

OFFICIAL CASE FILE  
MISSOURI PUBLIC SERVICE COMMISSION

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

CROSS-EXAMINATION AND ORAL ARGUMENT

TRANSCRIPT

FILED

OFFICIAL CASE FILE  
MISSOURI PUBLIC SERVICE COMMISSION

FEB 01 1990

CASE NO. : HM-90-4 PUBLIC SERVICE COMMISSION

In the matter of the application of **KANSAS CITY POWER & LIGHT COMPANY** for authority to sell its downtown Kansas City, Missouri, central station steam heat distribution system, and for the revocation of its certificate of public convenience and necessity to provide steam heat service.

CASE NO. : HA-90-5

In the matter of the application of **TRIGEN-KANSAS CITY DISTRICT ENERGY CORPORATION** for permission, approval, and a certificate of public convenience and necessity authorizing it to acquire, own, operate, control, manage, and maintain a steam heat distribution system to provide steam heat service, and for approval of its rates and rules and regulations to steam heat service.

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DATE : DECEMBER 19 AND 21, 1989

PAGES : 1 TO 154d, INCLUSIVE (INDEX: 154a-154d)

VOLUME NO.: ONE

*Missouri Public Service Commission*

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

At a Hearing and Oral Argument of  
the Public Service Commission,  
held at Jefferson City, Missouri,  
on the 19th and 21st days of  
December, . . . . . 1989.

C O N S O L I D A T E D   R E C O R D

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manage, and maintain a steam heat  
distribution system to provide steam  
heat service, and for approval of its  
rates and rules and regulations to  
steam heat service.

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**APPEARANCES:**

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**FOR: Kansas City Power & Light Company.**

**JEREMIAH D. FINNEGAN, Attorney at Law**  
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**and**

**GEORGE E. RIDER, Attorney at Law**  
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**FOR: Trigen-Kansas City District  
Energy Corporation.**

**GARY W. DUFFY, Attorney at Law**  
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Jefferson City, Missouri 65102-0456

**and**

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**FOR: The Kansas Power and Light Company.**

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**FOR: State of Missouri.**

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2 P.O. Box 7800  
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4 FOR: Office of the Public Counsel  
5 and the Public.

6 MARY ANN YOUNG, General Counsel  
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9 FOR: Staff of the Missouri Public  
10 Service Commission.  
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*Missouri Public Service Commission*

1 **BEFORE:**

2 C. GENE FEE, Presiding,  
3 CHIEF HEARING EXAMINER.  
4 WILLIAM D. STEINMEIER, Chairman,  
5 ALLAN G. MUELLER,  
6 JAMES M. FISCHER,  
7 COMMISSIONERS.  
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21 **REPORTED BY:**

22 ERIN C. HARRISON  
23 GINGER R. METTERNICH, RPR

24 **PROOFREAD BY:**

25 BARBARA A. SKALLA, CCR

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(Written Entries of Appearance filed.)

At this time will counsel make their entries of appearance, both written and oral.

MR. FINNEGAN: On behalf of Trigen,  
Jeremiah D. Finnegan, 4049 Pennsylvania, Suite 300,  
Kansas City, Missouri 64111.

MR. RIDER: Also, George Rider on behalf of Trigen-Kansas City, 1700 Bryant Building, Kansas City, Missouri.

MS. YOUNG: Mary Ann Young, P.O. Box 360,  
Jefferson City, Missouri 65102, appearing on behalf of the  
Staff of the Missouri Public Service Commission.

MR. MILLS: Lewis R. Mills, Jr., appearing on behalf of the Public Counsel and the public, P.O. Box 7800, Jefferson City, Missouri 65102.

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1 MR. DUFFY: Michael C. Pendergast and  
2 Gary Duffy, appearing for The Kansas Power and Light  
3 Company, KPL-Gas Service.

4 Mr. Pendergast's address is P.O. Box 889,  
5 Topeka, Kansas 66601. My address is Hawkins, Brydon,  
6 Swearengen & England, P.C., P.O. Box 456, Jefferson City,  
7 Missouri 65102.

8 MR. KELLY: William C. Kelly, Post Office  
9 Box 899, Jefferson City, Missouri 65102, appearing for the  
10 State of Missouri.

11 EXAMINER FEE: Mr. English.

12 MR. ENGLISH: Thank you, your Honor. This  
13 morning, pursuant to your request, the parties met and have  
14 agreed to a stipulation of certain facts and the framing of  
15 the few issues that are remaining before us in this  
16 proceeding.

17 The parties have asked that I have--that I  
18 recite the stipulation into the record; and after I have  
19 done so, the parties will have an opportunity either to  
20 concur or to object to any misstatement that I might have  
21 made.

22 The parties agree that KCPL's application to  
23 sell its downtown Kansas City steam distribution system, to  
24 transfer 5,955 tons of sulfur dioxide credits to Trigen, and  
25 to enter into the arrangements and transactions on the terms

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1 and conditions contained in the sales documentation which  
2 has heretofore been filed with the Commission is reasonable  
3 with one exception, which I will note below. And no party  
4 has any other objection in that matter.

5 Trigen's application for a Certificate of  
6 Public Convenience and Necessity and Trigen's filed rates  
7 and rules are--with only the exceptions that I will note  
8 below, are reasonable. And no party has any other objection  
9 to those items.

10 No party contests Trigen's qualifications to  
11 provide public utility steam service, and the parties agree  
12 that Trigen should be granted the requested certificate.

13 The exceptions that I have noted are as  
14 follows: KPL and Staff object to the automatic adjustment  
15 clauses contained in Section 7 of the steam service  
16 agreement between KCPL and Trigen. KCPL and Trigen support  
17 those clauses in Section 7, and, indeed, the entire proposed  
18 steam service agreement. I believe that KCPL (sic) and  
19 Staff also have a general objection to any sort of automatic  
20 adjustment clauses in contract rates--or in contracts that  
21 Trigen may enter into.

22 With regard to the objections of KPL-Gas  
23 Service set forth in its letter of December 14, 1989, KPL  
24 has agreed to remove Objections 1, 2, 3, and 5, based upon  
25 the agreed modifications of Trigen's proposed rates and

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1 rules and regulations as stated below.

2 This stipulation has been entered for the  
3 purposes of expediting resolution of the instant issues in  
4 this proceeding. And Trigen has specifically reserved the  
5 right, at such time as it chooses, to ask the Commission to  
6 consider alternative rates for process users of steam, to  
7 consider individual contracts that Trigen may propose for  
8 the long term for process users of steam or with customers  
9 outside of Trigen's certificated service area, and to bring  
10 before the Commission the issue of whether Trigen may enter  
11 into long-term contracts or contracts with customers outside  
12 of its certificated service area on an unregulated basis.

13 Trigen has agreed that it will not deliver  
14 steam service outside of its certificated service area or at  
15 rates other than its approved tariff rates unless the  
16 Commission gives its prior approval to specific contracts  
17 under which such sales will occur, approves additional  
18 tariff rates or a revised service area for such sales, or  
19 determines that sales of the specific type contemplated may  
20 be made by Trigen on an unregulated basis.

21 Based upon the foregoing conditions,  
22 Trigen's rates will be modified as follows: One, Sheet  
23 No. 2, Section II (A) will be modified by deleting the words  
24 ". . . and for whom the dominant use of steam is not for a  
25 process load . . . ." Two, Sheet Nos. 3 and 4, Section III,

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1 will be deleted. Three, Sheet No. 4, Section IV, will be  
2 deleted.

3 And the rules and regulations will be  
4 modified as follows: The second sentence in Section 3.7 on  
5 Sheet 12 will be revised to read as follows, "The Company  
6 shall not be obligated to supply steam service to a Customer  
7 for a portion of the steam and heating requirements of the  
8 Customer, but may, at its discretion, provide service at  
9 applicable tariff rates."

10 The parties have not stipulated to a  
11 resolution of Objection No. 4 raised by KPL-Gas Service and  
12 as the same issue may appear in the revised version of  
13 Section 3.7 of Trigen-Kansas City's rules. And such matter  
14 does remain at issue.

15 Your Honor, at this time I would ask the  
16 parties to state either their concurrence or their  
17 reservations to what I have stated.

18 MR. FINNEGAN: I think--with one exception  
19 here. I think you said KCP&L and Staff have objections, and  
20 you meant KPL.

21 MR. ENGLISH: KPL.

22 MR. FINNEGAN: If he did say that, he meant  
23 KPL.

24 MR. ENGLISH: Thank you, Mr. Finnegan.

25 MS. YOUNG: One additional item. I believe



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1 it was covered in general but, to state specifically, that  
2 the Staff has discontinued its first option proposal in  
3 terms of rates and is now proposing that the rates as  
4 contained in the proposed tariffs be approved by the  
5 Commission.

6 MR. MILLS: I concur in that stipulation.

7 MR. DUFFY: I believe the stipulation fairly  
8 represents KPL's position. Just to clarify, KPL is opposed  
9 to any treatment of--or approval by the Commission of any  
10 contract in this docket that has not been finally presented  
11 to the Commission, and I don't know whether that's going to  
12 happen or not.

13 There's a revised National Starch contract.  
14 We haven't seen it, and so we don't want the Commission to  
15 understand that we're giving approval to some contract that  
16 we haven't seen or had an opportunity to comment on yet.

17 The second aspect would be that as far as  
18 the issue that has been specifically reserved for Commission  
19 resolution in this docket, that being Item No. 4 in  
20 Mr. Pendergast's letter, it would be KPL's position that if  
21 the Commission intends to issue an Order in this case on an  
22 expedited basis in order to allow approval within the next  
23 week or two weeks, then KPL would request the permission to  
24 file a short letter brief with the Commission addressing  
25 this specific issue. KPL would probably be prepared to do

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1 that by the end of this week or something, in that time  
2 frame.

3 If it's the Commission's intention to take a  
4 longer period of time, then obviously we could deal with  
5 whatever schedule for briefing that particular issue would  
6 please the Commission. Other than that, we support the  
7 stipulation.

8 EXAMINER FEE: Mr. Kelly.

9 MR. KELLY: I concur.

10 EXAMINER FEE: Does Kansas City Power &  
11 Light now have a witness to call?

12 MR. ENGLISH: Yes, your Honor. KCPL would  
13 call Mr. Louis C. Rasmussen to the stand.

14 (Witness sworn.)

15  
16 LOUIS C. RASMUSSEN testified as follows:

17 DIRECT EXAMINATION BY MR. ENGLISH:

18 Q. Would you please state your name and by whom  
19 you are employed.

20 A. My name is Louis C. Rasmussen, and I am  
21 employed by Kansas City Power & Light Company.

22 Q. In what capacity do you serve Kansas City  
23 Power & Light?

24 A. I'm Vice Chairman and a member of the Board  
25 of Directors.

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1 Q. Have you been involved in the negotiation of  
2 the central station steam distribution system sales  
3 agreement and the ancillary documents, including the steam  
4 service agreement, which have been filed with this  
5 Commission?

6 A. Yes, I have.

7 Q. Do you recommend that the Commission  
8 approve, as presented, these documents?

9 A. I do.

10 Q. Are you aware that KPL and the Staff object  
11 to the automatic adjustment clauses contained in Section 7  
12 of the steam service agreement?

13 A. That is my understanding.

14 Q. Do you have any objection to the terms and  
15 conditions in that section?

16 A. No, I do not.

17 Q. Do you believe that they are just and  
18 reasonable as pertaining to Kansas City Power & Light  
19 Company?

20 A. Yes. The terms and conditions of the steam  
21 service agreement, after rather extensive negotiations, are  
22 in our judgment, my own judgment, just and reasonable and in  
23 the best interests of the ratepayers of Kansas City Power &  
24 Light Company.

25 MR. ENGLISH: Thank you, Mr. Rasmussen.

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1                   Your Honor, in view of the stipulation, that  
2 is the only issue that pertains to KCPL's application and  
3 the sales documentation. And with that, I would tender  
4 Mr. Rasmussen for cross-examination.

5                   EXAMINER FEE: Mr. Finnegan, do you have any  
6 questions?

7 CROSS-EXAMINATION BY MR. FINNEGAN:

8                   Q.     It's my understanding that the contract that  
9 we're referring to, the steam service agreement--is that the  
10 correct terminology?

11                  A.     That's correct. It's known as Exhibit 12.

12                  Q.     --contains adjustment clauses; is that  
13 correct?

14                  A.     That's correct.

15                  Q.     And this is to last for a period of five  
16 years?

17                  A.     That's correct.

18                  Q.     And you indicated that you felt that this  
19 was in the best interests of the ratepayers of Kansas City  
20 Power & Light?

21                  A.     Yes, I did.

22                  Q.     Would you have entered into such an  
23 agreement without an adjustment clause in it?

24                  A.     I doubt it very much if we would have.  
25 However, when one considers the overall terms and conditions

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1 of this service agreement and the fact that we were making  
2 our very best efforts to comply with the Commission's Order  
3 for a good faith effort to sell, I felt that these were the  
4 very best terms for our company and also for the ratepayer.

5 Q. With this agreement, are you able to plan  
6 the use of the Grand Avenue Station into your mix of  
7 electrical needs?

8 A. Exactly. The purpose of this steam service  
9 agreement is for us to have a supply of steam for  
10 utilization in the production of what I would call "peak  
11 service generation." Basically, that type of source of fuel  
12 has to compete with not only our in-house generation  
13 capabilities, but also in the interchange market. So that  
14 basically from the point of view of Kansas City Power &  
15 Light Company, we were interested in a supply of energy--in  
16 this case, it happens to be steam purchased from  
17 Trigen--that would permit the most efficient, economical use  
18 of the existing generation capability at Grand Avenue  
19 Station.

20 Q. Without such a contract, the capabilities of  
21 generating electricity at Grand Avenue Station would be  
22 nonexistent?

23 A. I would not say that it would be  
24 nonexistent. Only in the sense that if steam is not  
25 available, there's no way to produce electric power at Grand

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1 Avenue Station. But assuming that steam was available, then  
2 the terms and conditions under which that steam is purchased  
3 would influence the all startup order for our own electric  
4 generation and also, of course, what we buy and even  
5 possibly sell in the interchange market.

6 Q. Can you today predict the fuel prices and  
7 inflation that will affect you over the next five years and  
8 Trigen over the next five years?

9 A. No, I cannot. And I doubt if anybody can  
10 predict the inflation rate or fuel price rates. In fact,  
11 it's very possible that you can have, as exists today, a  
12 condition where inflation rates are running 4 1/2 to  
13 5 percent, purchased gas costs may be going up, and at the  
14 same time, the cost of coal might be going down or oil might  
15 be going down.

16 So I don't believe it's possible to forecast  
17 the future prices of either fuel or inflation, for that  
18 matter. But that is the exact reason why it's imperative  
19 that in a contract of this nature, there be an ability to  
20 have a fuel adjustment or a cost adjustment, if you wish, so  
21 that in terms of our utilization of electric generation, it  
22 would fit into the very facts of the competitive area in  
23 which we operate.

24 For example, in the interchange market the  
25 price of interchange power fluctuates on a daily basis--



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1 leaving out an hourly, just talk about it on a daily basis.  
2 --for the incremental cost of fuel. So this particular  
3 agreement reflects the same concepts that we have already  
4 existing in the interchange market. And that's just one  
5 reason why this particular steam service agreement, I  
6 believe, is in the best interests of our ratepayers and  
7 also, for that matter, the shareholders of Kansas City  
8 Power & Light Company.

9 Q. If the fuel adjustment that is provided in  
10 the contract were to go up faster than other sources, is  
11 Kansas City Power & Light obligated to buy steam from  
12 Trigen?

13 A. No, it's not. The only obligation that we  
14 have is essentially a four-hour test period. We do pay a  
15 \$65,000 a month charge for availability of capacity. But  
16 that is just good business. We could not expect ourselves,  
17 much less Trigen, to so-call "stand by" to deliver fuel  
18 without having a fixed charge component.

19 Q. This fixed charge component, is this not  
20 similar to what was originally discussed when Kansas City  
21 Power & Light was going to provide steam, I believe--

22 A. That's correct.

23 Q. --to Trigen or Kinetic?

24 A. Kinetic.

25 Q. At the earlier time?

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1           A.     At the earlier time.

2           Q.     So this is just basically a reversal of  
3 roles?

4           A.     That is correct.

5           Q.     And the adjustment clauses in this contract,  
6 are these not similar to those you've used in the past and  
7 that you're familiar with and you understand?

8           A.     The answer to that question is, yes, they  
9 are similar to those that we have used in the past. But one  
10 has to have a rather extensive knowledge of the tariffs of  
11 Kansas City Power & Light Company to reflect those. And I  
12 think that that deserves more than just a short answer.

13                   For example, we have in this contract not  
14 only adjustment for fuel, but we have adjustment for  
15 electricity. That's not at all unknown in the industry,  
16 particularly in this type of contract. We also have  
17 adjustments, although the adjustments are fixed, on a  
18 megawatt-hour basis for basically operations and  
19 maintenance, whether they're on coal or gas.

20                   If one is aware of pricing on  
21 particular--and I'll go back to the interchange market  
22 because that's a very competitive one. All of those  
23 conditions exist today. When anyone prices power on the  
24 high-voltage bus system, they take into account their costs,  
25 their incremental costs. And that's what this contract

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1 does.

2 We're trying to say in this contract, both  
3 parties, that we wish our electric generation to be  
4 competitive with our own generation, as well as in the  
5 interchange market. And so as costs go up, we expect that  
6 those costs will increase in the interchange market.

7 We don't know that for a fact. Nobody can  
8 predict the future. But what we're saying is, reasonable  
9 men would agree, I believe, that if one fuel goes up, you  
10 might expect other fuels to be competitive with it. For  
11 example, there is usually a tie between the price of gas and  
12 oil.

13 Q. And this agreement was reached as a result  
14 of arm's-length bargaining, was it not?

15 A. I would say that that is perhaps a very  
16 underestimated approach. There were very long, arduous  
17 negotiations. But you're correct; it started out with  
18 Kinetic and then went over to Trigen in time.

19 MR. FINNEGAN: That's all the questions I  
20 have.

21 EXAMINER FEE: Ms. Young.

22 MS. YOUNG: Thank you.

23 CROSS-EXAMINATION BY MS. YOUNG:

24 Q. Mr. Rasmussen, are you familiar with the  
25 current contract that KCPL has to provide steam service to

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1 National Starch?

2 A. I don't have it in front of me, but I am  
3 generally acquainted with it.

4 Q. And it's true, isn't it, that that contract  
5 was filed with the Commission, that indeed KCPL has a tariff  
6 making reference to that contract on file and approved by  
7 the Commission?

8 A. I believe that's correct. I believe it's  
9 filed under a special contract provision, but--

10 Q. And is there a provision within the contract  
11 that indicates the role of the Commission and the regulatory  
12 approval required from the Commission?

13 A. That would be very normal that in our  
14 special contracts we would file, that it's expressly subject  
15 to review by the Missouri Public Service Commission.

16 Q. And is it also true that the rates that are  
17 agreed to under that contract are subject to review by the  
18 Commission as to their reasonableness?

19 A. Let me check that. Usually there is a  
20 clause in there that would say that.

21 I believe that that's correct under  
22 Section 13, Regulatory Approval, on Page 11. And that  
23 language is rather standard, quote, unquote.

24 Q. Okay. Now, I understand that you're also  
25 familiar with the steam sales agreement, is it, between

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1 Trigen and KCPL?

2 A. Steam service agreement.

3 Q. Excuse me. Steam service agreement. You're  
4 familiar with that?

5 A. Yes.

6 Q. Is there a regulatory approval section in  
7 that contract?

8 A. There is not a standard clause, in that  
9 sense. What we're saying in our particular agreement here  
10 is that if this agreement basically is changed in any  
11 substantial manner, that we have the right to back out.

12 Q. Does the steam service agreement acknowledge  
13 that the Commission has jurisdiction and that regulatory  
14 approval is required for that document?

15 A. Let me just check this for a moment.

16 Would you ask the question again?

17 Q. Is there a provision in the steam service  
18 agreement that indicates that Commission approval is  
19 required?

20 A. I think the language speaks for itself under  
21 Section 14. What the parties to this agreement have agreed  
22 to is that we're not going to file any amendments to this  
23 agreement with the Missouri Public Service Commission.

24 We are asking for approval now. That, I  
25 think, is inherent in our steam service agreement. But



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1 we're also saying that if either party files amendments with  
2 the Missouri Public Service Commission, as I have indicated,  
3 we have an opportunity to terminate the agreement upon  
4 15 days' written notice.

5 Q. Would it be true then to say that the steam  
6 service agreement does not state specifically the  
7 Commission's role or jurisdiction?

8 A. That's correct. It does not state that  
9 specifically as in a, quote, standard type of clause.

10 Q. Okay.

11 A. We, in our application, are presenting this  
12 to the Commission for their approval as part of our overall  
13 package.

14 Q. And is there any provision in the steam  
15 service agreement which would acknowledge, in any way, the  
16 Commission's authority to review the rates contained  
17 therein?

18 A. Only by inference because the language  
19 reads, Should the Commission at any time order, direct, or  
20 approve any change to the terms and conditions of any  
21 service provided under this agreement, either through  
22 amendment or through superseding or substitute tariffs.  
23 That would infer that the Commission might have that  
24 authority to do so.

25 Q. And what is the consequence if the



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1 Commission does take such action?

2 A. If it has an adverse effect on the economics  
3 of this agreement, we can terminate.

4 MS. YOUNG: No further questions. Thank  
5 you, sir.

6 EXAMINER FEE: Mr. Mills.

7 MR. MILLS: I have no questions.

8 EXAMINER FEE: Mr. Kelly.

9 MR. KELLY: No cross.

10 EXAMINER FEE: Mr. Duffy.

11 CROSS-EXAMINATION BY MR. DUFFY:

12 Q. Mr. Rasmussen, if there were no regulatory  
13 or legal constraints on fuel adjustment clauses in this  
14 state, would it be correct to state that KCPL probably would  
15 advocate the use of fuel adjustment clauses in its own  
16 operations because of their--I think you talked about  
17 efficiency and flexibility. Would that be true? You'd like  
18 to use fuel adjustment clauses if you had the right to use  
19 them, correct?

20 A. Yes, we would. I can't speak for  
21 Kansas City Power & Light Company, but I can speak from the  
22 point of view of years of experience. The answer to that  
23 would be yes. I do believe, though, that that warrants a  
24 little bit of explanation too.

25 Fuel adjustment clauses have been utilized

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1 by our company particularly in those areas where we were  
2 facing heavy competition, usually historically in the  
3 industrial area or the commercial area. It was only during  
4 the extraordinarily high increases in fuel costs, oh,  
5 roughly 10, 15 years ago that we moved the fuel adjustment  
6 clauses into all of our tariffs, including the residentials.

7 Q. Regarding KCPL's position on the use of a  
8 fuel adjustment clause in this tariff, would it be accurate  
9 to state that KCPL would advocate the use of fuel adjustment  
10 clauses in any situation where you're dealing with two  
11 large, relatively sophisticated customers?

12 A. Yes, I would. But it would not necessarily  
13 mean that I would exclude one party, quote, not being  
14 sophisticated. But certainly in an area where both parties  
15 are well aware of the economics of a transaction, to enter  
16 into a transaction of this type without full recognition of  
17 a variable nature of one of the largest cost proportions  
18 would, in my judgment, be foolhardy.

19 Q. Do I understand you to say then that what  
20 KCPL's position would be regarding a contract with, let's  
21 say, a General Motors plant, that for consistency with their  
22 position in this case, you would argue that KCPL and General  
23 Motors ought to be able to reach an agreement, a contract  
24 for service, and that contract for service ought to be able  
25 to have a fuel adjustment clause in it if both parties to

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1 that contract wanted that?

2 A. Yes. And that was our position for many,  
3 many years, particularly in the industrial classes.

4 Q. Do you have with you or can your counsel  
5 provide you the existing set of steam tariffs for KCPL?

6 MR. ENGLISH: Mr. Duffy, I don't have them  
7 with me.

8 MR. DUFFY: Can I go off the record a  
9 second?

10 EXAMINER FEE: Yes.

11 (Discussion off the record.)

12 BY MR. DUFFY:

13 Q. Mr. Rasmussen, do you have in front of you  
14 the existing approved steam tariffs of Kansas City Power &  
15 Light Company?

16 A. Yes, I do.

17 Q. Would you please read Section 4.02 regarding  
18 "Other Sources" into the record? I believe it's just one  
19 sentence.

20 A. Yes, I will. And I'll identify it for the  
21 record. It's on Form 13, P.S.C. MO. No. 4, Sheet 10.13;  
22 date of issue, November 27, 1967; effective,  
23 January 1, 1968; signed by W.C. McCarthy, Vice President.

24 Section 4.02, "Other Sources," reads as  
25 follows: "The Customer's installation shall have no

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1 connection to or from any other source of steam supply."

2 MR. DUFFY: Thank you, Mr. Rasmussen.  
3 That's all the questions I have.

4 EXAMINER FEE: Anything further of  
5 Mr. Rasmussen?

6 MR. ENGLISH: Just one question on redirect,  
7 your Honor.

8 REDIRECT EXAMINATION BY MR. ENGLISH:

9 Q. In your conversation with Mr. Duffy,  
10 Mr. Rasmussen, you were talking about fuel adjustment  
11 clauses with electric customers. Do I take your  
12 conversation to mean that KCPL would do anything that is  
13 unlawful under the statutes of the state of Missouri or  
14 unlawful pursuant to case law in the state of Missouri?

15 A. No.

16 MR. ENGLISH: That's all that I have, your  
17 Honor.

18 EXAMINER FEE: Now is there anything  
19 further?

20 MR. FINNEGAN: I just have one question with  
21 respect to the Provision 4.02, "Other Sources."

22 RECROSS-EXAMINATION BY MR. FINNEGAN:

23 Q. Kansas City Power & Light Company is now--or  
24 is still presently a steam company, but is also an electric  
25 company; isn't that correct?

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1 A. That's correct.

2 Q. And as an electric company, you supply heat?

3 A. Yes.

4 MR. FINNEGAN: That's all.

5 EXAMINER FEE: The witness may be excused.

6 Thank you.

7 (Witness excused.)

8  
9 EXAMINER FEE: Mr. Finnegan.

10 MR. FINNEGAN: I would like to call

11 Mr. Casten to the stand, please.

12 May I go off the record a second?

13 EXAMINER FEE: Yes.

14 (Discussion off the record.)

15 (EXHIBIT NOS. 1 TO 9 WERE MARKED FOR  
16 IDENTIFICATION.)

17 (Witness sworn.)

18  
19 THOMAS R. CASTEN testified as follows:

20 DIRECT EXAMINATION BY MR. FINNEGAN:

21 Q. State your name, please, for the record.

22 A. Thomas R. Casten.

23 Q. And what is your occupation?

24 A. I am the President of Trigen Energy  
25 Corporation and also a member of the Board.

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1 Q. All right. Are you also affiliated with any  
2 other corporations or businesses?

3 A. Trigen has a number of subsidiaries in the  
4 district heating business, including Trigen-Tulsa;  
5 Trigen-Oklahoma City; Trenton District Energy Company;  
6 Trigen-London, Ontario, Canada; and Nassau District Energy  
7 Company.

8 Q. And you're also President of Trigen-  
9 Kansas City District Energy Corporation, the name of the  
10 corporation seeking authority here; is that correct?

11 A. Yes, sir.

12 Q. Okay. What's your educational and  
13 professional background?

14 A. I attended another Big Eight school,  
15 Colorado University, a Bachelor's in Economics, later a  
16 Master's in Business from Columbia University Graduate  
17 School of Business.

18 I have been involved in the energy business  
19 since 1974. And we began developing our first district  
20 heating system in 1980 and began giving service to customers  
21 on a brand new system on the last day of 1983 and have  
22 remained in that business continuously since. I was  
23 president of the antecedent company when we developed that  
24 project.

25 Q. Are you a member of any professional



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1 organizations related to district energy?

2 A. I am a past member of the Board of the  
3 International District Heating Association, and I am  
4 currently serving as the founding chairman of the Principal  
5 Managers Forum, which is a group of the chief executives of  
6 the various district heating systems in North America.

7 Q. Is Trigen-Kansas City District Energy  
8 Corporation affiliated with any other corporation?

9 A. No, it is not. It is a wholly-owned  
10 subsidiary of Trigen Energy Corporation.

11 Q. And where is Trigen Energy Corporation  
12 headquartered?

13 A. Our headquarters are at 1 Water Street,  
14 White Plains, New York 10601.

15 Q. Trigen Energy Corporation, is that the  
16 parent--or not the parent. Well, it is the parent  
17 corporation, is that correct, of Trigen-Kansas City?

18 A. Trigen Energy Corporation is the parent of  
19 Trigen-Kansas City, yes.

20 Q. Is that affiliated or a subsidiary of any  
21 other businesses or organizations involved in district steam  
22 heat?

23 A. Yes, it is. Trigen Energy Corporation is  
24 partially owned by a management team. And it is owned in a  
25 majority by two corporations, both of whom are major players

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1 in district heating. One is the French steam system that  
2 serves Paris, France, and we believe may be the second  
3 largest steam system in the free world with about 200 miles  
4 of distribution pipe and nine major generating stations.

5 In addition to that, the larger corporation,  
6 Cofreth, operates approximately 70 district heating systems  
7 by and large in France, but in other areas of Europe as  
8 well, spanning a period of 25 years. They had revenues of  
9 approximately \$700 million a year in U.S. last year.

10 Q. And it's my understanding that Trigen has  
11 contracted with Kansas City Power & Light Company to  
12 purchase the system; is that correct?

13 A. Yes, we have.

14 Q. And you are here today seeking a Certificate  
15 of Convenience and Necessity from the Commission to operate  
16 such system?

17 A. Yes, we are.

18 Q. Would you briefly explain why your company  
19 was interested in purchasing this system, considering the  
20 fact that the district energy system has been losing money  
21 for a period of time now?

22 A. Trigen is uniquely in the business of  
23 providing district energy and believes that we have enough  
24 skills between ourselves and the parent corporation to  
25 evolve strategies that will make that a competitive form of

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1 energy and allow us to compete profitably with the other  
2 providers of energy.

3 With respect to the analysis we've done over  
4 the past year on this system, we developed a strategy which  
5 we believe that, if allowed by the Commission and properly  
6 executed by our management, will return the system to  
7 competitive health in a period of three to five years.

8 That strategy involves several things and  
9 needs a comment about where the system is. The system is,  
10 at this point, vastly overdesigned for the customers that it  
11 has. Since 1973, it's lost three quarters of the steam  
12 load. And the power plant and the steam pipes are all very  
13 much too large for the job they do. And, consequently, the  
14 boilers are forced to operate at very inefficient levels,  
15 more than half the year at too low a level to be able to  
16 burn coal because of technical considerations. And the  
17 losses that occur in the steam pipes, which may not be  
18 generally known, are a constant based on the length of the  
19 pipe and the size.

20 The amount of steam that you sell through  
21 the pipes doesn't affect the losses. It's just that you  
22 have that many square feet of pipes that are hot with a  
23 certain insulation and you have losses.

24 So the system, in our view, is in what we  
25 term a "death spiral." And I believe the Commission Staff

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1 found the same thing in 1986 when they examined the rates,  
2 that the rates then looked at were some three-plus million  
3 dollars short of providing a rate of return to KCP&L, but  
4 that if the rates were raised, more people would go off the  
5 system. And these high fixed losses would be then forced to  
6 be distributed over an even fewer number of customers. And  
7 we liken that to the death spiral, that it only gets worse  
8 unless you do something to adjust it.

9 The strategy that we have developed and  
10 which has brought us to this hearing and this request has  
11 got several pieces to it. Number 1, we believe that the  
12 rate structure should recognize that the company is in the  
13 business of providing the capacity to heat buildings rather  
14 than providing steam.

15 It's the capacity that is what we really do.  
16 And that involves the purchase of the system, the  
17 maintenance of the system, and the provision of a large  
18 24-hour-a-day staff. That's before a pound of steam ever  
19 goes out the door, you've got all those fixed expenses to  
20 meet people's capacity needs which, of course, fluctuate  
21 over the year.

22 And the second and much smaller part of what  
23 we do is then to push the steam out the door when and if  
24 people need it. Our new rates that are before this  
25 Commission identify that capacity as a fixed charge, place a

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1 competitive marginal price on the steam, and we believe will  
2 send a signal to the various commercial space heating  
3 customers in the city that they can use the steam for  
4 process or for, more importantly, driving their summer  
5 chilling requirements.

6 It is a part of our recognition of the fact  
7 pattern that the chilling equipment in most of the buildings  
8 in our service area is using a refrigerant which has been  
9 agreed to be banned by 52 signatories to the Montreal  
10 Protocol, that there is a reduction of production of the  
11 chlorofluorocarbons based on their now pretty well  
12 demonstrated impact on the ozone level, and that all of  
13 these users are going to have to replace their chilling  
14 equipment with something that uses a more environmentally-  
15 acceptable refrigerant.

16 One of the principal options available is to  
17 use an absorption chiller that employs lithium bromide,  
18 which is environmentally benign and which is driven by  
19 steam. And our rates are designed to give all of those  
20 people that option at a competitive price for steam. We  
21 believe over two or three years that will increase the  
22 summer sales of steam sufficiently that we'll be able to  
23 burn coal in these very big boilers, that the load will be  
24 high enough that we can burn coal. So that's one part of  
25 the strategy.



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1           An ancillary part of that is that it  
2 encourages a building developer of a brand-new building to  
3 hook up to the system because his overall costs of heating  
4 and chilling look a lot better than just doing the one.

5           A second major part of our strategy is to  
6 obtain and solicit process loads so that we can use the  
7 very, very economic potential of this plant to provide  
8 an industrial process load; that is to say, a load that is  
9 not weather dependent, but is going to a process 24 hours a  
10 day. And those loads, like the National Starch load, will  
11 drive the minimum output up to a point where the company can  
12 then burn coal, which is rather considerably cheaper than  
13 gas. And in burning that coal, we would then over time be  
14 able to hold down the inflation in the rates to the downtown  
15 users who our submitted rates apply to. So that's a second  
16 major part of the strategy to do that.

17           A third part of the strategy is that as we  
18 looked at the economics and had negotiations with  
19 Kansas City Power & Light, it became apparent that they had  
20 existing electric generating capacity which was capable of  
21 doing peak shaving duty and which, in fact, carried out that  
22 duty in the last couple of years, and that we were proposing  
23 to buy the boiler plant that could make the steam. And we  
24 therefore arrived at the steam service agreement under which  
25 they will pay a reservation fee to Trigen to maintain the



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1     boilers and the capability to provide steam to them and then  
2     may, at their option, assuming that the steam is  
3     attractively priced and what their capacity needs are, cause  
4     Trigen to produce somewhere between 75 and 80 percent of the  
5     maximum output capable in the station. And that steam would  
6     go to their existing generating equipment.

7             That provides an economic boost to Trigen  
8     while we're trying to get additional people back on to the  
9     system and reverse the death spiral. And it also provides  
10    an economic increment of capacity to KCP&L, and that's why  
11    the contract was agreed to.

12            We, with all of those strategies, arrived at  
13    an economic analysis that is barely break even in the first  
14    full year of operations and, with some rather aggressive  
15    estimates of added sales, gets up into a 7 to 10 percent  
16    return on investment. I mention that not to tell you that  
17    we like 7 percent returns on investment, but that we believe  
18    that aggressively marketed with these rate structures and  
19    with some time, that our management will be able to reverse  
20    the death spiral and bring the system back up to the point  
21    where the losses are perhaps only 30 percent of the impact  
22    on the rates that they now are and that we'll have a  
23    competitive form of energy.

24            MR. FINNEGAN: At this time I offer into  
25    evidence Exhibits 1 through 9.

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1 EXAMINER FEE: Is there any objection to the  
2 exhibits?

3 (No response.)

4 EXAMINER FEE: Exhibit 1, the articles of  
5 incorporation of Trigen; Exhibit 2, the certificate of  
6 corporate good standing; Exhibit 3, a map of the service  
7 area; Exhibit 4, a metes and bounds description of the  
8 service area; Exhibit 5, a franchise ordinance of  
9 Kansas City; Exhibit 6, the rate sheets; Exhibit 7, the  
10 rules and regulations; Exhibit 8, the balance sheet; and  
11 Exhibit 9, the pro forma income statement, are received into  
12 evidence.

13 (EXHIBIT NOS. 1 TO 9 WERE RECEIVED IN  
14 EVIDENCE.)

15 MR. FINNEGAN: Can I go off the record a  
16 minute?

17 EXAMINER FEE: Yes.

18 (Discussion off the record.)

19 BY MR. FINNEGAN:

20 Q. Mr. Casten, with respect to the rates as  
21 proposed by Trigen at this time, are these the initial rates  
22 that Trigen was interested in?

23 A. No, sir. We prefer and, in fact, in all 70  
24 of our other systems, have long-term contracts where the  
25 fuel is passed through because we have no ability to

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1 forecast the future, nor do our users.

2 Based on the Staff objections and their  
3 interpretation that the Supreme Court case of UCCM should  
4 apply to district heating, which we don't agree with, we did  
5 go back and forth with the Staff and finally arrived at the  
6 present rates, which are something that we're prepared to  
7 live with, as they suggest, over a period of 18 to 24  
8 months, at which time we'll have an operating record and  
9 come back in and reexamine the matter.

10 Q. So at this point in time, Trigen is willing  
11 to live with the rates as they are now filed in this  
12 proceeding and the rules and regulations?

13 A. Yes, we are.

14 Q. Now, is there any other requirements that  
15 Trigen must have before it would complete this sale and  
16 obtain the Certificate of Convenience and Necessity?

17 A. Yes, sir. We entered into a memorandum of  
18 understanding with KCP&L, and that set forth that we would  
19 complete it, subject to the Commission approving our  
20 certificate of need and the rates and long-term contracts,  
21 and also subject to our obtaining an environmental permit to  
22 operate the station, and subject to National Starch agreeing  
23 to transfer or extend its contract. They're an essential  
24 part of the economics. And I think that's the list.

25 Oh, the other--I'd forgotten because it's

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1 already been done. We indicated that we would not go  
2 forward under the then existing city policy of a 10 percent  
3 gross receipts tax on steam, because that tax only applied  
4 to the fuel portion of users who bought tariff gas and  
5 didn't apply at all to users who bought oil or off-tariff  
6 gas; whereas it applied to our labor, our capital, our  
7 profit, if any, and so forth. And we made it a condition of  
8 going forward that the city reduce that gross receipts to  
9 4 percent in the case of steam. The City Council has so  
10 acted; and it is to become official, I believe, at the first  
11 of the year.

12 Q. With respect to the other conditions, what's  
13 the status of them? We can start with the banked credits.

14 A. The status with respect to the permit to  
15 operate, we have been in probably a three-month delay in  
16 when this hearing could have taken place, while the  
17 Department of Natural Resources and the city health  
18 department went through their process.

19 They requested and we complied with  
20 extensive modeling of the station, 8,760 hours a year over  
21 five years of weather data, to ascertain under what  
22 federally enforceable permit conditions we could operate so  
23 as to not cause there to be an ascendance of federally  
24 defined air quality standards in any place in the area.

25 That information has been under review by

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1 the two agencies for the last ten days, and we're scheduled  
2 to meet with them tomorrow morning here in Jefferson City  
3 with the stated objective of both parties to arrive at a  
4 permit. But that will be over when it's over. We think  
5 we're close.

6 Q. Initially in your rates and rules and  
7 regulations you had provisions regarding the long-term  
8 contracts with process steam users; is that correct?

9 A. Yes, we did.

10 Q. And you have for the moment, or at least for  
11 the purpose of this proceeding, have now dropped that  
12 request at this time in order to expedite the proceeding; is  
13 that correct?

14 A. We've dropped the request with the clear  
15 intention of coming back and discussing that when we're not  
16 pressed for time to get the decision over.

17 Q. Are there two agreements that require  
18 approval before Trigen will go through with this Certificate  
19 of Convenience and Necessity in operating this system?

20 A. Yes. And they're two of the three items  
21 that seem to be in contention by any of the parties here.  
22 In order for the economics to make sense and for the  
23 approval of my Board of Directors which has been given to be  
24 effective, we ask that the Commission approve the steam  
25 service agreement with KCP&L, which has been described and



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1 spans five years, and that they approve the presumed  
2 contract with National Starch, which is a ten-year contract.

3 The rates and a nearly final form of that  
4 contract have been given to Staff, but there still remains a  
5 couple of open items between ourselves and the management of  
6 National Starch. They're not rate issues.

7 Q. Both of those agreements, I understand,  
8 contain adjustment clauses; is that correct?

9 A. Yes, they do. The steam sales agreement has  
10 both a CPI on the labor and maintenance and a fuel  
11 adjustment on the fuel that's actually burned and  
12 contemplates that we might burn gas, we might burn coal, and  
13 different rates based on that.

14 The National Starch contract, which has been  
15 negotiated over a period of seven or eight months, requires  
16 Trigen to operate on the lowest cost fuel at least  
17 70 percent of the time or charge as though we were and then  
18 has a mechanism for adjusting their rate to the actual mix  
19 of fuel. And it's priced as received at the station.

20 Q. With respect to the steam service agreement,  
21 is this agreement beneficial to Trigen and prospective  
22 customers of Trigen?

23 A. This agreement is like the other one, a sine  
24 qua non of us going forward. And there are economic reasons  
25 for that. In order to purchase the system at its stated



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1 \$6 million price and put in another two and a half to  
2 four million of working capital and modest improvements and  
3 then put a staff in the plant, we need additional revenue  
4 over what's in the system today.

5 And our needs match KCP&L's. And,  
6 consequently, they agreed to pay a reservation fee of  
7 \$65,000 a month for five years, which is a major  
8 contribution towards these fixed costs during the period of  
9 time while our management scrambles to get some more sales.

10 The issue of whether they'll continue that  
11 contract beyond five years or whether we'll continue it is  
12 not before the Commission and is something to be decided  
13 down the road, but obviously we'd like to maintain that  
14 relationship.

15 They contemplate coming to us on fairly  
16 short notice and saying, We need 750,000 pounds of steam an  
17 hour, which is out of a million pounds of total capacity,  
18 to make electricity in the generating plant that exists at  
19 that station. We don't know how often or when that might  
20 be. But two years ago, I believe, the station ran for 30 or  
21 31 straight days.

22 When that happens, it's absolutely essential  
23 to us that it be done on a then-market-price of fuel. And  
24 there are several reasons for that. The biggest one is that  
25 we can't forecast. And because of the very large volume of

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1 fuel that will be burned, if we're wrong by even 5 percent  
2 in our forecast, we could end up going bankrupt trying to  
3 meet their needs if we're just being paid 5 percent less  
4 than the cost of fuel to us through some sort of a fixed  
5 price or Commission mandated fixed price contract. It would  
6 be tantamount to playing roulette, and we're not prepared to  
7 do it.

8 The second reason for that needing to be  
9 there is that one of our strategies to make the system work  
10 is to become an attractive supplier of electricity during  
11 those peak periods to KCP&L. And the more steps we can take  
12 to purchase cheap fuel and increase the blend of coal versus  
13 oil and drive the price of the fuel down, the more  
14 attractive we are in their dispatch order, which is  
15 fluctuating, as Mr. Rasmussen said, every day with the  
16 prices on the grid.

17 And so if we can be in there at the lowest  
18 possible competitive price, it may result in us having  
19 additional steam sales to them. And that will help to again  
20 defer the maintenance and the staff costs so that we'll be  
21 in a better position to offer competitive rates to the more  
22 traditional commercial institutional space users.

23 So that contract is a vital part to the  
24 economics of making the system work. We're willing to take  
25 the bet that at the end of five years, either they will

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1 renew in some form or we will have expanded our sales to  
2 other people or some combination thereof. Clearly,  
3 something has to happen in that five-year period.

4 With respect to the second contract with  
5 National Starch, first of all, the factual situation is that  
6 the system last year sold approximately 800,000 Mlbs. of  
7 steam and 400,000 of those Mlbs. went to National Starch and  
8 the other 400,000 to the downtown system.

9 The impact on the plant operations is much  
10 more disproportionate because National Starch is an  
11 essentially 24-hour-a-day, 365-day-a-year consumer and they  
12 provide the base load that, for many of the points in time,  
13 would allow us to get coal in the system instead of gas.

14 The system cannot drop below about 75,000  
15 pounds an hour and still burn coal. And with those two  
16 contracts together, there are more than 4,000 hours where  
17 the system is below that level. Without National Starch,  
18 you almost can never burn coal except the dead of winter.  
19 And it doesn't pay to put the staff in to do that, and we  
20 remain in the death spiral.

21 With respect to why a fuel adjustment in  
22 National Starch, National Starch is a subsidiary of  
23 Unilever, which is one of the largest corporations in the  
24 world. They are making in that plant a fungible commodity  
25 which doesn't have any brand identity. It's simply sold at

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1 a market clearing price. The economics of them staying in  
2 business are vitally determined by their ability to make  
3 that product as or more efficiently than other people that  
4 make it and other Unilever plants that make it, because the  
5 threat that occurred several years ago is that plant would  
6 be closed down and then starch would be made elsewhere. So  
7 to retain those 1,200 jobs in the Kansas City area, they  
8 need to know that they've got a competitive price of energy.

9 Their decision is either to enter into a  
10 long-term contract with Trigen or to erect their own boiler  
11 plants and go out and buy self-help gas at a market price.  
12 And they've done their economics rather carefully. And  
13 we've arrived at a contract which is attractive to them  
14 because it forces us to burn the lower cost fuel, which we  
15 anticipate to be coal, for at least 70 percent of the time.  
16 And they believe they're going to get a cheaper price of  
17 steam from us than they could make themselves by burning  
18 self-help gas. They absolutely insist that there be a  
19 mechanism to adjust that over the period of the ten years to  
20 what the market is.

21 Lacking that mechanism, they will only enter  
22 into a contract on a year-to-year basis. And we're not  
23 prepared to make this massive investment on the assumption  
24 that 50 percent of our load has an option to decide whether  
25 to continue to be our load on a year-to-year basis. It just.

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1 doesn't make economic sense.

2 Q. How is Trigen proposing to purchase the  
3 system, with what forms of financing?

4 A. Our Board of Directors, recognizing that the  
5 system presently loses money and that the pro formas we have  
6 reflect the same thing, has recognized that the system  
7 cannot easily be purchased right now with any leverage. And  
8 we're proposing to buy it with equity 100 percent, and then,  
9 as we achieve some of our objectives, return it to a more  
10 normal leverage position. But we're intending to purchase  
11 it and make all the working capital out of equity.

12 Q. So you're talking, what, \$8 1/2 million  
13 then?

14 A. Yes, sir.

15 Q. With respect to the steam service agreement,  
16 where would you be supplying the steam to Kansas City  
17 Power & Light?

18 A. Inside the four walls of the plant at Grand  
19 Avenue as it's now all owned by KCP&L. The pipes simply run  
20 from the boiler plant and over to two existing and operable  
21 condensing steam turbines. And the agreement contemplates  
22 that we would supply steam to those turbines, would take  
23 back from them condensate and also some steam that comes off  
24 the turbines.

25 We would provide them with condenser water,



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1 since a part of the property we're acquiring is the  
2 condenser pumps on the Missouri River and the pipes that  
3 bring that water back up to the condensers, and that they  
4 would be responsible for the electric generating equipment  
5 only and we would be responsible for the ancillaries,  
6 including all the fuel handling and ash treatment and so  
7 forth.

8 So we don't use our distribution system.  
9 It's all right inside the plant. And we're really simply  
10 doing what they are able to do and have been doing with the  
11 same contractual effect because if they decide to use that  
12 capacity today, they will simply pay the cost of fuel and  
13 the cost of labor to generate the extra steam; and that will  
14 become a part of their electric generating costs. And in  
15 our case, they will cause us to generate the steam, and the  
16 contract, as negotiated, pretty much passes through those  
17 costs based on FERC 501 definitions of fuel.

18 Q. Is there any other customer for this  
19 particular use?

20 A. No. There's not any other customer for  
21 steam to make electricity. It's only KCP&L.

22 Q. And was the agreement reached as a result of  
23 arm's-length bargaining?

24 A. Very much so.

25 Q. It took quite a bit of time, did it not, to



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1 reach the agreement that you have come up with?

2 A. It took a lot of time, but it's a  
3 complicated intermixing of facilities they retain and  
4 facilities we'll have. And it took a lot of trust that we  
5 would be there to provide them with what they needed and  
6 they would be there to take what we wanted. So it's a  
7 complex agreement that's, I think, beneficial to both  
8 parties.

9 Q. And is entering into this agreement  
10 necessary for your operation of the system?

11 A. It's absolutely necessary to the extent that  
12 without this agreement, I no longer have the economics that  
13 have been approved by my Board and we will not be allowed to  
14 purchase the system.

15 Q. Would you enter into such an agreement if it  
16 had no adjustment clauses in it?

17 A. Under no circumstances would we enter into  
18 that agreement for the reasons that I outlined, but I'll  
19 mention again.

20 We have complete doubt in our ability to  
21 forecast the future prices. We've watched the prices of  
22 fuel jump wildly around during the period of time that we  
23 have been in the business.

24 We understand that when KCP&L asks for  
25 steam, that many, many, many dollars will change hands

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1 because the generation of enough steam for an 80-megawatt  
2 power plant is a big revenue item relative to the size of  
3 this system.

4 If that's being done on a fixed price,  
5 nonadjustable contract that somebody who had more confidence  
6 in the future than I have put together, the only thing we're  
7 certain of is that our forecast will be wrong. And we lose  
8 either way. In one case, we're too high priced and they  
9 don't buy the steam from us at all; and in the other case,  
10 we're too low priced and we could literally go bankrupt in a  
11 month because of the volume of steam going out the door.

12 Keep in mind that our peak on the system for  
13 its other uses gets up to about 300,000 pounds, and that  
14 only very briefly on days like today, and averages much  
15 lower. And when KCP&L comes on the system, they're looking  
16 for 750,000 pounds 24 hours a day. So it's much too big to  
17 leave to chance and people that like to do forecasts.

18 Q. When the system peaks, it's a winter peaking  
19 system; is that true?

20 A. The system currently is a strongly winter  
21 peaking system, the steam system. And the anticipated  
22 requirement of KCP&L is the summer, not by contract, but by  
23 past practice. Their electric system strongly peaks in the  
24 summer. And we believe, from our conversations with them,  
25 that it will be the summer period when they are, in all

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1 probability, going to call on us for steam. But they have  
2 plenty of capacity in the winter because of their summer  
3 peak.

4 Q. And is this beneficial to both Trigen and  
5 its customers?

6 A. From Trigen's point of view it provides the  
7 extra source of revenue to defer the costs of operating the  
8 plant and maintaining the plant and offers the possibility  
9 to earn a little bit of money on the sale of the steam.

10 I might mention that from KCP&L's point of  
11 view, the reservation charge that we have agreed to amounts  
12 to about a fourth of the pool penalties for lack of the same  
13 capacity. So if just in one circumstance they were unable  
14 to have this capacity and they were deemed to be in short  
15 supply by the pool, which happened, I think, last year or  
16 the year before, it would be four times as expensive to pay  
17 the pool as we understand the rules. So we think, yes, it's  
18 beneficial to them and it's beneficial to us.

19 Q. Now, with respect to the National Starch  
20 contract that you are negotiating at this time, it's my  
21 understanding you are not asking for approval of that  
22 contract right now because it's not completed; is that  
23 correct?

24 A. I have to defer to the policy that the  
25 Commission would like to go. The rate section of that

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1 contract and the language is in basically final form. What  
2 remains at issue between the two parties has to do with  
3 guarantees in the event of default and how those things are  
4 arranged.

5 I would hope that there is some way  
6 procedurally that the Commission can deal with the concept  
7 of approving the Starch contract with the rate structures  
8 and the ten-year time period as proposed and leave it as a  
9 final step for the Staff to review the final words of that  
10 contract and make sure that it doesn't raise any other  
11 issues, which could happen as early as tomorrow and could  
12 take longer. It's a very important negotiation to both  
13 parties. And Starch has said that they will, by the end of  
14 the year, either enter into this contract or begin building  
15 a boiler plant. So there is no more time. It's not going  
16 to stretch on beyond the end of this year.

17 Q. What you are asking then is that the  
18 Commission approve the rate structures and the ten-year  
19 period that are already agreed to between you and National  
20 Starch?

21 A. If they could approve that and direct the  
22 Staff to just review the final contract for form, I think  
23 that would be an ideal outcome.

24 It does force the issue that Staff has  
25 raised to be dealt with, which we think is vitally

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1 important. We cannot proceed with the transaction if the  
2 Commission, for any reason, finds that they cannot approve  
3 the contract with half the sales on the system.

4 Q. The proposed contract--the rate structures  
5 contain adjustment clauses; is that correct?

6 A. Under the proposed contract, it has been  
7 determined between National Starch and ourselves what their  
8 need for capacity is, and a number--in this case, it's big  
9 enough that we can measure at very sophisticated meters.  
10 The number that's been agreed to, I think, 75,000 Mlbs. an  
11 hour.

12 And they have agreed to pay a base charge  
13 before they ever take any steam for that capacity. And that  
14 base charge has elements in it which are fixed, and it has  
15 elements in it which increase with the Consumer Price Index  
16 and elements that increase with fuel.

17 The notion that they have negotiated for is  
18 that they want Trigen to be responsible for the physical  
19 quantity of inputs to make that contract work. And they  
20 will be responsible for the general level of inflation, such  
21 that if we manage the business poorly and add ten people or  
22 pay the people above market rates, that's Trigen's problem,  
23 not theirs. But if there is rapid runaway inflation, they  
24 understand that they would have to increase the salaries and  
25 other prices if they had their own boiler plant and their



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1 own staff. And that's been the basic understanding of that  
2 part of the contract.

3 The second part of the contract involves a  
4 charge per Mlb. of steam that's delivered to them at the  
5 plant walls. They own the pipes to the plant. The meters  
6 are at the plant. And that charge is set to fluctuate based  
7 on Trigen's actual cost of fuel and Trigen's fuel mix.

8 As a further protection to National Starch,  
9 they have insisted that we guarantee we will use a minimum  
10 of 70 percent of--we will produce a minimum of 70 percent of  
11 the same steam to them with the lowest cost fuel, which at  
12 the moment is coal, so that we can in no way become lazy and  
13 burn a fuel that's easy. We've got to try to burn the  
14 cheapest fuel.

15 Q. National Starch, it's my understanding, is  
16 located in North Kansas City?

17 A. Yes, sir. They're across the river from  
18 Kansas City. And they built, at their own expense some  
19 years ago, a steam pipe from their plant and across a  
20 railroad bridge and right to the wall of the plant.

21 Q. And they are not in your certificated  
22 service area, are they?

23 A. I don't believe so, no.

24 Q. Or not the area that you're requesting at  
25 this point; is that correct?



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1           A.     That's correct.

2           Q.     Why can you not sign a contract with  
3 National Starch without these adjustments, these  
4 pass-throughs?

5           A.     I must answer that question from both  
6 directions.

7           MR. DUFFY: Well, I'm going to object to him  
8 characterizing the position of National Starch unless  
9 there's some foundation laid that he is authorized to speak  
10 for National Starch with regard to their contracting  
11 practices and philosophies.

12          MR. FINNEGAN: Mr. Examiner, I believe he  
13 has been negotiating with National Starch for some time. I  
14 think he should certainly know what their position is and  
15 what they will and will not accept at this point.

16          EXAMINER FEE: Overruled.

17          THE WITNESS: I'd like to start with  
18 an industry comment. One of the problems that the district  
19 heating industry faces across North America is that we  
20 generally don't have process customers.

21          Process customers are sufficiently nervous  
22 about what the cost and reliability of the service could do  
23 to their main business that they tend to do that themselves  
24 and therefore have control over it.

25          It's a "man-bites-dog" kind of news story

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1 when something happens like just did in Milwaukee where the  
2 Pabst Brewery agreed to hook up their brewery to the  
3 Milwaukee steam system. So it's very unusual to have a  
4 process customer. With that background I can explain, first  
5 of all, what they've expressed to us as their concerns and  
6 then tell you our concerns.

7 I think, without telling any secrets about  
8 their process, let's just put it at a range that energy is  
9 between 8 and 12 percent of their product cost and that  
10 other people in other jurisdictions with other electric  
11 suppliers and other sources of fuel make starch.

12 As you know, the market for gas and oil  
13 tends to level out across North America because they both  
14 move pretty easily. And the option that they look at and  
15 what they believe that their competitor companies will be  
16 looking at is to burn gas or oil in their own boiler with  
17 their own staff, and that will form the basis for the energy  
18 component of other people's starch product.

19 In this case, they find this plant  
20 attractive because they don't have to put up any capital to  
21 build a plant. They do not have a boiler plant. The plant  
22 that they have has been gutted--

23 EXAMINER FEE: Pardon me, sir.

24 What was the question? I thought you asked  
25 him if he would enter into a contract without these

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1 adjustment clauses.

2 MR. FINNEGAN: I asked, Why can you not sign  
3 a contract or enter into a contract with National Starch  
4 without adjustment clauses?

5 EXAMINER FEE: Okay. You're not making it  
6 easy.

7 THE WITNESS: Let me try to get right to the  
8 heart of the matter from their point of view. They believe  
9 that if they sign a contract at a fixed price of fuel, that  
10 they have no assurance whatsoever that their product will  
11 remain competitive and that therefore they would be able to  
12 sell their product.

13 And they have stated that to us very clearly  
14 throughout the negotiations, that they find us attractive  
15 because we offer them coal, which a lot of their competitors  
16 don't have, but they will not enter into a contract in which  
17 we both bet on what the prices will be.

18 And they're not in such a contract now.  
19 Their present contract, as approved by this Commission, has  
20 a fuel adjustment clause in it. That's the reason they  
21 won't enter into it. And it renders our reason immaterial  
22 because without them agreeing, we don't have a contract.  
23 But our reason is quite the other way around. As a  
24 purchaser of 400,000 pounds of steam per year, half the  
25 output of the system, if we enter into the obligation to

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1 supply that at a single fixed price, by the time we could  
2 get back to the Commission and have a hearing and say the  
3 prices of fuel have changed and we need to adjust up or  
4 down, we could have suffered very substantial losses  
5 relative to the size of the company.

6 And so we've got a total nonstarter from  
7 both the purchasing side and from the contracting side. We  
8 also, I might add, have found no examples of a process user  
9 entering into a contract without that kind of adjustment  
10 anywhere. They may be there. We just have never found any.

11 BY MR. FINNEGAN:

12 Q. Could you then just summarize what you're  
13 requesting from the Commission at this time?

14 A. We're requesting that the Commission give us  
15 a certificate to operate, approve our rates for the downtown  
16 as filed and amended today, and approve the steam sales  
17 contract with KCP&L and approve the ten-year steam service  
18 contract with National Starch per the rates submitted and  
19 per the general terms of the contract you have, subject to  
20 final Staff approval when we have any contract between the  
21 two of us.

22 Q. And if the Commission does not do all four  
23 of these, there will be no purchase; is that correct?

24 A. That's correct. I don't have the  
25 authorization to proceed otherwise.



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1 MR. FINNEGAN: That's all the questions.

2 EXAMINER FEE: Mr. English, do you have any  
3 questions?

4 MR. ENGLISH: None, your Honor.

5 EXAMINER FEE: Ms. Young.

6 MS. YOUNG: Thank you, sir.

7 CROSS-EXAMINATION BY MS. YOUNG:

8 Q. Mr. Casten, are you familiar with the  
9 existing National Starch steam contract with KCPL?

10 A. I have read it, yes.

11 Q. And are you familiar with the regulatory  
12 approvals section that I asked Mr. Rasmussen about this  
13 afternoon?

14 MR. FINNEGAN: Could I supply him a copy?  
15 Do you want to mark it or anything?

16 MS. YOUNG: No.

17 THE WITNESS: I can only answer that I've  
18 read the contract. Maybe you could be more specific.

19 BY MS. YOUNG:

20 Q. Page 11, Section 13, "Regulatory Approval."

21 A. Yes, I have it in front of me. Your  
22 question?

23 Q. Does the new contract that you're  
24 negotiating with National Starch contain a similar provision  
25 to Section 13 of the existing contract?



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1           A.     I don't know whether it has the Section A or  
2     not. Section A here says that "This Agreement . . . are  
3     conditioned upon acceptance of this Agreement by the  
4     Commission . . . ." And we're here to ask for the  
5     Commission to approve the new contract. If it helps to put  
6     that language in, we're happy to do so. We want the  
7     contract approved by the Commission. Both parties want  
8     that.

9           Q.     And the next provision there in the existing  
10    contract indicates that the agreement is ". . . subject to  
11    the terms and provisions of the Public Service Commission  
12    Laws of the State of Missouri . . . and subject to the  
13    jurisdiction and authority of the Missouri Public Service  
14    Commission."

15                   Do you have such a provision in the contract  
16    that you're negotiating with National Starch?

17           A.     I simply don't know if that provision is  
18    there or not.

19           Q.     Okay. Is it true that the existing National  
20    Starch contract is assignable to Trigen as purchaser of the  
21    steam system?

22           A.     My understanding is that National Starch has  
23    to agree to the assignment of that contract and it only runs  
24    for another year.

25           Q.     Did Trigen consider taking or seeking an

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1 assignment or seeking an extension of the terms of the  
2 original contract--the currently existing contract with  
3 National Starch?

4 A. We considered that and rejected it. The  
5 economics of us making the investment in the system are  
6 dependent upon them being there for longer than the one-year  
7 term. And we arrived through negotiation at a ten-year  
8 term.

9 Q. Other than the term, were there any  
10 provisions of this existing contract that kept you from  
11 taking assignment and seeking some extension?

12 A. I think the answer is yes. There were  
13 certainly a number of provisions which both parties felt  
14 could be changed to the benefit of the deal. As to a  
15 specific provision that we could absolutely not live with, I  
16 think it would be in the area of the rate structure where  
17 the existing contract goes more to the notion that the  
18 company is in the business of supplying steam as opposed to  
19 our belief that we're in the business of supplying the  
20 capacity to generate the steam needs, and that therefore the  
21 company was quite exposed in the event of National Starch  
22 making major changes to its operation.

23 Under the contract as negotiated, National  
24 Starch agrees to some roughly \$80,000 per month of a  
25 capacity charge, whether or not they choose to use some

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1 steam and make starch. And that reflects what I described  
2 earlier of our large commitment to a fixed cost. And then  
3 the steam becomes a variable part of what they do. Under  
4 the existing contract, I think that that's a big hole.

5 Q. I asked Mr. Rasmussen some questions about  
6 any provisions that may be in the steam service agreement as  
7 to regulatory approval and authority. And I recall that, in  
8 essence, he indicated that any such provision contained  
9 an implicit reference to the Commission's authority and  
10 an indication of some negative consequences in the event of  
11 Commission action. Do you recall those questions? Were you  
12 in the room?

13 A. I was in the room and in the negotiation of  
14 that contract. Yes, that's my understanding of the  
15 contract.

16 Q. Would a similar characterization apply to  
17 the current status of the National Starch contract that is  
18 under negotiation at this time?

19 A. I believe it would, yes.

20 Q. Okay.

21 A. Could I amplify that a second?

22 Q. Sure.

23 A. National Starch really has no concern  
24 whatsoever about what the Commission does with the rest of  
25 the steam system and the rates and so forth. They simply

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1 said, "Here's what we can make the steam for. Here's what  
2 we're willing to pay. Take it or leave it."

3 From Trigen's point of view, that taking of  
4 that half of the sales is vital to our strategy to be able  
5 to offer competitive service to the rest of the people. And  
6 it's not a situation where you can say you should pay a  
7 different price because we have gone through and sorted it  
8 out. They've said, "This is our market price. If you like  
9 it, fine. If you don't, we're going to build our own  
10 boiler."

11 Q. Let's go back to your "man-bites-dog"  
12 analogy. You made a reference to the dearth of process  
13 customers on steam systems in general.

14 Are there few or no process customers on  
15 other steam systems due to the fact that they have or don't  
16 have a fuel adjustment clause?

17 A. By and large, every jurisdiction that we're  
18 familiar with except the state of Missouri has fuel  
19 pass-throughs.

20 So I would have to say that the reason for  
21 there not being process users goes beyond simply having a  
22 fuel adjustment. The absence of a fuel adjustment is a  
23 problem, but there are other series of problems to get a  
24 process customer. It's a tough job to get a process  
25 customer.

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1 Q. It's true that the National Starch contract  
2 has not yet been filed officially with the Commission,  
3 correct?

4 A. It hasn't yet been agreed to by National  
5 Starch.

6 Q. And I believe you indicated that that could  
7 happen as soon as tomorrow or at some later date, correct?

8 A. Yes.

9 Q. And so you can't indicate today to the  
10 Commission when a final copy of that contract may be  
11 available?

12 A. No, because we don't have the  
13 decision-making authority in our control.

14 Q. You did indicate that you want the  
15 Commission to approve the ten-year term and the rates  
16 portion of the contract?

17 A. Yes.

18 Q. Is Trigen prepared to provide that to the  
19 Commission at this time?

20 A. I believe that we have provided that,  
21 although perhaps not in an official filing. You do have--we  
22 have sent on to Staff the contract as currently before both  
23 parties, and we sent on the rate structure with all the  
24 escalators. And they are not at this point under  
25 negotiation. The remaining issues, as I said, have to do



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1 with responsibilities in the event of default.

2 Q. And what I'm trying to determine is what  
3 Trigen is prepared to place before the Commission at this  
4 point, what you do have ready to provide into the record in  
5 this case. You know, the maximum that the Commission can  
6 have available as it's making its deliberations.

7 THE WITNESS: Can I just go off the record  
8 and ask a question here of my good counselors?

9 EXAMINER FEE: Yes.

10 (Discussion off the record.)

11 THE WITNESS: We're prepared to submit into  
12 the record the rate structure and the rate adjustment  
13 provisions as presently negotiated and withhold the rest of  
14 the contract until it is, in fact, agreed to.

15 MS. YOUNG: Mr. Examiner, would you like to  
16 reserve an exhibit number for that, because I would suggest  
17 that it should be included in the record.

18 EXAMINER FEE: Yes. Did you want to offer  
19 this steam service agreement that you just had?

20 MR. FINNEGAN: Well, we passed it around.  
21 Nobody seems to have any desire. I would just as soon offer  
22 it, though, as an exhibit.

23 (EXHIBIT NO. 10 WAS MARKED FOR  
24 IDENTIFICATION.)

25 EXAMINER FEE: The steam service agreement

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1 will be received as Exhibit 10.

2 (EXHIBIT NO. 10 WAS RECEIVED IN EVIDENCE.)

3 EXAMINER FEE: And those portions of the  
4 National Starch contract which do not appear to be subject  
5 to change can then be furnished as Exhibit 11.

6 MR. DUFFY: Just so I'm clear, what's going  
7 to come in as Exhibit 11 is public record portions of a  
8 contract that will be supplied to all of the parties to this  
9 case?

10 EXAMINER FEE: I don't know if it's the  
11 public record portion of the contract. It's the portion of  
12 the contract that the gentleman thinks will not change. The  
13 rest of the contract is still subject to negotiation.

14 Is that the current--

15 THE WITNESS: Yes, sir.

16 EXAMINER FEE: All right. He's going to  
17 furnish--

18 MR. DUFFY: May I voir dire the witness as  
19 to whether that document that he is going to furnish as  
20 Exhibit 11 is a public record or whether anybody has to sign  
21 a confidentiality agreement regarding that? At this point,  
22 I don't know what Exhibit 11 looks like, smells like or  
23 feels like; and I would like some indication on that.

24 THE WITNESS: I'm making a judgment that  
25 since National Starch allowed this contract to be a part of

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1 the public record and you could see what their rates were  
2 under this contract, that they will not request the  
3 proprietary process on the new contract. I have not asked  
4 them that question.

5 MR. DUFFY: Well, just so the record is  
6 clear, KPL, I think, would be willing to enter into a  
7 confidentiality agreement, if that's a prerequisite to  
8 looking at Exhibit 11, once Exhibit 11 is provided for the  
9 record. Thank you.

10 EXAMINER FEE: All right. They're prepared  
11 to do so if you feel it's necessary.

12 MR. FINNEGAN: All right.

13 EXAMINER FEE: All right. We'll move on.

14 MR. FINNEGAN: We'll check with them then.

15 MS. YOUNG: I have no further questions for  
16 the witness.

17 EXAMINER FEE: Mr. Mills.

18 MR. MILLS: I have no questions.

19 EXAMINER FEE: Mr. Kelly.

20 MR. KELLY: No questions.

21 EXAMINER FEE: Mr. Duffy.

22 MR. DUFFY: Yes, sir.

23 CROSS-EXAMINATION BY MR. DUFFY:

24 Q. Mr. Casten, you said that you were not aware  
25 of any process users in situations where there was not a

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1 fuel adjustment clause.

2 Did you investigate the--or are you aware  
3 that there is a steam system in existence in St. Joseph,  
4 Missouri?

5 A. Yes, we understand there is a steam system.

6 Q. How many process users are on that steam  
7 system?

8 A. I have no knowledge of the St. Joseph  
9 system. They are utterly inactive in our district heating  
10 association.

11 Q. Have you ever heard of AGP or Ag  
12 Processing, Inc.?

13 A. No, sir.

14 Q. Okay. Would the processing of soybeans  
15 constitute--and of soybean oil, things like that, would that  
16 constitute a process use of steam?

17 A. Absolutely.

18 Q. Would the cooking of dog food constitute a  
19 process use of steam?

20 A. Yes, sir.

21 Q. Are you aware that St. Joe's steam system  
22 does not have a fuel adjustment clause and it has no rate  
23 contracts with its customers, that its system is purely  
24 tariffed steam?

25 A. Yes. I'm further aware that they were the

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1 other way around, and this was a decision taken in the last  
2 year and a half. And I believe that the customers that you  
3 have mentioned are preexisting and that the actions of this  
4 Commission were apparently not sufficient to drive those  
5 customers into their own boiler plants as yet. My  
6 experience would suggest that those customers are probably  
7 looking at their own boiler plants out of fear that their  
8 energy rates will go out of control. Purely my experience.

9 Q. Are you the same Thomas R. Casten that  
10 submitted a memorandum to the Public Service Commission in  
11 this case dated September 7, 1989?

12 A. Yes, sir.

13 Q. You talk in this memorandum at Page 3 about  
14 the reduction in the gross receipts tax from 10 percent to  
15 4 percent or 4.5 percent. Let me ask you, is there some  
16 provision somewhere where Kansas City has agreed never to  
17 change it back to 10 percent?

18 A. My understanding is that serving city  
19 government can't make that kind of an agreement.

20 Q. So if the franchise gross receipts tax was  
21 reduced to 4-point-something percent as a result of an  
22 ordinance passed by the city council, then that same city  
23 council can raise it back up to 10 percent if that city  
24 council feels like it?

25 A. That's our understanding, yes, sir.



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1           Q.    You also mention in this same memorandum  
2 about the fact that none of the five other systems operated  
3 by Trigen in North America are rate regulated. Isn't that  
4 the result of the fact that you have chosen to operate those  
5 systems in states that do not have the regulatory rate  
6 structure that Missouri has with regard to heating systems?

7           A.    No, sir. In the state of New Jersey, the  
8 statute specifically states that "The commission shall have  
9 jurisdiction over . . . ." And in the enumerated list of  
10 things they have jurisdiction over is included the words  
11 "sale of heat."

12               The commission in New Jersey has looked at  
13 the statutes and decided that they could carry out their  
14 regulatory requirements with respect to our district heating  
15 system in Trenton, New Jersey, by approving the long-term  
16 contractual rate structure, which is 20-year contracts with  
17 private and government users, and by continuing to carry out  
18 those functions that are specified; for instance, the  
19 approval of debt instruments of over one year's duration  
20 have to go before the commission.

21               But they found that because the business was  
22 in no way a monopoly and that the users all had competitive  
23 sources of energy, that they were prepared to leave the rate  
24 of return to market forces and act primarily to exert their  
25 influence over the financial health of the company with its

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1 debt and the safety and the contracts--the contract form.

2 Q. So if I understand what you're telling me,  
3 the New Jersey Commission is regulating your contracts, but  
4 apparently not with regard to the allowed rate of return,  
5 that the contracts have to be submitted for approval?

6 A. No. They required us to submit the form of  
7 contract as a part of the original approval and then gave us  
8 the right to enter into those contracts without their  
9 approval with other people, which we have since done.

10 Q. Based upon the form they approved?

11 A. There's quite a bit of latitude on the form.  
12 We're able to change the form as well. They essentially  
13 stayed out of the contractual process.

14 Q. Does the contract form have a fuel  
15 adjustment clause in it?

16 A. The contracts all have a fuel adjustment and  
17 all have a PPI or a CPI adjustment for labor and maintenance  
18 and a fixed portion.

19 Q. Do other utilities in New Jersey have fuel  
20 adjustment clauses also?

21 A. Yes, they do.

22 Q. Have you previously supplied a copy of any  
23 part of the National Starch contract or what you're  
24 proposing to supply as Exhibit 11 to KPL or any party to  
25 this case other than the Staff?

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1           A.     No, sir.

2           Q.     So it would be fair to say that KPL hasn't  
3 seen any part of the National Starch contract, the one  
4 that's under negotiation?

5           A.     Not from us.

6           Q.     Let me direct your attention to Section 4.2  
7 of your proposed rules and regulations, Sheet 15. I think  
8 this is Exhibit No. 7. Counsel will have to supply you with  
9 a copy of that. Let me know when you have that in front of  
10 you.

11          A.     It starts with "Other Sources"?

12          Q.     Yes, sir. Can you tell me what safety  
13 reasons exist for Trigen needing the provisions--needing the  
14 words "or other heat supply" in that tariff language? What  
15 safety reasons exist?

16          A.     That provision is not there for safety  
17 reasons primarily.

18          Q.     Is it there primarily for economic reasons?

19          A.     That provision is there because our tariffs  
20 are predicated upon customers who use their full load from  
21 us. If they don't use their full load from us, there's a  
22 possibility that they can buy interruptible gas, a cheap  
23 boiler, use that until the gas company interrupts, and then  
24 take a little bit of service from us or do other things that  
25 were not intended in the rates.

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1           This provision is there because, rather than  
2 us be a policeman and have to go by and see if they're doing  
3 anything which other sections of the rates say they're not  
4 to do, it places upon them the affirmative requirement that  
5 if they contemplate some other sources, they have to notify  
6 us of that and that we have the right to either say, "We  
7 don't approve of that; and if you're going to go ahead, you  
8 can no longer have service from us under this tariff," or to  
9 say, "We understand and we approve of that." I can give you  
10 an example if you'd like.

11           Q.     A possible implementation of that tariff  
12 would be that if another heat supply was being used by your  
13 customer, you could insist on enforcing this in terms of  
14 telling that customer he has to disconnect from that other  
15 heat supply; is that correct?

16           A.     Based on the stipulations this morning, I  
17 don't currently have before this Commission an alternate  
18 rate structure to put that customer under. It would be our  
19 intent to come up with an alternate rate structure which the  
20 Commission could approve so that our action would not be to  
21 say, "You must disconnect," but our action would be to say,  
22 "You are no longer eligible for the full service rate  
23 structure. And if you want to continue to take service, you  
24 have to do it under this less than full service rate  
25 structure," which, I think, is a common thing for all of us.

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1 It's what you do to an interruptible customer that doesn't  
2 turn his gas off. It's the same concept.

3 Q. What I'm hearing you say is simply because--  
4 you would have the right to enforce that tariff to tell that  
5 customer to disconnect from that other heat supply. You're  
6 describing a temporary situation that you don't have another  
7 rate to put him on?

8 A. Well, throughout all of our experience, we  
9 don't find the right, quote, unquote, to disconnect a  
10 customer is ever an effective right. It's a theoretical  
11 right. But when you get to taking steam away from a  
12 customer, the Commission will intervene or somebody and it  
13 won't happen.

14 So what we're seeking to protect here is to  
15 prevent us from giving somebody the full service rates for  
16 what is not full service, which is therefore cheating the  
17 system. I think it's exactly analogous to you having  
18 an interruptible gas rate which is cheaper than a firm gas  
19 rate and if a customer doesn't interrupt, he gets thrown  
20 right onto the firm gas rate and pays a different price.  
21 And that's exactly what we're proposing to do with this  
22 clause.

23 Q. Are you saying then that you would not  
24 insist on the customer disconnecting from his other source  
25 so long as he pays the full tariff rate under your tariff?



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1           A.     Yes.

2           Q.     You said this was a 100 percent equity  
3 purchase?

4           A.     Yes, sir.

5           Q.     What return on equity is authorized or  
6 implicit in the rates that you are proposing?

7           A.     2 percent the first year. Want to buy a  
8 piece?

9                   MR. DUFFY: I ask that the last remark of  
10 the witness be stricken.

11                   That's all the questions I have.

12           EXAMINER FEE: Do you have any redirect?

13           MR. FINNEGAN: No.

14           EXAMINER FEE: I've about forgot what the  
15 issues are now.

16                   Will you have a witness that can tell me  
17 where the adjustments are, automatic adjustments are, or do  
18 I have to ask him?

19           MS. YOUNG: I will have a witness who can do  
20 that.

21           EXAMINER FEE: Thank you. The witness is  
22 excused.

23                   (Witness excused.)

24                   \_\_\_\_\_  
25           EXAMINER FEE: We'll be in recess 15

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minutes.

(A recess was taken.)

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1 (EXHIBIT NOS. 12 AND 13 WERE MARKED FOR  
2 IDENTIFICATION.)

3 EXAMINER FEE: The hearing will come to  
4 order, please.

5 There being no objection from the parties,  
6 we have marked and will receive as Exhibit 12 the contract  
7 between Trigen and Kansas City Power & Light, which is the  
8 subject of one of the proceedings.

9 (EXHIBIT NO. 12 WAS RECEIVED IN EVIDENCE.)

10 EXAMINER FEE: Ms. Young.

11 MS. YOUNG: Thank you. The Staff would call  
12 Mark Oligschlaeger to the stand.

13 EXAMINER FEE: A memorandum from  
14 Mr. Oligschlaeger has been marked as Exhibit 13.

15 (Witness sworn.)

16  
17 MARK L. OLIGSCHLAEGER testified as follows:

18 DIRECT EXAMINATION BY MS. YOUNG:

19 Q. Would you please state your name and  
20 business address for the record.

21 A. Mark L. Oligschlaeger, Post Office Box 360,  
22 Jefferson City, Missouri 65102.

23 Q. Would you please state by whom you are  
24 employed and in what capacity.

25 A. I'm employed by the Missouri Public Service

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1 Commission as the Manager of the Accounting Department.

2 Q. And how long have you been employed by the  
3 Public Service Commission?

4 A. Since 1981.

5 Q. Do you have with you a copy of a memorandum  
6 dated December 8, 1989, from yourself to Dale Johansen,  
7 which has now been marked as Exhibit 13 in this case?

8 A. I do.

9 Q. And can you identify that document as the  
10 memo which you sent to Mr. Johansen which was subsequently  
11 filed with the Commission in these cases for purposes of  
12 stating your recommendation in the cases to be heard today?

13 A. This is that document, yes.

14 Q. And were you also in the hearing room today  
15 when the stipulation was read into the record by Mr. English  
16 and I made some comments concerning the Staff's  
17 recommendation on rates?

18 A. Yes, I was.

19 Q. And, as conditioned by that stipulation, do  
20 you wish to have Exhibit 13 received into the record today  
21 as your testimony in this case?

22 A. I do.

23 MS. YOUNG: I have no further questions. I  
24 would tender the witness and offer the exhibit.

25 EXAMINER FEE: Mr. Mills.

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1 MR. MILLS: I have no objections to the  
2 exhibit, and I have no questions for the witness.

3 EXAMINER FEE: Mr. Duffy.

4 CROSS-EXAMINATION BY MR. DUFFY:

5 Q. Mr. Oligschlaeger, do you know whether there  
6 are other steam systems in Missouri?

7 A. I know there are other systems, yes.

8 Q. Could you list those?

9 A. There is a system in St. Joseph, Missouri,  
10 and I believe there's a central steam heating system in  
11 St. Louis, Missouri, also.

12 Q. Which ones of those, if any, are regulated  
13 by the Public Service Commission?

14 A. The St. Joseph steam system is rate  
15 regulated by the Missouri Public Service Commission. I'm  
16 not sure of the extent that we regulate the St. Louis system  
17 at this time.

18 Q. To your knowledge, do any of the rate  
19 regulated steam systems have the right to enter into  
20 unregulated contracts for providing steam service?

21 A. Not to my knowledge.

22 Q. Are there any regulated utilities that have  
23 the right to enter into unregulated contracts to provide the  
24 type of service that's otherwise regulated?

25 A. Not to my knowledge.



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1 MR. DUFFY: That's all I have.

2 EXAMINER FEE: Mr. Finnegan.

3 CROSS-EXAMINATION BY MR. FINNEGAN:

4 Q. Mr. Oligschlaeger, with reference to  
5 Exhibit 13, it's my understanding that, as a result of the  
6 stipulation this morning, you've changed your position on  
7 some of your proposals regarding the proposed rates?

8 A. Yes. Staff's position on the level of rates  
9 to go into effect upon Trigen's operation of the business,  
10 if that is indeed accepted by the Commission, would now be  
11 as stated in Option No. 2 in the memorandum from Dale W.  
12 Johansen to the case file.

13 Q. That's not an exhibit at this time, though,  
14 is it?

15 A. No, it is not.

16 Q. With reference to your position on the  
17 banked pollution credits, you have not changed on that, have  
18 you?

19 A. No. There is no change in that position.

20 Q. And you are recommending that they do be  
21 transferred to the Trigen company?

22 A. Yes, if the sale is approved.

23 Q. Yes.

24 MR. FINNEGAN: That's all the questions I  
25 have.

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1 EXAMINER FEE: Mr. English.

2 MR. ENGLISH: No questions, your Honor.

3 EXAMINER FEE: Any redirect?

4 MS. YOUNG: No. Thank you.

5 EXAMINER FEE: The witness may be excused.  
6 (Witness excused.)

7  
8 EXAMINER FEE: Exhibit 13 is received in  
9 evidence.

10 (EXHIBIT NO. 13 WAS RECEIVED IN EVIDENCE.)

11 MS. YOUNG: The Staff would call Michael W.  
12 Straub to the stand.

13 (Witness sworn.)

14  
15 MS. YOUNG: Would you like to go off the  
16 record to mark some exhibits?

17 EXAMINER FEE: Yes.

18 (Discussion off the record.)

19 (EXHIBIT NOS. 14 AND 15 WERE MARKED FOR  
20 IDENTIFICATION.)

21 EXAMINER FEE: The memorandum has been  
22 marked Exhibit 14, and his testimony in the St. Joe Light &  
23 Power case has been marked Exhibit 15.

24 MICHAEL W. STRAUB testified as follows:

25 DIRECT EXAMINATION BY MS. YOUNG:

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1 Q. Would you please state your name and  
2 business address for the record.

3 A. Michael W. Straub, Post Office Box 360,  
4 Jefferson City, Missouri 65102.

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

7 A. I'm employed by the Missouri Public Service  
8 Commission as a Rate and Tariff Examiner.

9 Q. How long have you been employed by the  
10 Public Service Commission?

11 A. Since 1970.

12 Q. Do you have before you a copy of a  
13 memorandum in your name to Dale Johansen dated December 8,  
14 1989, which has been marked as Exhibit 14?

15 A. Yes.

16 Q. And can you identify that document as the  
17 memo which you sent to Mr. Johansen and which was  
18 subsequently filed with the Commission for purposes of  
19 stating your recommendation in the dockets that are being  
20 heard today?

21 A. Yes, this is the document.

22 Q. Also, was the cover memorandum which was  
23 sent by Mr. Johansen to the case files in essence a summary  
24 and transmittal of your memorandum and Mr. Oligschlaeger's  
25 memorandum which was marked as Exhibit 13?

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1           A.     Yes.

2           Q.     Is it your desire that Exhibit 14 be  
3 received into evidence today as a portion of your testimony  
4 in this case?

5           A.     Yes.

6           Q.     On Page 2 of your memorandum which has been  
7 marked as Exhibit 14, there is a term "current regulatory  
8 requirements". Do you see that term?

9           A.     Yes, I do.

10          Q.     Could you please explain what you're  
11 referring to by the term "current regulatory requirements"?

12          A.     There are basically four items that go into  
13 the current regulatory requirements pertaining to adjustment  
14 clauses. One of them would be the UCCM case. The second  
15 one would be the St. Joe Light & Power Case No. HR-88-116.  
16 The third was the Southwestern Bell Company Case  
17 No. TC-89-14. And advice from counsel would be the last  
18 item.

19          Q.     Let's go to the first item, the UCCM case.  
20 Were you personally involved in activities of the Commission  
21 in dealing with the ramifications of the court's prohibition  
22 of the fuel adjustment clause in that case?

23          A.     Yes, I was.

24          Q.     And what was your role?

25          A.     I was one of the primary Staff members

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1 involved in rolling in the current fuel costs and zeroing  
2 out the fuel adjustment of the tariffs at that time, which  
3 happened in October of 1979.

4 Q. And, as you went through that process, were  
5 the fuel adjustment clauses only for residential customers  
6 eliminated?

7 A. No, not at that time. The fuel adjustment  
8 was eliminated for all regulated electric companies in the  
9 state of Missouri for all customers.

10 Q. And why were commercial and industrial  
11 customers' rates also changed to remove the fuel adjustment  
12 clause?

13 A. It was felt that, if we were to recommend to  
14 eliminate the fuel adjustment only to residential customers,  
15 that the industrial intervenors would immediately file an  
16 appeal and also try to get the fuel adjustment eliminated  
17 for them as well.

18 Q. And what was the basis for that feeling that  
19 you mentioned?

20 A. Well, the industrial intervenors were a  
21 party to the case, as in almost all rate cases that were  
22 going on at that time. They were involved in the process as  
23 much as the Office of the Public Counsel, the Staff, and  
24 UCCM.

25 Q. And, in the course of that involvement, did



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1 they indicate their intentions if the fuel adjustment clause  
2 were not eliminated for their service also?

3 A. Yes, they did.

4 Q. Turning now to the St. Joe Light & Power  
5 steam case back in 1988, what was your role in that  
6 proceeding?

7 A. I was a Staff witness that pertained to the  
8 rate design in that case.

9 Q. And do you have before you a copy of Exhibit  
10 No. 15, which is, on the cover sheet, indicated to be your  
11 direct testimony in that case?

12 A. Yes.

13 Q. And where in that testimony do you address  
14 your recommendation as to the fuel adjustment clause?

15 A. Let me see. Most of the testimony addresses  
16 the fuel adjustment clause with the exception of the first  
17 two and a half pages.

18 Q. Okay. And what was your basic  
19 recommendation?

20 A. My basic recommendation was to eliminate the  
21 fuel adjustment clause.

22 Q. And how was that recommendation received?  
23 What was the resolution?

24 A. The case was stipulated to. And the company  
25 and all parties agreed to eliminate the fuel adjustment

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1 clause.

2 Q. And did the Commission adopt that  
3 stipulation?

4 A. Yes, they did.

5 Q. Let's turn now to the Southwestern Bell  
6 Telephone Company Case TC-89-14. In what way did the  
7 Commission address an area that you felt is determinative or  
8 applies here?

9 A. They primarily addressed a CPI adjustment  
10 factor. There was a great deal of evidence presented on the  
11 CPI automatic adjustment clause, and the Commission devoted  
12 a number of pages of its Report and Order to that as well.  
13 And the Commission rejected the idea of a CPI automatic  
14 adjustment clause.

15 Q. What do you understand have been the bases  
16 or the concerns of the Commission that led them to reject  
17 that?

18 A. Most of the concern was their legal ability  
19 to have one in the state of Missouri, any type of automatic  
20 adjustment clause. That tied back to the UCCM fuel  
21 adjustment case.

22 Q. Now, do any of these sources that you've  
23 mentioned deal with the use of a fuel adjustment clause in  
24 contracts as opposed to in tariffs or other types of  
25 automatic adjustment clauses in contracts as opposed to

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1 tariffs?

2 A. I don't think we had any other contracts at  
3 the time. To my knowledge, everything was a tariffed item  
4 that I've discussed.

5 Q. Okay. Is there anything that you're aware  
6 of that you have been presented or reviewed that would lead  
7 you to believe that contracts should be treated differently  
8 from tariffs in regard to automatic adjustment clauses?

9 A. No. In my opinion, whether a rate is  
10 determined from a contract or from a tariff, it still has to  
11 abide by the rules and regulations of the Commission as well  
12 as the rules and regulations of the company on file with the  
13 Commission.

14 Q. Now, your recommendation indicates that the  
15 Staff has problems with certain automatic adjustment clauses  
16 included in the two contracts that are in issue today,  
17 first, with Kansas City Power & Light Company and, second,  
18 with National Starch. It's also been indicated on the  
19 record that the Staff has been provided with a recent draft  
20 of the National Starch contract. Has the Staff also been  
21 provided a copy of the KCPL steam service agreement?

22 A. Yes.

23 Q. And based upon a review of--let's take the  
24 KCPL agreement first. What types of adjustment clauses are  
25 contained therein that raise the concern?

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1           A.     Okay. Hang on just a minute. Let me find  
2 it.

3           The steam service agreement has a fuel  
4 adjustment clause, a CPI adjustment clause, some form of an  
5 electricity adjustment clause, and--I'm not certain if it  
6 has a chemical adjustment clause or not. I have it in one  
7 note and not in another.

8           Q.     If I may, I'll provide the witness a copy of  
9 Exhibit 12 to Exhibit 12, which is the steam service  
10 agreement which has been marked and received.

11           And, if you could, I'd like you to review  
12 the document and point out where in that document the  
13 Hearing Examiner and the Commissioners could go to see the  
14 specific language that represents these adjustment clauses  
15 that you've mentioned.

16           A.     On Page 6 of Exhibit 12, under Section 7,  
17 Subparagraph A refers to ". . . costs of fuel as defined by  
18 FERC Account 501 and electricity attributable to the supply  
19 of steam, cooling, and condenser cooling water to the  
20 Company . . . ." Subparagraph B is a steam capacity  
21 reservation charge, and it is the CPI adjustment factor.

22           Q.     And at what point and in what manner is the  
23 CPI adjustment applied?

24           A.     The CPI adjustment is applied after--pardon  
25 me. The steam capacity charge is ". . . \$65,000 per month

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1 through May 31, 1991. Thereafter, the Charge shall be  
2 \$56,875 per month, multiplied by the ratio of the current  
3 CPI-U to the CPI-U of June 30, 1989."

4 Q. Thank you.

5 Do you also have a copy of the draft  
6 National Starch contract?

7 A. Yes.

8 Q. Okay. As I ask you questions about that  
9 contract, I'd like you to keep in mind that it has, No. 1,  
10 not been placed in the record yet; No. 2, that there may be  
11 some confidentiality aspects to that contract. But if you  
12 could try to answer my questions without providing too many  
13 specifics but enough to place in the record the  
14 objectionable portions thereof.

15 A. Okay.

16 Q. Where in the National Starch contract or  
17 schedules would we find the automatic adjustment provisions?  
18 And if you could just very briefly describe what those are.

19 A. Of the National Starch contract, Schedule A,  
20 there are three adjustment clauses. One would be a fuel  
21 adjustment. Another would be a water adjustment, and a  
22 third would be a CPI adjustment.

23 Q. And in what portion of the charges is the  
24 CPI adjustment found? Is that under a specific category?

25 A. That's under the service charge as well as



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1 the base charge.

2 MS. YOUNG: Thank you.

3 That's all the questions I have for the  
4 witness. I would tender him for cross-examination and offer  
5 Exhibits 14 and 15 into the record.

6 EXAMINER FEE: Mr. Mills.

7 MR. MILLS: Yeah, I have a question.

8 CROSS-EXAMINATION BY MR. MILLS:

9 Q. Mr. Straub, are you familiar with the  
10 currently effective agreement between KCPL and National  
11 Starch, which has been marked as Exhibit 10?

12 A. I have seen the agreement.

13 Q. Does that agreement contain a fuel  
14 adjustment clause?

15 A. Yes, it does.

16 Q. And was that agreement approved by the  
17 Commission?

18 A. Yes, it was.

19 Q. Why was a fuel adjustment clause allowed in  
20 that agreement?

21 A. I don't know why Staff recommended that that  
22 agreement not be suspended.

23 MR. MILLS: Thank you. That's all I have.

24 EXAMINER FEE: Mr. Duffy.

25 CROSS-EXAMINATION BY MR. DUFFY:

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1           Q.     Mr. Straub, I believe you indicated you're  
2 familiar with the last St. Joe Light & Power steam case.  
3 Can you tell me whether there are any process gas users on  
4 the St. Joe steam system?

5           A.     I heard testimony earlier that there was.

6           Q.     Is it correct that all of the steam provided  
7 by St. Joe to its steam customers is pursuant to tariff,  
8 that there are no rate contracts?

9           A.     That's correct.

10          Q.     And those tariffs have no fuel adjustment or  
11 CPI-type escalators in them; is that correct?

12          A.     That's correct.

13          Q.     To your knowledge, is there any utility  
14 regulated by the Public Service Commission that has a  
15 provision in its tariffs that would allow that company to  
16 refuse service to a customer because that customer was  
17 taking a competing type of utility service?

18          A.     No, there is not. There may be a provision  
19 where the customer would go to a different rate schedule but  
20 certainly not to remove him from the system.

21          Q.     And I take it then there's nothing that  
22 would ban that customer from utilizing a different heat  
23 source or utility source?

24          A.     That's correct.

25          MR. DUFFY: I think that's all I have.

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1 EXAMINER FEE: Mr. Finnegan.

2 MR. FINNEGAN: Yes, sir.

3 CROSS-EXAMINATION BY MR. FINNEGAN:

4 Q. With respect to the current regulatory  
5 requirements that you referred to, you listed the UCCM case.  
6 And I believe you indicated that the court in that case  
7 decided that the fuel adjustment clause should not be in  
8 residential tariffs; is that correct?

9 A. The case, it's my understanding, only  
10 addressed residential customers; but all the reasons given  
11 by the Supreme Court were applicable to all customers.

12 Q. But the case specifically applied to only  
13 residential customers?

14 A. That's correct.

15 Q. With the St. Joe Light & Power case that you  
16 indicated you testified in, that was a stipulated  
17 settlement, was it not?

18 A. That's correct.

19 Q. So the issue was not decided?

20 A. By the Commission.

21 Q. By the Commission. And the parties, as  
22 usual, reserve all rights and decide that they are agreeing  
23 to nothing, is that correct, except for the final figures?  
24 Is that correct? They don't take--the parties do not give  
25 up any of their positions; is that correct?

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1           A.     That's correct. Usually a settlement is  
2 simply to dispose of the case.

3           Q.     And that involved tariffed rates?

4           A.     That's correct.

5           Q.     The Southwestern Bell Case TC-89-14, when  
6 the Commission disallowed the CPI adjustment, that was also  
7 on the rates for residential and business customers; is that  
8 correct?

9           A.     That's correct.

10          Q.     Tariffed rates?

11          A.     Correct.

12          Q.     You are aware in this case that the company  
13 is requesting fuel adjustment clauses in contracts with  
14 customers?

15          A.     That's correct.

16          Q.     And that the customers that they're dealing  
17 with are--would you consider sophisticated customers?

18          A.     I would consider them knowledgeable in their  
19 energy requirements.

20          Q.     Kansas City Power & Light, for instance,  
21 would be a sophisticated customer? It would be able to  
22 handle its own in dealing with a utility?

23          A.     I would say they are a knowledgeable  
24 customer.

25          Q.     How about National Starch?

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1           A.     Yes. They're knowledgeable as well.

2           Q.     And do both National Starch and Kansas City  
3 Power & Light have other alternatives in taking steam from  
4 Trigen?

5           A.     I don't know if they have other alternatives  
6 in taking steam.

7           Q.     "From Trigen," I said.

8           A.     From Trigen?

9           Q.     Yes.

10          A.     It's my understanding that Trigen is going  
11 to be the only supplier of steam.

12          Q.     All right. Can Kansas City Power & Light  
13 get its electrical requirements elsewhere and not even  
14 operate or purchase steam from the Grand Avenue Station?

15          A.     Yes, they can.

16          Q.     And can National Starch put its own boilers  
17 in?

18          A.     Yes, they can.

19          Q.     Or they can perhaps purchase gas?

20          A.     Yes.

21          Q.     Do you have any legal authority that you can  
22 rely on that does not allow the fuel adjustment clause to be  
23 applied to industrial customers?

24                 MS. YOUNG: Objection. It calls for a legal  
25 conclusion.



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1 EXAMINER FEE: Sustained.

2 BY MR. FINNEGAN:

3 Q. Could you explain what rights of National  
4 Starch and KCP&L, or other steam customers, that the Staff  
5 feels it's protecting by recommending against these  
6 contracts, the National Starch and the KCP&L contracts?

7 A. What rights of other customers?

8 Q. Of National Starch, KCP&L, and the other  
9 customers.

10 A. I think it's a question of the rights of all  
11 the customers. Automatic adjustment clauses have  
12 historically been eliminated by the Commission for numerous  
13 reasons, most of them being legal at this point. I don't  
14 think it's a question--

15 MR. FINNEGAN: Objection to the use of the  
16 word "legal".

17 EXAMINER FEE: Sustained.

18 THE WITNESS: I think the rights of all the  
19 customers involved.

20 BY MR. FINNEGAN:

21 Q. You heard testimony, did you not, that there  
22 will be no steam system if these contracts are not approved?

23 A. I've heard that testimony, yes.

24 Q. Is that beneficial to the customers not to  
25 have a steam system?

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1           A.     In my opinion, the steam customers would be  
2 better off with a steam supplier but not at the expense of  
3 allowing companies to do something that goes against Staff's  
4 position.

5           Q.     So the Staff is recommending then that there  
6 be no steam system in the future?

7           A.     No, we're not recommending that at all.  
8 We're recommending there not be any automatic adjustment  
9 clauses.

10          Q.     Well, if it's such that, if there are no  
11 automatic adjustment clauses, there would be no steam  
12 system, what's that result in?

13          A.     I think that results in one person's opinion  
14 that there wouldn't be a steam system. You've talked like,  
15 without a fuel adjustment clause, there is no life. There  
16 has been life after the fuel adjustment clause in the  
17 electric industry in Missouri, as well as the steam industry  
18 in Missouri.

19                 The companies have a right every day to file  
20 an emergency case if they feel their earnings are getting so  
21 low that they cannot stay whole. They have a right to file  
22 a rate case at any time they so choose to ensure that their  
23 earnings are at a level that benefits both the stockholders  
24 and the customers of the company.

25          Q.     What's been Kansas City Power & Light's

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1 experience when they've filed for rate increases for steam  
2 customers?

3 A. The last rate they filed for, I think Staff  
4 came in with a substantial revenue requirement. It was also  
5 recommended that they try to sell the system.

6 Q. Are you aware that, if KCP&L is not a  
7 customer and if National Starch is not a customer of Trigen,  
8 that there will be no steam system?

9 A. I have heard that in testimony.

10 Q. Do you believe it?

11 A. I don't know.

12 Q. Do you think that this company can operate  
13 on its own without those two customers?

14 A. I believe they could operate without  
15 adjustment clauses. They may not be able to operate without  
16 those two customers.

17 Q. Are you aware that the--well, let's see.  
18 The other steam system in this state is owned by an electric  
19 utility too, is it not?

20 A. St. Joe Light & Power are you referring to?

21 Q. Yes.

22 A. Yes, they are.

23 Q. And have not the customers of St. Joe  
24 Light & Power or Kansas City Power & Light been subsidizing  
25 electric customers and subsidizing steam systems?

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1 MR. DUFFY: Objection. No foundation. No  
2 facts in evidence regarding subsidization on the St. Joe  
3 steam system.

4 EXAMINER FEE: Sustained.

5 BY MR. FINNEGAN:

6 Q. Kansas City Power & Light and St. Joseph  
7 Light & Power have other operations, do they not?

8 A. Yes, they do.

9 Q. They operate electric systems?

10 A. Yes, they do.

11 Q. And do not their electric systems--are they  
12 not much larger in scope and in revenues than their steam  
13 operations?

14 A. Yes, they are.

15 Q. Trigen, as you know, will operate one type  
16 of company, will it not?

17 A. That's my understanding, yes.

18 Q. It will be a steam customer?

19 A. A steam company, yes.

20 Q. A steam company. And, whereas, if their  
21 rates were to fall below a certain level, they may go  
22 bankrupt; whereas Kansas City Power & Light or St. Joe  
23 Light & Power would not?

24 MR. MILLS: I object. That calls for  
25 speculation.

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1 EXAMINER FEE: Overruled.

2 THE WITNESS: I think they have every  
3 opportunity that any other utility in Missouri has and they  
4 can come before the Commission and ask for rate relief.  
5 And, to my knowledge, the Commission has never allowed a  
6 utility to go under.

7 BY MR. FINNEGAN:

8 Q. If the rates are not competitive--especially  
9 in the steam area, if rates are not competitive, do  
10 customers have alternate sources?

11 A. I think, as a general rule, customers always  
12 have alternatives.

13 Q. For a telephone customer, what's his  
14 alternative?

15 A. To do without.

16 Q. And how about an electric customer? What  
17 does an electric customer do?

18 A. He can generate his own.

19 Q. A residential electric customer can generate  
20 his own?

21 A. The technology is there, yes.

22 Q. Is it realistic that you're saying this or  
23 is this--

24 A. Financially, it may not be realistic,  
25 depending upon the location of the residence. If it's in



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1 the woods, it may be viable.

2 Q. Well, would you admit that--would you agree  
3 to this, that in Kansas City where this system is going to  
4 operate, there are alternate sources of heating power  
5 available?

6 A. Yes, I would agree.

7 Q. Would you say that there's gas available?

8 A. Yes.

9 Q. Both from Kansas City Power & Light as a  
10 tariff gas or--I'm sorry. --from KPL as a tariff source or  
11 from KPL as a transporter of gas?

12 A. I would definitely say, yes, as KPL as a  
13 customer. I'm not in the gas division of the Commission, so  
14 I'm really not up on transportation and where it stands  
15 today. But I would concede, if they can do it, then, yes,  
16 they could be served by both of them--or both ways by the  
17 company.

18 Q. And does not Kansas City Power & Light  
19 Company provide electricity as a source of heat?

20 A. Yes.

21 Q. And, if the rates for steam are not  
22 competitive with the rates for gas or electricity or perhaps  
23 oil--oil is also another source of heat, is it not?

24 A. Yes, it is.

25 Q. --then can a company continue to survive?

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1           A.     Well, I think the customer will, in all  
2     likelihood, take the heating source that best suits his  
3     needs. And, in a lot of cases and in most cases, that's an  
4     economical decision as well as a physical decision on  
5     whether he can physically have this heating source available  
6     to him or not.

7           Q.     The type of customers that take steam from  
8     Kansas City Power & Light, are they residential customers?

9           A.     No. It's my understanding they're usually  
10    larger commercial buildings in the downtown area. There may  
11    be some residential buildings, but it's supplied on a large  
12    customer basis.

13          Q.     And do not these larger buildings, just by  
14    the fact that they're larger, have a better opportunity to  
15    change sources of heat than a residential customer would  
16    have?

17          A.     I would agree they probably have more  
18    options available to them.

19          Q.     In the UCCM case, was not the electricity  
20    being supplied as a monopoly source of power?

21          A.     Well, you know, in Missouri we have three  
22    primary electric servers. We have regulated electric  
23    utilities; we have cooperatives; and we have municipal  
24    electric companies. We have had many instances where one  
25    customer could have his choice of any of those three. So

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1 when you say "a monopoly," it may not be in the truest sense  
2 of the word.

3 Q. In the middle of downtown Kansas City, do  
4 you have a choice of electric companies?

5 A. No, you don't.

6 Q. In most places, do you have a choice of  
7 electric companies?

8 A. Geographically, in most areas of the state,  
9 I would say you may have, yes.

10 Q. Do most customers have a choice?

11 A. Probably not.

12 Q. Because most customers are in large  
13 metropolitan areas, are they not?

14 A. That's correct.

15 Q. And there is no rural electric co-op or  
16 municipal serving those areas?

17 A. Generally not. That's true.

18 Q. You mention, with reference to the UCCM  
19 case, that you thought--or the reason the staff or whoever,  
20 the parties, went and extended the prohibition against fuel  
21 adjustment clauses was because industrial intervenors may  
22 protest in the next case or at some time; is that correct?

23 A. If I understand your question, you're asking  
24 me if that's why the adjustment was eliminated on all  
25 customers?

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1 Q. That's correct.

2 A. Well, at that time the fuel adjustment  
3 applied to all customers. So if we would have just  
4 eliminated it for the residential customers, we would have  
5 had to go through another hearing process and develop a fuel  
6 adjustment clause simply for the commercial and industrial  
7 customers. So they would have had an opportunity through  
8 that mechanism, I would assume, to appeal that decision.

9 Q. So that's why you eliminated it for all?

10 A. Yes.

11 Q. In this particular case, do not the  
12 industrial customers, Kansas City Power & Light and National  
13 Starch, want the fuel adjustment clause?

14 A. I don't know if they want it or not as  
15 customers.

16 Q. Are they not bargaining for this in their  
17 contracts?

18 A. They're bargaining for it, but that may be a  
19 position that they have given up in order to get something  
20 else.

21 Q. In your consideration, did you take into  
22 account the fact that both National Starch and Kansas City  
23 Power & Light are being served outside the service area?

24 A. National Starch, it's my understanding, is  
25 taking service within the service area of the company. They

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1 may not be using the steam within the service area.

2 Q. If I were to show you on Exhibit 3 that they  
3 are not inside the service area, would your answer be  
4 different?

5 A. Are you talking about the processing plant,  
6 or are you talking about the metering point?

7 Q. I'm talking about the--

8 A. The plant?

9 Q. --the location of the Grand Avenue Station  
10 itself. If you look at this map, do you see where these  
11 lines are?

12 A. Yes.

13 Q. This is where the service area is. Is Grand  
14 Avenue Station outside the service area or in it?

15 A. It's outside.

16 Q. Okay. So where is Kansas City Power & Light  
17 receiving that service?

18 A. Outside the service area according to that  
19 map.

20 Q. And do you know where the National Starch  
21 pipe comes in? On the north side?

22 A. I'm not certain which side of the building.  
23 I was up there and they told me, but I really don't remember  
24 which side it came in. I think it came in from the river  
25 side, so that would be the north side.



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1 Q. Which would be outside the service area?

2 A. Yes.

3 Q. So you did not take that into consideration?

4 A. No, I didn't. I would think that it would  
5 be to Staff's benefit to recommend that the service area be  
6 amended to include Kansas City Power & Light and the  
7 National Starch metering point.

8 Q. Do you realize that a service area is a  
9 place where a utility holds itself out to provide service to  
10 all customers?

11 A. Yes.

12 Q. The service provided that--proposed to be  
13 provided to National Starch and to KCP&L is under contract?

14 A. Yes.

15 Q. They're not holding themselves out to serve  
16 all the public, are they?

17 A. In my opinion, they're serving them outside  
18 of the service area and they shouldn't be. That doesn't  
19 remove them, in my opinion, from the Commission's  
20 jurisdiction.

21 Q. You are not an attorney; is that correct?

22 A. That's correct. I am not an--

23 MR. FINNEGAN: I ask that that be stricken,  
24 your Honor.

25 MS. YOUNG: If I may respond. He stated it

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1 as an opinion.

2 EXAMINER FEE: The request to strike will be  
3 denied.

4 MR. FINNEGAN: All right.

5 Could I have just a couple minutes or a  
6 minute here?

7 EXAMINER FEE: Yes.

8 (EXHIBIT NO. 16 WAS MARKED FOR  
9 IDENTIFICATION.)

10 MR. FINNEGAN: That's all the questions I  
11 have.

12 EXAMINER FEE: Mr. English.

13 MR. ENGLISH: Just a few questions, your  
14 Honor.

15 CROSS-EXAMINATION BY MR. ENGLISH:

16 Q. Mr. Straub, to your knowledge, does KCPL's  
17 present steam tariffs contain a fuel adjustment clause?

18 A. Yes, they do.

19 Q. Mr. Straub, were you in the room when  
20 Mr. Rasmussen was on the stand earlier today?

21 A. Yes.

22 Q. Did you hear him state to the effect that  
23 KCPL was willing to sign the steam service agreement, which  
24 has been identified as Exhibit 12 to Exhibit 12?

25 A. Yes.

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1 Q. Have you read the steam service agreement?

2 A. Yes.

3 Q. Does it allow for a hearing before a change  
4 to the rates?

5 A. Let me get it out again, please.

6 Q. Sure.

7 A. Yes, at Section 14.

8 Q. Let me rephrase my question to make it more  
9 clear. Does Section 7 of the agreement, which deals with  
10 the automatic adjustment clauses, provide for a hearing  
11 before Trigen can adjust its charges to Kansas City Power &  
12 Light under Section 7?

13 A. I don't see anything in Section 7 about  
14 Commission approval.

15 Q. Earlier, in your conversation with your  
16 counsel, you enumerated certain items of cost that Section 7  
17 treats. In your opinion and based upon your experience here  
18 with the Public Service Commission, does Section 7 treat or  
19 encompass all of the costs that Trigen will incur to provide  
20 steam to KCPL?

21 A. I don't know if it encompasses all the  
22 costs. But, obviously, it is the rate that they will be  
23 charging other than the minimum annual purchase.

24 Q. In your review of the contract, did you see  
25 any incentive to Trigen to keep down fuel costs, if you can

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1 recall one way or the other?

2 A. I can't recall.

3 Q. Mr. Straub, then if the steam service  
4 agreement allows Trigen to change rates to KCPL without a  
5 hearing before the Commission and if it doesn't consider all  
6 of the costs that Trigen incurs and if there is no  
7 incentive, except in the terms of the contract, for Trigen  
8 to keep its fuel costs down, if all those are true and if  
9 KCPL is willing to sign the steam service agreement, why  
10 shouldn't KCPL be allowed to enter into this arrangement if  
11 it's agreeable?

12 A. I just don't believe, in my opinion, it's  
13 allowed under the current regulatory environment. I think  
14 I'll leave my answer at that.

15 MR. ENGLISH: Thank you, Mr. Straub.

16 No further questions, your Honor.

17 QUESTIONS BY EXAMINER FEE:

18 Q. Before I give you an opportunity for  
19 redirect, I want to ask you: If, as a result of these  
20 proceedings, Trigen filed tariffs for Commission approval,  
21 are you the Commission Staff person that would probably  
22 review those tariffs and recommend approval or disapproval?

23 A. Yes.

24 Q. Can you tell me if the tariffs that have  
25 been filed by Trigen as Exhibits 6 and 7 would probably be

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1 considered acceptable?

2 A. As amended?

3 Q. Yes.

4 A. With the exception of the numbering at the  
5 top of the page. I believe they have incorrect numbers at  
6 the top of the page.

7 Q. But, other than that, the features--the  
8 substance of those tariffs would probably meet with a  
9 recommendation for approval?

10 A. Yes.

11 Q. Then the Staff's objection is, No. 1, the  
12 automatic adjustment features of the contract between Trigen  
13 and KCPL for steam sales; is that right?

14 A. That's correct.

15 Q. And it's my understanding that KCPL's  
16 facility is not within the service area?

17 A. I have been shown that. That's true.

18 Q. And it's my understanding that the use of  
19 the steam will be for the generation of electricity; is that  
20 right?

21 A. That's correct.

22 Q. Is there a possibility that Trigen, under  
23 that circumstance, could be considered analogous to a vendor  
24 of fuel to Kansas City Power & Light, such as gas or coal?

25 A. And then not be under our jurisdiction?



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1 Q. Well, I mean, are they not selling the steam  
2 for the same purpose, for Kansas City Power & Light to use  
3 to generate electricity?

4 MR. DUFFY: I'm going to object. That calls  
5 for a legal conclusion.

6 EXAMINER FEE: You don't have any objection  
7 to my questions.

8 (Laughter.)

9 MR. DUFFY: I've got to try anyway.

10 BY EXAMINER FEE:

11 Q. Under those circumstances, even though there  
12 may be a fuel adjustment clause in Trigen's contract, it  
13 will never be reflected in Kansas City Power & Light's  
14 rates, will it, because Kansas City Power & Light cannot  
15 raise its rates because of the increase in the cost of coal,  
16 right? Is that right?

17 A. That's correct.

18 Q. Okay. Now, is the other objection to the  
19 automatic adjustments in the National Starch contract?

20 A. Yes.

21 Q. And have I described the remaining two  
22 objections?

23 A. The National Starch contract?

24 Q. Yes. And the Kansas City Power & Light  
25 contract.

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1           A.     Yes.

2           Q.     It's also my assumption that National Starch  
3 is not within the proposed service area; is that right?

4           A.     I've been shown that.

5           Q.     I think the testimony is that, as a matter  
6 of fact, they built their own steam main to the plant.  
7 Under those circumstances, do you have an opinion as to  
8 whether or not Kansas City Power & Light would have been  
9 able to refuse service to National Starch?

10          A.     Yes, I think they would have had the right  
11 to refuse service to National Starch unless National Starch  
12 came into their service area, and then I think they would  
13 have the responsibility of serving them.

14          Q.     National Starch obviously had to go to a  
15 great deal of trouble to make it possible for them to  
16 negotiate service with the steam plant?

17          A.     Yes, they did.

18          Q.     And, since they are not in the service area,  
19 Kansas City Power & Light had no obligation to serve it, as  
20 is customary under a utility obligation?

21          A.     Yes, I would agree with that.

22                 EXAMINER FEE: Do you have any redirect?

23                 MS. YOUNG: Just one question.

24                 REDIRECT EXAMINATION BY MS. YOUNG:

25          Q.     In the tariffs that St. Joe Light & Power

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1 filed in its last rate case as a result of the stipulation  
2 that was approved by the Commission, was there or was there  
3 not a fuel adjustment clause included?

4 A. There was not a fuel adjustment clause.

5 MS. YOUNG: Thank you. Nothing further.

6 EXAMINER FEE: The witness may be excused.

7 (Witness excused.)

8  
9 EXAMINER FEE: Exhibits 14 and 15 will be  
10 received in evidence.

11 (EXHIBIT NOS. 14 AND 15 WERE RECEIVED IN  
12 EVIDENCE.)

13 EXAMINER FEE: While we were off the record,  
14 we had marked as Exhibit 16 a letter from Mr. Pendergast of  
15 KPL to the Secretary of the Public Service Commission.

16 Is there any objection to that document  
17 being received in evidence?

18 (No response.)

19 EXAMINER FEE: Exhibit 16 will be received  
20 in evidence.

21 (EXHIBIT NO. 16 WAS RECEIVED IN EVIDENCE.)

22 EXAMINER FEE: Is there anything further to  
23 be offered?

24 (No response.)

25 EXAMINER FEE: Are the parties willing to

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1 waive the reading of the transcript by the Commission  
2 pursuant to Chapter 536 of the statutes?

3 MR. DUFFY: KPL-Gas Service has waived.

4 EXAMINER FEE: What?

5 MR. DUFFY: KPL-Gas Service has waived.

6 EXAMINER FEE: All right.

7 MR. MILLS: Public Counsel will not.

8 EXAMINER FEE: You must either file a brief  
9 or present arguments to the Commission.

10 MR. DUFFY: I'm sorry. What was the first  
11 part of what you said?

12 EXAMINER FEE: You must either file a brief  
13 or present argument to the Commission. Which do you prefer  
14 to do?

15 We'll be in recess.

16 (Discussion off the record.)

17 EXAMINER FEE: Back on the record.

18 There appears to be nothing further to be  
19 offered. The transcript has not been waived. The argument  
20 will be given to the Commission on this matter at 10 a.m. on  
21 Thursday morning, which is two days hence. And the hearing  
22 is adjourned.

23 WHEREUPON, the cross-examination of this  
24 case was concluded; and the oral argument was continued  
25 to 10 a.m., Thursday, December 21, 1989.

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PROCEEDINGS

EXAMINER FEE: The hearing will come to order, please.

The Commission has scheduled at this time an oral argument in Cases HM-90-4 and HA-90-5, being respectively applications for Kansas City Power & Light Company to sell its downtown steam system and Trigen-Kansas City District Energy Corporation for an application to buy and thereafter operate.

I think we've indicated that Trigen should offer the first argument.

Mr. Finnegan.

MR. FINNEGAN: May it please the Commission, as a result of stipulations reached Tuesday, we are at a position where we are now down to basically three items for the Commission to consider. Actually, there's a fourth item, but it's outside the scope of the Commission. And that's with respect to the banking of the pollution credits. And I'd like to just briefly mention what's happening on that.

Trigen met yesterday with the DNR and the city of Kansas City. And it's believed that shortly after one more run would be had, that they will have an agreement that would be accepted, that will allow the banked credits for burning coal to be transferred to Trigen from



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1 Kansas City Power & Light. And all parties in this  
2 proceeding have agreed that that is a condition of the  
3 granting of the certificate.

4 And the reason it's necessary is because of  
5 the plan that Trigen has for the system, and that's for the  
6 burning of coal to make it a viable operation. The parties  
7 have agreed that the tariffs provided by Trigen and the  
8 rules and regulations provided by Trigen would be acceptable  
9 as amended and modified Tuesday with one exception, and  
10 that's with respect to Rule 4.2 involving other sources.

11 And this rule reads now that "The Customer's  
12 premises shall have no connection to or from any other  
13 source of steam or other heat supply without prior notice to  
14 and written approval from the company." This differs from  
15 the present KCPL tariff provision on this in that--in the  
16 use of the words "other heat supply."

17 We are willing at this time to modify or  
18 accept a modification. And we would propose the language to  
19 that that would provide that there would be a requirement  
20 that, if anybody was using "other heat supply" in addition  
21 to the steam supplied by the company, that they would be  
22 required to give notice to the company and the company would  
23 reserve the right to file a tariff for parties using less  
24 than full steam requirements.

25 And the reason for this is because of the

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1 way the tariffs are set up with the capacity requirement and  
2 the usage requirement. And I believe Mr. Duffy will present  
3 his side of the argument on that. But we are down to the  
4 two major issues. And that involves the National Starch  
5 contract and the steam service agreement contract with  
6 Kansas City Power & Light.

7 Briefly, I think we should--before going  
8 into this, we should mention or say that the Commission  
9 should be pleased that its decision in HO-86-139 that  
10 Kansas City Power & Light should look for a buyer of the  
11 system is close to realization. After some time of--and a  
12 change in horses in midstream from Kinetic Energy, who was  
13 going to buy it, to a more viable buyer, Trigen, we are very  
14 close to this.

15 Trigen is a subsidiary of Trigen Energy  
16 Corporation, which operates four--or has four systems in the  
17 United States and operates one other. And Trigen itself is  
18 a subsidiary of two French corporations, one of which has 70  
19 district energy systems throughout the world with over 440  
20 miles of distribution pipeline and also owns and operates  
21 the Paris District Energy System, which is believed to be  
22 the second largest in the world.

23 The purchase price is \$6 million. It's to  
24 be paid for in cash. There will be no financing. In  
25 addition, Trigen is committed to making \$2 1/2 million in

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1 improvements to upgrade the system in order to burn coal.  
2 As I mentioned earlier, coal is what will make this system  
3 viable.

4 As the Commission will remember in  
5 HO-86-139, it was believed that Kansas City Power & Light  
6 was entitled to a 66 percent rate increase under their  
7 present operation. In order to keep this going, however,  
8 that was deferred so that the customers would not go off the  
9 system while a buyer was sought. And that was good  
10 strategy.

11 Trigen's proposal, the rate structure it  
12 proposes, talks about a 3.7 percent increase when you take  
13 into consideration the reduction in the gross receipts tax  
14 from 10 percent to 4 percent which Trigen was able to get  
15 from the city of Kansas City. And that will go into effect  
16 the first of the year.

17 So we are very close in everything except  
18 for two things. It is very critical for this operation that  
19 the National Starch contract be authorized and that the  
20 steam service agreement with Kansas City Power & Light be  
21 authorized because these are part of the strategy for the  
22 burning of coal. And, with respect to this, the Staff has  
23 objected because both of these contracts contain adjustment  
24 clauses.

25 Now, there are two arguments on this.

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1 Number 1 is the legal argument. Neither National Starch nor  
2 Kansas City Power & Light are within the service territory  
3 proposed by Trigen. They are both served outside the  
4 service territory.

5 One is served inside the plant itself for a  
6 specific use under a contract for steam to operate Kansas  
7 City Power & Light's generators. This will provide Kansas  
8 City Power & Light a viable source of peaking power and will  
9 also permit Trigen to operate this system hopefully and  
10 eventually at a profit.

11 The steam service agreement with Kansas City  
12 Power & Light does contain a fuel adjustment clause. The  
13 fuel adjustment clause is necessary because of the amount of  
14 power that would be taken in such a short period when and if  
15 it is ever utilized by Kansas City Power & Light.

16 The use of steam by Kansas City Power &  
17 Light will only take place if the tariff or if the rate that  
18 is being charged Kansas City Power & Light is competitive.  
19 And the way it is set up, that the steam cost--or that the  
20 cost to produce--the fuel cost is passed right through,  
21 would make this a competitive service.

22 The National Starch contract is similar in  
23 that it is also outside the service territory. National  
24 Starch is in Kansas City. I'm sorry. It is in  
25 North Kansas City, Missouri. Across the river it has run a

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1 pipeline from its plant across the ASB Bridge to Grand  
2 Avenue Station itself, and it is served at Grand Avenue  
3 Station outside the certificated service area.

4 It is not on the distribution system, as  
5 Kansas City Power & Light is not on the distribution system.  
6 Both of these contracts make it viable for the system to  
7 operate with steam. I mean, with coal to produce the steam.  
8 And that is what keeps the rates down for all the other  
9 customers.

10 Since they are outside the service territory  
11 and since they are being provided service only via a  
12 contract, it is our position--and we believe we're supported  
13 by the City of Lohman--I'm sorry. --the Lohman Mutual  
14 Telephone Company case and the City of St. Louis vs.  
15 Mississippi River Fuel Transmission case, which indicate  
16 that customers served under contract does not constitute  
17 utility service, and the Lohman case, which says that you  
18 can be a utility for certain purposes and not a utility for  
19 other purposes.

20 And I believe the Commission will remember  
21 the shared-tenant service case when it cited with approval  
22 the Lohman case in finding that certain services provided  
23 by--which would have been provided by shared-tenant  
24 services, if it had ever worked, were nonutility services.

25 And so, with that respect, it's our position



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1 that the Commission has no jurisdiction over either of these  
2 contracts, at least as to whether approving or disapproving  
3 the contracts. However, the Commission always has the  
4 oversight and regulatory power to look and see whether or  
5 not such contracts are beneficial to the utility customers  
6 or not, just the same as when the gas company or electric  
7 company sells refrigerators or stoves.

8 If they don't sell them at a profit and if  
9 that department does not operate at a profit, the ratepayers  
10 that are served, as the utility service, do not pay for it.  
11 However, by the same token, if there is a profit, the  
12 ratepayers can benefit from such operations. And that's  
13 what we have here.

14 These two contracts benefit the ratepayers.  
15 These two contracts do away with the need for a 66 percent  
16 increase, and obviously a 66 percent increase would make  
17 this system inoperable because of the alternatives that are  
18 out there. The competition is there. There's heat that can  
19 be supplied by electricity or by gas. And not only  
20 regulated gas, but it can be supplied by customers  
21 transporting their own gas into their system and operating  
22 their own system. So we are dealing with that.

23 The second thing we're dealing with, and  
24 factually, is we're dealing with sophisticated customers,  
25 especially with the National Starch and the steam service

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1 agreement with Kansas City Power & Light. These are not  
2 residential customers who have to be protected because they  
3 do not understand what's going on. These are intelligent  
4 customers who have other alternatives and will go to the  
5 other alternatives if these contracts are not to their  
6 benefit.

7 So right now, at this point, National Starch  
8 is considering putting in its own boiler system or signing  
9 this contract. That's their option at this point. They  
10 have other options. If the price is too high in the  
11 Missouri area, they can produce their cornstarch someplace  
12 else. And it's a fungible product; and it sells in the  
13 market; and they compete with everybody for this.

14 So we're dealing with somebody who's very  
15 sophisticated, very intelligent, very cost conscious, who  
16 has other options. And so they don't need the protection.  
17 And they are willing to enter into long-term contracts with  
18 fuel adjustment clauses, with other clauses.

19 And, along this line, I should mention that  
20 the current National Starch contract has not one--the  
21 current National Starch contract with Kansas City Power &  
22 Light has not one but seven adjustment clauses. It has a  
23 fuel adjustment. It has a purchased water cost adjustment.  
24 It has a water treatment adjustment. It has a materials  
25 adjustment. It has a wage adjustment. It has an other

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1 steam charge adjustment, and it has a tax adjustment.

2 . There is only one year left in this  
3 contract, the assignment of which requires the consent of  
4 National Starch. A one-year contract is not going to make  
5 this steam system operate. The company needs a long-term  
6 contract, a ten-year contract, with both parties knowing  
7 what their costs are going to be on a day-to-day basis. And  
8 that's what they have bargained hard and long to accomplish.

9 And the same is true for the steam service  
10 agreement with Kansas City Power & Light. They've worked  
11 hard and long to reach a contract, and I believe Kansas City  
12 Power & Light will tell the Commission that the steam  
13 service agreement is beneficial to them and to the electric  
14 ratepayers.

15 So these are the two crucial items to the  
16 operation of the system that are left for this Commission to  
17 decide. If neither is approved, Trigen will not be able to  
18 go forward, will not be able to put \$6 million into this  
19 system, will not be able to make another \$2 1/2 million in  
20 improvements to make the system able to burn coal on a  
21 viable basis.

22 So we're asking the Commission to either  
23 make a determination that it does not have jurisdiction over  
24 these contracts because they are outside the service area,  
25 because they are contracts, and that it is not a utility

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1 service that's being provided or, alternatively, to approve  
2 the agreements--well, the steam service agreement--I must  
3 mention this. The steam service agreement is before the  
4 Commission. We ask for its approval.

5 The National Starch contract has not been  
6 completely negotiated yet. They're still working over the  
7 terms as to whether or not a guarantee should be provided.  
8 But, as far as the adjustments provisions, those are in  
9 there. Those have been agreed to.

10 We are asking the Commission to find, if  
11 they determine that they do have jurisdiction over this,  
12 that such provisions are not detrimental to the public and  
13 that they will be beneficial to the public and will allow  
14 Trigen to operate the system and to be granted a Certificate  
15 of Convenience and Necessity.

16 I should mention also that the UCCM case,  
17 which the Staff relies on, specifically says that it only  
18 applies to residential customers, and it did not decide  
19 whether or not industrial and large commercial rate  
20 schedules should or should not have fuel adjustment clauses.

21 This is different from that case in that  
22 these are not even rate schedules. These are contracts.  
23 So, even if UCCM were considered, it does not apply. It  
24 does not decide this question, plus we are not dealing with  
25 rate schedules.



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1           The other issues have been narrowed down.  
2       The parties have agreed that Trigen is a viable operator,  
3       that the rate structure would work, that the Staff has  
4       withdrawn from its position regarding taking the system  
5       under Kansas City Power & Light's present rate structure.

6           And I would like to point out that Kansas  
7       City Power & Light's present rate structure for steam  
8       service contains a fuel adjustment clause. It has since  
9       1982, and so it's kind of hard to understand why they are  
10      opposed to fuel adjustment clauses in these two contracts  
11      when they have recommended that we adopt Kansas City Power &  
12      Light's rates, which we cannot because of the way they are  
13      set up.

14           And the testimony was in the proceeding  
15      regarding that as to why we cannot adopt Kansas City Power &  
16      Light's rates, which the fuel adjustment clause would make  
17      the system less viable because we are going to burn coal  
18      instead of gas. And coal is cheaper than gas, so the rates  
19      would go down. The revenues would go down, even though we  
20      were providing or able to continue in service.

21           So, basically, that's what we're asking at  
22      this point. We're asking that the Commission either  
23      determine that it has no jurisdiction--and that's our strong  
24      belief. --that it has no jurisdiction over these contracts,  
25      because they are not providing utility service, they are not



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1 holding themselves out to serve the public, either at the  
2 Grand Avenue Station or in North Kansas City, or,  
3 alternatively, that the Commission consider the agreements  
4 and look at them and approve them and let the system become  
5 operable.

6 Any questions?

7 COMMISSIONER FISCHER: You mentioned  
8 National Starch has no objection to the adjustment clause.  
9 That's true of Kansas City Power & Light as well?

10 MR. ENGLISH: Yes, Judge.

11 MR. FINNEGAN: That's correct. They've  
12 worked with National Starch for months and months and  
13 months. They have reached that level on the adjustment  
14 clauses. The only question there is about a guarantee  
15 provision.

16 EXAMINER FEE: Thank you, Mr. Finnegan.

17 Mr. English

18 MR. ENGLISH: Thank you, your Honor.

19 May it please the Commission, this hearing  
20 is the culmination of a process which began over two years  
21 ago when the Commission ordered KCPL to make a good faith  
22 effort to sell its steam system to a willing and capable  
23 purchaser. The process, as Mr. Finnegan has stated, has  
24 been long and arduous.

25 But today KCPL, as the seller, and Trigen,

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1 as the purchaser, are here before you today. KCPL wishes  
2 you to approve this application to sell the system, on the  
3 terms and conditions of the sales documentation that we have  
4 filed with the Commission, to Trigen. And Trigen is here  
5 today to request a Certificate of Public Convenience and  
6 Necessity and for approval of the rates, of the rules and  
7 regulations, and also the two service agreements with KCPL  
8 and with Trigen.

9 The only contested issue that pertains to  
10 KCPL is whether or not the automatic adjustment clauses in  
11 the steam service agreement between KCPL and Trigen should  
12 be approved by the Commission. KCPL believes that these  
13 automatic adjustment clauses, which are in Section 7 of what  
14 was marked in Tuesday's hearing as Exhibit 12, are not  
15 precluded by law, are reasonable, and are a reasonable  
16 accommodation of the relative risks between Trigen and KCPL  
17 of changes in the Consumer Price Index and in the cost of  
18 fuel that Trigen will consume in order to provide steam to  
19 Kansas City Power & Light Company.

20 When KCPL started the negotiations with  
21 Kinetic District Energy Corporation, Kinetic wanted to  
22 purchase steam from Kansas City Power & Light. KCPL  
23 provided a form of service agreement to Kinetic that had a  
24 fuel adjustment clause in it. KCPL did not think that there  
25 was anything out of the ordinary in this because we viewed

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1 it as simply a continuation of what KCPL has done in the  
2 steam field for many years.

3 As the Commission knows, our steam tariffs  
4 have a fuel adjustment clause in them. As Mr. Finnegan  
5 stated today, National Starch's agreement with KCPL has a  
6 plethora of automatic adjustments. We do not believe that  
7 they are precluded by law, and we believe that they are just  
8 and reasonable.

9 Whether or not the Commission asserts  
10 jurisdiction over the steam service agreement between Trigen  
11 and KCPL, KCPL is willing to sign the agreement and to abide  
12 by its terms and conditions as presented to the Commission.  
13 KCPL does not believe that the UCCM case applies to the  
14 automatic adjustment clauses. Mr. Finnegan has treated the  
15 distinctions in detail.

16 Just very briefly, the court constraint is  
17 really to residential and, I believe, small commercial  
18 electric ratepayers. And the court went on to stress that  
19 these ratepayers did not have the sophistication to  
20 understand automatic adjustments and, perhaps more  
21 importantly in this instance, didn't have any input into the  
22 automatic adjustments.

23 Conversely, speaking for KCPL, we know how  
24 fuel adjustments operate. We know how this one operates  
25 because we were involved in the negotiation. And, because

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1 it is simply an agreement between Trigen and KCPL, we have  
2 had our say in the automatic adjustment clauses and we are  
3 agreeable to sign it as presented to the Commission.

4 In summary, KCPL respectfully requests that  
5 the Commission grant KCPL's application to sell its system  
6 to Trigen and, specifically, to approve the sales  
7 documentation, including the steam service agreement that we  
8 have previously filed with the Commission.

9 Thank you very much for this opportunity.

10 CHAIRMAN STEINMEIER: Mr. English, where in  
11 Exhibit 12 again is the--

12 MR. ENGLISH: On Page 6, Judge, on the  
13 bottom of Page 6. Section 7 starts--entitled, "Billing and  
14 Payment for Steam."

15 MR. FINNEGAN: It's Exhibit 12 to  
16 Exhibit 12.

17 CHAIRMAN STEINMEIER: Thank you.

18 What are you proposing to use the Consumer  
19 Price Index for?

20 MR. ENGLISH: Judge, there are a variety of  
21 adjustments. The CPI would be used in order to adjust the  
22 steam capacity reservation charge, which is in  
23 Subparagraph B on Page 7, and also the service charge in  
24 Subparagraph C.

25 CHAIRMAN STEINMEIER: And those are at issue

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1 here? Those are a part and parcel of the fuel adjustment  
2 clause?

3 MR. ENGLISH: Yes, Judge. We not only have  
4 a fuel adjustment clause, but we also have CPI-indexed  
5 clauses. And all of those items are at issue.

6 CHAIRMAN STEINMEIER: Okay. Thank you.

7 MR. ENGLISH: You're welcome.

8 EXAMINER FEE: Ms. Young.

9 MS. YOUNG: Thank you, Mr. Examiner.

10 Members of the Commission, I'd like to begin  
11 by walking through a few facts regarding this case. First,  
12 it's a fact that Trigen will operate as a heating company as  
13 defined in 386.020. Heating service is a utility service  
14 which is subject to Commission regulation per  
15 Section 393.290. A Certificate of Convenience and Necessity  
16 defines the area within which a utility is authorized to  
17 provide utility service. Conversely, a utility is not  
18 authorized to provide utility service elsewhere.

19 The UCCM case which has been discussed found  
20 that the Commission was without authority to adopt a fuel  
21 adjustment clause as an element of setting the regulated  
22 utility rates for residential electric and small commercial  
23 customers.

24 Over the last ten years since the UCCM case  
25 was decided, that prohibition has been logically extended,



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1     either by Commission decision or actions of the Staff, the  
2     industry, and its customers, to other types of customers,  
3     commercial and industrial. For electric companies, fuel  
4     adjustment clauses have been eliminated from all tariffs,  
5     including the large commercial and industrial customers, to  
6     other types of automatic adjustment clauses, for example,  
7     the CPI base rates that Southwestern Bell recently proposed  
8     to the Commission, and to other types of utility service, a  
9     steam case, such as the St. Joe rate case in which the fuel  
10    adjustment clause was eliminated by stipulation and, in the  
11    telephone area, for Southwestern Bell that I earlier  
12    mentioned.

13               As a general rule, if something is  
14    prohibited to be included or utilized in setting tariffs, it  
15    cannot be permitted or utilized in setting contracts. The  
16    service proposed to be provided by Trigen to KCPL and  
17    National Starch would appear to be steam service similar to  
18    what it was offering to the downtown customers.

19               It's also a fact that, if you put a fuel  
20    adjustment clause in a contract, there is no check on the  
21    operation of that and there is no later control or audit or  
22    true-up of those results, as used to be permitted under the  
23    fuel adjustment clauses and tariffs. Based on these facts,  
24    the Staff cannot recommend Commission approval of the fuel  
25    adjustment and other automatic adjustment clauses contained

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1 in the two contracts in question.

2 The Staff feels that there is value to the  
3 customers of the continued availability of steam service in  
4 the Kansas City area. However, because of the ramifications  
5 and the facts that I mentioned, the Staff could not  
6 recommend approval of those two contracts.

7 From the point of precedent, the Staff is  
8 very much concerned as to the territorial implications of  
9 the arguments being made by Trigen. The notion of a service  
10 territory and the provision of service within that territory  
11 has been upheld by the Commission, and we have taken action,  
12 such as in the UE Stoplight case in the Lake Saint Louis  
13 area.

14 I think it would also be contrary to the  
15 current progress that's being made in trying to resolve  
16 electrical territorial disputes among the various types of  
17 providers if we suggest that, if a utility wishes to provide  
18 service outside its territory, all it has to do is go out  
19 and find an intelligent, sophisticated customer, engage in  
20 arm's-length bargaining, and come to a contract and proceed.  
21 I think you could see that there would be some floodgates  
22 opened there potentially by that type of decision, that  
23 MoPub could go to the GM plant in Kansas City and negotiate  
24 a contract to provide electric service there. That is the  
25 type of precedent, that is the type of difficulty, that the

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1 Staff sees may result if the Commission proceeds as has been  
2 requested by Trigen.

3 Also, the Staff believes that such a  
4 decision would be contrary to the Southwestern Bell case,  
5 the TC-89-14 case, where the Commission found that it did  
6 not have authority to adopt automatic adjustments for rates.

7 One thing I would suggest to the Commission  
8 is that it look closely and compare the language regarding  
9 the role of this Commission and the attitude that that  
10 conveys in the existing National Starch contract, which is  
11 Exhibit 10, and the contract that has been executed with  
12 KCPL, which is Exhibit 12 to Exhibit 12, and once it is  
13 filed with the Commission, the language on National Starch.

14 The language you find in the current  
15 National Starch contract acknowledges the role of this  
16 Commission, acknowledges the authority of this Commission,  
17 and subjects that contract to that authority.

18 The contract with KCPL is precisely to the  
19 contrary. The evidence yesterday and the plain reading of  
20 that document indicates that the parties have attempted to  
21 only imply any Commission action. And the only response to  
22 that is a negative one that, if there are economic  
23 ramifications of the Commission decision, the parties have  
24 an out. And I think that's very important for the  
25 Commission to consider.

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1                   One potential way to address the question of  
2 the service outside the territory would be to suggest that  
3 the company should extend its certificated areas proposed to  
4 include the Grand Avenue Station and, at a minimum, the  
5 point of sale to National Starch. In essence, the Staff  
6 cannot support these contracts and requests the Commission  
7 to exercise great caution in the event that it decides to  
8 authorize them.

9                   Thank you.

10                  COMMISSIONER FISCHER: Ms. Young, absent the  
11 automatic adjustment clauses in these contracts, do you have  
12 any problems with the legality of the contract concept as  
13 it's applied here?

14                  MS. YOUNG: The question of the provision of  
15 service outside the service territory, that fact, that  
16 that's what currently exists and would happen under the KCPL  
17 contract, was just brought to the Staff's attention in the  
18 hearing on Tuesday. We had either overlooked that fact or  
19 never realized it.

20                  There is, I believe, some argument for a  
21 grandfathering theory there because the Grand Avenue Station  
22 was constructed prior to 1913, as I recall. And there may  
23 be some assumption that there is an authorization to provide  
24 service there at the station. And that is where both KCPL  
25 and National Starch would be taking their service, you know,

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1 in terms of metering and the actual provision. So that is  
2 the only remaining concern, I think, that we have in terms  
3 of the contracts, other than the adjustment clauses.

4 COMMISSIONER FISCHER: There aren't any  
5 other steam companies operating in the Kansas City area at  
6 this time; is that right?

7 MS. YOUNG: That's correct..

8 COMMISSIONER FISCHER: So any contract for  
9 National Starch wouldn't be invading the territory of  
10 another steam utility?

11 MS. YOUNG: That's my understanding.

12 COMMISSIONER FISCHER: Okay. Will Trigen  
13 have an obligation to serve, within its certificated area,  
14 all customers?

15 MS. YOUNG: That's the intention, yes. I  
16 believe that they have suggested that the tariffs will  
17 basically be for full requirements customers only, that they  
18 will not have a provision initially if someone only wanted  
19 to take part of its heating requirements. So it has  
20 conditions. But that, I think, is similar to any utility.  
21 They can place certain prerequisites before they provide  
22 service. But anyone who came to them for central steam heat  
23 within the mapped area, I believe they are holding  
24 themselves out to provide service.

25 COMMISSIONER FISCHER: But outside that



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1 area, pursuant to contract, they would not have an  
2 obligation to serve all customers?

3 MS. YOUNG: That's correct.

4 COMMISSIONER FISCHER: Could these contracts  
5 be in any way applied to any other customer under the terms  
6 of it, or is it strictly limited to National Starch and  
7 KCP&L, which have apparently waived any objections to those  
8 clauses?

9 MS. YOUNG: At one point the company was  
10 proposing in this proceeding to have authority to contract  
11 with anyone outside their service territory and, under  
12 certain circumstances, within. They have deferred that  
13 question to a later date at this time. So at this point the  
14 only two before the Commission are with National Starch and  
15 KCPL.

16 COMMISSIONER FISCHER: Is it the Staff's  
17 view that, if the Commission adopts your position, that the  
18 sale is likely to fall through?

19 MS. YOUNG: That is the assertion made by  
20 Trigen.

21 COMMISSIONER FISCHER: Thank you.

22 EXAMINER FEE: Mr. Mills, did you have  
23 anything?

24 MR. MILLS: I have nothing to offer at this  
25 time.

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1 EXAMINER FEE: Mr. Duffy.

2 MR. DUFFY: Thank you.

3 Good morning. I represent KPL-Gas Service.  
4 I'd like to briefly state the position of KPL in this  
5 proceeding and then go into some detail on some of the  
6 points that have been dealt with this morning.

7 First of all, KPL does not oppose the  
8 granting of the certificate to Trigen. We do oppose the  
9 approval of the National Starch contract at this time for  
10 two reasons.

11 One, the reasons previously stated by  
12 Ms. Young with regard to its containing a fuel adjustment  
13 clause or other type of automatic adjustment clauses for the  
14 same reason and perhaps of the broad policy implications,  
15 that it would tend to reverse what's happened in the  
16 industry for the last ten years and I think rightly open the  
17 floodgates, if that's your perception, to allowing fuel  
18 adjustment clauses in contracts so long as a utility and a  
19 large customer can say, "Well, we bargained at arm's-length,  
20 and we like that."

21 Second, the other aspect of why KPL opposes  
22 the National Starch contract is, we've never seen the thing.  
23 It's never been supplied to us. And so we have no idea of  
24 what it says or what provisions are in it, other than what  
25 we've heard represented in these proceedings. We indicated

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1 at the hearing that we'd be glad to sign a confidentiality  
2 agreement, if that's what it took to look at it. We've  
3 never been provided a copy of it. So, in good conscience,  
4 we can't say, "Yeah, we like this contract," because we  
5 don't know what it is.

6 And, as far as I know, based on what I've  
7 heard, the Staff has only seen portions of it. The Staff  
8 has not seen the entire contract, and the entire contract  
9 has not been finalized yet. So I don't think it's  
10 particularly a good idea for the Commission to approve a pig  
11 in a poke when they don't have the entire document in front  
12 of them to say, "Yes, that's something that we approve."

13 KPL does approve any special--or does oppose  
14 the approval of any special type of contract that includes a  
15 fuel adjustment clause for unregulated fuel sources. And  
16 the reason that it takes that position is not one of  
17 probably philosophical agreement, because I think every  
18 utility liked fuel adjustment clauses when they were a  
19 matter of course before this Commission. It's the reality  
20 of the UCCM case and how it's been applied uniformly by this  
21 Commission to eradicate fuel adjustment clauses ever since  
22 that case.

23 I guess what I'm saying is that I think this  
24 is a very precedent-setting case for the Commission. No  
25 matter how much you may like Trigen, no matter how much you

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1 may want a steam system to continue in effect in  
2 Kansas City, what these people are asking you to do is say,  
3 "You take this contract with this fuel adjustment clause in  
4 it, or we'll pack our bags and go home." You may like a  
5 fuel adjustment clause there.

6 I read the UCCM case to say that you don't  
7 have the statutory authority to approve any kind of a rate  
8 with a fuel adjustment clause in it because, by doing that,  
9 you're abrogating your statutory responsibility to have a  
10 rate that's set that people can look at and figure out  
11 exactly what it is they're going to have to pay.

12 If we're going to go--if you're going to  
13 approve a contract that is a formula type rate in this case,  
14 then I'm certainly going to tell all of the clients that I  
15 represent, "Hey, the Commission has said formula rates are  
16 okay as long as it's a big, sophisticated customer and you  
17 can enter into contracts with them." And, depending on what  
18 those clients do with that advice, you may see a whole new  
19 world of regulation around here.

20 I don't know that that would happen. But,  
21 as I tell my clients about every precedent-setting case that  
22 comes before the Commission that I'm aware of, I'm going to  
23 tell them about this one if you approve these contracts with  
24 automatic formula adjustment clauses in them.

25 Now, most importantly from KPL's

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1 perspective, Mr. Finnegan mentioned that we had a problem  
2 with Rule 4.2 in the proposed rules and regulations. I  
3 believe he forgot to mention that we also had a similar  
4 problem with Rule 3.7 because they both deal with the same  
5 item. And that item, I'm going to term it as a sole  
6 supplier type clause because it says in the 4.2 one right  
7 now that "The Customer's premises shall have no connection  
8 to or from any other source of steam or other heat  
9 supply . . ."

10 And, just to give you a little background,  
11 Trigen has added the "or other heat" language to go beyond  
12 what KCPL has right now. KCPL says you can't have another  
13 steam supply. Trigen says, in this document, you can't have  
14 another steam or heat supply. And, as you know, heat can  
15 come from gas, electricity, coal, oil, anything like that.

16 KPL reacted to that negatively as seeing  
17 that as a veto power by Trigen for any other type of heat  
18 source at a customer's premises. It's my understanding--and  
19 I was told just before we started arguing this case and you  
20 heard Mr. Finnegan say that they were willing to withdraw  
21 the "or other heat" language and file some tariffs that deal  
22 with a partial requirements customer as opposed to a full  
23 requirements customer.

24 I've not had the opportunity to talk to my  
25 client about whether they like this latest proposal or not.



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1 And so the comments I make are solely my own based upon what  
2 I've been doing for the last ten or so years around here.  
3 It seems to me that a notice provision for another heat  
4 supply would not be particularly onerous. But, to the  
5 extent the language that's ultimately submitted by Trigen  
6 gives them the veto power over any other type of heat  
7 supply, then KPL's position is that that's unreasonable.

8 Mr. Straub testified no other utility in the  
9 state of Missouri has that veto power over an alternate  
10 source of heat. What regulation does in that situation is  
11 have the provider set two different types of rates, a full  
12 requirements type rate and a partial requirements type rate,  
13 a backup service, if you will. You solve that problem by  
14 rate structure of the provider. You don't solve it by  
15 saying, "You can't have any other source of heat in your  
16 building other than the one that we're providing you."

17 I submit that you would not approve a tariff  
18 of an electric company saying that, if XYZ Electric Company  
19 supplies electricity to this building, they can't possibly  
20 have gas service also or any other type of heat. What you  
21 do is you approve a different type of rate for that  
22 different type of service.

23 So, very briefly, we don't know what kind of  
24 language that Trigen is now going to submit. If it's got  
25 something that gives them veto power over an alternate

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1 source of heat than steam, then we have a real problem with  
2 that for the reasons that I've just mentioned. And, again,  
3 it applies to the two sections, 3.7 and 4.2. And so we'd  
4 expect to see some language presented by Trigen to deal with  
5 that situation.

6 COMMISSIONER FISCHER: Mr. Duffy, to the  
7 extent it does not have a veto kind of clause in it but just  
8 gives a tariff for someone that wants to have a second  
9 source of heat, would KPL have a problem with that?

10 MR. DUFFY: No, I don't think so. It would  
11 not be KPL's position--well, it's KPL's position that these  
12 people are certainly free and willing to file any kind of a  
13 tariff for partial requirements service and that they  
14 probably ought to have a tariff for partial requirements  
15 service. They just ought not to have a veto to say, "Hey,  
16 if you take steam from us, you can't have gas without our  
17 permission." And that's the way we were reading the  
18 provisions that were in there initially.

19 And, as I understand it, they're going to  
20 take that veto type power out and simply say, "If you've got  
21 another source of steam"--and I'm not sure whether--I'm  
22 getting into areas where I'm not really comfortable because  
23 I don't really understand what they're going to do other  
24 than what they've said, and I'm not sure I understand all of  
25 that.

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1 But the only way I know to articulate it is,  
2 we don't want them to have a veto power. If they want--we  
3 want a customer to have the ability to have another source  
4 of heat. And, frankly, KPL sells, like, I'm told,  
5 900,000 Mcf of gas a year to National Starch. And so we  
6 would not want this provision to read that National Starch  
7 would have to turn off the gas and eliminate a  
8 900,000-Mcf-a-year load because Trigen is providing steam to  
9 them. The customer ought to have the choice of deciding  
10 whether he wants steam, gas, electricity, or all of the  
11 above or none of the above.

12 And, again, you solve those kinds of  
13 problems by approving different types of tariffs for  
14 different types of service, not by saying, "If you take  
15 this particular utility service, you can't take anything  
16 else that produces the same end result."

17 CHAIRMAN STEINMEIER: Paragraph 4.2 which  
18 you've been discussing, is part of the general rules and  
19 regulations that Trigen would implement as to its customers  
20 in its service area?

21 MR. DUFFY: Yes.

22 CHAIRMAN STEINMEIER: Whether they modify it  
23 or not, it would not necessarily affect National Starch;  
24 isn't that right?

25 MR. DUFFY: Well, I don't know since I

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1 haven't ever seen the National Starch contract. If the  
2 National Starch contract says that it's in derogation to the  
3 rules and regulations that they have for everybody else,  
4 then I think you've got a discrimination problem and some  
5 internal problems with a contract like that. But, since I  
6 haven't seen the contract, I don't know what it says about  
7 that.

8 I'm saying, as a general rule, you ought not  
9 have a sole--no utility ought to have a sole supplier  
10 restriction in its tariff. And I don't know of any utility  
11 in this state that does have such a thing. So, again, you'd  
12 be setting some precedent.

13 But Trigen has indicated this morning that  
14 they're not going to do that, that they're going to do  
15 something different and only have a notice requirement.  
16 And, based on what I know about that, a notice requirement  
17 does not seem to be particularly onerous.

18 As a footnote, I'd just point out that  
19 Mr. Casten, who testified for Trigen, admitted there were no  
20 safety reasons for having a sole supplier provision in here.  
21 It's purely economics that, if they were going to supply  
22 steam, they want to supply all the steam. And they  
23 obviously want to supply all of the heat sources of a  
24 particular customer also.

25 To me, another one of the evils would be

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1 that, in a downtown office building, you couldn't plug in an  
2 electric space heater unless you told Trigen about it and  
3 got their prior approval, because that's another heating  
4 source if they're supplying steam heat to the building. I  
5 don't think you want to put yourself in the position of  
6 approving tariff restrictions like that.

7 Let me just also briefly mention about the  
8 certificated area aspects. And I apologize if this is a  
9 little bit of rambling, but it wasn't our druthers to have  
10 oral argument on this. These are fairly complicated legal  
11 issues, and they ought to be presented in briefs where  
12 everybody has an opportunity to take some time and thought  
13 and apply to them.

14 But it seems to me, based on my  
15 understanding of the law, that if Grand Avenue Station was  
16 there before the Public Service Commission, I think I've  
17 read cases that say that you don't have to have a  
18 certificate because that's grandfathered. They were there  
19 before you were; and, therefore, there was no way for you to  
20 give them permission to operate there in the first place.

21 So, if you look at it from the standpoint  
22 that National Starch and KCPL are taking service in an area  
23 which is not on a map, not certificated, that may not be  
24 illegal because it could be grandfathered because they were  
25 doing that before the PSC existed. There are other



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1 instances, I think, like that in the state of Missouri.

2 So, in that sense, they're not providing  
3 service outside of their "certificated area". They are  
4 providing service outside of the area drawn on a map on a  
5 tariff, but they were authorized to do it before you came  
6 into existence. And there's no prohibition on them  
7 continuing to do that as far as I know.

8 So I think that it's a bad precedent to  
9 allow a utility to knowingly provide service outside of its  
10 authorized area. Let's use the term "authorized" instead of  
11 "certificated" if there is a situation where they were  
12 authorized to provide service by franchise prior to the  
13 existence of the Public Service Commission.

14 And that was one of the problems that was  
15 enumerated early on by KPL, that they don't think that it's  
16 appropriate to have unregulated contracts for a regulated  
17 type utility service. Steam is a regulated utility type  
18 service. And they don't think it's appropriate to allow  
19 service to be provided outside of authorized areas.

20 In this situation, it would certainly be  
21 easy for Trigen to file an amended certificate to include  
22 the areas of National Starch and the Grand Avenue Station.  
23 If that is somehow perceived as a stumbling block, it's no  
24 big deal to change the boundaries of your certificated  
25 service territory.

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1           If Trigen is concerned about its ability to  
2 economically serve the entire public within an expanded  
3 certificated area, then the way you solve that is an  
4 extension rule in your tariffs that puts some sort of  
5 revenue test.

6           St. Joe's steam system has such a tariff.  
7 All the sewer companies and water companies have extension  
8 rules that deal with that. And that basically says that,  
9 you know, even though this proposed customer is in your  
10 service territory, if there's not enough revenue from it to  
11 pay off reasonably the expenses involved in getting service  
12 to that person within a reasonable period of time, again  
13 approved by the Commission, you don't have to provide  
14 service to them.

15           The option then is for that customer to go  
16 ahead and give you a contribution in aid of construction to  
17 build that line and you provide service that way. So,  
18 again, we've got an economic situation here that can be  
19 solved through methods that are well recognized at the  
20 Commission.

21           I don't think that Trigen ought to argue  
22 that they can provide service outside a boundary line under  
23 this Lohman Telephone Company case. I haven't read that in  
24 a long time. But I don't think there's a Lohman Telephone  
25 Company anymore, and I don't know how much precedential

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1 value that case has.

2 I think they ought to expand their service  
3 territory to get right with the Commission. And I think  
4 they can solve any problems they have by filing an extension  
5 rule type tariff. And I think they can solve the other  
6 problems they have by filing partial requirements tariffs,  
7 and they have the right to do that and have the Commission  
8 look at those.

9 I think that's all I have.

10 COMMISSIONER FISCHER: Mr. Duffy, you're  
11 talking about something that sounds like a line certificate.

12 MR. DUFFY: No. I'm talking about an area  
13 certificate with an extension rule under the general rules  
14 and regulations that says, "Unless there's sufficient  
15 revenue"--I forget what all the mechanics of it are. But  
16 I'm sure the Staff can tell you that there are extension  
17 rules for most all utilities that say that, if you don't  
18 have to--you don't have to provide service to that customer  
19 unless there's sufficient revenue there to cover the costs  
20 of running that line out to serve him.

21 COMMISSIONER FISCHER: But wouldn't we  
22 basically grant a certificate for that line going over to  
23 National Starch in the National Starch area itself?

24 MR. DUFFY: Well, it's up to them whether  
25 they want to apply for a line certificate to legitimatize

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1 that line or whether they want to apply for an area  
2 certificate. They could do either one.

3 COMMISSIONER FISCHER: I understood from  
4 earlier argument that the other possibility for National  
5 Starch would be to implement its own boiler system. In the  
6 event that it did that, is National Starch within KPL's  
7 certificated gas area?

8 MR. DUFFY: It's my understanding they're in  
9 KPL's certificated gas area now because they are a customer  
10 of KPL-Gas Service. And, as I mentioned, KPL right now has  
11 a load of something like 900,000 Mcf a year, which I am told  
12 goes into the process that they modified their system a  
13 couple of years ago. It used to be corn products, and  
14 National Starch came in and revamped the thing and installed  
15 this process system and that the gas is used in drying the  
16 product.

17 Now, I don't know what--I don't have enough  
18 knowledge, and I don't think KPL has enough knowledge, to  
19 know whether, you know, this steam line has any effect on it  
20 or not. Apparently, it doesn't if steam is going through  
21 the line now and KPL is still selling 900,000 Mcf of gas.  
22 They may be totally separate processes.

23 Does that answer your question there?

24 COMMISSIONER FISCHER: In KPL's certificated  
25 area, it's likely if you ended up with a natural gas-fired

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1 boiler, that KPL might very much have a stake in--

2 MR. DUFFY: Yes, I would think so because  
3 KPL would be the only natural gas supplier. They could also  
4 do what everybody else does: propane, oil, coal, anything  
5 other--they're free to come up with any other kind of  
6 source they want that they see as economical.

7 COMMISSIONER FISCHER: Let me make sure I  
8 understand your argument about the adjustment clauses. Is  
9 it your position that regulated utilities should not have a  
10 contract, a special contract, or a contract with the  
11 customer that includes adjustment clauses within that  
12 provision?

13 MR. DUFFY: It's my position that, since the  
14 UCCM case, the Commission has systematically dismantled fuel  
15 adjustment clauses in all aspects of utility regulation. As  
16 far as I can tell, this particular clause in the KCPL  
17 existing contract or the National Starch existing contract  
18 are dinosaurs that were overlooked. And I think Mr. Straub  
19 testified that it had been overlooked the last time the  
20 Staff looked at it.

21 Certainly, I think St. Joe would have had a  
22 different position in the last heat case if a decision were  
23 made by the Commission that large, sophisticated customers  
24 could enter into contracts that had fuel adjustment clauses  
25 in them.



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1 I'm not going to sit here and tell you that  
2 fuel adjustment clauses are evil per se because we spent too  
3 many years arguing that they were good. It was the Supreme  
4 Court who said you didn't have the statutory authority to  
5 approve a rate that had them in it because you were  
6 abrogating your statutory responsibilities.

7 COMMISSIONER FISCHER: And, if we're  
8 abrogating our statutory responsibilities to determine a  
9 rate, a tariff rate, are we doing that whenever we also  
10 would approve that for a contract or--

11 MR. DUFFY: I see no legal distinction  
12 between a rate set by a contract and a rate set by a tariff  
13 for a regulated utility service. I know no distinction  
14 between those two things.

15 COMMISSIONER FISCHER: So, in the event the  
16 automatic adjustment clauses are not approved here, your  
17 thought would be that we would have to periodically, at  
18 least, approve whatever rate is in the contract between  
19 National Starch and Trigen?

20 MR. DUFFY: I think you'd have to approve  
21 whatever rate is ultimately--you'd have to be the arbiter of  
22 whatever rate exists between the supplier of steam and the  
23 customer, just as you do now with St. Joe's steam system.  
24 That's all on a tariff. Presumably, it could be on  
25 contracts that had the same result.

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1 But, as I read UCCM and I think as I've  
2 observed the Staff and the Commission over the years, you  
3 have said, "We do not want formulas sliding things in rates.  
4 We want a specific dollar amount that you can look at and  
5 say, 'This is what the rate is.'"

6 And, as I understand it, you've got formulas  
7 in these two contracts. And so what I'm saying is, formulas  
8 are not evil per se. But under UCCM, they sure look like  
9 they're illegal to me; and they must have looked like they  
10 were illegal to the Commission because you've been  
11 dismantling them for the last ten years or thirteen years.

12 COMMISSIONER FISCHER: Except I can't  
13 remember too many contracts where we've dismantled them.  
14 But perhaps--

15 MR. DUFFY: There haven't been that many  
16 situations that I know of where there's been a fuel  
17 adjustment clause in a contract.

18 COMMISSIONER FISCHER: Mr. English, on that  
19 point, does Kansas City Power & Light have a contract with  
20 Armco Steel separate and apart from the tariffs?

21 MR. ENGLISH: Yes, we do, Judge.

22 COMMISSIONER FISCHER: Do you have automatic  
23 adjustment clauses of one sort or another in that contract?

24 MR. ENGLISH: No, we don't, Judge.

25 COMMISSIONER FISCHER: Okay. Thank you.

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1                   MR. DUFFY: Anything else?

2                   COMMISSIONER FISCHER: Thank you.

3                   EXAMINER FEE: Mr. Finnegan, as the moving  
4 party, you are allowed a few minutes to close if you desire.

5                   MR. FINNEGAN: I do, your Honor.

6                   I'm going to start at the last and work up  
7 to the beginning. Just because Lohman Telephone Company is  
8 out of business doesn't mean that the Lohman case is no  
9 longer the law of the state of Missouri. In fact, this  
10 Commission cited it in the shared-tenant service case; so I  
11 think it still believes it is.

12                   And that law goes back to the M.O. Danciger  
13 case, which was in 1916, I believe. If you're not a  
14 utility, if you don't profess--if you don't hold yourself  
15 out to be a utility, you're not a utility. Even though you  
16 sell gas, electricity, water, telephone, steam, any other  
17 thing that's normally utility--considered utility service,  
18 you're not a utility.

19                   There's also the Bellflower case, I believe  
20 the Commission recalls, when the Commission ordered  
21 Southwestern Bell to serve the Bellflower exchange. And it  
22 was appealed by several telephone companies who said they  
23 couldn't do it. Well, it was appealed by Southwestern Bell,  
24 come to think of it, because Bell didn't want to serve them  
25 and said, "We never professed to serve Bellflower."

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1                   And the Supreme Court said, "That's right.  
2   You didn't profess to serve the Bellflower exchange;  
3   therefore, the Commission can't order you to serve them.  
4   You're not providing a public utility service. It's not  
5   your certificated area. Even if you had grandfather rights,  
6   if you don't profess to serve an area, you're not a  
7   utility."

8                   Going back to grandfather rights, we're not  
9   acquiring KCP&L's certificate in this case. We are asking  
10   for our own certificate in this case, so there is no  
11   grandfather right. And, even if there were, I don't believe  
12   Kansas City Power & Light started selling steam until the  
13   1920s; and this Commission was in existence in 1913. So  
14   that argument, I think, does not stand up.

15                  National Starch is holding itself out to  
16   serve the public in the area which is defined in the  
17   exhibits, in a map, and also in a legal description of the  
18   area to be served. Everything outside that area, it does  
19   not hold itself out; it does not intend to hold itself out;  
20   it does not profess to provide utility service.

21                  It will, however, provide steam under  
22   contract to people that come to it and want contract  
23   service; and it will provide, obviously, where Kansas City  
24   Power & Light has its turbines and generating facility,  
25   right inside the Grand Avenue Station. It will be happy to



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1 provide steam to Kansas City Power & Light if Kansas City  
2 Power & Light wants to buy steam from it. But it's not  
3 providing it as utility service. It has no obligation to do  
4 so. It does not have to do so.

5 The reason it wants to do so is economics.  
6 It's not telling the Commission it's going to pack its bags  
7 and leave and not operate the system if it doesn't get these  
8 contracts either approved or the Commission to find that  
9 they are not within its jurisdiction because it wants to.  
10 It's doing it because--or for something out of the air.  
11 It's doing it because it's economically the only way the  
12 system can operate.

13 National Starch takes about 40 percent of  
14 the steam load. It buys it year round, day in, day out.  
15 This allows--partially allows the company to burn coal  
16 rather than steam. The rates the company has proposed in  
17 this case are based on a fuel mix of 70 percent coal,  
18 30 percent gas. To burn coal, it needs to burn at least  
19 75 Mlbs. a day--or 750 Mlbs. a day to burn it efficiently.  
20 And, to do that, it has to make this \$2 1/2 million  
21 investment so that it can burn it on a day-in-and-day-out  
22 basis.

23 The reason it wants KCPL's load is because  
24 it's a summer peaking load. And, obviously, a steam system  
25 is a winter peaking system. So, by having KCPL pay on a



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1 monthly basis a certain capacity charge so that the steam  
2 will be there for it, it makes this thing feasible. The  
3 same with the National Starch contract.

4 National Starch pays a monthly capacity  
5 charge just for the ability to take steam, whether or not it  
6 takes any or not. That's what makes this system work.  
7 That's the only way you can make the system work and be  
8 competitive.

9 I can understand KPL's position. It sells  
10 gas. Gas is in competition with steam. But that does not  
11 change whether or not Trigen is holding itself out to serve  
12 the public in other areas. It is not holding itself out to  
13 serve the public in any area other than the certificated  
14 area that it's requesting in this case.

15 The other two are contracts. Under the  
16 Mississippi River Fuel case, it's been held that contracts  
17 with customers does not--even if there's numerous contracts,  
18 does not make one a utility. It's only a general profession  
19 to provide your property for public use within a designated  
20 area that makes you a utility. And we are asking to be a  
21 public utility in the area, in the certificated area that we  
22 request. Other than that, we are not.

23 The question comes also, whose rights are  
24 being protected by opposition to the National Starch and the  
25 KCPL contracts? Whose rights are being protected?

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1 Obviously, not National Starch. They're big boys. They can  
2 handle it. Obviously, KCP&L are big boys. They've been  
3 dealing with this contract. They've been negotiating it for  
4 months and months and months and months, maybe years. I  
5 believe it's years. They know what's good for them, and  
6 Trigen knows what's good for its customers in the  
7 certificated areas.

8 Without these two contracts, they can't  
9 serve the customers in the certificated areas on an  
10 economically feasible basis. And, if that's the case, then  
11 there will be no steam system for Kansas City. And that's  
12 not a threat. It's a reluctant realization of the economic  
13 realities of life. And that is where we stand, and that's  
14 our position.

15 We are asking for the certificate. We're  
16 also asking that the Commission either determine it has no  
17 jurisdiction over the contracts because they are not holding  
18 themselves out as a public utility in those areas, where the  
19 Commission will still have the plenary supervision over the  
20 revenues, the expenses put out by--or that Trigen incurs,  
21 and the money it takes in, and will determine whether or  
22 not, when it looks at the rates down the line, whether or  
23 not the rates should be reduced because they have not made  
24 an economic deal with National Starch or Kansas City Power &  
25 Light and vice versa or the rates may be held down because

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1 of the fact that it was an economic deal.

2 And so, therefore, we're asking for the  
3 certificate and for the Commission to either consider it has  
4 no jurisdiction over the contracts or to approve the  
5 contracts with the terms as provided.

6 Thank you.

7 EXAMINER FEE: This matter will be ruled on  
8 by Order of the Commission, and the argument is adjourned.

9 WHEREUPON, the oral argument of this case  
10 was concluded.

11 —————  
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**EXHIBITS**

**Marked**      **Rec'd**

**EXHIBIT NO. 1**

**Certificate of Incorporation of  
Trigen-Kansas City District  
Energy Corporation, State of  
Delaware, June 13, 1989**

**26      35**

**EXHIBIT NO. 2**

**Certificate of Corporate Good  
Standing - Foreign Corporation  
Trigen-Kansas City District  
Energy Corporation, State of  
Missouri, September 6, 1989,  
and Corporation Division -  
Certificate of Authority,  
July 19, 1989**

**26      35**

**EXHIBIT NO. 3**

**K.C.P.L. Co. Public Utility  
Steam Service Territory  
Boundary Map**

**26      35**

**EXHIBIT NO. 4**

**Territorial Description -  
Trigen-Kansas City District  
Energy Corporation Public  
Utility Steam Service Boundary  
Line**

**26      35**

**EXHIBIT NO. 5**

**Ordinance 64457 - Trigen-Kansas City  
District Energy Corporation**

**26      35**

**EXHIBIT NO. 6**

**Tariff Sheets for Steam Service  
for Trigen-Kansas City District  
Energy Corporation, 1-5**

**26      35**

**EXHIBIT NO. 7**

**Tariff Sheets for General Rules  
and Regulations Applying to  
Steam Service for Trigen-Kansas City  
District Energy Corporation, 1-31**

**26      35**



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	<u>EXHIBITS</u>	<u>Marked</u>	<u>Rec'd</u>
1			
2			
3	EXHIBIT NO. 8		
4	Trigen-Kansas City District Energy		
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6	Sheet Upon Acquisition	26	35
7			
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EXHIBIT NO. 16

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1989

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\* Late-Filed Exhibit

154d