether or not
18 this is mandatory. Now, the Company said they would make
19 it non-mandatory, but it doesn't change the fact that I
20 think with respect to these things Staff is wrong. Yes.
21 That's correct.

22 Q. Please turn to page 24 of your direct
23 testimony.

24 A. All right.

25 Q. And we're going to talk a little bit about

1 the access charge here for a while.

2 A. Okay.

3 Q. You state, I believe, that the access

4 charge wouldn't serve economic efficiency, quote, and I

5 guess we're on line 18 here -- because there is no reason

6 to believe that KCPL currently has the optimal mix --

7 excuse me, the optimal amount and mix of generating

8 capacity. Do you see that?

9 A. Right.

10 Q. Do you know anything about KCPL's

11 generating capacity?

12 A. No, other than there's no reason to believe

13 that it's optimal.

14 Q. Okay. So you don't know how much we have

15 or --

16 A. I've read summaries of the system, but I'm

17 not familiar with the expansion plan. That's correct.

18 Q. Okay. You don't know how much baseload or

19 intermediate or peaking capacity we have?

20 A. That's correct.

21 Q. Don't know what our fuel mix is?

22 A. That's correct. General knowledge of it,

23 none of the detail.

24 Q. Do you know when our current resource plan

25 shows the first need for new capacity?

1 A. I think the statement was no baseload
2 capacity for approximately ten years and some peaking
3 capacity within that window.

4 Q. Okay. Is that the extent of your knowledge
5 about that?

6 A. It's the summary of the plan that I read.

7 Q. Page 26 of your direct testimony. Starting
8 at line 8 you state that "KCPL never has to face the
9 consequences of its own I think efficiencies in generation
10 planning or any other activities that incur such fixed
11 costs."

12 And I believe this is the theme that
13 repeatedly surfaces in your testimony. And I can give you
14 some examples, if you would like, but I don't think it's
15 necessary. In Dr. Glycer's response to your testimony where
16 he testified that the MPSC can be expected to prevent these
17 kinds of things you're afraid of from happening, you
18 referred to this as rhetoric and said that Dr. Glycer was
19 being silly. And I'm intrigued by this attitude, and I'm
20 wondering if, do you understand that the Missouri Public
21 Service Commission is legally required to ensure that
22 KCPL's rates are just and reasonable?

23 A. Yes.

24 Q. Okay. Is it that you don't think the MPSC
25 will not carry out its legal responsibilities? Is that

1 your concern?

2 A. No, that's not my concern. Let me
3 explain. The problem here is that one of the fundamental
4 issues, one of the fundamental benefits that PURPA was to
5 provide was to allow someone to sell power to themselves
6 essentially and take themselves off of the system, get the
7 benefit of that, regardless of what the marginal cost was
8 to the utility and to avoid the retail rate. And that
9 meant basically to insulate themselves from any of the
10 vagaries, whatever their form is, prudent or not, that
11 might come about in the future based on the decisions of
12 that utility.

13 And to, essentially, tie someone to the
14 full margin going forward of whatever investments in
15 capital and strategies that that utility makes is to tie
16 them totally inflexibly to the whims of the Company. They
17 may be prudent. They may not be prudent. They may engage
18 in another nuclear plant and have, quote, prudent
19 overruns. Some portion of them might be disallowed.

20 But what you're effectively doing with this
21 form of tariff is denying them the ability to isolate
22 themselves from those types of decisions on the part of the
23 utility and forcing them forever after to pay a margin
24 based on the utility's decisions, not their own.

25 This is going forward. It may be prudent

1 going forward, but it has nothing to do with their
2 consumption. This whole access fee is based on the
3 historic consumption that they cease to take, and you're
4 trying to collect margin going forward based on that. It
5 has absolutely nothing to do with their use of the system.
6 And the way it's structured is, whatever costs, totally
7 prudent, questionable or not, you're going to recover
8 them. You're going to get the chance to recover for use
9 that is no longer being taken, regardless of whether or not
10 you had any say about it, whether you cared about it,
11 whether it was prudent or not.

12 And I'm not assuming or suggesting that the
13 Commission will be imprudent or not carry out their duties
14 properly. What I'm saying is you get that, and I don't
15 have a choice in the future regardless. That's what this
16 is about.

17 Q. Are you done?

18 A. Yes.

19 Q. Do you know when KCPL's last rate increase
20 was in Missouri?

21 A. Other than the testimony I heard today that
22 there hasn't been a case in approximately ten years and
23 apparently there has been three reductions since then, no.

24 Q. Okay. You testified that the access charge
25 is set at KCPL's discretion. Do you recall that? I can

1 give you a cite, if you would like. I think it's on
2 page 28 of your direct testimony, lines 18 and 19.

3 A. Yes.

4 Q. I think you were in the hearing room where
5 I asked -- or when I asked Dr. Thompson a few questions
6 about the access charge and what it was based upon. Do you
7 recall that?

8 A. That it is set by the parties, right.

9 Q. That the customer baseline load is --

10 A. That's correct.

11 Q. -- agreed to by the parties?

12 A. Yes.

13 Q. Is it your understanding that the access
14 charge is also based upon the Company's standard tariffs?

15 A. Right. In this statement I'm assuming that
16 the tariff's in effect and the RTP is however calculated.
17 So what's at discretion is the CBL, and it probably would
18 have been more straightforward to say it that way. It's
19 negotiated by the parties --

20 Q. Okay. Thank you.

21 A. -- apparently.

22 Q. Thank you. Along those same lines you
23 testified that the adder is open-ended, and I can give you
24 a cite for that statement, if you would like.

25 A. We're now talking about the contract rate,

1 the special contract rate?

2 Q. No, we're not. It's on page 36 of your
3 testimony, line 7 and 8.

4 ALJ DERQUE: Which testimony?

5 MR. RIGGINS: We're still on the direct
6 testimony, your Honor.

7 ALJ DERQUE: Seven and eight. Okay.

8 BY MR. RIGGINS:

9 Q. Page 36, lines 7 and 8.

10 A. I'm sorry. Yes.

11 Q. And that is what with regard to the standby
12 tariff?

13 A. That -- yes. The adder in the real time
14 price calculation. That's correct.

15 Q. Isn't your under-- do you understand that
16 the amount of the adder is specified in the RTP plus
17 tariff?

18 A. Right. But it's not at marginal cost, so I
19 mean, there -- I think one of the things that came out is
20 this is one of several components that keeps the proposal
21 from even being truly efficient even if you bought off on
22 this theory of how it would be put together.

23 Q. But is the adder open-ended, or is it
24 specified in the tariff?

25 A. Well, there's a determination, but it's not

1 prior set. I mean, the parties go through and the Company
2 sets the adder.

3 Q. Well, the adder is specified in the tariff,
4 is it not, the amount of adder?

5 A. Yeah. But if it's different from zero,
6 then it can't be the marginal costs. Correct?

7 Q. Well, your testimony is that the adder is
8 open-ended. I take that to mean is that your testimony is
9 that the adder can be changed at the discretion of the
10 Company. Is that your testimony?

11 A. No. I assume they have to go through some
12 sort of a tariff filing to change it.

13 Q. Okay.

14 A. But just having it and allowing for an
15 adder means that you're not charging what you're saying is
16 the theoretical price needed to get the efficiency results.

17 Q. You understand that there's inverse
18 relationship between the adder and the access charge?

19 A. That's correct.

20 Q. Okay. What is your pricing proposal in
21 this case?

22 A. In my direct testimony I laid out some
23 general principles. I couldn't put together a specific
24 tariff, I think, in part because of some of the things that
25 you heard today, that there was no load data available of

1 any sort on these kinds of customers.

2 Let me see if I can find the page
3 references. But basically what I had proposed was, I'll
4 say, a two-part rate, but I know -- don't mean it in any
5 form as the same as the way it's been used. I think it
6 begins on page 11, line 18.

7 Basically looking for the first premise, is
8 figure out what someone uses. Okay. That's the starting
9 point. You pay for what you use. Then the second thing is
10 to try and figure out the cost associated with that use. I
11 think, absent a total tariff structure that's based on
12 marginal cost, I think legally you're obligated to only use
13 one baseline embedded cost. I don't believe there is any
14 discretion there. I think if you switch the one -- the
15 Company switched in total to marginal cost, then you could
16 switch to a marginal cost based standby charge.

17 But here, as I propose, that you look for
18 costs associated with the use of the system, in this case
19 for standby services on the demand side. You would look to
20 recover demand or capacity generation transmission-related
21 charges in a fashion that reflects the actual use of those
22 services based on the diversity of the class of customers
23 expected to be taking it.

24 It can be accomplished in any of several
25 ways, and I didn't go into the detail of this, because I

1 didn't have any billing data or load data. One way is the
2 way they had done it in New York, which is they figure out
3 a diversified demand cost based on a per kilowatt hour
4 charge, based on the demand component of the otherwise
5 applicable class but then reflecting the diversity of these
6 customers from that class.

7 So if you expected these parties to only
8 have about a 10 percent load factor, it would be about
9 10 percent diverse in the class. You take the demand
10 charge for, in this case, like large power and use
11 10 percent of that.

12 Other proposals are similar, like what was
13 by DOE's witness. You could do it on a reservation
14 charge. Reflect the diversity of the class, figure out
15 what those demand services are, reflecting the diversity of
16 the class, and just charge it like an insurance premium.
17 You pay a monthly charge, and that backs up your firm
18 service.

19 In the past in Virginia I've recommended
20 something similar to what the DOE proposed, but with sort
21 of a subscription format; that is, rather than take the
22 diversity of the class, you specify what your maximum
23 diverse -- maximum load factor would be for taking those
24 services. So you say I'm never going to have more than a
25 5 percent demand factor, load factor, and I will,

1 therefore, only pay 5 percent of that class's demand
2 factor, because my outages would be random.

3 With that in mind, that's the demand side.
4 There's several ways to do it. A common thread is you
5 figure out what you consume, not what you used to consume,
6 and you price it. And if you have an embedded cost rate
7 structure, you price it consistent with that. Have a
8 marginal cost rate structure, you price it consistent with
9 that.

10 The second half begins on page 12, line 16
11 and talks about cost responsibility for energy charges.
12 For standby service, basically what I'm saying for standby
13 service is you would use the energy only component of the
14 RTP price to put it in terms consistent with KCP&L's rate
15 design.

16 May I get some water please? I've got a
17 sore throat. I apologize.

18 And I think, unlike demand, which can be
19 allocated in several different rate design proposals, most
20 of the energy use associated with this type of service is
21 fully random and some sort of marginal or real time truly
22 energy pricing component is preferable. And that's
23 discussed on page 12 and 13.

24 Q. That was a really long answer. Let me try
25 some discreet questions here, and maybe we can pin this

1 down. Is your proposal that all customers should be priced
2 at only marginal cost?

3 A. No. I never said that.

4 Q. Well, let me show you what made me think
5 that maybe that was your proposal. Turn to your direct
6 testimony, page 28, lines 5 through 9. And it says that
7 "The public interest would be better served by KCPL
8 lowering its retail rates to a level more in accord with
9 KCPL's marginal rates."

10 And there's also a place in your rebuttal
11 testimony, bottom of page 1 where you say "that economic
12 efficiency can be better achieved under a marginal cost
13 rate for retail service."

14 A. Sure. And I think I also said I never
15 intended nor in any way suggested you wouldn't recover
16 fixed costs.

17 Q. That's not --

18 A. Marginal cost rate designs are fully
19 appropriate. In fact, I even have a question in there
20 saying that you wouldn't support marginal cost rate design,
21 and I say no, that's not true. There's also a question and
22 answer in there that says are you restricting the recovery
23 or suggesting that there shouldn't be the recovery of fixed
24 costs, and I think I also say no.

25 Q. So your proposal is not that all customers

1 should be priced at only marginal cost?

2 A. No, it certainly isn't.

3 Q. Okay.

4 A. And I think on pages 11 and 12 I just went
5 through an energy component that was marginal cost based,
6 and a demand that, in the case of embedded cost, was
7 embedded cost based.

8 The key here is that a charge for the
9 services used, not what you used to use, not an access
10 charge on historical uses that's no longer applicable to
11 your current use. The charge is associated with the best
12 efforts of the utility consistent with whatever pricing
13 strategy they use in general to identify your use of the
14 system and to charge you for that use.

15 Q. Okay. Slowly but surely I think we're
16 going to get this narrowed down here. Is it your proposal
17 that only standby customers should be priced at marginal
18 cost?

19 A. No.

20 Q. Okay. Well, let me take you to someplace
21 in your testimony. Direct, page 23, lines 6 through 12.
22 "The Commission may obtain all the benefits claimed for
23 the current Schedule SQF by embracing" -- sorry, that's in
24 the quote, your Honor -- "by embracing just the portion of
25 the Schedule SQF concept that relates to the use of

1 marginal cost in rates."

2 A. That's correct.

3 Q. Also --

4 A. I'm not saying it's -- read the whole
5 paragraph. It's "I would counsel the Commission against
6 taking the arguments for SQF, Schedule SQF at face value."
7 This is in the context of discussion that's saying this is
8 the only way to get economic efficiency. What I'm saying
9 is you could price retail at the marginal cost or RTP with
10 no fixed cost recovery and get the same efficiency benefit,
11 and then we would be left to argue as to who pays the
12 missing sunk cost.

13 Let's just -- I'm just trying to isolate,
14 and unfortunately in trying to isolate the two components
15 of the argument, it makes it ripe for people to
16 misrepresent what I said.

17 Q. I am not trying to misrepresent what you
18 said, and I am not trying to argue with you. I'm trying to
19 find out what your proposal is.

20 A. Well, I guess I'm answering somewhat
21 sensitively in the context of the rebuttal testimony and
22 surrebuttal testimony that continues to say I'm suggesting
23 not to recover fixed costs, and that's not what I'm
24 saying. What I'm saying, that the recovery of fixed costs
25 can be looked at independent of the efficiency argument.

1 And for retail rates, if that's -- if you want efficiency,
2 you can accomplish them in several ways, one of which would
3 be to just price at marginal cost.

4 The separate question then has to do with
5 one of equity and picking up the fixed cost or the sunk
6 cost of the system as to who pays those. And that could
7 very reasonably be collected from those same customers or,
8 as is the Company's own proposal in the special contract
9 rates, it will be either the Company or it could be shifted
10 to other customers.

11 Those are two separate arguments, and the
12 Company itself has suggested that those costs -- those
13 fixed costs be shed elsewhere when they face competition.

14 Q. So you are not proposing that only standby
15 customers should be priced the marginal cost? I think
16 that's what you said. I just want to confirm it.

17 A. At only marginal cost --

18 Q. Fine.

19 A. -- as in the context of leaving out some
20 other costs, that's correct.

21 Q. Okay. That's --

22 A. I'm not suggesting that.

23 Q. Is it your proposal that standby
24 customers -- let me start over. Excuse me. Is it your
25 proposal that rates for standby customers should be lowered

1 as much as necessary to meet competitive threats?

2 A. Standby rates or the retail rates, the
3 pre-existing retail rates?

4 Q. No. No. Is it your testimony that rates
5 for standby customers should be lowered as much as
6 necessary to meet competitive threats?

7 A. No. I actually didn't address that at
8 all. I really talked about the retail rate -- you may have
9 heard Dr. --

10 Q. Well, I think I can direct you to the place
11 in your testimony that made me think that, if you would
12 like.

13 A. Okay. Fine.

14 Q. It's your direct testimony, page 26,
15 lines 21 through 25. And you state that the -- or you
16 suggest that the Commission can "reject SQF rates" --
17 sorry, your Honor -- "in favor of allowing KCP&L to meet
18 verifiable competitive threats from QFs by lowering KCPL
19 rates as necessary to meet competition but not less than
20 its own marginal cost."

21 A. Right. And the discussion here is --
22 again, it's in the context -- you've got to -- maybe we
23 should put footnotes or something. But this is talking
24 about the threat to -- the threat to competition from the
25 QF comes in competing for the service of the retail load.

1 What I'm talking about and what's -- I know
2 we went through this, because we tried to edit this portion
3 or several portions very clearly to make it
4 understandable. And obviously we haven't succeeded. That
5 the competitive element with respect to the use of marginal
6 costs, if that is it's objective, would apply to the
7 underlying retail rate, very similar to what the special
8 contract rate is proposing.

9 That's where competition can be met. And
10 that's where PURPA as a law has no -- puts no constraints
11 on the Company from competing. That's up to the state
12 Commission.

13 And what I'm trying to say is, if you think
14 you're going to lose load to a competitive threat from a
15 cogenerator, the way to deal with it is exactly what you
16 have proposed in your special contract rate. Drop your
17 rates as low as you need to go to marginal cost if
18 necessary, and if you can compete, that's how you solve the
19 competition. Once that person takes service as a standby
20 customer, you no longer have that discretion.

21 Federal -- well, I thought and I looked for
22 it, but the federal regulations are clear. You can't
23 discriminate. You've got to design the rates the same way
24 you do for the other customers, and that's all we're asking
25 for here.

1 One of the things that -- maybe to put this
2 in context -- and there's a quote I'll get, because it's
3 useful from Commissioner Stallon at FERC when this was
4 heard there, is a comment that in general FERC only deals
5 with wholesale issues. This issue was so important to them
6 that they reached beyond the typical bounds of FERC's
7 jurisdiction to really preempt retail rate design at the
8 state level in portions -- you know, it's 292.305 (A) which
9 says this is how you design retail rates for this service.
10 And they said don't discriminate; do it the same way as
11 everybody else. And that's where the problem occurs. You
12 want to compete, compete on your special contract, not
13 under the standby rate.

14 Q. So my understanding -- and tell me if it's
15 correct -- is that you are not proposing that the rates for
16 standby customers should simply be lowered as much as
17 necessary to meet competitive threats?

18 A. No. In fact, they should be designed
19 exactly the same way as everybody else's rate. Figure out
20 what they use and charge them for it.

21 Q. Good, because that's my next question. Is
22 it your proposal that it doesn't matter how you price
23 standby service as long as you use the same pricing for all
24 other customers?

25 A. The same approach to pricing and cost

1 allocation with one caveat, which is that you understand
2 the nature of these loads as being different. The FERC
3 regulations are also explicit, and they tell you don't make
4 any assumptions that this guy looks the same as everyone
5 else. Either -- and in fact, I think it was Dr. Proctor
6 even made a point of saying, well, sometimes these people's
7 use will be different, and of course it will be different.

8 And to the extent you can properly
9 represent the cost impacts of that difference both positive
10 and negative, you should do so. Just do it consistently
11 with the way you deal with all the other cost allocations
12 in the system. Don't discriminate.

13 Q. Well, let me take you to a place in your
14 testimony that prompted that question. It's in your
15 surrebuttal on page 10, lines 9 through 12.

16 A. One second.

17 Q. Surrebuttal.

18 A. Okay.

19 Q. Page 10, lines 9 through 12. "If the
20 status quo is embedded cost rates, then that is what must
21 be used. If the Company and Commission find that
22 inappropriate, their obligation then is to change the rate
23 design for all customers."

24 That's what led me to the question whether
25 your proposal was that it didn't matter how you priced

1 standby service as long as you used the same pricing for
2 all other customers as --

3 A. As a process, yes.

4 Q. And so that is correct?

5 A. That's correct. I mean, I have personal
6 preferences, but -- there is even an approach that you
7 could do it with an access charge, but then put an access
8 charge on every customer. I mean, if somebody can --
9 serves and drops their load, keep billing at their old
10 baseline. You know, I think that's really a poor rate
11 design, but if you wanted to insist on that kind of a
12 design, do it for everybody.

13 Someone leaves the system, charge them an
14 exit fee based on the loss of contribution. If a
15 residential customer puts in some sort of conservation
16 device, only let them save the real time component. I
17 mean, it's a foolish rate design, and it has other problems
18 that we haven't even gotten to yet. But you've got to do
19 it the same for everybody. That's the heart of this.

20 I have my personal preference as to how to
21 do it, but the key issue here is charge them for what they
22 use; charge them the exact same way as you charge your
23 other customers. That's real simple. And you can choose,
24 and the Commission can decide if it likes it or not. But
25 just do it consistently.

1 MR. RIGGINS: Thank you. I have no further
2 questions.

3 ALJ DERQUE: Thank you, Mr. Riggins.

4 QUESTIONS BY CHAIRMAN ZOBRIST:

5 Q. Dr. Shanker, you were saying some time ago,
6 and I just didn't get it all down in my notes. You said
7 recovery of fixed costs can be looked at independently
8 of -- and I've forgotten what you were completing then.

9 A. What I was trying to say is that there has
10 been a debate here about is efficiency the paramount goal.
11 Okay. And while it is not irrelevant, it is not the
12 paramount goal in PURPA, and if you want, we can go into
13 that.

14 All I was trying to point out was that, if
15 the Company's goal is efficiency, period, it can be
16 accomplished in other fashions. What they have done here
17 is linked efficiency with several other objectives. One I
18 think is an anti-competitive one. Certainly at minimum it
19 is one that is tied to capturing lost margin or stranded
20 cost based on historic use of the system for just one
21 customer or one class of customers while ignoring the issue
22 for all others.

23 And what I'm trying to point out is, don't
24 bite off the whole argument, that because I, quote, want
25 efficiency, I've got to do the rest of these things. We

1 can address that separately if that is an objective. There
2 are marginal cost rate designs that can be collectively
3 used across all the customers in the Company that can move
4 the Company towards efficiency if that is the objective.
5 It has nothing to do individually with recovering historic
6 margins on historic use that is no longer taken by a
7 customer who switches to serving themselves on onsite
8 generation. They're just two completely separate items.

9 Q. Isn't one of the reasons why Congress is
10 considering repeal of PURPA that there hasn't been enough
11 emphasis on efficiency over the last ten, fifteen years?

12 A. Certainly that's a consideration, but to be
13 honest with you, the real -- competition is certainly part
14 of the initiative, but the real reality is the same reason
15 they haven't been in for a rate case in ten years, is
16 people forecast costs to go like that, and they've gone
17 like that (indicating).

18 And so relying principally on utility
19 forecasts, a lot of QFs all around the country have locked
20 in those same high utility forecasts like the ones that
21 justified nuclear plants and got long-term contracts that
22 look very expensive now. So as a political expedient,
23 they're very obvious. And so, yeah, there is pressure to
24 repeal.

25 My personal feeling is that this

1 competition that's been brought in by PURPA is part of the
2 reason that the rates fell in the first place. I'd like to
3 say that, but that would be ridiculous.

4 Q. Well, I mean, I think that's true, and you
5 can evaluate the problems -- the political problem, but it
6 basically gets down to economic problems suffered by all
7 classes of ratepayers in places like Long Island.
8 Fortunately, we don't have customers like that here in
9 Missouri, but it is a matter of economic efficiency.

10 A. Sure. And if you buy what the Company is
11 saying, that you want people to see the right price signal
12 and you're comfortable with this access charge notion, then
13 you can apply that to standby rates. But all I'm telling
14 you is that the law is pretty clear.

15 If you want that efficiency for them, then
16 the guy who puts in a one megawatt generator and the guy
17 who conserves one megawatt, why does the guy who conserves
18 one megawatt get a free ride here? If you can't answer
19 that question for me, it's obvious it's discrimination.
20 And until you're prepared to bite off the consequences of
21 this for everybody, which I think equally is politically
22 impossible, then don't pick on one class as a convenient
23 whipping boy because you think you can isolate them. It's
24 not reasonable, and I think it's illegal. I just don't
25 think you can do that.

1 I mean, I don't like that rate design, but
2 if you're going to do it, do it for everybody. And I
3 guarantee you when you attempt to do it consistently for
4 everybody, this discussion will all disappear, and we will
5 be moving on to the next topic. Because you will realize
6 that you can't. It would be political suicide to do this.

7 And there's just no way that this
8 consistent rate design, logically carried out for all
9 customers, could survive in any reasonable political and
10 regulatory environment. It is only the, let's say, the
11 lack of political correctness that's associated with some
12 of the QF issues that has made that viable now. And to me
13 that's sort of another obvious reason that it's
14 discriminatory.

15 Q. If the Commission would choose to accept
16 the proposal of the Company as modified by Staff's
17 recommendations, would you have an opinion as to any
18 further restrictions, say, in terms of time? You know,
19 should we set this as an experimental period for a certain
20 number of months in order to determine how the tariff would
21 operate?

22 A. Well, I've got to be honest with you and
23 say that I think it's illegal, so I don't think I could
24 ever tell you that I would like to see you implement it.

25 Q. Okay. Well, let's go beyond that. It's a

1 hypothetical question.

2 A. The thing that confuses the issue even
3 further is the discussion today that it's not mandatory and
4 that we can count on KCP&L to always allow, even if it's
5 the wrong rate, but you can use the existing retail rate.
6 That even throws out the efficiency argument, because
7 obviously if there's two rates and one's efficient and the
8 other one is still available, you destroy all of it. I
9 mean, the logical implications of that are that this whole
10 thing doesn't really do anything.

11 Or the other alternative is that I don't
12 believe that it would be in the Company's interest to allow
13 somebody to go back to the retail rate.

14 Q. Well, but what I'm trying to ask you to do,
15 if you can, is answer my hypothetical question, which is,
16 if this tariff is modified based upon the recommendations
17 that Staff has implemented -- and I understand you think
18 that is illegal and you think that's wrong -- would you
19 recommend that it go into effect for a period of time
20 because then in your view or your client's view, you know,
21 the clouds would part and the sun would shine through, and
22 the error of our ways would be obvious to us?

23 A. I've got to say, other than -- that if you
24 did that in a fashion that took the -- I mean, the logical
25 response would be someone would take you to court on it.

1 That's why -- I'm having a problem, because I don't think I
2 can see past the illegality.

3 Q. Don't play lawyer with me. All right?

4 A. No. I understand, your Honor. I'm just
5 saying that you're asking me how to implement something
6 that I think is wrong or would do it, and I don't --

7 Q. Well, if you can't answer the question --

8 A. I just don't think I can. I hit the
9 impediment that logically, to me, I don't see how it works.

10 Q. Well, I would just tell the parties to the
11 extent there are objections to this, I appreciate the
12 criticisms, but also obviously alternative language is also
13 helpful to the Commission to entertain.

14 A. Understood.

15 CHAIRMAN ZOBRIST: Thank you.

16 ALJ DERQUE: Mr. Woodsmall?

17 MR. WOODSMALL: Nothing, your Honor.

18 THE WITNESS: Whoops. I'm sorry.

19 ALJ DERQUE: Redirect, Mr. French,

20 Mr. Swenson?

21 MR. SWENSON: Yes. Your Honor, I have some
22 redirect.

23 REDIRECT EXAMINATION BY MR. SWENSON:

24 Q. Dr. Shanker, do you remember that

25 Mr. Riggins asked you a number of questions to which you

1 respond that you lacked various pieces of information about
2 Trigen?

3 A. That's correct.

4 Q. Do you believe that you were provided by
5 Trigen with all the information that you needed to provide
6 sound testimony in this proceeding?

7 A. Absolutely.

8 Q. Do you recall Mr. Riggins asking you
9 whether you simply substituted KCPL for NIMO in certain
10 portions of your testimony?

11 A. That's correct.

12 Q. Can you tell us why you did that?

13 A. Aside from the obvious issue, which is I
14 believe it's totally appropriate for KCP&L, the structuring
15 of this proposal, if you go back and read -- I don't know
16 if it was a paper or testimony. I cite to it in my
17 testimony. Report by Dr. Glycer. Basically he said in the
18 Union Electric case that this tariff is exactly like what's
19 being proposed by Niagara Mohawk in New York, and we like
20 it. And if you want the details, I'll get you the
21 testimony and the surrebuttal and the -- I mean, I have a
22 stack at home about three feet high by the various
23 witnesses in New York that explain all the theoretical
24 detail of this tariff. And so that's what it is.

25 I mean, there are diminimous differences

1 here, and there's a perfectly reasonable explanation. It's
2 the same proposal.

3 Q. Do you recall Mr. Riggins asking you about
4 the optimal mix and your comments on whether KCP&L has an
5 optimal mix of resources?

6 A. Yes.

7 Q. Did you need to know any of the information
8 he asked you about in order to be able to decide whether it
9 was likely to have an optimal mix?

10 A. No. The whole point is that the -- this
11 is -- it's sort of -- the Company's proposal is a
12 theoretical distraction. It's meant to prospectively get
13 someone the right pricing in an instant in time when they
14 make that decision about what they ought to do, and it
15 really -- it has no practical -- I went through some of the
16 discussions, and it has no practical application.

17 I mean, just ask yourself a simple
18 question. Let's say the parties don't agree and you want
19 to engage in an economic bypass. You don't enter into this
20 agreement, and you build the facility anyways. What's the
21 Company going to do? What's the right thing to do in
22 selling services? Try and get an access charge or assault
23 you at the margin? At that one instant in time when you
24 were deciding, it's like playing a game of bluff here. You
25 really ought to be worried about this. I'm going to charge

1 you this access charge. But like they said in some of the
2 examples -- you weren't present. You know, once it's done,
3 it's a different game.

4 There's just a lot of problems. You don't
5 have to know the theoretical construct underlying the
6 expansion plan to know it doesn't work.

7 Q. Do you recall being asked about the access
8 charge and getting involved in a discussion on negotiation
9 of the CBL by the parties?

10 A. Yes.

11 Q. What is your opinion of what happens if
12 KCPL doesn't agree with the purchaser or consumer's vision
13 of what the CBL should be?

14 A. Well, obviously, the first thing is they
15 won't come to agreement, but then the second thing is that
16 means the notion of optimality in items of efficiency would
17 never have been correct. If we disagree, like if I'm the
18 potential cogenerator and I say I'm going to use half as
19 much in the future; I'm putting in more efficient
20 production lines; I'm shifting production elsewhere, other
21 factories; I'm going to conserve, and, therefore, my access
22 charge would be much smaller.

23 I'm going to make one decision, and the
24 Company says prove that to me. I don't believe it. And we
25 think you should use what you used the last 12 months,

1 which is what they propose. Then you sit there and you
2 argue forever, but neither party would agree on what the
3 right efficient decision is, if they have different views
4 of how they would proceed in the future.

5 MR. SWENSON: Your Honor, I'd like to show
6 Dr. Shanker a portion of the Schedule SQF in regard to this
7 line of questioning. Is that okay?

8 ALJ DERQUE: Sure. Proposed SQF?

9 MR. SWENSON: Yes, your Honor. It's
10 proposed.

11 ALJ DERQUE: This is the SQF tariff in
12 question?

13 MR. SWENSON: Yes, your Honor.

14 BY MR. SWENSON:

15 Q. Dr. Shanker, looking at the proposed SQF
16 tariff, do you believe that there's any basis in that
17 tariff for concluding that KCP&L has unfettered discretion
18 to simply reject the CBL proposed, in fact, reject the
19 availability of the tariff altogether for a customer who
20 doesn't agree with what KCP&L's vision of the base CBL
21 should be?

22 A. Yes.

23 Q. And why do you say that?

24 A. Under the availability, the specific
25 language is the Company reserves the right to determine the

1 applicability or the availability of this price schedule to
2 any specific applicant for electric service who meets the
3 above criteria.

4 Q. Dr. Shanker, do you recall using the term
5 diversity in a number of your answers to Mr. Riggins'
6 questions?

7 A. Yes.

8 Q. For clarity, would you explain what you
9 meant by diversity?

10 A. In the context of typical cost allocation,
11 costs may be assigned consistent with the demand or
12 causality of the various customers in the class. Very
13 often in the context of demand-related charges, you look at
14 the demand or the aggregate demand of the class as a whole,
15 and if your -- if your demand, say, was 100 megawatts but
16 your contribution to the allocator for, say, the coincident
17 demand of the class was 10 megawatts, your diversity would
18 be 10 percent. So you -- even though you have a higher
19 absolute demand, you wouldn't be contributing at the time
20 of the -- of whatever the allocator is that's associated
21 with the costs in question.

22 And this is very relevant, because
23 typically standby customers are very, very diverse from the
24 demand of the class as a whole of the otherwise applicable
25 retail service. I think the number we came up with in New

1 York from the utility data was on the order of 4 to
2 6 percent.

3 Q. Do you recall being asked a line of
4 questions that resulted in your indicating your approval of
5 a method of meeting competition as being what was in KCPL's
6 special contract proposal?

7 A. I think the statement was, is that the
8 appropriate way to the extent they wanted to meet
9 competition without tainting what are the, I think,
10 restrictions on the standby rate design by PURPA, is to use
11 a tariff structure such as the special contract tariff.

12 Q. But did you mean to indicate that you had
13 full approval of KCP&L's actual special contract tariff?

14 A. No. Actually, I think in my testimony I
15 stated specific reservations. I'm just saying mechanically
16 this kind of a flex rate structure is the right way to
17 conduct retail competition for the utility.

18 Q. Do you recall being asked by Mr. Riggins
19 whether stranded costs can be dealt with separately from --
20 I'm sorry.

21 Do you recall being asked about whether
22 stranded costs can be dealt with separately from
23 efficiency?

24 A. I know we discussed it. I don't know if I
25 was asked that, to be honest.

1 Q. Well, is it your testimony that efficiency
2 and stranded costs can be dealt with separately?

3 A. Yes.

4 Q. Is it actually your testimony that they
5 should be dealt with separately?

6 A. Yes.

7 Q. Do we have sufficient information to decide
8 how to deal with stranded costs in this proceeding?

9 A. Not at all. In fact, I think, you know, my
10 comment was that you really couldn't know what stranded
11 costs were without really some understanding of market
12 value of the underlying Company assets, and that's
13 clearly -- nothing like that's at play here.

14 Q. Do you recall being asked about whether an
15 experimental phase for the SQF tariff might be useful?

16 A. Yes.

17 Q. Would it be your testimony that the
18 usefulness of that tariff might be somewhat limited, given
19 the lack of existing customers, onsite generation customers
20 in the state?

21 A. I think as a practical matter the lack of
22 demand coupled with the infirmities of the rate, I'm not
23 sure a demonstration would accomplish much, but I still
24 have this discomfort in demonstrating something I don't
25 really feel -- you know, feel good about.

1 Q. Do you recall being asked questions about
2 KCP&L's motives by Mr. Riggins?

3 A. Yes.

4 Q. Regardless of KCPL's motives, would you
5 still believe that the effect of this tariff is to harm the
6 development of competition from self-generation or, when
7 available, from retail wheeling?

8 A. Clearly for self-generation. I suppose in
9 the sense that onsite generation would be another source of
10 potential retail wheeling would do the same. That's
11 correct.

12 Q. Do you recall Mr. Riggins asking you
13 questions about your testimony on the efficiency of the SQF
14 rate?

15 A. Yes.

16 Q. Did any of KCPL's or Staff's witnesses
17 provide basis for that supposed efficiency, that is, the
18 efficiency alleged by KCP&L and Staff that contemplates
19 that the potential self-generator has options available for
20 purchasing power at any rate that is not based on embedded
21 costs?

22 A. I don't believe so. I think that all of
23 the efficiency arguments basically rely on the fact that
24 this is all that you could do, and so I think the way that
25 the responses are is, given the volitional nature of what's

1 been proposed, the efficiency's off all part. Just -- you
2 don't get -- you have all the other problems, plus you
3 don't even get the economic benefits that have been
4 proposed.

5 MR. SWENSON: I have no additional
6 redirect, your Honor.

7 ALJ DERQUE: Thank you, Mr. Swenson. Thank
8 you, Dr. Shanker.

9 MR. RIGGINS: Judge Derque, if I may, I
10 would like to make one clarification on the record.
11 Perhaps I misheard, but on redirect I believe I heard
12 Dr. Shanker say that he had relied upon something that
13 Dr. Glyer had testified to in a Union Electric case, and I
14 don't know whether he misspoke or whether I misheard. But
15 Dr. Glyer has not done anything for KCPL in any Union
16 Electric case, and to the best of my knowledge he hasn't
17 been involved in any Union Electric case.

18 ALJ DERQUE: Yeah. I heard Union Electric
19 also, Dr. Shanker. Did you mean Union Electric?

20 THE WITNESS: I'll have to go get the
21 report. I don't remember.

22 ALJ DERQUE: You were referring to Niagara
23 Mohawk at the time.

24 THE WITNESS: No. No. This was in the
25 context of the work --

1 ALJ DERQUE: UE. Okay.

2 THE WITNESS: -- in the state. I may --

3 well, I don't know if I have it with me, but certainly we

4 can make available -- we have the reference --

5 ALJ DERQUE: Please tell your counsel when

6 you come up with the right electric utility, will you?

7 THE WITNESS: Yeah. The --

8 ALJ DERQUE: That's fine.

9 THE WITNESS: Okay. It's referred to in

10 the testimony, and I just don't remember the reference.

11 ALJ DERQUE: Thank you. Is that good

12 enough, Mr. Riggins?

13 MR. RIGGINS: That's fine, your Honor.

14 ALJ DERQUE: I didn't think it was Union

15 Electric either. Thank you, Dr. Shanker.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 _____

19 ALJ DERQUE: Mr. Kind -- let's go off the

20 record a minute.

21 (A recess was taken.)

22 (EXHIBIT NOS. 28 AND 29 WERE MARKED FOR

23 IDENTIFICATION.)

24 ALJ DERQUE: Direct testimony of Mr. Bernal

25 will be No. 28, and I have surrebuttal testimony, which

1 will be No. 29. Is that correct?

2 MR. PHILLIPS: That's correct.

3 ALJ DERQUE: Mr. Phillips?

4 MR. PHILLIPS: Yes. We'll call -- our

5 first witness on behalf of Intervenor DOE will be

6 Mr. Bernal. Mr. Bernal has not been sworn.

7 ALJ DERQUE: I know.

8 (Witness sworn.)

9 _____

10 ALJ DERQUE: Thank you, sir. Please be

11 seated. Off the record.

12 (Discussion off the record.)

13 ALJ DERQUE: Back on. Mr. Phillips?

14 LUIS C. BERNAL testified as follows:

15 DIRECT EXAMINATION BY MR. PHILLIPS:

16 Q. Yes. Mr. Bernal, would you please state

17 your name and business address for the record?

18 A. My name is Luis C. Bernal, P. O. Box

19 651588, Miami, Florida.

20 Q. And by whom are you employed?

21 A. I'm employed by Rhema Services, Inc., a

22 public utility consulting firm.

23 Q. And in that capacity did you cause to be

24 filed on behalf of Intervenor DOE in this docket two pieces

25 of testimony which have been premarked, one, direct

1 testimony of Luis Bernal marked as Exhibit No. 28, which
2 consists of 18 pages of questions and answers, and attached
3 to that is what was marked internally as a five-page
4 exhibit, LCB-1 through 5?

5 A. Yes.

6 Q. Do you have that in front of you?

7 A. Yes, I do.

8 Q. And has the entire document been marked as
9 Exhibit No. 28?

10 A. Yes.

11 Q. You also have in front of you what has been
12 marked as Exhibit No. 29, which is surrebuttal testimony
13 consisting of eight pages of questions and answers?

14 A. Yes.

15 Q. Do you have any changes to make to either
16 your direct testimony or your surrebuttal testimony at this
17 time?

18 A. Yes. I have some pages in my direct
19 testimony. I have some minor changes. Page 13 --

20 Q. So this is your Exhibit No. 28. Is that
21 correct?

22 A. Yes, sir.

23 Q. Would you read that slowly into the record?

24 A. Yes. Page 13, line 17, the words "of that
25 unit" should be stricken.

1 Line 23 between "factor" and "usage," the
2 word "historical" should be inserted. And the rest of the
3 sentence starting with "as follows" should be eliminated.

4 Then on page 14, the first three lines
5 should be crossed out. Those are all the changes I have.

6 Q. On page 14 down to and including line 4.
7 Is that correct?

8 A. Yeah. Line 4. You're correct.

9 Q. With those changes in your direct
10 testimony, if I were to ask you the questions set out
11 therein, would your answers under oath today be the same as
12 is contained therein?

13 A. Yes.

14 Q. Are there any changes to your Exhibit
15 No. 29, which you've identified as your surrebuttal?

16 A. No.

17 Q. If I were to ask you the questions that are
18 set out in your Exhibit No. 29 today under oath, would your
19 answers be the same as contained therein?

20 A. Yes.

21 MR. PHILLIPS: Your Honor, we would tender
22 Mr. Bernal for cross-examination and offer Exhibit 28 and
23 29.

24 ALJ DERQUE: Thank you, Mr. Phillips. I
25 have Exhibits No. 28 and 29 offered for admission into

1 evidence. Is there any objection?
2 (No response.)
3 ALJ DERQUE: Seeing none, they will be
4 admitted.
5 (EXHIBIT NOS. 28 AND 29 WERE RECEIVED IN
6 EVIDENCE.)
7 ALJ DERQUE: Mr. Mills?
8 MR. MILLS: No questions.
9 ALJ DERQUE: Trigen?
10 MR. SWENSON: Yes, your Honor. I think we
11 have one or two questions.
12 CROSS-EXAMINATION BY MR. SWENSON:
13 Q. Mr. Bernal, would you please turn to
14 page 6, line 3, of your surrebuttal testimony?
15 A. Okay.
16 Q. Do you see where you refer to the monthly
17 backup demand charge?
18 A. Yes.
19 Q. Would you expect the monthly backup demand
20 charge to be equal to the full service -- or full
21 requirements standard tariff for a similar size demand?
22 A. I would expect that if the customer uses
23 the amount of backup energy for every hour of the month, it
24 would be the same. Otherwise, it won't be.
25 Q. So if the energy is less, then the backup

1 demand charge would also be less. Is that correct?

2 A. Yes.

3 MR. SWENSON: I have no further questions,

4 your Honor.

5 ALJ DERQUE: Thank you, Mr. Swenson.

6 KCPL?

7 MS. CUNNINGHAM: Thank you.

8 CROSS-EXAMINATION BY MS. CUNNINGHAM:

9 Q. Mr. Bernal, in your direct testimony you

10 proposed a tariff for standby service. That's accurate,

11 isn't it?

12 A. Yes.

13 Q. And then you further modified this proposed

14 tariff with comments in your surrebuttal testimony. Is

15 that right?

16 A. Yes.

17 Q. Now, is it your opinion that your proposed

18 tariff -- including any comments that you might have added

19 in your surrebuttal testimony, is it your opinion that your

20 proposed tariff provides for all aspects of standby service

21 to a qualifying facility's customer?

22 A. I intended to.

23 Q. For example, there's no provision for the

24 sale of electricity to KCPL from the QF customer, is there?

25 A. That is correct, because that was not the

1 intent of it.

2 Q. Did you happen to take into account the
3 cost associated with the installation of any special
4 facilities by KCPL for that QF customer?

5 A. I would assume that if there are additional
6 costs, according to FERC regulation, it would be paid by
7 the customer.

8 MS. CUNNINGHAM: Okay. I have no further
9 questions.

10 ALJ DERQUE: Thank you. Mr. Woodsmall?

11 MR. WOODSMALL: Nothing, your Honor.

12 ALJ DERQUE: Chairman Zobrist?

13 CHAIRMAN ZOBRIST: None.

14 ALJ DERQUE: Is there any redirect?

15 MR. PHILLIPS: No redirect.

16 ALJ DERQUE: Thank you, Mr. Bernal.

17 (Witness excused.)

18

19 MR. PHILLIPS: We'll call Mr. Rosenstein as
20 our next witness, and there is one piece of testimony, your
21 Honor, rebuttal testimony.

22 ALJ DERQUE: That would be rebuttal of
23 Rosenstein, No. 30. Off the record.

24 (Off the record.)

25 (EXHIBIT NO. 30 WAS MARKED FOR

1 IDENTIFICATION.)

2 ALJ DERQUE: Back on the record. I have
3 what's marked as Exhibit No. 30, the rebuttal testimony of
4 David Rosenstein. Mr. Phillips?

5 I. DAVID ROSENSTEIN testified as follows:

6 DIRECT EXAMINATION BY MR. PHILLIPS:

7 Q. Yes. Mr. Rosenstein, would you please
8 state your name and business address for the record?

9 A. My name is David Rosenstein. My business
10 address is P. O. Box 429349, Cincinnati, Ohio.

11 Q. And by whom are you employed,
12 Mr. Rosenstein?

13 A. I'm employed by Lundberg, Marshall and
14 Associates, a public utility consulting firm.

15 Q. And have you been retained by Intervenor
16 DOE to provide rebuttal testimony in this case?

17 A. Yes, I have.

18 Q. And do you have in front of you what has
19 been marked for purposes of identification as Exhibit
20 No. 30?

21 A. Yes, I do.

22 Q. And is that prepared direct testimony which
23 is set out in question and answer form?

24 A. Yes, it is.

25 Q. Does it also contain an appendix,

1 Appendix A?

2 A. Yes, it does.

3 Q. Do you have any corrections or changes to
4 make to that testimony at this time?

5 A. Just one correction. On page 2, line 3
6 there is a word proceedings, but there appears to be a
7 stray comma and a space between the letter G and the letter
8 S. And that comma and space should be deleted.

9 Q. So just the word proceeding should appear
10 there?

11 A. That's correct.

12 Q. If I were to ask you today the questions
13 that are set out in that prepared direct testimony, which
14 is Exhibit No. 30, would your answers contained therein be
15 the same today under oath?

16 A. Yes, they would.

17 Q. Do you have anything you wish to add to
18 that testimony?

19 A. No, I don't.

20 MR. PHILLIPS: Your Honor, at this time we
21 would tender Mr. Rosenstein for cross-examination and offer
22 Exhibit 30.

23 ALJ DERQUE: Thank you, Mr. Phillips. I
24 have what's marked Exhibit No. 30, rebuttal testimony of
25 David Rosenstein. Is there any objection to its admission

1 into evidence?

2 (No response.)

3 ALJ DERQUE: Seeing none, it will be

4 admitted.

5 (EXHIBIT NO. 30 WAS RECEIVED IN EVIDENCE.)

6 ALJ DERQUE: Let's see. Mr. Mills?

7 MR. MILLS: No questions.

8 ALJ DERQUE: Trigen?

9 MR. SWENSON: Your Honor, I hope that

10 Rosenstein won't take it as a slight but rather a comment

11 that he will be the only witness we have no questions for.

12 ALJ DERQUE: I don't think he will take it

13 as a slight. Kansas City Power and Light?

14 MS. CUNNINGHAM: No questions.

15 MR. WOODSMALL: None, your Honor.

16 ALJ DERQUE: Chair Zobrist?

17 CHAIRMAN ZOBRIST: No.

18 ALJ DERQUE: Thank you, Mr. Rosenstein.

19 MR. PHILLIPS: That's all the witnesses we

20 intend to call today.

21 ALJ DERQUE: Thank you, Mr. Phillips.

22 Mr. Mills?

23 MR. MILLS: Yes. We have direct, rebuttal,

24 and surrebuttal, both non-proprietary and highly

25 confidential.

1 ALJ DERQUE: That will be 31, 32, 33, and
2 33HC. Off the record.
3 (Off the record.)
4 (EXHIBIT NOS. 31, 32, 33, AND 33HC WERE
5 MARKED FOR IDENTIFICATION.)
6 ALJ DERQUE: On the record. Mr. Mills?
7 MR. MILLS: Has he been sworn?
8 ALJ DERQUE: Have you called him yet?
9 MR. MILLS: I call him to the stand.
10 (Laughter.)
11 (Witness sworn.)
12 ALJ DERQUE: Thank you, sir. Have a seat.
13 THE WITNESS: Thank.
14 ALJ DERQUE: Mr. Mills?
15 RYAN KIND testified as follows:
16 DIRECT EXAMINATION BY MR. MILLS:
17 Q. Could you state your name for the record,
18 please?
19 A. My name is Ryan Kind.
20 Q. And by whom are you employed and in what
21 capacity?
22 A. I'm employed by the Missouri Office of the
23 Public Counsel as a chief public utility economist.
24 Q. Have you prepared and caused to be filed in
25 this case direct, rebuttal, and surrebuttal testimony,

1 including confidential pages of your surrebuttal testimony
2 that has all been marked as Exhibits 31 through 33HC?

3 A. Yes, I have.

4 Q. And are the answers in that testimony true
5 and correct to the best of your knowledge?

6 A. Yes, they are.

7 Q. Do you have any changes to make to that
8 testimony?

9 A. No, I do not.

10 Q. If I were to ask you the same questions
11 that are contained therein today, would your answers be the
12 same?

13 A. Yes.

14 MR. MILLS: With that, I will tender the
15 witness for cross-examination and offer Exhibits 31, 32,
16 33, and 33HC.

17 ALJ DERQUE: Is there any objection to the
18 admission into evidence of Exhibits 31 through 33HC?

19 (No response.)

20 ALJ DERQUE: Seeing none, they will be
21 admitted.

22 (EXHIBIT NOS. 31, 32, 33, AND 33HC WERE
23 RECEIVED IN EVIDENCE.)

24 ALJ DERQUE: Mr. Phillips?

25 MR. PHILLIPS: No questions.

1 ALJ DERQUE: Trigen?

2 MR. SWENSON: Yes, your Honor, we do have

3 probably one or two questions.

4 CROSS-EXAMINATION BY MR. SWENSON:

5 Q. Good afternoon, Mr. Kind.

6 A. Good afternoon.

7 Q. Would you please turn to page 7 of your

8 surrebuttal testimony?

9 A. Okay.

10 Q. Do you see in line 12 there's a question

11 with regard to whether Dr. Proctor's recommendations meet

12 your concerns?

13 A. Yes.

14 Q. And you say it would. Is that correct?

15 A. That's correct.

16 Q. What is your understanding of what happens

17 to the special contract that's already in existence should

18 the customer seek to renegotiate and fail to reach terms of

19 KCPL?

20 A. I had not contemplated that possibility,

21 and so it seems -- it may be a legal matter whether or not

22 a contract that they've already entered into would be

23 subject to the terms of this generic special contract

24 tariff. And I wouldn't have a good idea as to whether or

25 not it would be subject to the terms of this tariff.

1 Q. Well, what I'm asking is, would you be
2 satisfied with this one condition if KCP&L was entitled
3 just to say no when the customer came and asked to
4 renegotiate the contract?

5 A. Well, if by their saying no the special
6 contract customer had the right to terminate the contract,
7 then I wouldn't have a problem with that. In other words,
8 if KCPL said, no, I don't want to renegotiate the price
9 terms, if the customer had the right to say, well, fine,
10 then I guess I'm out of this contract, I wouldn't have a
11 problem with that. I'm not sure if that answered your
12 question.

13 Q. I think it -- what I'm really trying to get
14 at is, if they don't have that right, what's your testimony
15 with regard to that?

16 A. Then it's not a very effective provision
17 probably.

18 MR. SWENSON: No further questions, your
19 Honor.

20 ALJ DERQUE: Thank you, Mr. Swenson.
21 Kansas City Power and Light?

22 MS. CUNNINGHAM: Yes. Thank you.

23 CROSS-EXAMINATION BY MS. CUNNINGHAM:

24 Q. Good evening, Mr. Kind.

25 A. Good evening.

1 Q. I have several questions for you, and to
2 put my questions in context, I want to refer you to
3 Mr. Mills' opening statement yesterday morning, if you
4 recall that. And I think Mr. Mills did a very good job of
5 summarizing Public Counsel's main concerns with the special
6 contract tariff. And I can very briefly go through his
7 five points that he made in his opening statements, and we
8 can go from there.

9 He indicated that, first, that Public
10 Counsel desired a clarification to the facilities charge
11 language; secondly, that Public Counsel would be okay with
12 the special contracts tariff if there was a reasonable
13 contribution to fixed costs; third, that the tariff only
14 applied to customers with documented competitive
15 alternatives; fourth, that there be term limits; and,
16 fifth, documentation that the Company agreed to provide to
17 Staff also be provided to Public Counsel.

18 Is that your recollection of Mr. Mills'
19 opening statement yesterday?

20 A. Yes, it is. I had the impression that he
21 sort of missed one of the minor recommendations that was
22 made in my testimony, but he hit on all the major ones, I
23 think.

24 Q. That's fine. And I think what I'm going to
25 do to organize this cross-examination is just take those

1 five. And we'll talk about those, because I think there's
2 some areas that we can get cleared up in terms of what
3 previously might have been opposing positions on these
4 issues.

5 First of all, with regard to clarifying the
6 facilities charge, if I understand your concerns, you want
7 to ensure that if KCPL incurs some incremental costs to
8 provide additional facilities to serve a customer under the
9 special contracts tariff, that KCPL actually collects those
10 costs. Is that an accurate representation of your concerns
11 on that issue?

12 A. Yeah. I think that's right. I think I
13 address that in my surrebuttal testimony where I stated
14 that I supported Dr. Proctor's proposal on that subject.

15 Q. And if KCPL also were willing to adopt
16 Dr. Proctor's proposal on that issue, would that alleviate
17 your concerns?

18 A. Yes. That's what my testimony states, and
19 I -- as I just stated to my attorney, I am still standing
20 by all these statements.

21 Q. Okay. The second issue that Mr. Mills
22 mentioned in his opening statement yesterday is that you
23 wanted to -- Public Counsel wanted to ensure that special
24 contract customers are providing a reasonable contribution
25 to fixed costs. And were you in the hearing room when

1 Mr. Mills cross-examined Mr. Giles?

2 A. Yes, I was. And I definitely had some
3 concerns about his responses, in that he didn't seem to be
4 able to commit to ensuring that all the contracts entered
5 into, that each one would have a reasonable contribution
6 towards fixed costs. And that's a concern partly because I
7 think that's a standard that the Commission has set in the
8 natural gas area for flex rates, and I haven't heard -- and
9 I heard Mr. Giles saying that he thought that that standard
10 was very vague and that he didn't like the use of that
11 word. But I haven't heard any of our gas utilities
12 objecting to the Commission orders where they've made use
13 of that term reasonable contribution to fixed costs, and I
14 think it's a workable term.

15 Q. Well, let's -- before we go to what
16 Mr. Giles didn't say, let's go to what he did say first.
17 You heard him say emphatically many times, did you not,
18 that at no time KCPL would price below its marginal cost?
19 Do you recall him stating that in his cross-examination?

20 A. Yes, I do recall him making that statement.

21 Q. And did you -- do you also recall him
22 saying several times that KCPL intended to maximize the
23 customer's contribution to margin?

24 A. I heard him say that, although as I noted
25 in my testimony, I have reason to believe that that would

1 not necessarily be the case due to KCPL's long-run
2 strategic interest, which might interfere with pursuing
3 that objective. And those concerns of mine were described
4 on -- in my direct testimony beginning on page 6 at line 14
5 and continuing through page 7, line 7.

6 Q. Well, you -- I think I heard you say just
7 now that you had concerns with believing that KCPL would
8 actually carry out that intention of maximizing the
9 customer's contribution to margin, but isn't that exact
10 language contained in the tariff itself?

11 A. I'd have to look at the tariff really to
12 refresh my memory.

13 Q. Well, let's look at the tariff.

14 A. Okay.

15 Q. I believe it's on Sheet 29 under the
16 special provisions section.

17 A. Okay.

18 Q. Second full paragraph under pricing
19 methodology.

20 A. Uh-huh.

21 Q. And the last sentence in that paragraph --
22 correct me if I'm wrong -- reads "for newer contestable
23 customers" -- and for now we're not talking about whether
24 or not newer contestable customers are -- that's not an
25 issue for purposes of this cross-examination. But what it

1 says is, "For newer contestable customers the Company may
2 adjust the access charge and/or energy prices to maximize
3 the customer's expected contribution to margin without
4 exercise of undue price discrimination."

5 Do you see that there?

6 A. I do. I guess I'm not -- the language may
7 be a little unclear in that we're -- where the word "may"
8 appears, I'm not sure whether that pertains to both they
9 may adjust it or they may choose to maximize the
10 contribution.

11 Q. I think when we first started talking about
12 this issue, you made the statement that you were a little
13 concerned that Mr. Giles' response -- in that he failed to
14 commit to using the word "reasonable," that customers would
15 provide a -- that we would ensure that customers would
16 provide a reasonable contribution to the margin. Is that
17 what you stated earlier?

18 A. That's right. And I think that concern
19 arises from some things I mention in my testimony where
20 there's a possibility that the utility may, instead, get
21 little or no contribution to fixed costs for the purpose,
22 essentially, of erecting barriers to entry by, you know,
23 securing long-term contracts that would hinder competition
24 developing particularly for KCPL's largest customers.

25 Q. Well, I guess I'm confused. Let's take

1 what you just said, your concern that KCPL might recover
2 just a little bit or even no contribution to the -- are
3 you -- to the margin. Are you indicating that Mr. Giles
4 would lie on the stand when he says that at no time will we
5 not maximize the customer's contribution to our margin?

6 I can understand -- let me rephrase that.
7 I can understand that we may have a disagreement in terms
8 of what reasonable -- what a reasonable contribution is,
9 and I believe that Mr. Mills indicated quite clearly that
10 Office of the Public Counsel wanted something more than a
11 diminimous contribution to the margin.

12 A. Uh-huh.

13 Q. But I don't think KCPL at any time has ever
14 said that they would receive no contribution to the
15 margin. Is that what you heard or read somewhere? Is that
16 what you believe the Company will do?

17 A. Well, my concern is that it might be so
18 small as to be virtually nothing, and that it, in my mind,
19 would be essentially the same as nothing. But if I could
20 return to your earlier question --

21 Q. Sure.

22 A. -- about you were suggesting that I,
23 perhaps, thought that Mr. Giles might have been lying under
24 oath, and no. That is not the case.

25 Q. Okay.

1 A. Have no reason to believe that. What I do
2 have reason to believe, though, is that Mr. Giles, in
3 pursuing policies for your Company that will promote the
4 interests of your shareholders, that he may believe that
5 other constraints and other concerns in terms of provisions
6 that would go into the contract might be more important
7 than just the one concern of maximizing the contribution to
8 margin.

9 And those other concerns would be things
10 such as securing a contract with the greatest length
11 possible, and, you know, as some of the confidential
12 information in my testimony indicates, that that sort of
13 thing may be a concern. And I believe there may be a
14 trade-off between goals of achieving a contract with the
15 longest term possible and maximizing contribution to
16 margin.

17 And so Mr. Giles may have stated that he
18 intended to maximize contribution to margin, but given that
19 that other goal is there, I have some doubt whether -- what
20 in his mind is meant by maximizing contribution to margin
21 would be the same thing that I would see as being
22 maximizing contribution to margin.

23 Q. And if I could take a stab at summarizing
24 your position, you want to ensure that a reasonable
25 contribution to margin is made, and you would define

1 reasonable as something greater than a diminimous
2 contribution. Is that accurate?

3 A. That's right. Yeah. Some sort of a
4 contribution that would make the special contract tariff a
5 worthwhile interest -- instrument that actually promotes
6 the public interest in that it may -- in that it would help
7 to hold down rates for other customers not being served on
8 the special contract tariff.

9 Q. Okay. With regard to Public Counsel's
10 third concern with this special contracts tariff, you have
11 taken the position that the special contract tariff should
12 only apply to customers with documented competitive
13 alternatives. Is that accurate?

14 A. Documented competitive alternatives, and I
15 guess I would agree with the discussion that went on
16 earlier today, in that that also should be seen within the
17 constraints under the promotional practices rule.

18 Q. Okay. Let's look at that issue in two
19 parts. Let's first look at your documentation
20 requirement.

21 For ratemaking purposes, I can see where it
22 would be in the Company's best interest to have a high
23 level of documentation so as to not -- so as to fully
24 recover and not have any revenue under-recovered that would
25 impact our shareholders. If we didn't have that type of

1 documentation in the context of a rate case, the Company
2 would bear the risk. Would you agree with that?

3 A. I would agree, but in terms of your -- the
4 interest of KCPL in preserving documentation because it
5 would want to minimize the risk to shareholders of some
6 harm to their profitability, I think that that's -- that
7 would not be the only concern in terms of what might guide
8 KCPL in how it conducted its documentation. I think that
9 KCPL's shareholders would also probably be served by KCPL's
10 ability to pursue some barriers to competition through
11 long-term contracts.

12 And so I -- in general, you know, in my
13 investigation of various matters with utilities in terms of
14 what kind of documentation I'm able to find, I can't say
15 that there's necessarily any one particular interest that
16 lies behind how easily that documentation is to find and
17 how well that documentation actually illuminates the
18 motives that were behind what action a utility took.

19 Q. You've looked at our Schedule SCS, haven't
20 you?

21 A. Yes. I sure have.

22 Q. And you're familiar that on page 29 C or
23 what's the last page of that document, there is a section
24 called contract documentation. Are you aware generally of
25 that provision?

1 A. Yes. And I suppose Dr. Proctor has added
2 one -- suggested adding one point to that, and I think in
3 my testimony I also suggested changing something consistent
4 with Public Counsel's view that it should only be available
5 for customers that have competitive alternatives.

6 On page 10 of my direct testimony I made
7 the recommendation that item No. 2 in this contract
8 documentation section, which you've referred to, should --
9 that word says "customer alternatives," "the cost of
10 customer alternatives if available." My recommendation was
11 that the word "if available" should be deleted from this
12 documentation section.

13 Q. But even this document as it stands, absent
14 the changes that have been made in the various forms of
15 testimony and as we've talked the past couple of days,
16 there is a provision under contract documentation that does
17 indicate that, to the extent customers have alternatives,
18 if that documentation is available, we had agreed to
19 provide that, did we not?

20 A. That's correct. You know, unfortunately,
21 you don't always -- you're not necessarily setting up the
22 most ideal situation when you set up a situation that
23 requires regulatory oversight of minutia such as this,
24 because, despite best intentions in order to try and figure
25 out how to avoid future problems, it's just not necessarily

1 going to work. And we recently had an example of that in
2 the recent MGE rate case where the Company really had
3 virtually no documentation available.

4 Often it just depends on not so much what a
5 tariff like this may say, but it also has to do with really
6 the Company's willingness to, you know, really be vigilant
7 in providing that information to people who are trying to
8 figure out what the Company has done. And it just --
9 always in that simple matter of just writing it down,
10 here's everything we need, and voila, it happens when it
11 comes around to handling a rate case.

12 Q. Well, would you agree that that's not the
13 only piece of information or documentation that we agree to
14 provide to the Company? And then if you heard
15 cross-examination to Public Counsel also, that's just one
16 piece of the documentation that we agreed to provide to
17 both Staff and Public Counsel. Would you agree with that?

18 A. The one piece being item No. 2 or --

19 Q. Well, I see seven items listed there.

20 A. Yeah. I didn't know which one piece you
21 were referring to.

22 Q. I'm sorry. Right. There is more than one
23 item of documentation that we agreed to provide?

24 A. That's right. And, you know, I think it
25 is -- this is a good attempt at trying to get this kind of

1 documentation. I'm just saying that I've seen other good
2 attempts at these type of things in the past, and they just
3 aren't foolproof. You know, I hope this works as it's
4 intended.

5 And I have -- I have to say that my support
6 of this tariff, subject to the recommendations that I have
7 made, has, in large part, been influenced by the Company's
8 willingness to have this detailed documentation in here.
9 But despite that support, because of this, I'm still a
10 little uneasy about the situation.

11 Q. And with regard to those other good
12 attempts that you've talked about with other companies, are
13 you aware that they were under any tariff obligation to
14 provide that documentation to you?

15 A. I'm not sure if it would be specifically
16 tariff obligation. Sometimes it's just a matter of other
17 obligations, say, pursuant to data requests.

18 I could bring up the unfortunate example of
19 a letter that I sent to KCPL two or three months ago
20 requesting some information relevant to an IRP document --
21 IRP docket that is still open, and I have yet to hear
22 either a response or a reason why I haven't gotten a
23 response. And my letter was -- it was not just saying
24 please provide me some information. The letter was saying
25 please provide some information that you were ordered by

1 the Commission to provide after certain triggers went into
2 effect.

3 And part of my concern with this is that,
4 even if ideally this kind of thing would work out, I don't
5 have the resources or time to follow through on all of
6 these things. I don't have -- we don't have enough people
7 in our office with the resources or time to follow through
8 on this.

9 Q. Thank you. That's fine. Let's move to the
10 second part of that concern that Public Counsel has, and
11 that is your opinion that KCPL should only be allowed to
12 enter into special contracts with customers that have
13 competitive alternatives. Is that your testimony?

14 A. Right. And as I stated, you know, a little
15 while ago, that subject to the limitations under the
16 promotional practice rule.

17 Q. Right.

18 A. Competitive alternatives, we would be
19 willing to --

20 Q. The position you've taken in this case,
21 that's also consistent with your position that the Office
22 of Public Counsel took in OE-95-181, isn't it?

23 A. I think it's fairly consistent, although I
24 was not the Public Counsel witness in that case. And I
25 really -- I haven't -- I didn't -- for instance, I didn't

1 rely on our testimony that we -- the other Public Counsel
2 witness, Mr. Barry Hall, had filed in that case to write my
3 testimony for this case. I just didn't have time to read
4 it. I wish I had.

5 So if it's consistent, it's sort of just by
6 chance, because my own independent analysis came up with
7 some of the same problems that a previous Public Counsel
8 witness came up with.

9 Q. Well, for someone who didn't read the
10 testimony, it's surprisingly almost identical, so you two
11 must be on the same wavelength at least.

12 Are you aware, though, generally in that
13 case that the Commission addressed not only customers that
14 have competitive alternatives, but customers also that have
15 unique circumstances or what I think Staff has called in
16 this case special needs?

17 A. I'm sorry. Could you repeat that please?

18 Q. Are you aware that in EO-95-181 that the
19 Commission not only addressed the applicability of entering
20 into special contracts for customers with competitive
21 alternatives, but also entering into special contracts for
22 customers that have such unique characteristics that they
23 can't really be served adequately under our standard
24 tariffs or what we've been calling in this case special
25 needs customers?

1 A. Well, I'm not sure if I would agree to
2 address that. I think it's important to distinguish that I
3 think the way that -- if that was addressed by the
4 Commission in a previous case, it was addressed on a
5 case-by-case customer for specific contracts that were
6 under consideration, and in this case it's being addressed
7 in a more generic sense. And I think that's a very
8 important distinction.

9 Q. Do you happen to have available to you
10 what's been marked Exhibit No. 7, that Trigen offer? And
11 it's the report and order in case No. EO-95-181?

12 A. Yes, I do.

13 Q. Would you turn to page 12 of that order,
14 please?

15 A. Okay.

16 Q. Okay. I'm going to be reading from the
17 first full paragraph and including the second paragraph.
18 And in that order -- this is going right along with your
19 point that, you know, the Commission was considering this
20 on a case-by-case basis.

21 The Commission in their order in that case
22 says, "The Commission, as cited by Staff, has approved
23 special contracts for KCPL in the past as well as for other
24 utilities under its jurisdiction, including Trigen-Kansas
25 City. The approval of these contracts may not be

1 determinative, but it does indicate a history of
2 recognizing the need for flexible pricing provisions where
3 exigent circumstances exist.

4 "The Commission concludes that where a
5 unique class of customer takes service under a tariff which
6 allows rates to be set by special contract, the contract
7 and tariff are lawful where the terms and conditions of the
8 contract are offered to similarly situated customers.

9 "The Commission concludes further that
10 flexible rates are lawful where, as here, the floor for
11 each contract is established and all customers are subject
12 to the same calculation of the rates to be charged under
13 the special contract. The specific rate paid by the
14 customer will not be set in the tariffs since each customer
15 will have different costs and, therefore, pay a different
16 rate or combination of rates. This does not make the rates
17 unduly discriminatory where the conditions of taking
18 service are the same. This flexibility is essential in the
19 modern environment for providing electric service where
20 customers have unique production needs for energy.

21 "As stated by Staff witness Proctor, as
22 long as the incremental costs of providing service are
23 covered by the pricing in the special contract and provides
24 some contribution to fix costs, the utility's customers
25 benefit from the customer remaining on the system. Pricing

1 flexibility for customers who meet the conditions of the
2 tariff will allow KCPL to retain these customers."

3 Did I recite that accurately?

4 A. Yes, you did. I'm not sure how it's
5 relevant to things we've been discussing, but --

6 Q. Well, did the Commission not indicate that
7 it concludes that where a unique class of customer takes
8 service under a tariff which allows rates to be set by a
9 special contract, the contract and tariff are lawful where
10 the terms of contract are offered to similarly situated
11 customers? Do you see that in there?

12 A. Yeah. And I guess there's something here
13 about unique needs of customers, that it may be in the
14 public interest to have special contracts in certain
15 circumstances for customers that have unique needs.

16 But I guess the thing that I have disagreed
17 about with respect to including that in this generic
18 special contract tariff is that there -- it's never been
19 demonstrated to me that serving special -- serving
20 customers with unique needs is something that arises very
21 often for KCPL. In fact, I think that you currently have
22 two customers with unique needs, and Mr. Giles testified
23 yesterday that he was not aware of any customers that have
24 had unique needs in, you know, in recent history where you
25 needed this kind of tariff.

1 And I think it makes a lot more sense
2 for -- when circumstances like that are that unusual and
3 when the pricing arrangements can have such a significant
4 impact on other ratepayers, it makes a lot of sense to just
5 address those on a case-by-case basis.

6 I'm not saying there is no need to ever
7 have a special contract for customers with unique needs.
8 What I am saying is that there is no need to have that as
9 part of this tariff.

10 Q. Thank you, Mr. Kind. Let's move on to the
11 fourth concern that was expressed by Mr. Mills in his
12 opening statement yesterday, and that had to do with
13 limiting the terms of contracts to not more than five
14 years. Do you recall that statement? And I believe that's
15 part of your testimony.

16 A. Yeah. I'm not sure that that's how he put
17 it, was just limiting it to not more than five years.
18 We've also supported this market-out language that
19 Dr. Proctor has proposed.

20 Q. Well, let's talk about market-out language
21 for just a minute. Is it your understanding that the way
22 that that would work is that there would be some sort of
23 market-out clause contained within the contract that we
24 might enter into with a particular customer?

25 A. My understanding is that --

1 Q. Or let me even rephrase that. Whether it's
2 your understanding, what is your recommendation with how
3 that would work?

4 A. Okay. I think I probably answered this
5 question already in response to Trigen's attorney, is that
6 I felt that if it was an optional thing for KCPL to include
7 a market-out in its contract with special contract
8 customers, that it would not be an effective mechanism for
9 reducing KCPL's ability to create barriers to entry and
10 that my recommendation is that it would be -- the tariff
11 would state that all contracts that were entered into
12 pursuant to this special contract tariff would include a
13 market-out provision that allowed special contract
14 customers the option to get out of the contract if, after
15 retail wheeling became a reality, a special contract
16 customer and KCPL were not able to come to satisfactory
17 agreement on pricing terms.

18 And the importance of that recommendation,
19 I think, has to do with what I've referred to earlier as
20 there being some kind of a trade-off probably in terms of
21 the interests of KCPL's management and shareholders between
22 what level of discount would be granted to customers and
23 the length of contract term that would go along with the
24 level of discount.

25 Q. What if the customer wanted a multi-year

1 contract of something more than five years in exchange for
2 locking in a particular rate? What if the customer itself
3 wanted that? Do you have a problem with that?

4 A. I think that I probably would, because that
5 gives KCPL the wrong incentive in terms of that trade-off
6 between length of contract and getting a decent
7 contribution to margin. I'm concerned that, by giving KCPL
8 the flexibility to enter into contracts that are longer
9 than five years, we're giving KCPL the incentive to agree
10 on pricing terms that provide very little contribution to
11 margin and, therefore, essentially turn this whole special
12 contract tariff into a sham in that it does not promote the
13 public interest by doing something for other ratepayers by
14 helping to ensure there's some contribution to covering
15 fixed costs.

16 Q. To the extent that a customer would leave
17 KCPL's system down the road with the advent of retail open
18 access, how are KCPL's customers being benefited by that
19 loss of load?

20 A. Could you repeat that, please?

21 Q. When we're -- you just made a statement
22 that talked about benefits that might accrue to customers.
23 I'm asking you, how are KCPL's customers benefited by a
24 customer -- how are KCPL's other customers being benefited
25 by a customer with a large load leaving the system as a

1 result of the advent of retail open access?

2 A. Well, that sort of raises a whole larger
3 issue of dynamic efficiency versus static efficiency in
4 terms of, you know, the benefits of moving towards retail
5 competition if there are some benefits, which I'm not
6 convinced that there really are in a particular situation
7 here in Missouri, but things will probably move on
8 regardless of my opinion on those things.

9 But anyway, it's -- if there are to be some
10 benefits from competition, there have to be -- there has to
11 be a really big risk and effective competition to move
12 prices down towards marginal costs. And whenever you've
13 got people who have prior commitments to a long-term
14 contract, there's going to be less competition to move
15 pricing that results in a competitive market down to
16 long-run marginal cost.

17 I mean -- and just an example of that is
18 that there will be less likelihood for potential
19 competitors to want to enter this market if a lot of the
20 best customers are already sewn up by KCPL. And if we have
21 fewer competitors entering the market, then I don't think
22 we're -- you know, there's a good possibility that whatever
23 benefits people expect to get from competition, they're
24 either not going to accrue, or they're going to take a lot
25 longer to accrue than they would otherwise.

1 Q. With regard to Public Counsel's position on
2 the length of the term of a contract, let me make -- let me
3 summarize and make sure that I understand your position.

4 In your written testimony, you indicated
5 that these contracts should not exceed five years.
6 However, you do provide the caveat that we've talked about
7 today, that to the extent there's a market-out clause, you
8 would be willing to entertain contracts of a longer
9 duration. Does that summarize your position?

10 A. No. I never suggested that, under any
11 circumstances, that contracts of a longer duration should
12 be considered. I don't know that --

13 Q. I said with the caveat that there's a
14 market-out clause. Isn't that what you said? To the
15 extent that there's a market-out clause that could be
16 pulled into play at the time of retail open access, you
17 wouldn't care maybe how long the term of the contract was
18 as long as that customer had the opportunity to
19 renegotiate, if there was a market-out clause at the advent
20 of retail open access. Isn't that what you just said a few
21 minutes ago?

22 A. No. I don't know -- really did not intend
23 to say that. I would -- I may have somehow stated that it
24 would give me less concern, but it would still be a
25 concern.

1 And I have no reason to believe that these
2 large customers that KCPL is desiring to enter into
3 large -- into special contracts with won't have an
4 alternate -- the choice of an alternate supplier in five
5 years. And so -- I don't know. I don't know I would
6 contemplate things beyond the five-year period.

7 Q. Well, I think I'll handle that when I get
8 to see the transcript again. So let's move on to the fifth
9 point, and I think we can handle this pretty quickly.

10 You had simply requested at some point that
11 Office of the Public Counsel be provided the same contract
12 documentation that we had agreed to provide to the Staff.
13 Is that right?

14 A. That's right. And it's my understanding
15 that the KCPL has made the commitment to do that. I think
16 I at least heard that in opening arguments yesterday and
17 probably appeared in Mr. Giles' testimony.

18 MS. CUNNINGHAM: That's fine. Thank you.
19 I don't have any other questions for this witness.

20 ALJ DERQUE: Mr. Woodsmall?

21 MR. WOODSMALL: No, your Honor.

22 ALJ DERQUE: Redirect, Mr. Mills?

23 MR. MILLS: Just a few brief questions.

24 REDIRECT EXAMINATION BY MR. MILLS:

25 Q. Mr. Kind, in response to the question about

1 maximizing the contribution to margin, isn't it possible
2 that KCPL could, from its perspective, maximize the
3 contribution to margin that it can get from a particular
4 customer and still have that contribution be diminimous?

5 A. Oh, certainly. Yes.

6 Q. Okay. Now, you had some discussion about
7 what Mr. Giles testified to yesterday. Is it your
8 recollection that he not only was not willing to commit to
9 the term reasonable, but that he also balked at significant
10 and diminimous?

11 A. That's true. I don't recall him -- all I
12 can really recall him ever agreeing to was some
13 contribution, and I recall the repeated attempts of you to
14 try to get him to state whether he could use any of these
15 words to describe a contribution, and I don't recall him
16 ever agreeing to them.

17 Q. So it wasn't just the word reasonable?

18 A. No, it was not.

19 Q. It was anything in that nature?

20 A. Yes.

21 Q. Finally, the last -- second to last series
22 of questions was about the term limits on contracts, and I
23 think there may have been some confusion either on the part
24 of the questionee or the questioner about what was said.

25 Is it your position that with a market-out

1 clause we would support allowing KCPL to have contracts in
2 excess of five years?

3 A. No, it's not.

4 MR. MILLS: Okay. That's all the questions
5 I have.

6 ALJ DERQUE: Thank you, Mr. Mills. Thank
7 you, Mr. Kind. You may step down.

8 (Witness excused.)

9 _____
10 ALJ DERQUE: Is there anything else we need
11 to deal with on the record?

12 MR. RIGGINS: Briefs, your Honor.

13 ALJ DERQUE: I do that off the record.

14 MR. MILLS: No. I don't believe so.

15 ALJ DERQUE: If there's nothing else, the
16 on-the-record portion of this hearing will be terminated.
17 We're off the record.

18 WHEREUPON, the hearing and oral argument of
19 this case was concluded.

20 _____

21

22

23

24

25

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

I N D E X

Page

KCPL EVIDENCE:

J. DAVID GLYER	
Cross-Examination (Continued) by Mr. Swenson	194
Redirect Examination by Mr. Riggins	213

STAFF'S EVIDENCE:

MICHAEL S. PROCTOR	
Direct Examination by Mr. Woodsmall	216
Cross-Examination by Ms. Cunningham	217
Cross-Examination by Mr. Mills	225
Cross-Examination by Mr. Phillips	238
Cross-Examination by Mr. Swenson	251
Cross-Examination by Mr. French	277
Redirect Examination by Mr. Woodsmall	292

JAMES C. WATKINS	
Direct Examination by Mr. Woodsmall	295
Cross-Examination by Mr. Swenson	297
Redirect Examination by Mr. Woodsmall	331

DANIEL I. BECK	
Direct Examination by Mr. Woodsmall	334
Cross-Examination by Mr. Swenson	336

RANDY L. FLOWERS	
Direct Examination by Mr. Woodsmall	337
Cross-Examination by Mr. French	339

TRIGEN-KANSAS CITY'S EVIDENCE:

PHILIP B. THOMPSON	
Direct Examination by Mr. French	341
Cross-Examination by Mr. Riggins	342
Redirect Examination by Mr. French	352

ROY J. SHANKER	
Direct Examination by Mr. French	358
Cross-Examination by Mr. Riggins	359
Questions by Chairman Zobrist	390
Redirect Examination by Mr. Swenson	395

1	DEPARTMENT OF ENERGY'S EVIDENCE:	
2	LUIS C. BERNAL	
	Direct Examination by Mr. Phillips	406
3	Cross-Examination by Mr. Swenson	409
	Cross-Examination by Ms. Cunningham	410
4		
	I. DAVID ROSENSTEIN	
5	Direct Examination by Mr. Phillips	412
6		
	OPC'S EVIDENCE:	
7		
	RYAN KIND	
8	Direct Examination by Mr. Mills	415
	Cross-Examination by Mr. Swenson	417
9	Cross-Examination by Ms. Cunningham	418
	Redirect Examination by Mr. Mills	441
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	E X H I B I T S		
2		Marked	Rec'd
3	EXHIBIT NO. 14HC		
4	Letter to Mr. French from Charles		
5	Locke, dated 4-3-97, and		
6	Attachment, Highly Confidential	211	213
7	EXHIBIT NO. 15		
8	Prepared Direct Testimony of		
9	Michael S. Proctor	215	217
10	EXHIBIT NO. 16		
11	Prepared Rebuttal Testimony of		
12	Michael S. Proctor	215	217
13	EXHIBIT NO. 17		
14	Prepared Surrebuttal Testimony of		
15	Michael S. Proctor	215	217
16	EXHIBIT NO. 18		
17	Prepared Direct Testimony of		
18	James C. Watkins	294	297
19	EXHIBIT NO. 19		
20	Prepared Rebuttal Testimony of		
21	James C. Watkins	294	297
22	EXHIBIT NO. 20		
23	Prepared Surrebuttal Testimony of		
24	James C. Watkins	294	297
25	EXHIBIT NO. 21		
26	Prepared Direct Testimony of		
27	Daniel I. Beck	334	335
28	EXHIBIT NO. 22		
29	Prepared Direct Testimony of		
30	Randy L. Flowers	337	339
31	EXHIBIT NO. 23		
32	Prepared Rebuttal Testimony of		
33	Philip B. Thompson	340	342
34	EXHIBIT NO. 24		
35	Prepared Surrebuttal Testimony of		
36	Philip B. Thompson	340	342

1	EXHIBIT NO. 25		
2	Prepared Direct Testimony of		
	Roy J. Shanker	357	359
3	EXHIBIT NO. 26		
4	Prepared Rebuttal Testimony of		
	Roy J. Shanker	357	359
5	EXHIBIT NO. 27		
6	Prepared Surrebuttal Testimony of		
	Roy J. Shanker	357	359
7	EXHIBIT NO. 28		
8	Prepared Direct Testimony of		
	Luis C. Bernal	405	409
9	EXHIBIT NO. 29		
10	Prepared Surrebuttal Testimony of		
	Luis C. Bernal	405	409
11	EXHIBIT NO. 30		
12	Prepared Rebuttal Testimony of		
	I. David Rosenstein	411	414
13	EXHIBIT NO. 31		
14	Prepared Direct Testimony of		
	Ryan Kind	415	416
15	EXHIBIT NO. 32		
16	Prepared Rebuttal Testimony of		
	Ryan Kind	415	416
17	EXHIBIT NO. 33		
18	Prepared Surrebuttal Testimony		
	of Ryan Kind	415	416
19	EXHIBIT NO. 33HC		
20	Prepared Surrebuttal Testimony of		
	Ryan Kind, Highly Confidential	415	416
21			
22			
23			
24			
25			