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1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4 TRANSCRIPT OF PROCEEDINGS  
5 Hearing  
6 March 6, 2006  
7 Jefferson City, Missouri  
8 Volume 1

8 City of Kansas City, Missouri, )  
9 )  
9 The Planned Industrial Expansion )  
Authority of Kansas City, Missouri,) )  
10 )  
Boulevard Brewing Associates )  
11 Limited Partnership, a Missouri )  
limited partnership, d/b/a )  
12 Boulevard Brewing Company, )  
13 )  
Complainants, )  
14 v. ) Case No. EC-2006-0332  
15 Kansas City Power & Light Company, )  
16 Respondent. )  
17

COLLEEN M. DALE, Presiding,  
18 CHIEF REGULATORY LAW JUDGE.  
19 JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
20 STEVE GAW,  
ROBERT M. CLAYTON,  
21 LINWARD "LIN" APPLING,  
COMMISSIONERS.  
22

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES  
25

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FOR: City of Kansas City.

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FOR: Boulevard Brewing Company.

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FOR: Kansas City Power & Light.

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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 13 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE DALE: We are on the record in Case  
5 No. EC-2006-0332, City of Kansas City, Missouri, the  
6 Planned Industrial Expansion Authority of Kansas City,  
7 Missouri, Boulevard Brewing Associates Limited  
8 Partnership, a Missouri limited partnership,  
9 d/b/a Boulevard Brewing Company, Complainants vs. Kansas  
10 City Power & Light Company, Respondent.

11 At this time we will open with entries of  
12 appearance, beginning with Complainants.

13 MS. BROWN: Heather Brown, Assistant City  
14 Attorney, attorney for the Complainants -- I mean, yes,  
15 Complainants, City of Kansas City, Missouri and Planned  
16 Industrial Expansion Authority.

17 JUDGE DALE: Thank you.

18 MR. FINNEGAN: On behalf of Boulevard  
19 Brewing Company, Jeremiah Finnegan, Finnegan, Conrad &  
20 Peterson, LLC, 3100 Broadway, Suite 1209, Kansas City,  
21 Missouri 64111.

22 JUDGE DALE: Thank you.

23 MR. BLANC: Curtis Blanc here on behalf of  
24 the Respondent, Kansas City Power & Light. I've provided  
25 my contact information to the court reporter.

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1 JUDGE DALE: Thank you. At this time we  
2 will begin with -- well, do we have any preliminary  
3 matters that I need to address before we begin?

4 (No response.)

5 JUDGE DALE: Thank you. Then Mr. Finnegan  
6 or the --

7 MR. FINNEGAN: Ms. Brown. She does not  
8 have an opening.

9 JUDGE DALE: Okay.

10 MR. FINNEGAN: May it please the Commission  
11 and Ms. Dale, Judge Dale? I'm Jeremiah Finnegan. I  
12 represent Boulevard Brewing Company, and we want to --  
13 first, on behalf of my clients, I want to thank the  
14 Commission for giving us this expedited treatment.

15 This is a very important thing to the  
16 brewery. They're in the midst of a large expansion and  
17 have been backed into a corner, and we are now at a point  
18 where we've -- we need the electric matters taken care of  
19 and in time to get the opening of this new plant to start  
20 selling beer for the summer season, which to many people  
21 is very important.

22 Our position, we've brought this in two  
23 counts. The first count is by all the Complainants, City,  
24 the Planned Industrial Authority, the PIEA, and Boulevard  
25 Brewing on the question of who is to pay for the

1 relocation of the lines that has been involved in this  
2 case. We are -- it is our position that this is a matter  
3 governed by Union Electric Company vs. Land Clearance, 555  
4 SW 2d 29, a Missouri en banc case in 1977, where the  
5 common law is stated that -- which is applicable to  
6 franchises and streets, is that the utility company must  
7 relocate its facilities on public streets when changes are  
8 required by public necessity or public convenience or  
9 security required at its own expense.

10               The common law in Missouri has been there  
11 for some time. Judge McQuillen, who is a former  
12 Commissioner, McQuillen and municipal corporations has  
13 stated this common law many, many years ago. The court  
14 of -- the Supreme Court en banc agreed with this and cited  
15 it in their decision, and in that case, which is similar  
16 to here, there was a relocation caused by the declaration  
17 of a blighted area. And as such -- which it was a  
18 legislative determination that there was a blighted area  
19 by the City of St. Louis. As a result, the Legislature  
20 has indicated that this is a public purpose and it is not  
21 performance of a duty in the -- as a proprietary function  
22 of the City.

23               And what the court said in UE is equally  
24 applicable here, and this was that the primary purpose of  
25 this project, the redevelopment or renewal of what is

1 implicitly a blighted area of the City, has been declared  
2 legislatively to be a public purpose. The removal of the  
3 utilities to make the thoroughfares available for use as a  
4 part of the project with the acts of the City and the  
5 Authority is the exercise of a governmental rather than a  
6 proprietary function.

7                   Kansas City Power & Light in its answer  
8 claimed that it was -- the law governing this was Home  
9 Builders Association. That is not the case. In Home  
10 Builders, there's a major difference. There was no  
11 declaration of a blighted area. There was no finding of a  
12 public purpose. In that case, private developers were  
13 seeking authority to build, and as a condition of their  
14 being able to develop property, they were required to go  
15 and widen the highway and as a result some lines had to be  
16 relocated.

17                   In that case, they said this is a private  
18 purpose, which is different from this case where we are  
19 talking about blight, and the whole purpose of this --  
20 this line removal is to remove the blight. The lines do  
21 not serve Boulevard. Neither the one on 26th Street nor  
22 the one on Belleview serve Boulevard. Boulevard gets its  
23 service from Kansas City Power & Light at a separate  
24 location.

25                   With respect to Belleview, Kansas City

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1 Power -- I mean, Boulevard would be perfectly content if  
2 Kansas City Power & Light were to remove this line  
3 completely. It's not needed by Boulevard. If they don't  
4 want to remove it completely, then to remove the blighted  
5 area as declared by the City and by the plan, they need to  
6 put it underground.

7 On 26th Street there's a requirement to  
8 widen the street to take care of development in the area,  
9 not just Boulevard's development, but there's all kind of  
10 development. There's the post office going in. There's  
11 areas all around in this immediate vicinity that are  
12 being -- under which the -- are being developed to remove  
13 the blight in this area in Kansas City.

14 The one thing that -- in the answer to the  
15 complaint, there was no denial of the first nine  
16 paragraphs of our complaint, so therefore, it should be  
17 taken as true.

18 In their response, in the complaint  
19 Section 15 to 19, the company hung its hat basically on  
20 the fact that there was a statement in the general plan  
21 that relocations are to be provided at the developer's  
22 expense. This has been changed. The PIEA has by  
23 resolution changed and clarified its intent.

24 The intent, and this was brought to KCPL's  
25 attention in January by a letter from the PIEA,

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1 Mr. Figuly, to Kansas City Power & Light saying that the  
2 real purpose of that provision was to be sure that neither  
3 the City nor the PIEA paid for any relocations. They  
4 didn't care who paid for it. They just didn't want to be  
5 the ones paying for it. So they have clarified that by an  
6 amendment to the plan. It's not a substantial change.  
7 It's just clarification change.

8                   So it's our position that the law is clear,  
9 and the facts will show that this is no different than  
10 what happened in St. Louis. We've got a different  
11 utility. We've got Kansas City Power & Light rather than  
12 Union Electric. We have a different agency. Here's the  
13 Planned Industrial Authority, as opposed to the Land  
14 Clearance Redevelopment. But other than that, the  
15 purposes are the same, to clear the blight. And in this  
16 case, it's been declared that the blighted -- overhead  
17 lines in this area blighted. They're causing part of the  
18 blight, and they need to be removed to cure the blight.

19                   In our second count is an alternative  
20 count. In the event that the Commission does not agree  
21 that this case is governed by Union Electric vs. Land  
22 Clearance, then we are questioning the reasonableness of  
23 the charges that Kansas City Power & Light is proposing to  
24 impose upon Boulevard.

25                   For one thing, there's no tariff provision



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1 for relocation. They have a tariff provision for line  
2 extensions, but nowhere in that is mentioned relocation or  
3 removal. It says extensions to a new facility.

4           The lines in question here are not needed  
5 for Boulevard. They're being relocated for the City's  
6 purpose of widening the streets. They're being relocated  
7 and the other line is being asked to be removed.  
8 Boulevard does not benefit as an electric customer.  
9 Boulevard does benefit by having the aesthetics improved,  
10 but that is not as an electric customer. That is because  
11 it's on the site that has been declared blighted and the  
12 lines have been declared blighted.

13           The other issues that we are going into is  
14 the ambiguousness of the extension policy. If it's  
15 determined that that rule applies, it's Rule 9, there is  
16 no way that a person can look at that and know what  
17 they're going to be charged by the power line company. It  
18 says some -- tells you some of the things that might be  
19 included, but that's it. It doesn't tell you how they're  
20 to be determined.

21           There's no tariff anywhere that says this  
22 is how your charges will be calculated. And the law says  
23 if you don't have a tariff on file to provide for it, you  
24 cannot make a charge. It's against the law to charge  
25 anything other than is on file in your tariffs.

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1                   So we're asking that if this is -- if the  
2   in the event that the Commission does not rule in our  
3   favor in Count 1, we're asking that they look into and  
4   require a tariff, in the interim that we be allowed to use  
5   an outside contractor to develop it because of all the  
6   overheads and excessive items that Power & Light is  
7   including in here, including transportation, which means  
8   their trucks that they've already got in their rate base,  
9   their labor that's already in their charges in their cost  
10  of service.

11                   And one of the issues here also is the  
12  applicability of the CIAC tax or the contributions in aid  
13  of construction tax on projects such as this. It's our  
14  position that it does not apply because Boulevard is not  
15  the one that needs or benefits from the removal of these  
16  lines. It is for the City. It's for the PIEA. It's for  
17  the removal of the blight, and as such, even if Boulevard  
18  were to have to pay for this, it still won't fall within  
19  the requirement that the company has to collect CIAC tax,  
20  which is a substantial sum.

21                   We believe that we can do the job as well  
22  and for considerably less money. We don't have all the  
23  overheads tacked on top. We know what our costs would be.  
24  We don't know what Kansas City Power & Light's costs are  
25  because they do not explain them in detail. They just

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1 say, here's your figure and that's what we need, and if  
2 you don't pay it, you don't get the lines moved.

3 So we are requesting that the Commission  
4 first find that Union Electric applies and that there is  
5 no requirement for Boulevard Brewing to make any payment  
6 to Power & Light Company to remove -- or to move the line  
7 on 26th Street or to remove the line on Belleview. And in  
8 the event that the Commission does not find that way, then  
9 we're asking the Commission looks at the reasonableness  
10 and the lawfulness of the charges that KCPL has proposed  
11 for a line that is not needed for Boulevard.

12 In fact, the one line is not needed for  
13 anybody. It was there, once served some residential  
14 customers on this block, but the houses are gone. As part  
15 of the renewal project they were removed.

16 So again, thank you for giving us this  
17 opportunity, and we hope that there will be a favorable  
18 ruling on this.

19 JUDGE DALE: Thank you, Mr. Finnegan.

20 MR. BLANC: Good morning. May it please  
21 the Commission and your Honor?

22 Boulevard has requested that KCP&L relocate  
23 its facilities to accommodate the expansion project  
24 Boulevard's presently undertaking. Specifically,  
25 Boulevard has requested that KCP&L remove its facilities

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1 on 26th Street to the other side of the street for a road  
2 improvement that is necessary for Boulevard's delivery  
3 trucks.

4 JUDGE DALE: If I could, would you move  
5 your microphone?

6 MR. BLANC: Sorry. The second part of the  
7 project deals with KCP&L's facilities on Belleview.  
8 Boulevard has requested that KCP&L either remove those  
9 facilities entirely or relocate them underground, and that  
10 is to ensure that the view from Boulevard's new conference  
11 center is not obstructed by those facilities.

12 KCP&L supports Boulevard and supports  
13 Boulevard's expansion project. In fact, KCP&L has already  
14 done about \$90,000 worth of work in support of the  
15 expansion project at no cost to Boulevard. Furthermore,  
16 KCP&L would be happy to move these facilities as requested  
17 by Boulevard. The sole issue here is whether KCP&L, which  
18 ultimately means our ratepayers, or Boulevard should have  
19 to bear these costs.

20 Until recently, KCP&L was under the  
21 impression that Boulevard understood that it would be  
22 responsible for the cost of these relocation projects.  
23 Boulevard requested cost estimates for various versions of  
24 projects.

25 They selected an option based on those

1 costs, and for the past several months Boulevard and KCP&L  
2 have been negotiating the cost to Boulevard of those  
3 projects. In fact, KCP&L has worked with Boulevard to  
4 address its concerns about our cost estimates, and as a  
5 result of those discussions, we have revised the cost  
6 estimates downward.

7                   In November of last year, however,  
8 Boulevard through its consultant, Greg Elam, changed  
9 course and insisted that KCP&L should pay for these  
10 relocation projects. In January of this year, KCP&L  
11 learned that Boulevard was demanding that KCP&L either  
12 remove its facilities on Belleview or relocate them  
13 underground, again at its own cost. Initially Boulevard  
14 had indicated that those facilities did not need to be  
15 relocated underground.

16                   When Boulevard believed it should bear the  
17 burden of those costs, it wanted the much cheaper of  
18 cleaning up those facilities that existed currently, but  
19 once Mr. Elam convinced Boulevard that KCP&L should bear  
20 those costs, Boulevard decided that KCP&L should move  
21 those facilities underground.

22                   The Complainants have asked the Commission  
23 to decide whether KCP&L ratepayers should bear the cost of  
24 relocating KCP&L facilities to accommodate Boulevard's  
25 expansion project. To find in the Complainants' favor,

1 the Commission must conclude that the Complainants have  
2 demonstrated by a preponderance of the evidence that  
3 Missouri law requires KCP&L's ratepayers to bear those  
4 costs.

5               It is clear under Missouri law that under  
6 the present facts KCP&L's ratepayers should not bear those  
7 costs. Boulevard should. None of the city council  
8 ordinances relied upon by the Complainants direct that  
9 KCP&L's facilities be moved underground. Moreover, none  
10 of the city ordinances have anything to say about who  
11 should bear those costs if relocations are necessary.

12               For both of those points, the Complainants  
13 rely exclusively on the 25th Street and Southwest  
14 Boulevard general development plan. Specifically, the  
15 Complainants rely on page 20 of the development plan,  
16 which states that the intent of the plan is to remediate  
17 various blighting factors, including, among other things,  
18 the removal of overhead utility lines. Complainants  
19 attach page 20 and only page 20 of the development plan to  
20 their complaint.

21               Complainants did not attach page 34 of the  
22 development plan to their complaint, nor did they  
23 reference it, discuss it, or otherwise bring it to the  
24 Commission's attention.

25               Page 34 of the development plan expressly

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1 states that any utility facility changes that are  
2 necessary to remedy a blighting condition under the plan  
3 should be, quote, provided at the developer's expense, end  
4 quote. The Complainant cannot pick and choose which  
5 provisions of the development plan are City mandates. If  
6 a development plan mandates those facilities be  
7 underground on page 20, then on page 34 it mandates that  
8 Boulevard should have to pay for it as the developer.

9 It appears that Complainants must have come  
10 to the same conclusion. On March 1st, 2006, just last  
11 week, a year and a half after the city council approved  
12 the development plan and after substantial progress has  
13 been made on the development plan, and only five days  
14 before this expedited hearing that Complainants requested,  
15 one of the Complainants, the Planned Industrial Expansion  
16 Authority, which I'll call PIEA, issued a resolution that  
17 purports to amend that provision on page 34 of the  
18 development plan to read instead that the expenses of the  
19 relocation project should be, I quote, incurred and  
20 financed by the affected utilities or other parties, end  
21 quote.

22 We do not need to speculate about PIEA's  
23 intent. The final whereas clause of that March 1st  
24 resolution provides, quote, whereas the matter of  
25 responsibility for relocation costs is now before the

1 Public Service Commission of Missouri, and the Authority,  
2 PIEA, does not desire that the language of the plan have  
3 any bearing on the matter not intended by the authority,  
4 PIEA.

5                   PIEA is not a disinterested third party  
6 who's trying to advise the Commission here. It is a  
7 complainant, a complainant trying to alter a document that  
8 hurts its case.

9                   PIEA's attempt to modify the development  
10 plan is beyond its statutory authority. The Missouri  
11 statute that authorized the creation of PIEA requires that  
12 any substantial modification to a development plan must be  
13 approved by the city council. Such city council approval,  
14 in turn, triggers the due process protections one would  
15 expect, public notice, public hearing, et cetera.

16                   PIEA seeks to circumvent these due process  
17 and statutory authority issues by describing these changes  
18 as, quote, minor modifications. They are not. PIEA's  
19 proposed change, if valid, significantly affects each of  
20 the utilities and the ratepayers thereof whose facilities  
21 are impacted by the development plan, without any of the  
22 procedural due process protections that are provided in  
23 the law that established PIEA.

24                   And if these changes are indeed minor and  
25 PIEA can change the development plan as it seeks to do



1 here, there's nothing to prevent PIEA and Boulevard from  
2 agreeing, for example, that perhaps Boulevard shouldn't  
3 have to pay for the cement or the steel necessary for its  
4 expansion project.

5               That may sound far-fetched, but page 20 of  
6 the development plan upon which the Complainants rely so  
7 heavily says that, in addition to removing the overhead  
8 utility lines, other examples of remedying of blighted  
9 conditions include Boulevard's expansion project and  
10 construction of that project, replacement of curbs,  
11 replacement of sidewalks.

12              If PIEA can change the plan as it seeks to  
13 do here, there's nothing to prevent it from changing the  
14 plan to say they shouldn't have to incur those costs  
15 either. That is not the intent of the PIEA law, and, in  
16 fact, it's contrary to the provisions of the PIEA law.

17              However, even if the Commission finds that  
18 PIEA's last-minute resolution is valid, it remains clear  
19 that Missouri law does not require KCP&L's ratepayers to  
20 subsidize Boulevard's expansion project by paying for  
21 these relocation projects. The Union Electric case that  
22 Mr. Finnegan discussed and on which the Complainants  
23 exclusively rely is based on the condition of Union  
24 Electric's franchise with St. Louis that does not appear  
25 in KCP&L's Kansas City franchise.

1                   Union Electric's franchise contains an  
2   express provision that permits St. Louis to direct Union  
3   Electric to relocate its distribution facilities. The  
4   Court's decision is clearly premised on the fact that  
5   Union Electric accepted that condition as part of  
6   accepting its franchise. KCP&L's franchise does not  
7   contain a similar provision. Consequently, the Union  
8   Electric case does not apply here.

9                   Requiring Boulevard to pay for the  
10   relocation projects is not only the correct legal  
11   conclusion, it's the most equitable one. It's hard to  
12   imagine under what circumstances it would be appropriate  
13   to require KCP&L's ratepayers to pay for the relocation of  
14   facilities on 26th Street to accommodate Boulevard's  
15   delivery trucks or, worse yet, to remove or put  
16   underground KCP&L's facilities on Belleview for the sole  
17   purpose of ensuring that Boulevard's view from its new  
18   conference center is unobstructed by those facilities.

19                  KCP&L does not object to the relocation  
20   projects requested by Boulevard or for Boulevard's reasons  
21   for wanting them. Our sole objection is that we believe  
22   Boulevard should pay for those costs instead of KCP&L's  
23   ratepayers.

24                  The second question raised by Boulevard but  
25   not joined by PIEA, the City, is how much Boulevard should

1 have to pay if the Commission concludes that Boulevard  
2 must bear the cost of the relocation projects. Boulevard  
3 makes a litany of unsupported allegations in its Complaint  
4 about KCP&L's cost estimates for the projects, from  
5 questioning the design of KCP&L's distribution system  
6 around Boulevard, the design of the relocation project  
7 itself, to whether the contribution in aid of construction  
8 that KCP&L collects is taxable, CIAC.

9 Boulevard also suggests that delays in the  
10 project and the urgency for this expedited hearing are the  
11 result of KCP&L's action. This is not true. Prior to  
12 Boulevard's radical change of heart in January, KCP&L was  
13 on track to complete the projects requested by Boulevard  
14 by their deadlines. Boulevard's decision to demand that  
15 the Belleview facilities either be removed entirely or put  
16 underground and their demand that KCPL pay for the cost of  
17 those projects affected the timing.

18 Specifically with respect to Belleview,  
19 where they requested the facilities to be removed  
20 entirely, it affected the timing of the project in two  
21 ways. Not only does it take longer to bury facilities  
22 than clean them up, but KCP&L has not prepared a detailed  
23 design to underground the facilities. It appears that  
24 Boulevard only wants to bury those facilities if KCP&L  
25 bears the cost of doing so. If Boulevard bears those

1 costs, it just wants to clean them up. Since the issue of  
2 payment has not been resolved, KCPL has not expended the  
3 resources it would require to design those facilities.

4               Second, Boulevard's insistence that KCPL  
5 bear the cost of the projects created an impasse the  
6 parties weren't able to work around. KCPL believes it  
7 would be inappropriate for it to collect the cost of  
8 relocation projects from its ratepayers.

9               Boulevard's vague and unsupported  
10 allegations fail to satisfy Boulevard's burden of proof as  
11 the Complainant to demonstrate by a preponderance of all  
12 the credible evidence that KCP&L's cost estimates for the  
13 relocation projects are not just and reasonable, are  
14 discriminatory or inconsistent with our tariffs or  
15 otherwise contrary to Missouri law.

16              Boulevard's position also fails to  
17 recognize that at the end of the day neither Boulevard nor  
18 its consultant, Greg Elam, is responsible or held  
19 accountable for the safe or reliable operation of KCP&L's  
20 system. As Mr. Finnegan suggested, they want the  
21 Belleview line removed because it doesn't serve Boulevard.  
22 It does serve our other customers. It's necessary for the  
23 reliability of our system.

24              Under Missouri law, KCP&L is solely  
25 responsible for the safe and adequate provision of

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1 electric service in its service territory. KCP&L takes  
2 that responsibility very seriously and is not willing to  
3 jeopardize it by implementing the recommendations of  
4 Boulevard's consultant, Greg Elam.

5 Thank you very much.

6 JUDGE DALE: Thank you, Mr. Blanc.

7 Mr. Finnegan, you may come --

8 MR. FINNEGAN: Ms. Brown.

9 JUDGE DALE: Okay. Ms. Brown?

10 MS. BROWN: May it please the Commission?  
11 My name is Heather Brown, attorney for the City of Kansas  
12 City, Missouri and the Planned Industrial Expansion  
13 Authority. I would like to call Al Figuly to the stand.

14 JUDGE DALE: It appears that some of the  
15 Commissioners have questions for counsel, so before we  
16 actually begin taking testimony, we will let those  
17 Commissioners who have questions do so. You can either  
18 sit there or sit back at counsel table, wherever you  
19 prefer, if the light's in your eyes.

20 Okay. Good. We'll begin with questions  
21 from Chairman Davis.

22 CHAIRMAN DAVIS: Okay. Ma'am, assuming  
23 that the -- assuming that the Union Electric case is on  
24 point, is it the PIEA's position that all ratepayers  
25 should, you know, bear the costs of this -- of removing

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1 the blighted electric lines or should that be apportioned  
2 to the industrial sector for ratemaking purposes?

3 MS. BROWN: I believe that the Authority's  
4 position is that the Union Electric case does apply, and  
5 our reading of that case is that the ratepayers would bear  
6 that burden.

7 CHAIRMAN DAVIS: All ratepayers?

8 MS. BROWN: Yes.

9 CHAIRMAN DAVIS: Okay. Mr. Finnegan?

10 MR. FINNEGAN: Yes.

11 CHAIRMAN DAVIS: Looking at the Union  
12 Electric case, there's some discussion about whether --  
13 I'm trying to look back and find the words here quickly.  
14 Is this for -- I mean, obviously you're saying that the  
15 taking of this property is for a, quote, public purpose  
16 and not of a proprietary nature; is that correct?

17 MR. FINNEGAN: That is correct.

18 CHAIRMAN DAVIS: The Union Electric case  
19 doesn't really describe proprietary interests, although it  
20 gives some examples where utilities -- or cities have  
21 decided to start their own utility service, et cetera.  
22 And how would you define proprietary?

23 MR. FINNEGAN: Proprietary would be a  
24 function where the city was involved in its -- in its own  
25 operation of an item that was not necessary for the -- to

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1 provide for the public good. In this case, we're -- the  
2 City's interest in this is to clear up the blight, which  
3 the Legislature has declared to be a public purpose.

4 CHAIRMAN DAVIS: So the overhead electric  
5 lines are a blight; is that your position?

6 MR. FINNEGAN: That's true. That's  
7 correct.

8 CHAIRMAN DAVIS: Now --

9 MR. FINNEGAN: The whole area was blighted,  
10 but part of the blight was electric overhead lines.

11 CHAIRMAN DAVIS: Now, I believe you stated  
12 earlier that these lines will not serve Boulevard at all;  
13 is that correct?

14 MR. FINNEGAN: That is correct. Neither  
15 the one on 26th Street does not serve Boulevard now and  
16 will not, and the one on Bellevue does not serve  
17 Boulevard.

18 CHAIRMAN DAVIS: What if the lines that do  
19 serve Boulevard go down, will these lines serve Boulevard  
20 then or still not at all?

21 MR. FINNEGAN: No, they would not. They're  
22 not connected to them.

23 CHAIRMAN DAVIS: They're not connected to  
24 it. Now, is it your understanding that they serve any  
25 other particular purpose?

1 MR. FINNEGAN: Could I consult a second?

2 Perhaps Mr. Elam could answer this.

3 CHAIRMAN DAVIS: Well, we'll skip that.

4 Your consultant will be along later.

5 Now, you've got a new ordinance here that  
6 was passed early March; is that correct?

7 MR. FINNEGAN: It's a resolution.

8 CHAIRMAN DAVIS: Resolution?

9 MR. FINNEGAN: Of the Planned Industrial  
10 Expansion Authority.

11 CHAIRMAN DAVIS: So is it your position  
12 that up until the passage of this resolution, that  
13 Boulevard was responsible for moving those electric lines?

14 MR. FINNEGAN: Let's put it this way:  
15 There was a belief on Boulevard's part, until Mr. Elam  
16 came into the picture, that they had to pay it. When we  
17 came in and the Union Electric case was pointed out to  
18 them, they realized that Union Electric would apply and,  
19 therefore, did not have to pay for it. There was a  
20 provision that was brought to their attention by Kansas  
21 City Power & Light earlier in -- I think it was December  
22 or so, about this language in the plan that was supposed  
23 to be paid at their expense.

24 Mr. Figuly sent a letter to Kansas City  
25 Power & Light on January the 5th indicating that that was



1 not the intent, that the intent of the -- of that language  
2 was to be sure that the PIEA -- neither the PIEA or the  
3 City of Kansas City paid for the relocation. And so  
4 this -- the purpose of the resolution was to clarify what  
5 they intended.

6 CHAIRMAN DAVIS: So they were clarifying  
7 their intent, but --

8 MR. FINNEGAN: And they had done so in  
9 January in a letter, but apparently that didn't satisfy  
10 KCPL.

11 CHAIRMAN DAVIS: Why would it satisfy KCPL  
12 when they've got a resolution passed by the PIEC that says  
13 that the developer will pick up the costs?

14 MR. FINNEGAN: Well, except that the  
15 PIEA can't necessarily require that because the common law  
16 in Missouri says that for this type of case the utility  
17 pays. Their major concern was that the PIEA -- neither  
18 the PIEA or the City pay.

19 CHAIRMAN DAVIS: Now, what -- I believe I  
20 did get handed the KCP&L franchise agreement somewhere  
21 here today. It's in my three-inch stack of paperwork that  
22 I have now sitting here. What does the KCP&L franchise  
23 agreement with the City say about -- is there a similar  
24 provision that would be similar to the language referenced  
25 in the Union Electric case, or how does KCPL's franchise

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1     differ -- or agreement with the City of Kansas City  
2     differ?

3                     MR. FINNEGAN: Well, it differs in the  
4     respect that it does not go into relocation provisions.  
5     It was passed, I think, in 1881.

6                     CHAIRMAN DAVIS: So it's silent in terms of  
7     relocation?

8                     MR. FINNEGAN: Right, it is silent. But  
9     looking at the UE case, the St. Louis ordinance is cited  
10    as a footnote and is not -- and when you go to the reason  
11    for it, it does not mention the ordinance. It basically  
12    goes after what the common law is stated in McQuillen,  
13    municipal corporations and the fundamental common law  
14    right.

15                    CHAIRMAN DAVIS: Now, if you're -- is the  
16    road being moved or is the road being expanded or anything  
17    related, the streets?

18                    MR. FINNEGAN: The road is to be widened as  
19    a part of the traffic study that was performed by the City  
20    that's saying that because of all the activity in this  
21    area, that it's going to need to widen the street here at  
22    this intersection because they're also going to do  
23    something on 25th street to go over to the -- which is a  
24    direct route to the new IRS facility.

25                    CHAIRMAN DAVIS: So when are they going to

1 widen the street?

2 MR. FINNEGAN: I don't think they can widen  
3 it until after the lines are moved.

4 CHAIRMAN DAVIS: Now, counsel for KCP&L, if  
5 the City is going to widen the street, wouldn't you have  
6 to move the lines anyway and wouldn't you be required to  
7 pay for it at that point?

8 MR. BLANC: Our position would be, and the  
9 Home Builders case that we cite in our answer supports  
10 this, is because this road widening is for the sole  
11 benefit of Boulevard and only necessary to accommodate  
12 Boulevard's delivery trucks being able to leave its  
13 facility, that it's not for a public purpose and that  
14 Boulevard should have to pay for the relocation of its  
15 facilities.

16 CHAIRMAN DAVIS: Do you think the PIEA's  
17 presence in this case is more proprietary than it is of a  
18 public nature?

19 MR. BLANC: Absolutely. I think they are  
20 basically supporting Boulevard's development project as  
21 opposed to the general governmental purpose. I think  
22 that's evidenced by the March 1st resolution they passed  
23 for the sole benefit of Boulevard.

24 CHAIRMAN DAVIS: Mr. Finnegan, forgive me  
25 if I haven't done my homework here, but is there any

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1 statement in the record about how much additional sales  
2 tax revenue the City expects to take in from this  
3 expansion?

4 MR. FINNEGAN: There is not yet, that I  
5 know of.

6 CHAIRMAN DAVIS: And is -- because I'm  
7 assuming that the City's supporting this expansion, not  
8 only do they get an improvement upon a blighted  
9 neighborhood, but they also get some increased sales tax  
10 revenue or something that all citizens should benefit  
11 from; is that correct?

12 MR. FINNEGAN: That, and plus there would  
13 be additional employees that would be paying City earnings  
14 taxes, and there's quite a bit of benefit for the City in  
15 addition to getting the blight cleared.

16 CHAIRMAN DAVIS: Okay. No further  
17 questions at this time, Judge.

18 JUDGE DALE: Do any other Commissioners  
19 have any?

20 COMMISSIONER MURRAY: I have a question for  
21 the Kansas City attorney, and that is for an explanation  
22 of the Planned Industrial Expansion Authority, what is it  
23 exactly?

24 MS. BROWN: The Planned Industrial  
25 Expansion Authority is a body politic incorporate. It's

1 established under Chapter 100 of the Revised Statutes of  
2 Missouri. It was authorized, I think, in the late '60s.  
3 It was after authorization by the state statute, the city  
4 council passed an ordinance authorizing PIEA, as we call  
5 it, to commence activities in Kansas City, and its board  
6 members are appointed by the mayor.

7                   There are 15 members of the board from all  
8 walks of life, and their purpose is to prepare  
9 redevelopment plans to cure blight in the City and to  
10 present those to the city council for approval or for  
11 consideration. And once those are -- if they are  
12 approved, then the PIEA hears -- advertises for developers  
13 for a particular area and approves individual projects,  
14 which are designed to implement the general development  
15 plans, and the sole purpose of that is to clear the blight  
16 in Kansas City.

17                   COMMISSIONER MURRAY: So it is actually --  
18 would you characterize it as an agency of the City?

19                   MS. BROWN: Yes.

20                   COMMISSIONER MURRAY: And in order to have  
21 any power or exercise any power, anything that the  
22 PIEA does have to be approved by the city council; is that  
23 correct?

24                   MS. BROWN: Absolutely.

25                   COMMISSIONER MURRAY: And the plan that was

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1     adopted and then very recently had a resolution passed to,  
2     quote, clarify some of the language in that plan, when was  
3     that plan adopted?

4                     MS. BROWN:   The plan was adopted, I believe  
5     in 2004 or '03.

6                     COMMISSIONER MURRAY:   When was it approved  
7     by the city council, in that same year?

8                     MS. BROWN:   2004.   It usually takes several  
9     months to get through the City staff approval process, and  
10    it goes through planning commission review before it  
11    finally gets to the city council.

12                    COMMISSIONER MURRAY:   The resolution 1083,  
13    that is a resolution by the PIEA; is that correct?

14                    MS. BROWN:   Yes, it is.

15                    COMMISSIONER MURRAY:   Now, has that been  
16    approved by the city council?

17                    MS. BROWN:   No.

18                    COMMISSIONER MURRAY:   So does it have any  
19    legal authority?

20                    MS. BROWN:   Yes.   The PIEA can amend or  
21    modify its plans as long as it's a minor modification.  
22    Substantial modifications must go to the city council.

23                    COMMISSIONER MURRAY:   The language that it  
24    is modifying -- correct me if I'm wrong -- is, quote, it  
25    may be required that as part of a specific project plan

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1 and to remedy blighting conditions, certain utilities will  
2 be relocated or buried. Any changes will be coordinated  
3 with the City of Kansas City, Missouri, and provided at  
4 the developer's expense. Is that the language being  
5 modified?

6 MS. BROWN: Yes.

7 COMMISSIONER MURRAY: And the statement in  
8 the resolution is that that language is unclear?

9 MS. BROWN: I think that the -- the  
10 statement in the resolution is that that indicates an  
11 intent that was not really intended by the Authority when  
12 they passed that. They weren't -- that was kind of stock  
13 language in the plan. They didn't really intend to put  
14 that burden on the developer. They were trying to  
15 emphasize that the PIEA would not bear that expense.

16 COMMISSIONER MURRAY: Now, it's interesting  
17 that the intent is being interpreted, because the intent  
18 at the time that the plan was developed is being  
19 interpreted now at this time. Isn't that kind of like  
20 trying to determine legislative intent after the fact, and  
21 is the board the same board?

22 MS. BROWN: Yes, it's the same board, and  
23 this matter was presented to them for the purpose of  
24 clarifying that they really needed to follow the law and  
25 this is really a matter for the Public Service Commission

1 and the case law in Missouri and not really a matter for  
2 PIA to make that determination.

3 And that was their intent at their meeting  
4 last week. They just want to clarify that they're not  
5 making that determination, that that really is a matter  
6 for the Commission and they just intend to follow the law.

7 COMMISSIONER MURRAY: Okay. I think that's  
8 all the questions I have for counsel at this time. Thank  
9 you, Judge.

10 JUDGE DALE: Commissioner Gaw?

11 COMMISSIONER GAW: Mr. Finnegan, I'm trying  
12 to just get an understanding here of this -- the legal  
13 argument dealing with the Union Electric case. I think I  
14 heard you say that you don't believe that that case hinges  
15 on whether or not the franchise that was granted in  
16 St. Louis had contingencies in it or conditions in it,  
17 that it was common law that they were relying on. Can you  
18 be a little more specific if that -- if I've captured that  
19 generally?

20 MR. FINNEGAN: That is correct. There's  
21 a -- I don't know if the Court has -- the Commission has  
22 the case before them, but I believe it's on page 32 of the  
23 decision where the court, quote, says McQuillen Municipal  
24 Corporation 3rd Edition, where it says, the fundamental  
25 common law right applicable to franchises and streets is



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1   that the utility company must relocate its facilities on  
2   public streets when changes are required by public  
3   necessity or public convenience and security required at  
4   its own expense.

5                   COMMISSIONER GAW:   Okay.

6                   MR. FINNEGAN:   That's the general common  
7   law, even without the ordinance.

8                   COMMISSIONER GAW:   Now, let me ask KCP&L to  
9   respond to that, please.

10                  MR. BLANC:   Sure.   If you go just a couple  
11   of paragraphs in that decision above the paragraph he  
12   quoted, it talks about the condition in Union Electric  
13   franchise, and it says, however, the right of Union  
14   Electric to serve this blighted area is not unconditional.  
15   It is subject to the express terms of the franchise or  
16   contract.   And then to a sentence that -- beginning of the  
17   next sentence is, it is subject to the condition clearly  
18   expressed in the ordinance on which the rights claimed are  
19   based, a reservation of the right to direct relocation of  
20   electric distribution facilities installed in a street.

21                  That's the express condition that Union  
22   Electric's decision -- Union Electric decision hinges on.  
23   That provision doesn't appear in the franchise.

24                  COMMISSIONER GAW:   Okay.   So Mr. Finnegan,  
25   I'm going to give you another chance to respond to what

1 KCP&L just said. What is it about that need for express  
2 condition in the ordinance that grants the franchise that  
3 you think is implied or just a given without it being  
4 expressly stated? Help me to understand.

5 MR. FINNEGAN: Okay. Well, in St. Louis  
6 they did spell it out in their ordinance, but I can point  
7 out that is -- the ordinance is only mentioned once and  
8 it's a footnote in the case.

9 When it comes down to it, you don't need  
10 that ordinance. The common law says that you have -- that  
11 the utility will remove it at its expense. And that's the  
12 common law in Missouri, and it's been there for years.  
13 It's been recognized in other cases since that time.

14 And we're not talking proprietary function  
15 here. We're talking about it's been legislatively  
16 declared to be a public purpose to clear blight. And  
17 there's the language on -- and UE is very clear on this,  
18 and what the court finally decides, they said the primary  
19 purpose of the project, the redevelopment or renewal of  
20 what is implicitly a blighted area of the City has been  
21 declared legislatively to be public purpose.

22 COMMISSIONER GAW: Now let me ask you this,  
23 and I want to review this language myself in the case to  
24 understand the differences in your-all's position. But if  
25 that question is in front of us in regard to who pays,

1 based upon this public purpose question, tell me what it  
2 is that factually you have to establish in this case in  
3 front of us, not in detail, but just in general. What do  
4 you have to establish in order to get this Union Electric  
5 case to apply?

6 MR. FINNEGAN: Basically to show that the  
7 fact situation here is similar to Union Electric, in that  
8 it was a legislatively declared blighted area by the City  
9 and by the PIEA, and as such, it legislatively has been  
10 declared a public purpose under Chapter 100, and that's  
11 what we're talking about.

12 This differs from other cases where and  
13 it's not just -- well, Union Electric, it was pointed out  
14 that part of the project was a hotel, to be owned by a  
15 private individual only and operated by, and whether's the  
16 hotel or a brewery, it's privately owned, but it's still  
17 -- because the purpose of being there is  
18 to -- as part of the blight removal. Removing the blight  
19 and replacing it with something that's not, that's the  
20 legislative purpose.

21 MR. BLANC: May I respond to that?

22 COMMISSIONER GAW: Sure, go ahead.

23 MR. BLANC: Thank you. I think the test  
24 setup in Union Electric is clearly a two-part test. A  
25 two-part test is, is there a condition in the franchise

1     that gives the City the authority to do that. The  
2     question that -- if the answer to that question is no, the  
3     inquiry ends. If the answer to that question is yes, that  
4     there is express condition, then you go to his analysis of  
5     whether there's a governmental or proprietary purpose  
6     here. I don't think we have to answer that question.

7                     COMMISSIONER GAW: Okay. Now that --  
8     Mr. Finnegan, do you disagree with what he just said?

9                     MR. FINNEGAN: I do disagree, because even  
10    now is the kind of common law --

11                    COMMISSIONER GAW: But in regard to the  
12    two-prong, two-part test, do you disagree with that?

13                    MR. FINNEGAN: Yes. I think in Union  
14    Electric they could have ignored if there was no ordinance  
15    provision, if there's nothing in the city ordinance giving  
16    franchise that says you need to relocate at your expense,  
17    the common law would prevail.

18                    COMMISSIONER GAW: Do you disagree that you  
19    have to do what he said in the second part of his two-part  
20    test?

21                    MR. FINNEGAN: I'm sorry. I missed the  
22    second part.

23                    COMMISSIONER GAW: That's all right.  
24    That's okay.

25                    MR. FINNEGAN: But I disagree.

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1                   COMMISSIONER GAW:  You're not going to  
2   concede any ground, is what you're saying?

3                   MR. FINNEGAN:  No.

4                   COMMISSIONER GAW:  Okay.  The tax  
5   treatment, I don't know how -- I don't want to go too far  
6   on this, but is someone here that can tell us what the tax  
7   treatment is of this area after it is -- it is classified  
8   as blighted and under Chapter 100, on property taxes and  
9   sales taxes?  Will someone be able to do that?

10                  MS. BROWN:  Yeah.

11                  COMMISSIONER GAW:  And just a second.  Is  
12   there any other business locating in this area that's  
13   being designated?

14                  MS. BROWN:  In the plan?

15                  COMMISSIONER GAW:  Yes.

16                  MS. BROWN:  Not in this specific plan.

17                  COMMISSIONER GAW:  Are there other plans  
18   out there that Kansas City is working on that are similar  
19   to this?

20                  MS. BROWN:  Yes, there are a number of  
21   them, and there are a number of them in this immediate  
22   area.  I'll find out from Mr. Figuly how many PIA plans  
23   there are.

24                  COMMISSIONER GAW:  All right.  That's all I  
25   have right now.  Thank you.

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1                   COMMISSIONER CLAYTON: I just have a few  
2 questions. Who is paying to cover the cost of widening  
3 the streets? Is that a City responsibility?

4                   MS. BROWN: No.

5                   COMMISSIONER CLAYTON: Is it Boulevard? Is  
6 KCP&L paying for -- probably not doing that.

7                   MR. BLANC: We hope not.

8                   MR. FINNEGAN: No. I believe that probably  
9 is an expense of Boulevard's.

10                  COMMISSIONER CLAYTON: Are there any other  
11 infrastructure modifications aside from the utility  
12 connections and the street that are being addressed?

13                  MS. BROWN: I believe there is. We have  
14 the plans. I believe there are sidewalk improvements,  
15 some lighting. Yes, there are.

16                  MR. FINNEGAN: I said Mr. Figuly would know  
17 those details.

18                  MS. BROWN: There are some other public --

19                  COMMISSIONER CLAYTON: But then I'd have to  
20 wait. That's all right. How about are there any other  
21 relocation of sewer or water facilities? How about  
22 telecommunications facilities?

23                  MR. FINNEGAN: Fire hydrants.

24                  MS. BROWN: There's relocation of a fire  
25 hydrant. I don't think there are communication

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1 relocations.

2 COMMISSIONER CLAYTON: I'll hold my  
3 questions to get the real experts up here on the stand.  
4 Thank you.

5 JUDGE DALE: Commissioner Appling?

6 COMMISSIONER APPLING: I think I have one  
7 question, and that question is for you and maybe you can  
8 help me out. PIE is -- correct me if I'm wrong. PIE is  
9 the group or the committee that established the plans for  
10 the City of Kansas City for blighted area and for  
11 improvements; is that somewhat correct?

12 MS. BROWN: Yes. There are a number of  
13 agencies, but PIA is one of those agencies, and it has a  
14 number of redevelopment plans which it presents to the  
15 City.

16 COMMISSIONER APPLING: And the initial plan  
17 for this specific area was presented to the city council,  
18 correct?

19 MS. BROWN: Yes, it was.

20 COMMISSIONER APPLING: And in that plan,  
21 PIE said that Boulevard would be responsible for paying  
22 for the improvements, correct?

23 MS. BROWN: Yes.

24 COMMISSIONER APPLING: But later on after  
25 the argument heats up and people get all excited about





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1    whether it involves a lot of money is the issue.  The case  
2    law on substantial -- there's not a lot of case law on  
3    what's a substantial modification of a plan.  I think  
4    there's one case that's the Tierney case, and it talks  
5    about what a substantial modification of a PIA plan is,  
6    and that is that it has to alter -- substantially alter  
7    the contemplated nature of the development.

8                   And in the Tierney case, they -- PIA may  
9    have modified a plan and they changed an office building  
10   to a hotel, they moved streets around, and the Court said  
11   that's not a -- that's a minor modification.  It's not a  
12   major modification.  The PIA frequently will make minor  
13   modifications to its plans, and those do not go to the  
14   city council.

15                  JUDGE DALE:  Excuse me.  Could I get a cite  
16   for the Tierney case?

17                  MR. FINNEGAN:  I have it here, your Honor.

18                  MS. BROWN:  I have it here.

19                  MR. FINNEGAN:  Okay.

20                  JUDGE DALE:  At some point, if someone will  
21   look --

22                  MR. FINNEGAN:  I can give it to you right  
23   now.

24                  JUDGE DALE:  Okay.

25                  MR. FINNEGAN:  It's 742 SW 2d 146 1987, and

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1 it's Tierney vs. the PIEA of Kansas City, Missouri. And  
2 there is a -- the first page of that is a very good  
3 explanation of what the PIEA is.

4 JUDGE DALE: Thank you. I'm sorry,  
5 Commissioner Appling.

6 COMMISSIONER APPLING: That's okay. You  
7 can break in any time.

8 But to me, if you're changing who's going  
9 to pay for it, to me that raises the bar a little bit. I  
10 just don't understand how the argument could boil down to  
11 say, well, we just designate somebody else to pay for this  
12 versus who was in the original plan. That just doesn't  
13 hold water with me.

14 MS. BROWN: I think the position is that  
15 PIA did not specify who would pay. In fact, in their  
16 modification they just clarified that it was not the City  
17 or PIA that would pay, it was a third party. So they  
18 didn't say that the developer would or the utility would  
19 pay in their modification. They left that open for the  
20 Commission.

21 COMMISSIONER APPLING: Thank you.

22 JUDGE DALE: Are there any other  
23 Commissioner questions?

24 (No response.)

25 JUDGE DALE: With that, we will begin the

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1 examination of the first witness.

2 (Witness sworn.)

3 JUDGE DALE: You may proceed.

4 ALFRED FIGULY testified as follows:

5 DIRECT EXAMINATION BY MS. BROWN:

6 Q. Will you state your name, please.

7 A. My name is Alfred Figuly.

8 Q. And where are you employed?

9 A. I'm employed by the Planned Industrial  
10 Expansion Authority of Kansas City, Missouri.

11 Q. And what is your position?

12 A. My position is executive director, and I'm  
13 also the assistant secretary for the board.

14 Q. And how long have you been in that  
15 position?

16 A. Since 2001.

17 Q. And what are your duties?

18 A. Primarily to -- administrative duties, but  
19 primarily to encourage -- or not encourage, but to provide  
20 plans, opportunities for plans to be created -- create  
21 plans for redevelopment of the urban core of Kansas City  
22 and to cure blight.

23 Q. Can you give us a little, just a quick  
24 general background on your employment?

25 A. My background was as city manager in small

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1 cities. I graduated KU in '76. Was a city manager in  
2 small cities, primarily in areas of community planning and  
3 economic development, redevelopment and finance.

4 Q. And are you generally familiar with the  
5 planned industrial expansion law?

6 A. Yes, I am.

7 Q. And can you tell us what the PIA is?

8 A. The PIA is a -- you mentioned it earlier.  
9 It's a governmental body. It's a body corporate. I'm not  
10 sure what corporate and politic mean, but it's a corporate  
11 body that's provided for in Chapter 100, 100.300 through  
12 620, RSMo, and its primary purpose is to cure blight and  
13 to prepare and implement redevelopment plans primarily in  
14 the urban cores of Kansas City, at least in this  
15 particular case, to cure blight and blighted areas.

16 Q. And how is the board of directors selected?

17 A. Board of directors are appointed by the  
18 mayor.

19 Q. And are you familiar with the City  
20 ordinance establishing the PIA?

21 A. Yes, I am.

22 Q. I'm going to hand you what's been marked as  
23 Exhibit 1. And can you identify that exhibit?

24 A. Yes. This is the -- the ordinance, the  
25 enabling legislation that the city council of Kansas City,

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1 Missouri adopted on February 9th, 1968 that implemented  
2 the chapter -- or implemented the provisions of state  
3 statute implementing the PIA in Kansas City, Missouri.

4 Q. Is that a certified copy?

5 A. Yes, it is. Been certified by the city  
6 clerk on February 6th.

7 MS. BROWN: I move to admit Exhibit 1.

8 JUDGE DALE: If you could clarify which of  
9 these exhibits is Exhibit 1, since the ones given to the  
10 Bench aren't marked.

11 MS. BROWN: It is a certified copy of  
12 Ordinance 34677.

13 JUDGE DALE: Are there any objections to  
14 its admission?

15 MR. BLANC: No, your Honor.

16 JUDGE DALE: Then Exhibit No. 1 is  
17 admitted.

18 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

19 BY MS. BROWN:

20 Q. Could you read the fourth and fifth  
21 recitals on that ordinance for the Commission?

22 A. Fourth and fifth, did you say?

23 Q. Yes.

24 A. The fourth recital in the Ordinance 34677  
25 is, Whereas, the council finds that there exists in Kansas

1 City one or more blighted, insanitary or undeveloped  
2 industrial areas as defined in said Act, and whereas, the  
3 city council finds that the development of such areas or  
4 area -- or area or areas is necessary in the interest of  
5 the public health, safety, morals or welfare of the  
6 citizens of Kansas City, Missouri.

7 Q. Can you also read from Section 1, beginning  
8 with the word approval?

9 A. Section 1 says, approval is hereby given --  
10 approval is hereby given to the exercise in Kansas City by  
11 the Planned Industrial Expansion Authority of Kansas City,  
12 of the powers, functions and duties of an authority.

13 Q. I think we've been over what the purpose of  
14 PIEA is. Can you state in your own words what that is?

15 A. Basically, the PIA is an instrument of the  
16 City that processes plans, either at the request of the  
17 City or at the instigation of others, to clear blight and  
18 -- to clear blight in areas, to increase the value of  
19 these areas. And the PIA undertakes blight studies or  
20 causes blight studies to be undertaken, causes general  
21 development plans to be undertaken for areas within the  
22 City. There's about 33 or 34 areas that have been  
23 declared blighted under the PIA law in Kansas City,  
24 Missouri.

25 Q. And is that purpose public or private?

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1           A.       That is indeed a public purpose.

2           Q.       What are some of the public benefits of  
3 clearing blight?

4           A.       Other than the elimination of unhealthy and  
5 insanitary conditions, for one, and I'm thinking  
6 specifically of this particular area where there are a  
7 number of older houses that needed to be removed right next  
8 to very intensive commercial areas, run down, dilapidated  
9 homes, opportunities for infestation and vermin. Those  
10 are some of the things that blight clearance does in the  
11 areas that we focus on, address those kinds of concerns.

12                   In addition to that, there are the  
13 increase -- once blight is cleared, the value of the areas  
14 are increased, and that has an impact, of course, on the  
15 values of property and the desirability of property in  
16 adjacent areas.

17          Q.       When a PIA project -- one of the  
18 Commissioners asked about the tax treatment. Can you  
19 describe just briefly what sort of tax treatment is given  
20 to planned industrial expansion projects once they are  
21 approved by the Authority?

22          A.       Yeah. The project that's approved by the  
23 Planned Industrial Expansion Authority can get tax  
24 abatement on the value of the improvements being made in  
25 the area. That doesn't mean that the existing tax base at

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1 all is compromised or demised, and the taxing  
2 jurisdictions get those -- continue to get their existing  
3 taxes, but taxes are re-- redevelopment offers developers  
4 the opportunity to redirect taxes to service debt created  
5 by the redevelopment being undertaken in an area. And  
6 they can receive up to ten years at 100 percent of tax  
7 payment on the value of the improvements, not the --  
8 what's already there, but the value of the improvements  
9 that are being made by the developer that are taxable, and  
10 then after that 15 years at 50 percent of the value of  
11 improvements.

12 The properties are frozen at a particular  
13 level at the pre-redevelopment stage for 10 years, and  
14 then after 10 years they're increased to the value that  
15 they -- in year 11, and then they're given 50 percent  
16 abatement after that period of time through year 25.

17 Q. Now let's turn to the specific project.  
18 Can you describe how the PIA became involved with the  
19 Boulevard Brewing Company?

20 COMMISSIONER GAW: Let me ask something.

21 JUDGE DALE: Excuse me.

22 COMMISSIONER GAW: I apologize. Just for  
23 point of clarification, the taxes that you're referring to  
24 are property taxes only?

25 THE WITNESS: That is correct. They're



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1     ad valorem property taxes. That's correct.

2                     COMMISSIONER GAW: No sales tax involvement  
3     in any abatement or in these type of projects?

4                     THE WITNESS: No, sir. I think there's a  
5     lot of -- there's always been a lot of discussion about  
6     that in terms of what the most cost effective  
7     redevelopment tool for this is, and tax abatement is one  
8     of those because it certainly, according to Hancock, is  
9     not a growth revenue of cities or taxing jurisdictions.  
10    All taxing jurisdictions are limited in the amount in  
11    gross taxes.

12                    Sales taxes on the other hand, earnings  
13    taxes are taxes that are the growth revenues of a city,  
14    and so we don't -- we don't get at all involved in those  
15    types of revenues. In this particular case, my sense is  
16    -- and I don't know this for sure. My sense is that the  
17    sales taxes associated with Boulevard Brewery's operations  
18    are not necessarily associated with their sales to their  
19    clients. I think the tax -- I think their clients pay  
20    sales taxes. I know if I buy some Boulevard Brewery in a  
21    liquor store, I pay sales tax at that point, so it's at  
22    the point of sale of those things. I don't think there's  
23    sales taxes involved in this.

24                    COMMISSIONER GAW: In any event, there is  
25    no provision in regard to anything other than property

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1 taxes?

2 THE WITNESS: That is true.

3 COMMISSIONER GAW: Thank you for that  
4 clarification.

5 JUDGE DALE: I actually have another  
6 follow-up question that's sort of similar. So if KCP&L  
7 were to bear the burden of any of these improvements, what  
8 favorable tax treatment would they be eligible for?

9 THE WITNESS: Your question is what  
10 favorable tax treatment KCP&L would be eligible for if it  
11 were to bear the cost?

12 JUDGE DALE: Yes.

13 THE WITNESS: I don't know of any.

14 JUDGE DALE: Okay. Thank you.

15 THE WITNESS: And just to clarify again, I  
16 neglected a big area in terms of sales tax. I want to  
17 clarify. The PIA can enter into what's called capital  
18 leases and can actually own property, and if they do  
19 indeed own property and lease it back to a third party,  
20 they can own and construct improvements and, of course, as  
21 a public body, we have not -- of course, we do have a  
22 sales tax exemption certificate, and we try to build  
23 facilities most cost effectively in blighted areas to  
24 serve the area, so we do not pay sales tax in that case.  
25 I hope that clarifies it for you.

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1                   COMMISSIONER GAW: But that's not the  
2 arrangement in this particular area?

3                   THE WITNESS: That is -- that is the  
4 arrangement in this particular area. The PIA will own the  
5 facilities and will provide sales tax abatement on  
6 equipment, on construction facilities and those kinds of  
7 things.

8                   Now, I think you need to take a look at  
9 that very carefully because taxes on construction  
10 materials and equipment generally don't necessarily affect  
11 local tax jurisdictions or more specifically only affect  
12 local tax jurisdictions or the state. They -- a good  
13 chunk of the sales taxes, again, are paid at point of  
14 sale, and many of the construction items that go into  
15 facilities such as these are not things that are purchased  
16 in the state of Missouri.

17                  COMMISSIONER GAW: I understand, but there  
18 is a retail establishment that will be at this particular  
19 location or not?

20                  THE WITNESS: I don't know that for sure.  
21 I think they -- I don't know if they have the retail  
22 establishment that you go to for sale or it's more of a  
23 convenience, a testing, brewmeister kind of operation for  
24 testing. I know they have some facilities where they can  
25 pump beer, but I don't think it's for sale necessarily. I

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1 don't know that for sure.

2 COMMISSIONER GAW: Okay. Do you know  
3 anything about excise taxes or liquor taxes or anything  
4 else?

5 THE WITNESS: I don't know very much about  
6 excise taxes or liquor taxes whatsoever, Commissioner.

7 COMMISSIONER GAW: Okay. And when you say  
8 this -- this ownership and lease back, is that purely on  
9 personal property or can that be real estate or is it real  
10 estate?

11 THE WITNESS: It can be real estate, it can  
12 be real -- it can be -- it can be real estate. It can be  
13 real property. It could be certain elements of personal  
14 property. The Constitution defines -- if you're talking  
15 about the sales tax issue, the Constitution, I believe,  
16 provides provisions or generally outlines what can be  
17 exempted from sales tax by public entity, and it's a very  
18 close definition.

19 COMMISSIONER GAW: But the real estate that  
20 is concerned in this case will be owned by the  
21 quasi-governmental entity and leased back to the brewery?

22 THE WITNESS: That is correct.

23 COMMISSIONER GAW: So from a legal  
24 standpoint, this -- the title to this property is going to  
25 lie in the quasi-governmental entity itself?

1                   THE WITNESS: That is correct, and the  
2   lessor will end up paying taxes based on the provisions  
3   that I just outlined under Chapter 353, and they make  
4   them -- they make those payments, they're called PILOT  
5   payments, but they are the tax and they're paid to the  
6   County and distributed by the County in the same way.

7                   COMMISSIONER GAW: Okay. I'm going to -- I  
8   may come back to this, but I'm going to stop my  
9   interruption now. Thank you. Thank you, sir.

10   BY MS. BROWN:

11                  Q.       Can you describe how the Planned Industrial  
12   Expansion Authority became involved with the Boulevard  
13   Brewing Company?

14                  A.       The PIA was contacted by the Economic  
15   Development Corporation, a city-funded agency, and  
16   requested that they take a look at -- at this particular  
17   area because of the mixed use and the dilapidated  
18   condition and see if there was an opportunity to redevelop  
19   it. They, I believe, were the first point of contact for  
20   Boulevard and they generally run the traps. I call it  
21   running the traps. They generally make sure that the city  
22   manager and the mayor and the elected officials for the  
23   area are -- concur with the activities, potential  
24   activities that could go on in an area like this before  
25   we're contacted. So they're our point of the contact, and

1 they bring it to us as a city-funded agency.

2 Q. So the Kansas City Economic Development  
3 Corporation recommended that PIA consider this project?

4 A. That is correct, yes.

5 Q. And what happened after that?

6 A. After that, the PIA at a meeting -- after a  
7 meeting and hearing the testimony by the Economic  
8 Development Corporation elected to undertake what's called  
9 a blight study and a general development plan for the  
10 area, and passed resolutions indicating their intent.

11 Q. Okay. I'm going to give you what's marked  
12 as Exhibit 2, which is Resolution No. 893 of the Planned  
13 Industrial Expansion Authority. Can you identify this  
14 exhibit?

15 A. Yeah. This is resolution -- yes, Counsel.  
16 Resolution 893 for the Commissioners is a resolution  
17 approving a blight study and finding the 25th and  
18 Southwest Boulevard PIA area as blighted pursuant to the  
19 PIA law and adopting a general development plan for the  
20 area. This resolution is adopted after a blight study and  
21 general development plan has been prepared and is being  
22 presented to the board and being reviewed by -- has been  
23 reviewed by the board, and this is the document that  
24 approves that.

25 Q. Is this contained in the files of PIEA?

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1 A. Yes, it is.

2 Q. And are you custodian of those files?

3 A. Yes, I am.

4 MS. BROWN: I move for admission of

5 Exhibit 2.

6 JUDGE DALE: Is there any objection?

7 MR. BLANC: No objection, your Honor.

8 JUDGE DALE: Thank you. Exhibit 2 will be  
9 admitted.

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

11 BY MS. BROWN:

12 Q. What was the process after the PIA approved  
13 the plan?

14 A. The process after the PIA -- all plans,  
15 once they're approved, and this was no different than  
16 other plans, they go through a hearing process and what I  
17 call a vetting process at city hall that's prescribed by  
18 statute. The plan and blight study, general development  
19 plan are sent to city hall for a city staff review called  
20 the -- I guess staff review or --

21 Q. Redevelopment coordinating?

22 A. Redevelopment coordinating committee  
23 review. I'm sorry. And the redevelopment coordinating  
24 committee consists of planning personnel, as well as  
25 public works and other personnel of the City to review the

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1 plan and make recommendations on changes to the planning  
2 commission that occur, that they feel are important for  
3 the plan.

4 Q. And did the City require changes to be made  
5 to the general development plan?

6 A. I did look that up. There were quite a few  
7 changes that were required in this plan by CPC. They were  
8 A through T, so that's about 20 or 25 --  
9 20 changes, and most of them -- some of them are  
10 administrative, clarification of access and transportation  
11 relating to the streets in the area and how they were  
12 going to interface with I-35, given the number of other  
13 redevelopment projects in the area.

14 And one of the other more significant  
15 changes was requiring -- because these are general  
16 development plans that are submitted, requiring that  
17 anybody that's named as a developer for the area secure  
18 what's called URD or urban redevelopment district zoning,  
19 which is a more specific plan, they have to submit a  
20 specific plan to the City in order for -- in order for  
21 them to develop the area and secure the tax and other  
22 benefits associated with PIEA.

23 Q. At that time of those staff hearings, did  
24 the relocation of the utilities or the responsibility for  
25 payment of the utilities -- relocation of the utilities,



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1 was that brought up?

2 A. No. Not to my recollection, no, Counsel.

3 Q. I'm going to give you what's been marked as  
4 Exhibit 3, which is Ordinance 041081. And can you  
5 identify this exhibit?

6 A. Yes. This is the committee substitute for  
7 Ordinance 041081. This is the ordinance that the city  
8 council adopted on October 28th, 2004, declaring the 25th  
9 and Southwest Boulevard PIA area as a blighted area and  
10 approving the general development plan. This is the final  
11 stage, and City approvals for this, like I said earlier,  
12 this plan is vetted at the City staffing level, the RCC,  
13 and it goes to the planning commission for a hearing.

14 And then it goes to a council, a standing  
15 committee of the city council called the Planning, Zoning  
16 and Economic Development Committee, who'll also hold  
17 another hearing before recommending it to the city  
18 council. And this is the final action by the city council  
19 approving the plan as it has changed and been amended in  
20 this process.

21 Q. And is that a certified copy?

22 A. Yes, it is. It was certified by the city  
23 clerk on March -- in March 2006.

24 MS. BROWN: I move for the admission of  
25 Exhibit 3.

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1 JUDGE DALE: Objections?

2 MR. BLANC: No objections, your Honor.

3 JUDGE DALE: Thank you. Then Exhibit 3  
4 will be admitted.

5 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

6 BY MS. BROWN:

7 Q. I just handed you a document which is the  
8 General Development Plan and Blight Study. This was an  
9 attachment to the Respondent's -- Attachment 4 on the  
10 Respondent's answer. Can you identify that document?

11 A. Yes. This is the General Development Plan  
12 and Blight Study that was prepared for the 25th and  
13 Southwest Boulevard PIA area prepared July 16th, 2004, and  
14 revised September 1, 2004.

15 Q. And it was revised after the -- it went  
16 through the City process?

17 A. That is correct.

18 MS. BROWN: I move --

19 JUDGE DALE: It's been prefiled, but it's  
20 not already in evidence, but it has not been marked.

21 MS. BROWN: I believe it is one of the  
22 Respondent's exhibits, which is why I didn't want to kill  
23 another tree and make extra copies.

24 JUDGE DALE: Well, no. I'm just  
25 questioning what number. You've already premarked all of

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1   yours through what number?

2                   MS. BROWN:  13.

3                   JUDGE DALE:  So then without objection, we  
4   will make Respondent's Attachment 4 Exhibit 14.

5                   MR. BLANC:  No objections to that approach.

6                   JUDGE DALE:  Then it will be admitted as  
7   Exhibit 14.

8                   (EXHIBIT NO. 14 WAS RECEIVED INTO  
9   EVIDENCE.)

10  BY MS. BROWN:

11           Q.       Who prepared the blight study and general  
12   development plan for this area?

13           A.       This study and plan was prepared by a  
14   company called Development Initiatives, Incorporated, an  
15   independent firm that we hire occasionally to do these  
16   things.

17           Q.       Okay.  I'd like you to look at Exhibit D in  
18   the blight study and general development plan.  It's just  
19   past page 104.

20           A.       Yes.

21           Q.       Can you identify what is on that page and  
22   just briefly describe what the contents of that page is?

23           A.       This is the certification of James Potter,  
24   AICP, which stands for the American Institute of Certified  
25   Planners, the person with Development Initiatives that

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1 prepared this, and this is a statement indicating that his  
2 analysis is clear and unbiased and has no interests in any  
3 of the property or any of the -- any development of the  
4 property that's the subject of this review.

5 Q. Thank you. Can you look at page 71,  
6 please?

7 A. Yes.

8 Q. Did the consultant make a determination as  
9 to blight?

10 A. Yes. On page 71, blight conclusion, the --  
11 in summary, the consultant indicated that there existed in  
12 the area insanitary and unsafe conditions. There were  
13 deteriorating site improvements and economic  
14 underutilization of the area sufficient to declare the  
15 area blighted.

16 Q. Can you turn to page 34, please? Can you  
17 read the next to the last paragraph on that page?

18 A. Yes. The area on page 34, proposed changes  
19 and public utilities, it says that it may be required that  
20 as part of a specific project plan and to remedy blighting  
21 conditions, certain utilities will be relocated or buried.  
22 Any changes will be coordinated with the City of Kansas  
23 City, Missouri and provided at the developer's expense.

24 Q. Is that the language in the current general  
25 development plan?

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1 A. No, that is not.

2 Q. And I'm going to give you what's been  
3 marked as Exhibit 4, which is Resolution 1083 of the PIA.  
4 Is this resolution contained in the files of PIA?

5 A. Yes, it is.

6 Q. And you're the custodian of those files?

7 A. That is correct.

8 MS. BROWN: I move for the admission of  
9 Exhibit 4.

10 JUDGE DALE: Any objections?

11 MR. BLANC: No objections, your Honor.

12 JUDGE DALE: Then Exhibit 4 will be  
13 admitted into evidence.

14 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

15 BY MS. BROWN:

16 Q. Was there public notice given of the  
17 meeting at which this resolution was considered?

18 A. Yes, there was.

19 Q. And was there a public hearing?

20 A. Yes, there was.

21 Q. Can you read the last three recitals in  
22 this resolution?

23 A. The Authority hereby approves modification  
24 of the --

25 Q. Excuse me. The resolution -- the recitals.

1           A.       Recitals. I'm sorry. Last three, is that  
2 what you said?

3           Q.       Yes.

4           A.       It says, Whereas, the plan states that the  
5 cost of relocation of the utilities will be borne by the  
6 developer; and whereas, the Authority wishes to clarify  
7 that the reason that any language regarding the  
8 responsibility for utility relocation costs was included  
9 in the plan was to indicate that the Authority would not  
10 be obligated to pay such costs, not to make a  
11 determination of responsibility between the developer and  
12 any utility company; and whereas, the matter of  
13 responsibility for relocation costs is now before the  
14 Public Service Commission of Missouri and the Authority  
15 does not desire that the language in the plan have any  
16 bearing on the matter not intended by the Authority.

17          Q.       And what is your understanding of a major  
18 modification?

19          A.       My understanding of a major modification is  
20 one that would substantially alter the development  
21 anticipated in a general development plan.

22                 JUDGE DALE: Excuse me. I have a question.  
23 You discussed earlier that this language about the costs  
24 being borne by the developer was standard language in  
25 these plans. In light of this proceeding, have you gone

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1 back to change any other pending plans?

2 THE WITNESS: No. No, we have not. In  
3 my -- my background tells me that to a great extent these  
4 are under -- it's understood that if the utility company  
5 has a role in this, that they generally step up to the  
6 plate. It's been my experience in other locations doing  
7 redevelopment. But no, we have not gone back and changed  
8 any other plans, at least to my knowledge. I've been here  
9 since 2001. This has been around since 1968.

10 JUDGE DALE: I'm sorry. I have to ask a  
11 follow-up question. Then in your opinion, the utility  
12 does not have an obligation in this case?

13 THE WITNESS: No. No, that's not -- it's  
14 not my opinion. My opinion is that these are -- this is a  
15 blighted area and that the utilities have a responsibility  
16 in this particular case.

17 JUDGE DALE: Thank you.

18 BY MS. BROWN:

19 Q. Mr. Figuly, was there discussion among the  
20 board members at that meeting about what they might do in  
21 future plans with regard to relocation of utilities?

22 A. Yes, there was some general discussion of  
23 that nature, that they probably would need to revisit  
24 those items again. A lot of these things come down from  
25 historical perspective and really aren't given a lot of

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1 review.

2 I think the specifics of it or the more  
3 focused assessments on these particular plans as they're  
4 presented are on various areas, the uniqueness of various  
5 areas in terms of blighting conditions that exist and the  
6 surrounding land uses and the need to redevelop the areas  
7 that are compatible and that assist these blighted areas  
8 and provide a better quality of life and a better  
9 environment.

10 Some of the older language in there doesn't  
11 get reviewed and probably needs to get reviewed in the  
12 future, and that was the general nature of the  
13 discussions.

14 Q. After the city council approved the general  
15 development plan and the blight study, what happened next?  
16 What were the next steps?

17 A. After the city council approves a general  
18 development plan, and in all cases what happened is that  
19 we advertise for developers, and I believe -- Counsel,  
20 correct me if I'm wrong -- is that the PIA or the PIA law  
21 gives preference to folks that own property in the area,  
22 and there were indeed several owners of property in this  
23 general area.

24 So we advertised for a developer for the  
25 area, and Boulevard Brewery submitted a proposal and



1 industrial development contract proposal in response to  
2 that advertisement.

3 Q. I'm going to give you what has been marked  
4 as Exhibits 5, 6 and 7, which are Resolutions 936, 937 and  
5 938 of the Authority. Can you identify these exhibits?

6 A. Yes, Counselor. Resolution No. 936 is the  
7 Authority's expression of intent. The law requires that  
8 prior to the award of any specific project to a developer  
9 in a PIA area, that the City be given 30 days notice of  
10 its intent to do so. And Resolution No. 936 expresses  
11 that intent and directs myself to forward that notice to  
12 the mayor and city council of Kansas City, Missouri.

13 On Resolution No. 937, the general  
14 development plan requires that the PIA make a finding that  
15 the proposal is in substantial conformance with the  
16 adopted general development plan, and the adoption of this  
17 resolution indicates that the proposal submitted by  
18 Boulevard Brewery is indeed in substantial conformance  
19 with the general development plan.

20 And Resolution No. 938 is the -- is a  
21 resolution authorizing tax abatement for the property  
22 pursuant to Chapter -- pursuant to PIEA law and  
23 Chapter 353 of the statutes of Missouri.

24 Q. Are these resolutions contained in the  
25 files of PIA?

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1           A.       Yes, they are.

2           Q.       And are you the custodian of those files?

3           A.       Yes, I am.

4                   MS. BROWN: I move for the admission of  
5 Exhibits 5, 6 and 7.

6                   JUDGE DALE: Any objections?

7                   MR. BLANC: No objections, your Honor.

8                   JUDGE DALE: Thank you. Then Exhibits 5, 6  
9 and 7 will be admitted into evidence.

10                   (EXHIBIT NOS. 5, 6 AND 7 WERE RECEIVED INTO  
11 EVIDENCE.)

12 BY MS. BROWN:

13           Q.       When were these resolutions approved?

14           A.       These resolutions were approved  
15 December 16, 2004.

16           Q.       And can you tell us what the next step in  
17 the process was?

18           A.       The -- in terms of?

19           Q.       What was your obligation next? Did you  
20 send notice to the city council?

21           A.       Yes. I needed to notify the city council  
22 of the PIA's intention to award the development rights.  
23 Under the statute, the PIA -- or the council has  
24 30 days -- the mayor and city council have 30 days to  
25 respond to that notice. And once that 30-day term

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1 expires, if there are any issues, we attempt to resolve  
2 them with the city council.

3 If not, and there were none in this  
4 particular case, we send a notice of award to the  
5 developer, expressing the intent of the P-- or expressing  
6 the award -- granting the award of the development rights  
7 under PIA for their project.

8 Q. I'm going to hand you Exhibit 8, which is a  
9 certified copy of the Communication 050001. Can you  
10 identify this exhibit?

11 A. Yes. This is the December 20, 2004 letter  
12 that I sent to Mayor Kay Barnes and copied to the city  
13 council, the city clerk and various others associated with  
14 this project, indicating the PIA's intent to award  
15 development rights to Boulevard Brewing Associates, LLP,  
16 d/b/a Boulevard Brewing Company, for the project that --  
17 for the Boulevard Brewing project, basically.

18 Q. And that's a certified copy of that  
19 communication?

20 A. That is correct, certified by the city  
21 clerk on March -- in March of 2006.

22 MS. BROWN: I would move for admission of  
23 Exhibit 8.

24 JUDGE DALE: Any objection?

25 MR. BLANC: No objection, your Honor.

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1 JUDGE DALE: Thank you. Then Exhibit 8  
2 will be admitted into evidence.

3 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

4 BY MS. BROWN:

5 Q. I'm going to hand you what's been marked as  
6 Exhibit 9, which is a certified copy of 041415. Can you  
7 identify this exhibit?

8 A. Yes, I can. This exhibit, as a  
9 prerequisite for awarding or securing the benefits of  
10 tax abatement and other benefits in a PIA plan,  
11 particularly -- in this particular plan, anyone that is  
12 given the -- is awarded a development contract has to  
13 secure a -- what's called URD zoning from the City of  
14 Kansas City, Missouri. And this ordinance number is  
15 evidence that the Boulevard Brewery Associates did indeed  
16 secure URD zoning. This is the authorization or approval  
17 of that URD zoning for this particular project.

18 MS. BROWN: I move for admission of  
19 Exhibit 9.

20 JUDGE DALE: Is there any objection?

21 MR. BLANC: No objection, your Honor.

22 JUDGE DALE: Then Exhibit 9 is admitted.

23 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

24 BY MS. BROWN:

25 Q. In your statement describing the exhibit,

0069

1     you indicated that this ordinance implemented the City  
2     requirement that the project be rezoned to URD zoning?

3             A.       That is correct. That was one of the  
4     changes that were made by city staff when we submitted,  
5     that if any project is submitted to take advantage of tax  
6     abatement would be -- get rezoned.

7             Q.       I'm going to hand you Exhibits 10, 11 and  
8     12, and I'll go through them one by one with you. Can you  
9     identify Exhibit 10?

10            A.       Yes. Exhibit 10 is a certified copy of the  
11     section of the city Code known as Section 80-170  
12     describing the purpose of the -- and intent of the URD,  
13     the urban redevelopment district zoning designation.

14            Q.       Is that a certified copy of the ordinance?

15            A.       Yes.

16                    MS. BROWN: I move for admission of  
17     Exhibit 10.

18                    JUDGE DALE: Objection?

19                    MR. BLANC: No objection, your Honor.

20                    JUDGE DALE: Exhibit 10 is admitted in  
21     evidence.

22                               (EXHIBIT NO. 10 WAS RECEIVED INTO  
23     EVIDENCE.)

24     BY MS. BROWN:

25            Q.       Could you read that section of 80-170?

1           A.       Yeah. Subparagraph lowercase A, the  
2     purpose of the urban redevelopment district is to  
3     encourage and accommodate development and redevelopment of  
4     underdeveloped and blighted sections of the City and to  
5     encourage latitude and flexibility in design to ensure the  
6     stated purposes of our redevelopment plan.

7           Q.       And the 25th and Southwest Boulevard  
8     general development plan indicated that the relocation or  
9     burial of the utilities might be required to eliminate  
10    blight?

11          A.       That's correct.

12          Q.       Could you identify Exhibit 11, which is a  
13    copy of 80-172?

14          A.       Yes. 80-17-- certified copy, certified  
15    March 6, 81-172 provides the application process for  
16    establishment of a URD district and requires that an  
17    application for urban redevelopment district be  
18    accompanied by a development plan, which is our general  
19    development plan, and the plan includes certain  
20    information and enumerates the information.

21          Q.       And so the general nature of this ordinance  
22    is to require -- sets forth the requirements for the  
23    application for a URD?

24          A.       That's correct.

25          Q.       And the development plan --

0071

9 Q. So subsection -- subsection B requires the  
10 general development plan, and who is that submitted to?

13 Q. I'm referring you to Exhibit 12, which is  
14 80-175. Can you identify that?

23 MS. BROWN: I move for admission of  
24 Exhibit 12.

0072

1 for admission of Exhibit 11?

2 MS. BROWN: Yes. I'm sorry.

3 JUDGE DALE: Any objections?

4 MR. BLANC: No objections, your Honor.

5 JUDGE DALE: Then Exhibits 11 and 12 are  
6 accepted into evidence.

7 (EXHIBIT NOS. 11 AND 12 WERE RECEIVED INTO  
8 EVIDENCE.)

9 BY MS. BROWN:

10 Q. What is contained in a site plan, and I  
11 refer you to subsection B?

12 A. It's information that -- required on the  
13 development plan and specific information with respect to  
14 streets and site-specific types of information. So it  
15 incorporates both the needs of the general development  
16 plan as well as specific plan, in terms of remedying the  
17 blight and construction disruption in the area.

18 Q. So to get a development approved, you have  
19 to have a site plan, and to get a site plan, you have to  
20 have the development plan approved?

21 A. That is correct.

22 Q. And those are all approved by the City?

23 A. That is correct.

24 Q. I've handed you what's marked as  
25 Exhibit 13, which is the affidavit of custodian of



0073

1 business records.

2 A. That is correct. The affidavit of Virginia  
3 Wall, who was the manager of city planning and  
4 development. Her affidavit indicating that the -- that  
5 the final development plan, a traffic impact analysis and  
6 the general development plan and blight study relating to  
7 the Boulevard Brewing Company are all part of the record  
8 associated with the -- with the urban redevelopment  
9 district designation for this particular project.

10 Q. And that affidavit indicates that the  
11 attached is the final development plan and the traffic  
12 study?

13 A. That is correct.

14 MS. BROWN: I move for admission of  
15 Exhibit 13.

16 JUDGE DALE: Any objection?

17 MR. BLANC: No objection, your Honor.

18 JUDGE DALE: Then Exhibit 13 with the  
19 attached will be admitted into evidence.

20 (EXHIBIT NO. 13 WAS RECEIVED INTO  
21 EVIDENCE.)

22 BY MS. BROWN:

23 Q. I've handed you the traffic study, which is  
24 an attachment to that affidavit. Can you turn to page 29?

25 A. Yes.

1           Q.       Well, first of all, who prepared this  
2 traffic study?

3           A.       This traffic study was prepared by Olsson  
4 Associates, an independent planning and engineering firm,  
5 requirement of the City -- under requirement of the City  
6 by traffic analysis -- traffic flow analysis be conducted.

7           Q.       And was there a requirement in the rezoning  
8 ordinance for this project that a traffic study be  
9 conducted?

10          A.       Yes, there was.

11          Q.       And in these rezoning ordinances, is there  
12 a -- is there a requirement that the recommendations of  
13 the traffic study be implemented?

14          A.       That is correct, yes.

15          Q.       On page 29, can you look at the  
16 recommendations at the top of the page?

17          A.       Yes.

18          Q.       And read the first bullet point there.

19          A.       Recommendations for exiting, Phase 1  
20 development associated with the Boulevard Brewery project,  
21 the recommendation first bullet point says that there  
22 needs to be provided a left and right turn lane for  
23 westbound 26th Street turning onto Southwest Boulevard to  
24 reduce delay for the turning vehicle traffic on  
25 26th Street.

0075

1           Q.       So if you were to go straight on  
2 26th Street onto the Southwest Boulevard -- can you go  
3 straight across Southwest Boulevard?

4           A.       No, you can't, so you have to have a  
5 turning lane.

6           Q.       You have to go right or left?

7           A.       Right or left, correct. It's a two-way  
8 street.

9           Q.       So this would require the addition of one  
10 lane?

11          A.       That is correct, yes. I think it discusses  
12 that to some extent in the second bullet point.

13          Q.       I'm going to hand you a copy of the final  
14 development plan, which is also an attachment to that  
15 exhibit. Can you identify that attachment to the exhibit,  
16 please?

17          A.       Yes. Yes. This is the final development  
18 plan that's been approved by Robert Langencamp. He's the  
19 assistant director of city planning and development for  
20 this particular project. It was prepared by Architecture,  
21 Incorporated and for the Brew House, the Boulevard Brewery  
22 project here in Kansas City.

23          Q.       Can you look at that plan and tell me what  
24 is indicated with regard to the widening of 26th Street?

25          A.       It indicates that the plan -- it's from the

1 front page and I know -- I think it's on one or the other  
2 pages in here in more detail. The plan requires an  
3 additional turning lane on that portion of 26th Street  
4 between Southwest Boulevard and the alley right behind  
5 Boulevard Brewery to accommodate the truck traffic,  
6 which -- and other traffic that was anticipated in the  
7 traffic study and required in the traffic study.

8                   Within that right of way now is an  
9 unimproved right of way. I guess it's not been improved  
10 at this point. I haven't looked at it yet. But within  
11 that right of way there were a number of things that  
12 needed to be relocated, which included overhead power  
13 lines and a fire hydrant. It requires that --

14           Q.       And what does that plan require in regard  
15 to the utilities on that street?

16           A.       It requires them to be relocated to the  
17 south side of the street, to the other side of the street.

18           Q.       And when I say utilities, I mean electric.

19           A.       The overhead power lines to be relocated to  
20 the south side of the street.

21           Q.       So --

22           A.       The fire hydrant would move.

23           Q.       By approval of the general development, the  
24 City required the widening of the street and relocation of  
25 the utilities?

1           A.       Correct. And there's other things that's  
2 required. I think it -- alluding to Commissioner Gaw's  
3 comments earlier, I think with respect to other kinds of  
4 things, there were improvements in existing sidewalks and  
5 curb and gutter that needed to be built and those kinds of  
6 things in the area.

7           Q.       Are you generally aware of the Land  
8 Clearance for Redevelopment Act?

9           A.       I'm generally aware of Chapter 99 and --  
10 which is the Land Clearance Redevelopment Act, yes,  
11 creating Land Clearance Redevelopment Authority.

12          Q.       And can you describe the similarities and  
13 differences between the LCRA, the Land Clearance  
14 Redevelopment Authority, and PIEA?

15          A.       Yes. The statutes -- having dealt with  
16 both for a couple of years, both statutes are almost  
17 identical. The only -- the substantial differences are,  
18 is I think LCRA is limited to the amount of tax abatement  
19 they can grant, whereas P-- to ten years, and PIA has the  
20 authority to grant Chapter 353 tax abatement.

21                   I think the other substantial difference in  
22 the two statutes is one statute, Chapter 99, there's a  
23 threshold population requirement in each of those statutes  
24 for a community wishing to implement those two statutory  
25 agencies. The threshold requirement for LCRA, I believe,

0078

1 is 75,000, and there are quite a few LCRA agencies in and  
2 around metro areas. There's only two PIA areas because  
3 the threshold population requirements are higher, and  
4 that's in St. Louis and Kansas City.

5 Q. And would you say that both agencies  
6 operate following similar processes in declaring blight  
7 and recommending development plans to cities?

8 A. Very much so. I coordinate a lot with the  
9 review process that takes place at EDC before determining  
10 whether or not an area should be declared blighted under  
11 PIA law or LCRA, interface with the director, with Joe  
12 Egan, who's the director right now, quite a bit. And,  
13 yes, there is.

14 MS. BROWN: Thank you. I have no further  
15 questions.

16 JUDGE DALE: I just -- I have one  
17 clarification question.

18 Are you aware of any other projects similar  
19 to this that -- involving KCP&L or any other utility in  
20 the Kansas City area?

21 THE WITNESS: When you're saying in terms  
22 of the circumstances here, is that what you're referring  
23 to?

24 JUDGE DALE: Right, that involve a utility  
25 moving --

1                   THE WITNESS: I'd have to say in one  
2 particular area that I have some knowledge of it, it  
3 involves a construction of a Salvation Army, an adult  
4 rehabilitation center in what we call the Paseo West PIEA  
5 area, and there was some city relocation -- there was some  
6 relocation of utilities associated with that, that were  
7 required. I never did get into the who pays issue, but  
8 there were substantial KCP&L involvement in that  
9 particular case.

10                   There are a number, and I just happen to --  
11 I asked my colleagues at EDC to put a map together of all  
12 the redevelopment areas, and I don't know if I -- I don't  
13 know if I should have had this in my pocket or not, but I  
14 did, and there are quite a few redevelopment areas in and  
15 around this particular establishment, and I'm pretty  
16 certain that all of them in one way or another involve  
17 relocation or undergrounding or other types of activities,  
18 reconfiguration, relooping maybe of electric utilities, as  
19 well as other utilities, to serve the area.

20                   JUDGE DALE: Okay. Thank you very much. I  
21 note that it is straight up to noon. If you are willing,  
22 Mr. Blanc, to delay your cross-examination of this witness  
23 until after lunch, we can recess until -- I would like  
24 everyone to be back by 1:15. I understand that it is  
25 difficult to get lunch in a mere hour and 15 minutes at

0080

1    this time of year in downtown Jefferson City, so -- but if  
2    we can -- if we can aim for that, hopefully we can start  
3    right on time at 1:30.

4                   MR. FINNEGAN: I will have a few questions  
5    myself.

6                   JUDGE DALE: Okay. We'll then recess until  
7    1:15.

8                   (A BREAK WAS TAKEN.)

9                   JUDGE DALE: We are back on the record, and  
10   I believe Mr. Finnegan had a few follow-up questions.

11                   MR. FINNEGAN: Yes, I do.

12                   JUDGE DALE: This, I take it, is in the  
13   nature of direct?

14                   MR. FINNEGAN: Yes, it is.

15   DIRECT EXAMINATION BY MR. FINNEGAN:

16           Q.     Mr. Figuly, I'll be brief here. I just  
17   have a few things I wanted to cover, make sure they were  
18   understood.

19                   In the Exhibit 14 that's the general  
20   development plan, are you familiar with page 20 thereof?  
21   I don't believe it was referred to.

22           A.     20, 2-0?

23           Q.     Page 20, 2-0.

24           A.     Zoning, and blight analysis findings?

25           Q.     That's correct. Let me --



0081

1 MR. FINNEGAN: Can we mark this?

2 (EXHIBIT NO. 15 WAS MARKED FOR

3 IDENTIFICATION.)

4 BY MR. FINNEGAN:

5 Q. Mr. Figuly, is this a copy of page 20 of  
6 the general development plan?

7 A. Yes, it is.

8 Q. Okay. And could you -- this title is --  
9 the title here says Blight Analysis Findings?

10 A. Yes.

11 Q. And could you read the last paragraph of  
12 that?

13 A. In that section it says -- the last  
14 paragraph says, the intent of this plan is to remediate  
15 various blighting factors within the planning area,  
16 including but may not be limited to the remediation of  
17 certain environmental liabilities, the modernization  
18 and/or construction of new facilities and replacement of  
19 curbs, gutters and sidewalks, as well as the removal of  
20 overhead utility lines.

21 Q. And so overhead utility lines are  
22 considered a blight?

23 A. Correct.

24 Q. Or certain overhead utility lines are a  
25 blight.

0082

1                   Okay. And with respect to Exhibit No. 4,  
2   which is Resolution 1083; is that correct?

3           A.       No. 4? Yes, that is Resolution 1083,  
4   correct.

5           Q.       Okay. Prior to having an amended  
6   resolution, did you send a letter to Kansas City Power &  
7   Light advising them of their -- of what the intent of the  
8   PIEA was when this language was installed at page 34 of  
9   the general plan?

10          A.       Yes, I did. I think it was early in  
11   January I did that.

12                   (EXHIBIT NO. 16 WAS MARKED FOR  
13   IDENTIFICATION.)

14   BY MR. FINNEGAN:

15          Q.       Mr. Figuly, you have before you what's been  
16   marked as Exhibit 16?

17          A.       Correct.

18          Q.       Do you recognize this?

19          A.       Yes. That's the letter dated January 5th,  
20   2006 that I sent to Larry Marullo with KCP&L.

21          Q.       And on page 2, did you advise him that --  
22   of what the PIEA's intent was by that language?

23          A.       Yes, I did. I indicated that the intent of  
24   the redevelopment plan that was approved by the PIEA and  
25   the City was -- that language to -- the purpose of that

0083

1 language was to assure that neither the City nor PIA would  
2 be responsible for any expenses themselves associated with  
3 utility relocation.

4 MR. FINNEGAN: Okay. I'd like to offer  
5 Exhibits 15 and 16 at this time.

6 JUDGE DALE: Does Exhibit -- does  
7 Exhibit 15 differ in any way from the page 20 already  
8 accepted into evidence as Exhibit, I believe, 14?

9 MR. FINNEGAN: No, it does not. It does  
10 not.

11 JUDGE DALE: Then I will not accept  
12 Exhibit 15 into evidence. Is there any objection to  
13 Exhibit 16?

14 MR. BLANC: No objection to -- I guess is  
15 it Exhibit 15 now?

16 JUDGE DALE: No. We'll just go with it  
17 being 16 and not admit 15.

18 MR. BLANC: Okay. No objection to 16.

19 JUDGE DALE: Okay. Then Exhibit No. 16 is  
20 admitted into evidence.

21 (EXHIBIT NO. 16 WAS RECEIVED INTO  
22 EVIDENCE.)

23 MR. FINNEGAN: Thank you.

24 JUDGE DALE: And, Mr. Finnegan, I already  
25 have five copies, so you must have mistakenly given me

1 six. You can keep the one you took.

2 MR. FINNEGAN: Thank you.

3 BY MR. FINNEGAN:

4 Q. Mr. Figuly, with respect to Exhibit 13,  
5 which was -- part of it was the traffic impact study, do  
6 you recall?

7 A. Yes. I believe that was 14, or is it 13?  
8 I know the impacts -- it's the impact -- traffic impact  
9 analysis and the plans, that's correct.

10 Q. I've got it marked Exhibit 13, I believe.

11 A. Okay.

12 Q. You read from a page 29 of the traffic  
13 study, the first paragraph of that exhibit?

14 A. Yes, I did.

15 Q. And I believe you said there was a further  
16 statement at the second bullet point?

17 A. Yes. This was -- the first bullet point  
18 dealt with a recommendation to provide a left and right  
19 turning lane at the westbound 26th Street turning onto  
20 Southwest Boulevard. The second bullet discusses the  
21 traffic that is expected to be -- to be generated by  
22 nearby redevelopment activities going on in the area,  
23 necessitating the lane change and -- or the turning lane  
24 and other modernizations.

25 Q. And these two paragraphs or anywhere in

0085

1     these pages, does it say that the reason for the -- the  
2     additional -- left and right turn lane on the westbound 26  
3     is a result for -- or is there for Boulevard's trucks?

4             A.       No, it does not.

5                     MR. FINNEGAN:   And I'd like to have this  
6     marked, please.

7                     (EXHIBIT NO. 17 WAS MARKED FOR  
8     IDENTIFICATION.)

9                     MR. FINNEGAN:   Thank you.

10    BY MR. FINNEGAN:

11             Q.       With respect to Exhibit 16, one more  
12     question here.   Did you ever receive a response from KCPL  
13     to your letter?

14             A.       No, I did not.

15                     MR. FINNEGAN:   I'd like to offer  
16     Exhibit 16.

17                     I haven't done 17 yet.   I did 16.   15 was  
18     denied, I believe.

19                     JUDGE DALE:   15 was denied, 16 was  
20     accepted.

21                     MR. FINNEGAN:   Thank you.   Thank you.

22    BY MR. FINNEGAN:

23             Q.       And do you have before you what's been  
24     marked as Exhibit 17?

25             A.       Yes, I do.

1 Q. And can you tell me what that depicts?

2 A. This is a map that I alluded to earlier in  
3 my previous testimony. It's a map of the general area of  
4 the 25th and Southwest Boulevard PIA that shows a number  
5 of other redevelopment areas in the immediate as well as  
6 general vicinity of this particular project.

7 There's two or three different types of  
8 development -- redevelopment efforts going on in this  
9 area. One is a Chapter 3-- what's called a Chapter 353  
10 redevelopment project that's being -- that's being  
11 undertaken on West Side Industrial Park at the direction  
12 of the City. All of these are undertaken at the direction  
13 of the City. Some of them are TIF projects, which are tax  
14 increment financing projects.

15 Another is an urban renewal area project,  
16 which is an LCRA project, as well as PIAs, 25th and  
17 Southwest Boulevard projects. So there's a number of them  
18 that are immediately adjacent to as well as a little  
19 removed from this particular area.

20 Q. And the 25th and Southwest Boulevard PIEA,  
21 that's shown kind of in the center of the map?

22 A. Correct. It's kind of a greenish color,  
23 correct.

24 Q. It looks like there's another PIEA project  
25 up on Washington?

1           A.       The Washington -- yes, there's a  
2   PIEA project up there, all part of the downtown -- some of  
3   the downtown or outside of the downtown loop type of  
4   projects, very old areas of the community.

5           Q.       The Pershing Road TIF, is that the new IRS?

6           A.       Yes.   Pershing Road -- Pershing Square is  
7   and the Pershing Road TIF, there's several projects going  
8   on in there.   The 353 is a tax abatement project.   The  
9   Pershing Roads.   The IRS facility where income generated  
10  by that particular project will help development expenses  
11  for public improvements, defer development expenses for  
12  public improvements.   That's correct.

13          Q.       Is it anticipated that all these projects  
14  will increase the traffic?

15          A.       Oh, just tremendously.   There's 5,000 IRS  
16  employees moving into those facilities in the Pershing  
17  Road TIF area.   That's -- that's a significant increase in  
18  traffic in that area.

19          Q.       Does not 25th Street run directly into the  
20  side of the IRS project?

21          A.       That's correct.   It runs directly to the --  
22  kind of catty-corner -- well, it runs directly to the east  
23  on this map, and it runs up into Summit, and that's  
24  directly adjacent to the IRS project, correct.

25          Q.       And what about 26th Street, does it run

0088

1 into the project or is it --

2 A. 25th Street -- 26th Street? No. I'm  
3 sorry. My earlier -- my earlier comment was made on 26th  
4 Street, which was -- runs into Summit, which is adjacent  
5 to the Pershing Road TIF. 25th Street does indeed run  
6 into  
7 the -- into that -- into just right against -- up against  
8 the TIF IRS project.

9 Q. And part of the traffic study recognizes  
10 all this development in the area and the need for 25th to  
11 26th Street and the work that needs to be done there; is  
12 that correct?

13 A. That is correct, yes. It's in the second  
14 bullet point I alluded to earlier. It discusses those,  
15 correct.

16 Q. Are there other businesses on 26th Street  
17 besides Boulevard's need for the use of 26th Street?

18 A. Boulevard, I believe it's classified as a  
19 collector street, so my sense is that it collects traffic  
20 from areas, and in my sense, there might be, but I don't  
21 know that for sure.

22 Q. By Boulevard, you mean Southwest Boulevard?

23 A. I'm sorry. I'm talking about --

24 Q. 26th Street?

25 A. I should let you ask the question before I



0089

1 answer.

2 Q. 26th Street; is that correct?

3 A. 26th Street. Okay. Your question on  
4 26th Street was? I'm sorry.

5 Q. Well, the question, are there other  
6 businesses, I guess it would be to the east of Boulevard  
7 and also to the west of Boulevard that would have use of  
8 that street?

9 A. Yes, that is correct.

10 Q. Okay. So to sum it up, the need for the  
11 relocation of the lines on 26th Street is not due solely  
12 to Boulevard?

13 A. Not according to the traffic study.

14 MR. FINNEGAN: That's all the questions.  
15 I'd like to offer Exhibit 17.

16 JUDGE DALE: Any objection?

17 MR. BLANC: No objections, your Honor.

18 JUDGE DALE: Thank you. Then Exhibit 17 is  
19 accepted in evidence.

20 (EXHIBIT NO. 17 WAS RECEIVED INTO  
21 EVIDENCE.)

22 MR. FINNEGAN: Thank you, sir. That's all  
23 my questions.

24 JUDGE DALE: Thank you. Cross?

25 CROSS-EXAMINATION BY MR. BLANC:

0090

1 Q. Good afternoon.

2 A. Hi.

3 Q. You reference a lot of city ordinances and  
4 PIEA resolutions in your direct examination. I think  
5 they're Exhibits 1 through 9. Do you recall those?

6 A. I recall many of them, yes. There were a  
7 bunch of them, correct.

8 Q. One of them involves the establishment --  
9 one of the City ordinances involves the establishment of  
10 PIEA; is that correct?

11 A. That is correct.

12 Q. And another one involves the approval of  
13 the development plan; is that correct?

14 A. That is correct.

15 Q. And then you also testified to some letters  
16 you wrote to the mayor about this project, about the  
17 development plan?

18 A. Correct.

19 Q. Setting aside the development plan itself  
20 for a moment, do any of those documents expressly require  
21 KCPL to relocate or remove its facilities?

22 A. None of those specific documents do, no.

23 Q. Do any of them say who should be  
24 responsible for the cost of such relocation projects?

25 A. Not in those documents themselves, no.

0091

1           Q.       Okay. Now, let's go to the development  
2 plan itself, which I believe is Exhibit 14. The  
3 development plan was approved by the city council,  
4 correct?

5           A.       That's correct.

6           Q.       And I believe you just list -- went through  
7 the list of blighting conditions on page 20?

8           A.       Correct.

9           Q.       If we could look at those again, please.  
10 Are you aware of any necessary remediation of certain  
11 environmental liabilities at the site?

12          A.       No, I'm not aware of any.

13          Q.       Are you aware of any modernization or  
14 construction of facilities that's going on at the site?

15          A.       Yes, I am.

16          Q.       Okay. Who's paying the cost of that  
17 construction project?

18          A.       The PIA has issued bonds to construct those  
19 projects. The -- I would imagine the financing on that,  
20 whether -- has been -- is being provided by banks or other  
21 institutions that loan money typically for these kind of  
22 things, secured by -- based on the bonds that they've  
23 purchased for this.

24          Q.       But the people performing the work aren't  
25 being asked to pay?

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1           A.       Ultimately, they will -- oh, people  
2 performing the work? No, they're not being asked to pay.

3           Q.       And another blighting condition listed  
4 there is the replacement of curbs -- or remedy is the  
5 replacement of curbs?

6           A.       Correct.

7           Q.       Are the curbs being replaced as part of the  
8 project?

9           A.       Yes, they are.

10          Q.       And who's paying for replacing curbs?

11          A.       The bondholders that have loaned money  
12 against the project.

13          Q.       But the construction companies hired to  
14 actually build the curbs, are they being asked to pay?

15          A.       No.

16          Q.       How about gutters, are gutters being  
17 relocated or moved as part of the plan?

18          A.       Reconstructed, correct. Yes.

19          Q.       Okay. Are the developers -- or I'm  
20 sorry -- the contractors who will actually be doing that  
21 work, are they being asked to pay?

22          A.       No.

23          Q.       Okay. Sidewalks, are sidewalks being  
24 constructed or moved or reconfigured as part of the plan?

25          A.       Yes, they are.

0093

1 Q. And that's to remedy the blight?

2 A. Correct.

3 Q. Are the contractors that are doing that  
4 work, are they being asked to pay?

5 A. No, I don't believe they are.

6 Q. Just with respect to overhead utility  
7 lines, that contractor, KCPL, should pay?

8 A. KCP&L should pay in this particular case,  
9 yes.

10 Q. What about -- I think I heard someone say  
11 earlier that there's some fire hydrants that will have to  
12 be relocated or built new as part of this?

13 A. There is a fire hydrant, I believe, yes, in  
14 the right of way where the KC Power & Light overhead lines  
15 are being constructed.

16 Q. Who owns or is responsible for maintaining  
17 that fire hydrant?

18 A. The municipal utility.

19 Q. And that's part of the City of Kansas City,  
20 in effect, is responsible?

21 A. That's correct, yes.

22 Q. And who's going to bear the cost of moving  
23 that fire hydrant?

24 A. I believe the bondholders are, under  
25 requirements of the municipal utility.

1           Q.       But the utility is not required -- the  
2 utility is not paying?

3           A.       I don't believe that is the case.

4           Q.       Okay. If we could turn to page 34 of the  
5 development plan, please.

6           A.       Got it.

7           Q.       Could you please read the second to last  
8 paragraph that is entitled, proposed changes in public  
9 utilities?

10          A.       Yes, I can. It's the proposed change in  
11 public utilities states that it may be required that as  
12 part of a specific project plan and to remedy blighting  
13 conditions, certain utilities will be relocated or buried.  
14 Any changes will be coordinated with the City of Kansas  
15 City, Missouri and provided at the developer's expense.

16          Q.       Is it correct that you believe PIEA  
17 intended something else by that?

18          A.       Yes.

19          Q.       Did the city council approve your stated  
20 interpretation of what PIEA intended or did they approve  
21 the actual language on page 34?

22          A.       They approved the language on page 34.

23          Q.       Has any work been done on the development  
24 contemplated under the project?

25          A.       Yes, there has been.

0095

1           Q.       Roughly how much -- do you have a dollar  
2   idea of how much work's been done?

3           A.       I really don't know at this particular  
4   point.  A good chunk of work has been done.

5           Q.       Hundreds of thousands, millions?

6           A.       I would probably say hundreds of thousands.

7           Q.       Okay.  So over the past two years, would  
8   you say a substantial amount of work has been done under  
9   the version of the plan that was approved by the city  
10  council?

11          A.       Yes.

12          Q.       Did PIEA recently pass a resolution  
13  involving this proceeding?

14          A.       Yes, they did.  And let me backtrack on  
15  your last question before the one about the PIA's  
16  amendment to this particular plan.

17                   In terms of the -- the project that the  
18  PIA approves is a project subject to a notice of intent.  
19  So the general development plan's a little different than  
20  a city council approval of a specific project.  There are  
21  documents where they have to sign off on specific plans  
22  associated with a project, but the intent to award a  
23  contract for redevelopment of this was the PIA's -- is the  
24  PIA's responsibility by statute, simply with a notice of  
25  intent to the City.

0096

1 Q. Okay. I didn't mean to confuse things.

2 Just to clarify, the city council did approve the  
3 development plan, correct?

4 A. They approved the general development plan,  
5 that's correct.

6 Q. The general development plan. I'm sorry.

7 And the copy, the version of the general  
8 development plan that they approved contains the provision  
9 on page 34 you just read?

10 A. That's correct.

11 Q. Just to clarify that point. Thank you. I  
12 asked you if PIEA had recently passed a resolution  
13 regarding this or involving this proceeding?

14 A. Yes, they did.

15 Q. Okay. And I believe you have a copy of  
16 that resolution in front of you?

17 A. Yes, I do.

18 Q. It's -- I don't have the exhibit number in  
19 front of me, but that resolution -- Resolution 1083,  
20 correct?

21 A. Correct. That is correct.

22 Q. It seeks to amend the development plan; is  
23 that right?

24 A. That is correct, yes.

25 Q. Could you please read the original



0097

1 language? You already read that. I won't make you do  
2 that again. How does the resolution propose to amend the  
3 language on page 34 of the development plan that you just  
4 read?

5 A. The resolution intends to clarify the  
6 language in the general development plan by indicating  
7 that any changes with respect to public utilities be  
8 coordinated with the City of Kansas City, Missouri and  
9 expenses relating to the same will be incurred and  
10 financed by the affected utilities or other parties other  
11 than the City or the PIA.

12 Q. When did PIEA approve Resolution 1083?

13 A. March 1st, 2006.

14 Q. And PIEA approved the resolution because  
15 PIEA does not desire that the original language have any  
16 bearing on this proceeding that you now claim PIEA did not  
17 intend; is that correct?

18 A. Can you say that again?

19 Q. We can break that up.

20 A. Okay.

21 Q. PIEA approved the resolution because it did  
22 not desire that the original language have any bearance on  
23 this proceeding, right?

24 A. That is correct.

25 Q. And PIEA now thinks or you're stating that

1     PIEA intended something differently?

2             A.       PIEA intended that -- PIEA's intention is  
3     very clear -- is very clear and has been very clear to me  
4     ever since I started working with them, and this language  
5     clarifies it, is their intent is to make sure that PIEA,  
6     particularly and the City aren't held responsible for  
7     public utilities relocation and public utilities in a  
8     redevelopment area.

9             Q.       Just to confirm again, then, because things  
10    got muddled a little bit, the city council approved your  
11    interpretation of what PIEA intended or the city council  
12    approved that appears on page 34?

13            A.       The city council approved what was on  
14    page 34 of the original development plan.

15            Q.       Okay.

16            A.       And my board approved the minor  
17    modification of that plan with this additional language.

18            Q.       And the Commission will decide if that's a  
19    minor modification or not. Is PIEA a party to this  
20    proceeding?

21            A.       Yes, they are.

22            Q.       Is PIEA, in fact, one of the Complainants  
23    in this proceeding?

24            A.       Yes, it is.

25            Q.       And just to clarify, has the city council

0099

1 approved the amendment?

2 A. No. The city council has not approved the  
3 amendment in 1030 -- 1083. I'm sorry.

4 Q. Okay. Same -- change subjects a little  
5 bit. You testified about PIEA's ability to bestow  
6 property tax exemptions?

7 A. That's correct.

8 Q. You talked about what PIEA is able to do,  
9 but what did PIEA agree to do with respect to the  
10 Boulevard project?

11 A. The PIA agreed to -- in general, the  
12 development contract had agreed to acquire and lease --  
13 construct and lease back to Boulevard facilities and  
14 equipment associated with this project. And it also  
15 agreed to -- in the context of that lease, for technical  
16 and legal reasons, it agreed to follow what's called a  
17 Chapter 353 process, which takes the entire lease and  
18 treats it as a Chapter 353 in the event any issues ever  
19 arose relating to bonus value of a tax exempt lease.

20 Q. Not to interrupt, but I just meant, did  
21 Boulevard receive certain tax abatement as a result of  
22 PIEA's approval?

23 A. Boulevard will receive certain tax  
24 abatement.

25 Q. Okay. I'm sorry. That's what I wanted you

0100

1 to describe. Could you please describe the tax abatement?

2 A. The tax abatement on this particular  
3 project provides PI-- provides Boulevard as a leasehold  
4 interest to the property with tax abatement for the term  
5 of the lease.

6 Q. And how long was the term of the lease?

7 A. I don't recall. I think it was 15 or  
8 20 years.

9 Q. So PIEA -- I'm sorry -- Boulevard won't pay  
10 any property taxes for the 15 or 20 years?

11 A. No. Boulevard will pay property taxes.  
12 They won't pay taxes on the improvements, improved value  
13 of the property after the development, because provisions  
14 in the contract require the payment of basic taxes, base  
15 taxes.

16 Q. If we could as the last point refer to the  
17 traffic study, which has already been entered as an  
18 exhibit, Exhibit 13, I believe. Would you please read --  
19 I'm sorry -- refer to page 1, the section entitled  
20 introduction and objective?

21 A. Yes.

22 Q. Would you please read the first sentence?

23 A. The first sentence, this is -- this report  
24 studies the traffic impacts regarding the proposed  
25 Boulevard Brewing Company expansion development located in

0101

1 Kansas City, Missouri. A vicinity map illustrates the  
2 approximate location of the development in Figure 1.

3 Q. Okay. Thank you.

4 A. Should I read the second one?

5 Q. No.

6 MR. BLANC: Thank you very much. No  
7 further questions.

8 JUDGE DALE: Is there redirect?

9 MR. FINNEGAN: Could I have a second,  
10 please?

11 REDIRECT EXAMINATION BY MS. BROWN:

12 Q. I refer you to page 1 of the traffic study.  
13 would you like to read the second paragraph?

14 A. Yes, I would. The objective of the study  
15 is to evaluate the existing traffic and roadway conditions  
16 and the traffic impacts expected from the proposed  
17 development and the future traffic impacts. The  
18 appropriate intersection geometrics and traffic control  
19 improvements necessary to accommodate the increased  
20 traffic on the study area roadways were identified. For  
21 the purpose of this studying existing, existing plus  
22 development and future year 2024 scenarios were evaluated  
23 based on discussions with City staff.

24 Q. In regard to the other public -- other  
25 improvements to the road and the sidewalks, curbs, who

0102

1 owns those improvements?

2 A. Kansas City, Missouri owns the  
3 improvements.

4 MS. BROWN: Thank you.

5 JUDGE DALE: Anything further?

6 MR. FINNEGAN: Just one or two questions.

7 REDIRECT EXAMINATION BY MR. FINNEGAN:

8 Q. Mr. Figuly, do you know of any common law  
9 requirement that the City has to pay to remove their  
10 sidewalks or the City has to pay to replace gutters or  
11 just the one that applies to public utilities?

12 MR. BLANC: I object to this line of  
13 questioning to the extent that it requires him to draw a  
14 legal conclusion. He's not a lawyer. It's the  
15 Commission's determination.

16 MR. FINNEGAN: I'm really not asking for a  
17 legal conclusion. I'm asking to see if he knows any.

18 JUDGE DALE: Restate the question.

19 MR. FINNEGAN: The question was, do you  
20 know of any common law requirement that says that a --  
21 that the City or the public --

22 JUDGE DALE: Hold on. Are you aware of  
23 what a common law requirement is?

24 THE WITNESS: Not in a strict legal  
25 context. I am aware, however --

0103

1 JUDGE DALE: That's enough. Sustained.

2 BY MR. FINNEGAN:

3 Q. Let me ask, you're aware of the Union  
4 Electric vs. Land Clearance case?

5 JUDGE DALE: Once again, I'm sorry.

6 MR. FINNEGAN: Okay. That's all right.

7 BY MR. FINNEGAN:

8 Q. With respect to the Resolution 1083, you  
9 stated it's a minor change and doesn't require city  
10 council approval?

11 A. That's correct,

12 Q. Would you be willing to seek city council  
13 approval if it would satisfy the Commission?

14 A. Yes, we -- we certainly would.

15 MR. FINNEGAN: Okay.

16 JUDGE DALE: Thank you.

17 MR. FINNEGAN: Could we -- you want to  
18 reserve that as a late exhibit?

19 JUDGE DALE: The approval of the city  
20 council?

21 MR. FINNEGAN: Yes.

22 JUDGE DALE: No.

23 MR. FINNEGAN: Oh, okay. Thank you.

24 JUDGE DALE: Thank you, Mr. Figuly. You  
25 may step down.

1 I'm sorry. We have Commissioner questions.  
2 But before we do that, I would like to address a  
3 procedural matter before I forget. Both the City/PIA and  
4 the Brewery are for this case Complainants. Please limit  
5 your direct or cross to one of you. One of you may choose  
6 to do that. The other one -- it's not the regular  
7 proceeding at the Public Service Commission. You are both  
8 the Complainant.

9 MR. FINNEGAN: We represent separate  
10 clients, though, your Honor. I represent Boulevard only.  
11 She represents the City and PIEA. So we are separate  
12 parties.

13 JUDGE DALE: Then in that case, you are  
14 limited to cross.

15 MR. FINNEGAN: Thank you.

16 JUDGE DALE: Commissioner questions,  
17 Commissioner Gaw?

18 COMMISSIONER GAW: I'll pass for now.

19 JUDGE DALE: Commissioner Clayton?

20 COMMISSIONER APPLING: Let me just try one.

21 JUDGE DALE: Commissioner Appling.

22 COMMISSIONER APPLING: Mr. Figuly, don't  
23 move. I want to go to KCPL's attorney first and ask a  
24 couple of questions.

25 When I was running all the State-owned



0105

1 buildings, there used to be an economic development rider  
2 and also an urban core development rider that's in the  
3 City of St. Louis and Kansas City. Does KCPL have such a  
4 rider, that you know of?

5 MR. BLANC: We have an economic development  
6 rider, and our witness Tim Rush would be able to answer  
7 questions about specific provisions of that here.

8 COMMISSIONER APPLING: Okay.

9 QUESTIONS BY COMMISSIONER APPLING:

10 Q. Mr. Figuly, do you know anything about the  
11 riders or have you been involved, or would that be better  
12 answered by KCPL?

13 A. I know something about them. I know that  
14 they do indeed have an urban core rider and they do indeed  
15 have an economic development rider. And the nature of  
16 rider is, from a layman's point of view and not in the  
17 ratemaking business, in developing these riders is that it  
18 provides -- these riders provide a break in utility rates  
19 over a period of years for increased loads, and I  
20 believe -- I don't know, I can't testify to whether or not  
21 the urban development rider relates to urban redevelopment  
22 or not. I think that's best left to somebody from KCPL.

23 Q. Okay. We'll get that in a few minutes.  
24 This morning when you and I was talking, it was my  
25 understanding that your attorney for the City said that

0106

1    when they asked you for clarification on who should pay  
2    for this, whether KCPL or the brewery, it was my  
3    understanding that you just said that you was just  
4    clarifying that and that you didn't have any power or  
5    anything to determine who pays for this; is that correct?

6           A.       This morning I believe the question was  
7    directed to our counsel.

8           Q.       Right.

9           A.       Right. And my response would be that my  
10   board is -- would like this matter, this is a matter  
11   that's administratively adjudicated by this board and they  
12   do not want to go on record as suggesting that one party  
13   or another pay for it. They wanted to clarify their  
14   intention, which was to say that the PIA nor the City is  
15   going to pay for it.

16          Q.       But in the letter that you wrote to KCPL on  
17   January the 5th, 2006, in fact on the last sentence of the  
18   last paragraph of that letter, isn't that what you're  
19   stating, that KCPL should bear the cost for this project?  
20   If you look at the last sentence in the last paragraph  
21   before you get to if you have any questions, what does  
22   that say?

23          A.       It says, these factors as well as  
24   requirements of the City franchise agreement and  
25   requirements in law should dictate that utility relocation

1 expenses on this project be borne by KCP&L.

2 Q. So do you have the power to say who bears  
3 the cost for this?

4 A. I do not, nor my board does.

5 Q. Is that your signature at the bottom?

6 A. Yes, sir.

7 COMMISSIONER APPLING: Thank you. That's  
8 all the questions I have. Thank you.

9 JUDGE DALE: Any other questions from the  
10 Bench?

11 COMMISSIONER CLAYTON: I'll just ask a  
12 couple.

13 QUESTIONS BY COMMISSIONER CLAYTON:

14 Q. There was some testimony earlier today  
15 about projects of similar nature that have been -- that  
16 have occurred or not occurred in Kansas City. I guess I  
17 first want to ask, how long have you been with the City?

18 A. Since 2001.

19 Q. And how many projects of this type of  
20 nature have you dealt with in that time?

21 A. I'd say a dozen or more.

22 Q. Dozen or more. And in the dozen or so  
23 cases that you've dealt with, is it your testimony that  
24 KCP&L has paid for the cost of modifying any electrical  
25 utilities in that time -- or I guess maybe I ought to

0108

1 preface and say, has there been any moving of electrical  
2 facilities?

3 A. Not in a lot of them. Many of them are  
4 much smaller, and some of them are much larger. Downtown  
5 redevelopment, for instance, where -- not KCP&L -- I'm  
6 familiar with Trigen, which provides gas, had to move  
7 lines at their expenses for the downtown redevelopment  
8 work that was going on.

9 Q. Steam?

10 A. Steam, that's correct.

11 Q. Unless they're doing something different  
12 now.

13 A. No, no, no. Steam.

14 Q. Putting gas in those lines?

15 A. No, steam.

16 Q. That would be a heck of a redevelopment  
17 project.

18 A. You guys would have something really bad on  
19 your hands.

20 Q. And in each of those instances, you're  
21 saying that the cost of moving the facilities was either  
22 very small -- I guess it could be smaller or larger, you  
23 said?

24 A. Smaller or larger. In some cases I can  
25 only draw similarities, and some of the similarities I run

0109

1 into, for instance, where the owner, for instance, we have  
2 some -- we had some street, some sidewalks and curbs and  
3 gutters and those kind of things going, need to be  
4 renovated in the Paseo area, the Paseo west PIA area, and  
5 a lot of those -- some of those areas either were paid for  
6 by the owners of the property themselves, through special  
7 assessments, which is a common practice in these  
8 redevelopment areas, or by -- as I pointed out in the  
9 Trigen case, by the utility.

10 Q. Okay. So Trigen was the only instance  
11 where a utility paid for moving of the utility  
12 infrastructure?

13 A. The only one that I know of, and the only  
14 one that I think was a major -- a major significant --  
15 that just comes to mind as a major significant project.

16 Q. And in that Trigen case, did they have  
17 something in their tariff that was different or something  
18 in their franchise agreement with the City that was  
19 different than what KCP&L has?

20 A. I do not know.

21 Q. You don't know. Okay. I was looking at  
22 Exhibit 9, which is Ordinance 041415 when it was  
23 presented, and it makes reference to the development plan  
24 and a number of other infrastructure modifications that  
25 will occur in the development area.

0110

1                   According to paragraph 2 -- and I guess I'm  
2   asking if you agree with this. According to No. 2, the  
3   developer will have the responsibility of making any storm  
4   drainage corrections as required by the Department of  
5   Public Works. That would be a developer responsibility?

6           A.       That's correct.

7           Q.       Paragraph 4, the developer shall make  
8   improvements required by improved traffic study,  
9   walkability study required by the Department of Public  
10   Works?

11          A.       That's correct.

12          Q.       They'll be responsible for curb, gutter,  
13   storm sewers and streetlights as necessary along all  
14   development street frontages as required by the Department  
15   of Public Works?

16          A.       Which provision was that, sir? I'm sorry.

17          Q.       Paragraph 6.

18          A.       Paragraph 6. Yes. They will -- they do  
19   indeed make provision to provide -- require that the  
20   developer provide for those, that's correct.

21          Q.       Developer shall submit plans regarding  
22   erosion control in paragraph 7, extend water mains in  
23   paragraph 10, and the developer shall provide for fire  
24   protections required by the fire department. Each of  
25   those the costs will be borne by the developer?

0111

1           A.       The -- I believe that -- I believe more  
2 accurately would say that they're required to provide for  
3 those in the development plan, yes.

4           Q.       Just in the plan or -- so am I  
5 mischaracterizing this, that the costs will not be borne  
6 by the developer in each of these instances?

7           A.       Yeah, I think that is. I think it's more  
8 appropriate to provide, to make sure. I think their  
9 ultimate goal was much like the PIA's goal in terms of  
10 making sure these things are provided, but not necessarily  
11 to dictate how they're going to be provided.

12          Q.       Well, if we look at it in terms of what has  
13 to be filed in a plan, there's no reference to electrical  
14 facilities in this document. Did the City -- does the  
15 City not request such information in a redevelopment plan?

16          A.       They req-- yes, they do. The site plan  
17 specifically says relocate -- the lines need to be  
18 relocated, the overhead power lines.

19          Q.       Do you work for the City of Kansas City or  
20 for the PIEA?

21          A.       The PIEA is my employer.

22          Q.       So is your check a City of Kansas City  
23 check or is it a PIEA check?

24          A.       PIEA check.

25          Q.       Okay. You brought up an example regarding

0112

1 the Paseo where you had -- where you had enhancements that  
2 were done on that street with curbs and guttering and some  
3 modifications there. That is not -- that's not similar to  
4 what we're dealing with here, is it?

5 A. There -- there was, I believe, Tracy  
6 Avenue -- I'm trying to remember. There was a street  
7 closure in order to assemble some property for the  
8 Salvation Army, and there were some utility lines in that,  
9 and I believe they were -- I think they were for a series  
10 streetlight system and not necessarily providing loop  
11 service or anything like that, and I think in that  
12 particular case the utility company came in and provided  
13 those.

14 Q. At their expense?

15 A. I can't say for sure.

16 Q. Okay. Well, what I was getting around to  
17 is if you do widen the street or you modify an alley or  
18 you -- say, for example, you've got a side street that  
19 turns into a major thoroughfare where perhaps the line  
20 needs to be erased to accommodate truck traffic or  
21 something. In those instances, does the utility bear the  
22 responsibility or the cost of making that modification or  
23 does -- well, you wouldn't have a developer in that  
24 instance. So in that instance, does the utility always  
25 take care of paying those costs?





0114

1 area that you-all have either bought them out, eminent  
2 domain or whatever way you all -- would be a better choice  
3 of words other than taking their property. But what is it  
4 -- what other companies are down there? Is anybody else  
5 down in that area that you've got to relocate?

6 A. We didn't need to necessarily relocate  
7 anyone, and we didn't have any condemnation associated  
8 with the particular project. There were good-faith  
9 negotiations to buy houses. Those were successful and  
10 there was no need for any type of condemnation, and the  
11 PIA is very deliberative and restrictive in their use of  
12 condemnation.

13 But there are other projects similar to  
14 this in this particular area. One that pops into mind  
15 because it's very recent, it's further, I guess it would  
16 be south according to that map. It's called Schutte  
17 Lumber (ph. sp.). You're generally familiar with that?

18 Q. Yes.

19 A. Yeah. That's a capital lease as well.  
20 That was burned down by arsons down in that particular  
21 area. We did a capital lease, a very similar capital  
22 lease as this one up in that area. So I can't speak to  
23 the details of the TIF or URA project.

24 There's a 353, I call it the round house.  
25 It's a DST development just on the other side of -- you're

0115

1 generally familiar with that area -- on the other side of  
2 Southwest Boulevard. Again, I can't speak to the details  
3 of that. That didn't come through the PIA. It came  
4 through another program.

5 Q. So what you're telling me today is the PIEA  
6 own all of that property within that neck of the woods  
7 there on that green spot?

8 A. No. Right now they -- right now they do  
9 under -- right now they -- let me think about this. I --  
10 let's see. The capital lease, the documents were filed.  
11 Yeah, I believe right now we hold fee simple title to all  
12 that where the green spot is.

13 COMMISSIONER APPLING: Thank you, sir.

14 JUDGE DALE: I have one quick follow-up  
15 question.

16 QUESTIONS BY JUDGE DALE:

17 Q. You talked about the tax abatement on  
18 property. Is that including personal property?

19 A. No, that's not including personal property.  
20 Just real ad valorem taxes on real property and  
21 improvements on real property.

22 JUDGE DALE: Okay. Thank you. Are there  
23 any other questions from the Bench?

24 (No response.)

25 JUDGE DALE: Redirect or recross?

0116

1 (No response.)

2 JUDGE DALE: Now you really may step down.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 JUDGE DALE: Ms. Brown, do you have any  
6 other witnesses?

7 MS. BROWN: No, I do not.

8 JUDGE DALE: Okay. Thank you. Then we're  
9 on to Mr. Finnegan.

10 MR. FINNEGAN: Thank you. I'd like to call  
11 Jeff Krum.

12 (Witness sworn.)

13 JUDGE DALE: You may be seated. You can  
14 certainly ask your questions from your seat if you prefer,  
15 as long as you use your microphone.

16 MR. FINNEGAN: I'll come up here.

17 JEFFREY KRUM testified as follows:

18 DIRECT EXAMINATION BY MR. FINNEGAN:

19 Q. Would you state your name for the record.

20 A. Jeffrey A. Krum, K-r-u-m.

21 Q. And what is your occupation?

22 A. I am a vice president and chief financial  
23 officer for Boulevard Brewing Company.

24 Q. How long have you been in that capacity?

25 A. 12 years.

0117

1 Q. And what did you do prior to that?

2 A. I was engaged in the restoration of antique  
3 buildings in and around downtown Kansas City.

4 Q. And since you've been with Boulevard, what  
5 have been your job duties?

6 A. Well, when I started 12 years ago, we were  
7 a much smaller company, and so my job duties were larger.  
8 But in general, I oversee all of the financial aspects of  
9 the company, as well as all business issues, such as  
10 insurance, legal, real estate, those sorts of things.

11 Q. And are you the officer that's most  
12 concerned with the development of the new project, the  
13 extension to expansion?

14 A. Well, I was certainly the most involved in  
15 the -- in the run up to bring it to fruition, in terms of  
16 obtaining the necessary approvals, financing and those  
17 sorts of things.

18 Q. And you are familiar with what the project  
19 is and the scope of it?

20 A. Very much so.

21 MR. FINNEGAN: Can I get these marked,  
22 please?

23 (EXHIBIT NO. 18 WAS MARKED FOR  
24 IDENTIFICATION.)

25 JUDGE DALE: So for every -- the benefit of

0118

1 everyone else, what was prefiled as Attachment No. 7, I  
2 believe, the three sort of the artist rendering computer  
3 drawings are all marked as Exhibit 18.

4 BY MR. FINNEGAN:

5 Q. You have before you what's been marked  
6 Exhibit 18?

7 A. Yes.

8 Q. And all three. Can you briefly describe  
9 each one of these, tell us what they depict?

10 A. These are renderings that were computer  
11 generated some time ago by our architectural team that  
12 depict the images of the new building that is presently  
13 under construction. Two of the images focus primarily on  
14 the new building, as I say, that is now under  
15 construction. One is an overall aerial view of the site  
16 plan as it will exist when fully developed.

17 Q. Okay. And what's the second one now? Is  
18 that pretty much the same thing, these two?

19 A. Correct.

20 Q. This is the aerial view, is that correct,  
21 or is this one (indicating)?

22 A. This one (indicating).

23 Q. Okay. Where's Phase 3?

24 A. (Indicating.)

25 Q. Do you have a copy before you of this part

0119

1 of Exhibit 18?

2 A. Yes.

3 Q. The one that shows the street to be built  
4 there with the parking spaces?

5 A. Yes.

6 Q. Now, could you describe just where the --  
7 this was Belleview; is that correct?

8 A. That is correct.

9 Q. Can you describe --

10 A. The street on the left side of the image.

11 Q. On the left side of the image is where the  
12 power lines currently are?

13 A. That's correct.

14 Q. They run through the -- what is to be your  
15 parking lot?

16 A. Correct.

17 Q. And are you required to have a certain  
18 number of parking spaces?

19 A. Yes, we are.

20 Q. And if the poles continued being in there,  
21 would this impact the parking spaces?

22 A. Yes.

23 Q. The ability to have the number of parking  
24 spaces you need?

25 A. Yes.

0120

1 Q. Now --

2 A. I might point out that there are certain  
3 aspects of this image that -- this was created early on  
4 before the final construction set was -- the final  
5 construction drawings were finished and more importantly  
6 approved by the City, so certain elements of this have  
7 changed. For example, the street trees that you see in  
8 front of the building had to be eliminated in order to  
9 maximize the number of parking spaces that could be  
10 created on what was the former Belleview right of way.

11 Q. And is there -- does it somewhere show on  
12 here a reception room for members of the public?

13 A. Yes. If I may, I'll back up a moment. The  
14 Brewery was founded in 1989. At one time there were in  
15 excess of 200 breweries in the state of Missouri. By the  
16 time that we opened in '89, we were at that time the  
17 second brewery then in existence. So we still like to  
18 call ourselves Missouri's second largest brewery. The  
19 brew house in which we brew our beer that we presently  
20 operate with is the original vessel that we started with.  
21 It produces about 1,000 gallons at a time. We're  
22 presently running that brew house virtually nonstop, ten  
23 brews per days, seven days per week.

24 The impetus for creating this building for  
25 this expansion is to enable us to expand our production



0121

1 capacity. We can make about 110,000 barrels of beer per  
2 year. We are on -- we are making right now an annualized  
3 rate of 110,000 barrels of beer per year. So we need to  
4 get this facility up and running, and that's the primary  
5 purpose of this facility is it will contain a new --  
6 instead of 1,000 brew house, a 4,000 gallon brew house, so  
7 we'll be producing 4,000 gallons of beer or ort, as it's  
8 called at that stage before fermentation, as opposed to  
9 about a quarter of that per brew presently.

10 As a part of this facility, we have  
11 designed -- it's very difficult to develop, as we have  
12 learned, in an inner city area, yet we are very committed  
13 to the inner city and chose to try to grow our business in  
14 our existing area rather than going to a greenfield, if  
15 you will.

16 All new breweries being built in the world  
17 today are built upon one level. As you can see, because  
18 of space considerations, we built on three levels. The  
19 top level here is offices, conference room and a -- what  
20 you see at the front of the image, a large hospitality  
21 room designed to seat upwards of 100 people with an  
22 outdoor terrace with views of downtown Kansas City.

23 As I say, we jokingly call yourselves  
24 Missouri's second largest brewery. Our colleagues in St.  
25 Louis attract thousands and thousands of people per day.

0122

1 I believe, last I heard, Missouri's second largest tourist  
2 attraction. We do not ever think we'll get to that level,  
3 at least not in my lifetime.

4 But there are many people for whatever  
5 reason love to see how beer is made, love to go to  
6 breweries, and right now we're very restricted in the  
7 number of people we can accommodate. So part of the  
8 program for this new building, if you will, is to  
9 accommodate and encourage tourists to the facility,  
10 bringing them not only to our building and familiarizing  
11 them with our particular brands of beer, but also at the  
12 same time benefiting the city and the neighborhood of  
13 which we're a part.

14 Q. And how many employees will you be  
15 engaging?

16 A. We personally have about 67 full-time  
17 employees. When this new facility comes online, it will  
18 not immediately result in a big jump in the number of  
19 employees. We've been growing for many years now at a  
20 very steady rate of between 15 and 20 percent, and as we  
21 grow at that rate, we seem to add 10 percent per year to  
22 our employment base.

23 So to the extent that that continues, as I  
24 said earlier, our present facility we can brew 110,000  
25 barrels of beer per year. When this facility is fully

0123

1 built out, that number will increase to somewhere between  
2 6 and 700,000 barrels per year.

3 So at some point in the future, when we --  
4 if and when we reach capacity at this plant, we will have  
5 significantly more employees than we presently do now.

6 Q. Are you working under a deadline at this  
7 point, and if so, would you describe it?

8 A. As I said earlier, we are at capacity right  
9 now, and our original plan was to be -- was to be test  
10 brewing in the new facility by April 1. At this point  
11 we're not going to make that, but every day that we are  
12 behind is costing us revenue.

13 Q. And you have contracts for supply of beer  
14 to customers expecting to have this online; is that  
15 correct?

16 A. We don't have contracts per se. We have a  
17 network of about 60 wholesale distributors in 11  
18 midwestern states, and our rate of growth as I said has  
19 been very steady and predictable, and it continues so far  
20 this year. So we, as I say, are at capacity now, and this  
21 summer if we're not able to begin producing beer out of  
22 this facility, then we'll have to start rationing sales to  
23 our wholesalers.

24 Q. You presently have the electricity hookup  
25 that you need to operate the new facility?

0124

1           A.       I believe we do, yes, sir.

2           Q.       The lines we're talking about on Belleview  
3 are -- on 26th Street are not necessary for the operation  
4 of the brewery; is that correct?

5           A.       I'm not an electrical engineer, but that is  
6 my understanding.

7           Q.       Now, with respect to the reception area,  
8 where was that located? Is that the third floor?

9           A.       Correct.

10                   MR. FINNEGAN: Your Honor, I thought we had  
11 copies of these.

12                   JUDGE DALE: You have those in the record,  
13 and they're filed as Attachment 6. Would you like to give  
14 them No. 19?

15                   (EXHIBIT NO. 19 WAS MARKED FOR  
16 IDENTIFICATION.)

17 BY MR. FINNEGAN:

18           Q.       You have before you what's been marked  
19 Exhibit 19?

20           A.       Yes.

21           Q.       And could you briefly describe what we're  
22 seeing on these exhibits?

23           A.       The one image taken from the ground looking  
24 generally south on what was Belleview Avenue shows the  
25 utility lines in question or at least one set, the other

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1 set running east and west on 26th Street at the south end  
2 of the site.

3 Q. Okay.

4 A. And the other images are all taken from the  
5 new third floor terrace that is again adjacent to our  
6 hospitality room showing the views of downtown and the  
7 aboveground existing utility lines.

8 Q. And all of them show different varying  
9 pictures of them?

10 A. That's correct.

11 Q. And is that the view that your customers  
12 would have of downtown from the reception room?

13 A. That is the view presently as it exists  
14 from the terrace looking towards downtown, generally  
15 northeast.

16 Q. And do these fairly and accurately depict  
17 the scene thereon?

18 A. These were taken late last week or the  
19 middle of last week, yes, sir.

20 MR. FINNEGAN: At this time I'd like to  
21 offer Exhibits 18 and 19.

22 JUDGE DALE: Any objection?

23 MR. BLANC: No, your Honor.

24 JUDGE DALE: Then Exhibits 18 and 19 are  
25 accepted into evidence.

1                   (EXHIBIT NOS. 18 AND 19 WERE RECEIVED INTO  
2 EVIDENCE.)

3 BY MR. FINNEGAN:

4           Q.       Mr. Krum, can you tell the Commission how  
5 we got into this situation that we're here rather than  
6 back brewing beer and us drinking it, too?

7           A.       Well, I'll preface that by saying that I  
8 have not been involved in the day-to-day or should I say  
9 month-to-month meetings and conversations with Kansas City  
10 Power & Light until recently.

11                   As I can tell you, however, that as I said  
12 earlier, one of the things that we have learned throughout  
13 this process is that developing an existing, already  
14 developed area in an inner city is quite a challenge.  
15 This process was years in planning, and required an  
16 inordinate amount of coordination with a wide variety of  
17 different entities.

18                   We had, of course, not only Kansas City  
19 Power & Light to deal with but all of the other utilities  
20 in the area, Missouri Gas Energy, Southwestern Bell, cable  
21 companies, water companies -- or company. We had a lot of  
22 property to acquire, some of which was owned by land  
23 trusts in Jackson County, some of which was owned by a  
24 railroad, an old right of way. We had to rezone, replat.

25                   Because of the extraordinarily high cost of

1    developing an already developed site, it was not  
2    economically feasible without some tax relief abatement on  
3    new taxes that would be otherwise created by the result of  
4    these improvements, so we had to seek tax abatement, a  
5    long and involved process.

6                    So having been through all of that and  
7    having successfully completed all of that, the only  
8    outstanding issues that remains before us is with Kansas  
9    City Power & Light. I should say that the individuals  
10   that we have worked with at KCP&L I think are fine people.  
11   We've had -- they I think for the most part tried to be  
12   helpful and responsive, and we bear no ill will towards  
13   any of them individually.

14                   But I can also say that our experience with  
15   KCP&L as an entity has been a very difficult experience.  
16   We've had more trouble getting responses from them,  
17   getting reasonable numbers from them on a timely basis,  
18   more trouble in general working with KCP&L than I would  
19   say all the other entities that we had to deal with for  
20   this project combined.

21                   We did not want to be here today. We made  
22   several attempts to reach what we thought would be  
23   reasonable compromises based upon what we saw as their  
24   real costs involved to do this work. It was not our  
25   intent initially to try to force them to bear all of the

1 costs of these line relocations. It was only when we  
2 could not get from them what we thought were numbers that  
3 were economically reasonable that we decided to take this  
4 course of action and find ourselves here today.

5 Q. Okay. And time is running, is that  
6 correct, as we sit here, or stand here?

7 A. Well, as I say, this project was many years  
8 in the making. We, I believe, made contact, and I can't  
9 swear to this, but I know it was at least August of 2004  
10 that we began conversations with KCP&L. There were some  
11 lines, some old lines serving nothing running down the  
12 middle of the development site that used to serve some  
13 houses that we had acquired and demolished. And I cannot  
14 testify to the exact dates.

15 I know there's an e-mail trail on this, but  
16 we had been working with a gentleman named Mike Lucas, who  
17 was a planner for KCP&L. He was apparently supposedly  
18 working on the plans that would allow us to break ground  
19 on February 24th, I believe was our target date. After  
20 repeated attempts to contact him and receiving no  
21 responses, we learned, I believe in November, that he was  
22 no longer with the company or had been reassigned.  
23 I may have misspoken. And we pushed and pushed and  
24 pleaded that we needed these plans prepared so that we  
25 could break ground at the end of February.



1                   And on February 15th we received finally  
2   some preliminary plans that still were not ready to be  
3   executed. On March 5th we received final plans, and then  
4   it still had to be put in their schedule, and we did not  
5   break ground until we stood around waiting with everything  
6   else ready to go, our money borrowed and the interest  
7   clock ticking, for three or four weeks. And our delay was  
8   exclusively due, in my opinion, to Kansas City Power &  
9   Light. So we got off, you might say, on the wrong foot,  
10   and it really hasn't improved.

11                   As I say, we do not relish this. We have  
12   had no other disputes with any other entity, public or  
13   private, and do not wish to be here today, and yet we find  
14   ourselves here.

15           Q.       Have you been able to complete the parking  
16   facilities outside or are you waiting on that?

17           A.       These lines on Belleview, our initial  
18   conversations with KCP&L, we had a meeting with them and  
19   became clear that there was no power presently running  
20   down those lines on Belleview. And we understood from  
21   them that those lines now because of some services that  
22   were no longer being provided to businesses and houses  
23   that used to the exist on Belleview, that they were not  
24   necessary.

25                   We sent them an e-mail and said, it's our

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1 understanding based on this meeting that these lines are  
2 not necessary. And we did not hear any response to the  
3 contrary from them. So when we were putting our budgets  
4 together as to costs, we figured no cost for Belleview,  
5 under the assumption that these lines were redundant and  
6 could go away.

7                   We later learned that they said, well, they  
8 may not be necessary now, they may be necessary in the  
9 future, we want them to stay. We cannot do our grading of  
10 the right of way and complete our project and get our  
11 certificate of occupancy and begin producing beer until  
12 these poles along Belleview are dealt with, to answer your  
13 question.

14                   On 26th Street, it's the same story. The  
15 City mandated that we widen 26th Street to accommodate  
16 vehicular traffic, much of which is not being generated by  
17 our site, but rather through development of the area in  
18 general, but since we were working in the area, they said,  
19 you guys widen 26th Street, put in a left and a right turn  
20 lane. And that work also has to be completed before we  
21 can obtain a certificate of occupancy, occupy the building  
22 and begin producing beer in the new facility.

23           Q.       How many vehicles does Boulevard have,  
24 trucks, beer trucks?

25           A.       We have an offsite warehouse presently, and

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1 we have two trucks, two semi trucks that, depending on  
2 what we're packaging and what day it is, go back and forth  
3 between our brewery and our warehouse, which is three-  
4 quarters of a mile down the road, an average of I would  
5 guess six to eight trips per day.

6 Q. And is the widening of 26th Street  
7 necessary for these trucks to operate?

8 A. No, it is not.

9 Q. Are they operating on it now?

10 A. No. We are not running trucks on this  
11 alleyway. Presently, there's an alley that turns into  
12 26th Street. Our neighbor on the block, which is a  
13 manufacturing company called Jianus Brothers Contract  
14 Packaging, they do operate trucks down that alley. The  
15 alley itself needs to be improved and widened, the throat  
16 on the alley widened. We do not require the widening of  
17 26th Street for our purposes. That was mandated by the  
18 City under a recommendation from the traffic study.

19 Q. For your purposes, you would like the lines  
20 on 26th Street removed completely, right?

21 A. On 26th Street?

22 Q. I'm sorry. Excuse me. On Belleview.  
23 Sorry.

24 A. Yes, that's correct.

25 Q. That would improve the aesthetics from the

0132

1 observation deck or --

2 A. Clearly.

3 Q. They are -- you consider them a blight?

4 A. I consider them unattractive. We also  
5 offered to KCP&L when they told us that, yes, perhaps  
6 these were not necessary now but might be in the future,  
7 we offered that we would, at our sole expense, bury  
8 conduit in the street to their specifications so that if  
9 in the future they ever really did need those lines down  
10 that street, that there would be conduit there for them to  
11 pull lines through.

12 Q. And you're still willing to do that, if  
13 you --

14 A. Yes.

15 Q. -- you're required to make the payments on  
16 this?

17 A. Yes.

18 Q. You indicated that these lines do not serve  
19 you, in fact they're serving nobody; is that correct?

20 A. Well, again, I'm not an electrical  
21 engineer, and I can't say for certain. I know they do not  
22 serve us, and I have been told that the line on Bellevue  
23 presently does not directly serve anyone.

24 Q. And who told you this?

25 A. I've heard it from our engineer, who's

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1 heard it from KCP&L, and I heard it from a gentleman named  
2 Joe Rosa at a meeting that we had with him not very long  
3 ago.

4 JUDGE DALE: Mr. Finnegan, if I may  
5 interrupt for just a second, and request that people in  
6 the audience sit there with poker faces and please not  
7 express their incredulity or agreement with what the  
8 witness is saying. Thank you.

9 MR. FINNEGAN: Especially since I can't see  
10 it. Thank you.

11 THE WITNESS: Excuse me. I should amend a  
12 statement that I just made. We do have a neighbor  
13 immediately across the street that is presently being  
14 served by those lines that run down Belleview, but it's my  
15 understanding -- and you can see that white cinder block  
16 building pretty much on the corner of 25th and Belleview.  
17 It's my understanding that that building is quite close to  
18 25th Street, and that building I believe can be served  
19 directly off of 25th Street, or we again offered to pay  
20 for the underground connection to that building at our  
21 sole expense. I believe that is the only -- the only  
22 service that comes directly off of those lines on  
23 Belleview.

24 BY MR. FINNEGAN:

25 Q. But beyond that area to the south, is it,

1     there is no one being served?

2             A.       That is my understanding.

3             Q.       The question before about the taxes,  
4     does -- Boulevard will be paying any taxes, other than the  
5     ad valorem tax on the property?

6             A.       Well, there was -- yes, all the taxes that  
7     we presently pay for real estate, we will continue to pay.  
8     As I understand it, for ten years we will not pay any real  
9     property taxes on the value of the new improvements that  
10    we are constructing, and then in the 11th year they will  
11    be reassessed and we will be paying 50 percent of what we  
12    would otherwise pay for years 11 through 25.

13            We do not pay very much in the way of sales  
14    tax. I know there were several questions earlier  
15    regarding sales tax. We don't have a substantial sales  
16    tax burden because we don't sell directly to the public.  
17    We sell to wholesalers under state law who then sell to  
18    resellers who then sell to consumers. The only exception  
19    to that is we do have a small gift shop where we sell  
20    T-shirts and hats and beer glasses and things of that  
21    sort. So we have a small sales tax generation that will  
22    be unaffected by this tax abatement program.

23            The primary taxes that we pay are federal  
24    and state excise taxes on beer, which are significant. We  
25    pay in excess of a million dollars per year in combined

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1 federal and state excise taxes.

2 Q. And that will not change?

3 A. That will not change.

4 Q. And your employees, do they not pay a city  
5 earnings tax to the City of Kansas City?

6 A. They do, and that will not change.

7 Q. I believe that's all the questions I have  
8 right now. Do you have anything else you want to add  
9 while you're here?

10 A. No. I believe that's it.

11 JUDGE DALE: Thank you, Mr. Finnegan. Do  
12 we have cross from PIEA?

13 MS. BROWN: No.

14 JUDGE DALE: KCP&L?

15 CROSS-EXAMINATION BY MR. BLANC:

16 Q. Good afternoon, Mr. Krum.

17 A. Good afternoon, Mr. Blanc.

18 Q. Now, it sounded to me like you just  
19 testified that the reason you want to either remove or  
20 underground the facilities along Belleview is because of  
21 parking spaces and because of the view from the new  
22 hospitality center; is that correct?

23 A. Largely, that is correct.

24 Q. Okay. Would you need to have added these  
25 parking spaces if you weren't expanding your facilities?

1           A.       No.

2           Q.       If this Commission determined that  
3 Boulevard, not KCPL, would be responsible for those costs,  
4 would you still require us to underground those  
5 facilities?

6           A.       Could you repeat the question?

7           Q.       If this Commission determined that  
8 Boulevard should bear the costs and determine that we  
9 couldn't simply remove those facilities that were  
10 necessary, would Boulevard pay the costs of relocating  
11 those facilities underground?

12                   I'm sorry. I muddled the question. I  
13 apologize for that. Let me rephrase it. If this  
14 Commission determined that Boulevard is responsible for  
15 these relocation costs and the Commission determined that  
16 we couldn't simply remove those lines, would Boulevard  
17 want to pursue an option of cleaning up those facilities  
18 or would Boulevard want to bury them at its expense?

19           A.       I believe that the number that we've  
20 received from KCP&L for burying lines, excluding the  
21 installation of conduit, was in the neighborhood of  
22 \$135,000. We have a high-level number. It's hard to get  
23 specifics because we don't know the precise requirements  
24 that KCP&L would impose in terms of exactly what they  
25 would need there, but we have a general idea and have



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1 received from a reputable electric contractor in Kansas  
2 City an estimate of doing that same work underground for  
3 well under half of that cost, so --

4 Q. I guess maybe my question wasn't clear. If  
5 Boulevard had to bear the costs and the facility had to be  
6 there, either above ground or underground, would Boulevard  
7 clean them up as they exist above ground or would  
8 Boulevard bury them?

9 A. Well, I'm trying to answer your question.

10 Q. I thought we were going down a different  
11 route.

12 A. If we could pay \$55,000 to bury them  
13 underground, that would be a very different equation or  
14 very different set of considerations from having to pay in  
15 excess of 130,000.

16 Q. Let's assume, then, that the Commission --  
17 you request in the complaint that we direct you to allow  
18 your contractors to do the work. Let's assume that the  
19 Commissioners found that is not appropriate and KCP&L  
20 should do that work. Under those circumstances, KCP&L  
21 does the work for the cost estimate, the Commission  
22 decides that Boulevard should bear those costs, would  
23 Boulevard decide to clean up the existing facilities  
24 aboveground or would Boulevard bury them?

25 A. At the numbers that KCP&L has provided to

0138

1 us, we can't afford an excess of \$130,000 to bury the  
2 line, so we have no choice but to clean up overhead.

3 Q. Okay. Thank you for that. Now, you also  
4 touched on in your testimony -- correct me if I'm wrong --  
5 but it sounded like it wasn't your intent that KCP&L  
6 should have to bear the full costs of these relocation  
7 projects, is that correct, or did I mishear that?

8 A. Yes, that was correct.

9 Q. Doesn't Count 1 of your complaint deal  
10 entirely with Boulevard's assertion that KCPL should have  
11 to bear the entire cost of the project?

12 A. It is now our contention that KCP&L should  
13 bear the full cost because there were no successful  
14 outcomes to our attempt to reach compromise.

15 Q. So you didn't like our numbers, and as a  
16 result of that we should have to pay?

17 A. We didn't like your numbers because we feel  
18 they're wildly inflated.

19 Q. Right. But as a result of your conclusion,  
20 we should have to pay for all of it; is that your position  
21 now?

22 A. Yes, it is.

23 Q. Now, are you aware that your consultant,  
24 Mr. Elam, is proposing changes to KCP&L's design of the  
25 relocation projects?

1           A.       I'm aware that our consultant, Mr. Elam,  
2   has identified certain changes that KCP&L has inserted  
3   into their proposed plan subsequent to what was originally  
4   provided to us and has brought those to our attention.

5           Q.       And -- but does Mr. -- has Mr. Elam  
6   explained to you that the facilities KCP&L says it needs  
7   aren't necessary?

8           A.       Mr. Elam has explained to us that  
9   redundancy is a subjective matter, and that it can be  
10  argued easily many different ways, but that there is a  
11  very strong case to be made that these facilities on  
12  Bellevue are not needed. There are other much more  
13  cost-effective ways of achieving the required redundancy  
14  other than retaining those lines on Bellevue.

15                   It was also explained to us that KCP&L is  
16  presently seeking land to put a new substation somewhere  
17  in the immediate vicinity and that they might want to run  
18  new power down Bellevue, depending on where that new  
19  substation is sited.

20          Q.       I see. So just to go full circle to my  
21  original question, it sounds like you're aware that your  
22  consultant is recommending that the relocation facilities  
23  be designed differently than what were proposed in KCP&L's  
24  cost estimates?

25          A.       No. What I understand -- and I don't have

0140

1 full knowledge of this, but what I understand is that, as  
2 I said before, our consultant brought to our attention  
3 that what KCP&L is now proposing is different than what  
4 KCP&L originally proposed back in 2004.

5 Q. Okay. We'll get to talk to Mr. Elam a  
6 little later. But let's assume for the sake of argument  
7 here that he has suggested that our designs for the  
8 projects aren't appropriate.

9 If, contrary to the advice of its system  
10 planners and engineers, KCP&L adopted such recommendation  
11 from your consultant, would KCP&L or any of its customers  
12 have any recourse against Boulevard for reliability or  
13 safety-related issues that arose as a result of adopting  
14 your consultant's recommendations?

15 A. I don't know the answer to that.

16 Q. How about if, contrary to the advice of  
17 system planners and engineers, KCPL adopted your  
18 consultant's recommendation, would Boulevard agree to  
19 waive any potential right to recourse against Kansas City  
20 Power & Light for reliability or safety-related issues  
21 that arose at Boulevard as a result of KCP&L adopting your  
22 consultant's plans?

23 A. I don't imagine that KCP&L would adopt any  
24 plan that they did not feel was appropriate.

25 Q. Exactly. Final question down that road.

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1 If contrary to the advice of its system planners and  
2 engineers, KCP&L adopted your consultant's  
3 recommendations, would Boulevard agree to indemnify KCP&L  
4 for any reliability or safety-related issues that arose  
5 with respect to KCPL's other customers that resulted as  
6 a -- were a direct result of adopting your consultant's  
7 plans?

8 A. I don't know the answer to that.

9 Q. You don't know whether Boulevard would  
10 agree to indemnify KCP&L?

11 A. That's correct. I would have to have much  
12 more information than I have presently to give you an  
13 answer to that question.

14 MR. BLANC: No further questions.

15 JUDGE DALE: Thank you. Commissioner Gaw  
16 has questions.

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. The scope of your business is expanding  
19 significantly. Will the amount of your electric use  
20 expand with that?

21 A. Presumably, yes, sir.

22 Q. Do you have estimates as to the increase in  
23 the amount of electric use that you will have as a result  
24 of changes?

25 A. I believe that we do, but I do not know

0142

1     those numbers.

2             Q.       Is there someone who's here that would have  
3     information?

4             A.       Yes, sir.

5             Q.       Okay.  Who is that, if you know?

6             A.       It's our plant engineer, Mr. Michael Utz.

7             Q.       Okay.  And would he be the one to ask about  
8     the -- about any increases in regard to facilities that  
9     are necessary to serve that increased load?

10            A.       Yes.

11                    COMMISSIONER GAW:  Okay.  That's all I  
12     have.  Thank you.

13                    JUDGE DALE:  Redirect?

14                    MR. FINNEGAN:  One or two questions.

15     REDIRECT EXAMINATION BY MR. FINNEGAN:

16             Q.       Mr. Blanc was asking you some questions  
17     about whether or not KCPL should be paying for this or  
18     whether you should, and is it your position that the  
19     change that came about was because you became aware of  
20     what the law was that the utility should pay?

21                    MR. BLANC:  Calls for a legal conclusion  
22     about what the law is.

23                    MR. FINNEGAN:  I'm not asking a legal  
24     question.  I'm asking does it change his mind when they  
25     changed their position.

0143

1 JUDGE DALE: You might want to rephrase  
2 your question, then.

3 BY MR. FINNEGAN:

4 Q. Okay. Were you advised that the law in  
5 Missouri was that the utility should pay this, for the  
6 relocation of facilities?

7 A. Yes, we became aware that --

8 JUDGE DALE: You've answered the question  
9 that you were so advised.

10 BY MR. FINNEGAN:

11 Q. And after you became advised, did your  
12 position change as to whether Boulevard should make the  
13 payments or whether KCPL should make the payments because  
14 it's clearing of a blighted area?

15 A. Yes.

16 Q. Okay. And when did that occur,  
17 approximately?

18 A. Sometime in December.

19 Q. Of this year -- of last year?

20 A. Yes.

21 Q. 2005?

22 A. Correct.

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

25 JUDGE DALE: Thank you. Recross from

0144

1 either party?

2 MR. BLANC: No, your Honor.

3 JUDGE DALE: Thank you.

4 COMMISSIONER GAW: Can I ask a quick  
5 question --

6 JUDGE DALE: Certainly.

7 COMMISSIONER GAW: -- of counsel, because  
8 counsel has gotten into an area inquiring of positions of  
9 the parties, and I'm unclear about whether that is  
10 intended to be a discussion of what various offers have  
11 been to settle this matter, as opposed to whether or not  
12 counsel's trying to insinuate that there's some admissions  
13 on behalf of the parties, and I am unclear about what  
14 the -- what counsel is trying to present to us.

15 I want to ask counsel for KCP&L, first of  
16 all, if counsel is trying to insinuate or state that there  
17 are some acts or actions on behalf of one of the parties  
18 in this matter that you believe somehow is an admission  
19 against interests in regard to the position.

20 MR. BLANC: Mr. Krum testified, as I  
21 understood and asked him to confirm, on direct whether  
22 Boulevard -- whether it was Boulevard's position that  
23 KCP&L should bear the full cost. He said no. That was my  
24 understanding before until he said that was Boulevard's  
25 position, but he answered the question no. So I think



0145

1 that goes to whether Boulevard continues to support Count  
2 1 of the complaint, and if they don't, I would move that  
3 it be dismissed.

4 COMMISSIONER GAW: Mr. Finnegan, do you  
5 want to answer that same question for me?

6 MR. FINNEGAN: Okay. It is not my  
7 understanding that Mr. Krum stated that that KCPL should  
8 not have to pay the cost. My understanding was that they  
9 have made offers to get this thing moving along, and we  
10 didn't really want to bring an offer up before the  
11 Commission because it goes to settlement of issues.

12 COMMISSIONER GAW: I understand. That's  
13 why I'm asking about this. I understand about whether or  
14 not we're getting into offers and responses to offers of  
15 settlement.

16 MR. FINNEGAN: No, I did not intend to do  
17 that.

18 COMMISSIONER GAW: I'm not insinuating you  
19 did or didn't. I'm just trying to clarify.

20 MR. BLANC: That is not my intent either,  
21 but I would move to dismiss Count 1 if Boulevard does not  
22 believe KCPL is responsible for the cost, for the full  
23 cost of the project.

24 COMMISSIONER GAW: Was it Kansas City  
25 Power & Light's position at any point that they -- well,

0146

1 let me -- let me try to understand this. Your question --  
2 line of questioning in regard to whether or not KCP&L --  
3 or excuse me -- Boulevard has taken some sort of position  
4 is merely based upon a question and answer that came up  
5 here in regard to a belief of this witness as to whether  
6 or not they should now bear part of the costs of the  
7 relocation. Is that what you're telling me?

8 MR. BLANC: No. I believe that the CFO of  
9 the company testified under oath that it was not his  
10 intent that KCPL would be held accountable for the full  
11 cost of the relocation projects. That's what I believe I  
12 asked him to confirm on cross, and he confirmed that.

13 COMMISSIONER GAW: Then I have a clarifying  
14 question of this witness.

15 MR. BLANC: I guess I have a motion before  
16 Her Honor regarding dismissal of Count 1.

17 COMMISSIONER GAW: I'm sure the Judge will  
18 let us know who goes first, Counsel, if you want to find  
19 out.

20 JUDGE DALE: And knowing where my paycheck  
21 comes from, Commissioner Gaw.

22 COMMISSIONER GAW: Thank you.

23 FURTHER QUESTIONS BY COMMISSIONER GAW:

24 Q. Sir, I want to ask you, earlier when there  
25 was questions and answers about your company's position in

0147

1    regard to whether or not your company would pay for part  
2    or all of the costs of the relocation of the lines you  
3    were describing, when you said that, when you were  
4    discussing that, were you talking about settlement that  
5    had -- settlement discussions that have occurred in the  
6    past or were you talking about what your position is today  
7    in regard to what your legal status is?

8           A.       I thought I had made that clear.  I  
9    apologize.

10          Q.       I want you to clear it up, because  
11    evidently there's some disagreement.

12          A.       Clearly.  The answer to your question is,  
13    yes, I was talking about our position in trying to  
14    negotiate a settlement with KCP&L, and in those efforts we  
15    agreed to bear a portion of the cost for the line removal  
16    and/or relocations.

17                   My position today is that in the -- given  
18    the failure of those negotiations, that we believe that  
19    KCP&L, according to my understanding of the law, should  
20    bear the cost for such removals and relocations.

21                   COMMISSIONER GAW:  Okay.  That's all I  
22    need.  Thank you.

23                   Thank you, Judge.  Whatever you need to do  
24    on process.

25                   JUDGE DALE:  I need to deny the motion at

0148

1     this time.  Is there anything else for this witness?  Did  
2     you have questions?

3                     CHAIRMAN DAVIS:  No questions at this time.  
4     Thank you, Judge.

5                     JUDGE DALE:  Nothing else from counsel?

6                     (No response.)

7                     JUDGE DALE:  Then you are dismissed.  Thank  
8     you.

9                     (Witness excused.)

10                    JUDGE DALE:  It is five minutes 'til three.  
11     Why don't we take a ten-minute break and come back at five  
12     after and resume with the next witness.

13                    (A BREAK WAS TAKEN.)

14                    JUDGE DALE:  We are back on the record and  
15     ready for Mr. Finnegan to call another witness.

16                    MR. FINNEGAN:  I'd like to call Mike Utz.

17                    (Witness sworn.)

18                    JUDGE DALE:  Thank you.  Please be seated.

19     MICHAEL UTZ testified as follows:

20     DIRECT EXAMINATION BY MR. FINNEGAN:

21             Q.       Would you state your name for the record.

22             A.       Michael Utz.

23             Q.       And what is your occupation?

24             A.       I am the plant engineer for Boulevard  
25     Brewing Company.

0149

1 Q. How long have you been plant engineer?

2 A. For seven and a half years.

3 Q. And before that, what was your occupation?

4 A. Engineer for Keebler Company, Sunshine  
5 Biscuit, plant engineer as well.

6 Q. Where was that, Kansas City?

7 A. Kansas City, Kansas. And I --

8 Q. Go ahead. Prior to that?

9 A. Prior to that, electrical engineer for  
10 Howard, Needles, Tammen & Bergendorf. Designed airfield  
11 lighting and power systems.

12 Q. Are you a registered engineer?

13 A. Not registered. EIT.

14 Q. What does that mean?

15 A. Engineer in training. I never got the  
16 professional engineer certificate.

17 Q. And before that, what did you do?

18 A. Before that, six years in the U.S. Navy  
19 submarine service.

20 Q. And have you been dealing with utility and  
21 electric matters for some time?

22 A. Quite some time. I was in the electrical  
23 generation field on the submarine, and then co-opped  
24 during college at Wolf Creek Nuclear Power Plant,  
25 Burlington, Kansas.

0150

1           Q.       How long have you been involved with the  
2 construction phase of the Boulevard Brewery expansion?

3           A.       Since the inception. We've been working on  
4 it for about three years, working different development  
5 scenarios until we finally chose the one that we proceeded  
6 with about two and a half years ago.

7           Q.       And how long have you been dealing with  
8 Kansas City Power & Light over the Belleview and  
9 26th Street?

10          A.       Our talks started in August of '04, with  
11 formal correspondence dating back in e-mail form to  
12 September.

13          Q.       September of?

14          A.       Of '04. Sorry.

15          Q.       Of '04. And then what happened?

16          A.       We had some lapses in correspondence due  
17 to, I think, some personnel changes within KCP&L, and we  
18 kind of communicated in fits and starts for a while until  
19 the latter part of '04, I believe it was December, we  
20 picked up correspondence more regularly. We got Lori  
21 Locker involved and Russ Wiley came on to our project, so  
22 then things started rolling again.

23          Q.       Until how long -- how long ago was that, or  
24 how long did it last?

25          A.       We communicated pretty well throughout the

0151

1 first phase of our construction project, getting the  
2 rework done on the alley overhead lines. That lasted  
3 through May of '05, and then that's when we started  
4 working again on our -- the rest of our development  
5 scenario, which is the underground or overhead  
6 reconstruction work.

7 And when we're proposed the other scenarios  
8 and the pricing, that's when we kind of dropped  
9 communication for a while while we figured out what we  
10 were going to do.

11 Q. And in Attachment 1 to KCP&L's answer  
12 there's some correspondence between you and Lori Locker;  
13 is that correct?

14 A. I believe it is. I don't have it in front  
15 of me.

16 Q. Okay.

17 A. That's correct.

18 Q. And what dates are those?

19 A. July 7th, '05. July 7th, '05, back to  
20 June 15th, '05.

21 Q. Is that all the correspondence you had  
22 between you and Ms. Locker?

23 A. No. This is not complete. This was on the  
24 latest topic when we were deciding which options to choose  
25 for our -- the remaining phases of our work, and I believe

0152

1     that we probably had a little more correspondence past  
2     that time.

3                     MR. FINNEGAN:   Can I have these exhibits  
4     marked?

5                     JUDGE DALE:   Mr. Finnegan, do you happen to  
6     know under what you prefiled them?

7                     MR. FINNEGAN:   It was an attachment to the  
8     answer of KCP&L.

9                     (EXHIBIT NO. 20 WAS MARKED FOR  
10    IDENTIFICATION.)

11    BY MR. FINNEGAN:

12             Q.     Mr. Utz, do you have before you what's been  
13    marked as Exhibit 20?

14             A.     Now I do.   I do.

15             Q.     Can you identify that?

16             A.     This is an e-mail from Lori Locker to Greg  
17    Elam on October 25th of '05, with myself being copied.

18             Q.     And then if you go back farther, there's  
19    additional e-mails?

20             A.     Yes, there were.

21             Q.     And they start like August the 12th, 2005?

22             A.     Yeah.   All the way on the last page,  
23    August 12th of 2005.

24             Q.     Up through October 25th, 2005?

25             A.     Yes.   Yes.



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1                   MR. FINNEGAN: Okay. I'd like to offer  
2 Exhibit 20, please.

3                   JUDGE DALE: Any objections?

4                   MR. BLANC: No objections, your Honor.

5                   JUDGE DALE: Thank you. Then Exhibit 20  
6 will be accepted into evidence.

7                   (EXHIBIT NO. 20 WAS RECEIVED INTO  
8 EVIDENCE.)

9 BY MR. FINNEGAN:

10           Q.       Have you been -- you have been working on  
11 the dealings with Kansas City Power & Light over the  
12 25th Street -- or I mean 26th Street and also the  
13 Belleview lines?

14           A.       Yes. I've been the primary contact for  
15 Kansas City Power & Light, as well as with Greg Elam.

16           Q.       When you mentioned about there was one line  
17 relocation earlier, did you say something like that?

18           A.       Early in the project, it was -- let's see.  
19 We started the work in April of 2005. At the very  
20 beginning we had an overhead service that went down  
21 through the abandoned alleyway that needed to be removed  
22 prior to starting construction of the building.

23           Q.       And that has been removed?

24           A.       That was removed in April of 2005, correct.

25           Q.       Okay. But there are still overhead lines

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1 remaining along this alley?

2 A. There are actually in the alley, but it's  
3 down on the south end of the alley feeding Jianus Brothers  
4 Packaging. But those are overhead secondaries that are  
5 basically draped along the building. Well, not along the  
6 building. They do have poles.

7 Q. And on the south -- by the south side, to  
8 which are you referring?

9 A. This plan is oriented north/south. So the  
10 south -- it's basically southwest of the alley. So if  
11 this is our building here, it would be southwest  
12 (indicating).

13 Q. Let me get an exhibit in here at this  
14 point.

15 A. Okay.

16 Q. That might help.

17 (EXHIBIT NO. 21 WAS MARKED FOR  
18 IDENTIFICATION BY THE REPORTER.)

19 BY MR. FINNEGAN:

20 Q. Do you have before you what's been marked  
21 Exhibit 21?

22 A. Yes, I do.

23 Q. And would you explain what this is?

24 A. It appears to be a circuit map for the  
25 general area of 25th and Southwest Boulevard from Kansas

0155

1 City Power & Light.

2 Q. And you're familiar with this area?

3 A. Yes, I am.

4 Q. Now, looking at this map, can you kind of  
5 explain what lines we're talking about here?

6 A. Okay. The lines that were taken  
7 underground up to date are, I believe it's -- I'm not sure  
8 how they call out this designation here. Transformer  
9 JAB016690, and further south from that point, those lines  
10 were essentially refed from a new underground circuit from  
11 the manhole at the corner of 25th and Belleview to a new  
12 switch and transformer that are in the back side of our  
13 existing brewery building, and then further fed down to  
14 the area of JA10625.

15 That pole was essentially relocated, moved  
16 towards the Jianus Brothers building to provide their  
17 power feed. But that's all underground now, except for  
18 the last part at Jianus Brothers.

19 Q. And just where is Jianus Brothers in  
20 relation to where the brewery is?

21 JUDGE DALE: Actually, if I can ask you to  
22 point on the map. I have the camera up so that our  
23 viewers in Germany can see.

24 THE WITNESS: Jianus Brothers is right here  
25 going out to the 26th Street, all the way south

0156

1 (indicating).

2 JUDGE DALE: Thank you.

3 THE WITNESS: You're welcome.

4 BY MR. FINNEGAN:

5 Q. And where's Boulevard on there?

6 A. Boulevard, existing -- what we call the  
7 existing brewery is from the JIANUS Brothers wall north to  
8 25th Street, and then our new facility is out in this open  
9 area (indicating).

10 Q. Okay. So which one is the existing line on  
11 the overhead line on Bellevue?

12 A. The existing overhead line on Bellevue is  
13 this, from this point to this point (indicating), 25th  
14 Street to 26th Street.

15 Q. Okay. Is that line currently energized?

16 A. Currently, a section of it is de-energized  
17 from roughly the Clarkson Building, which is this faint  
18 black line right here, just past that point south to the  
19 switch (indicating).

20 Q. And how long has that been de-energized?

21 A. Two to three months. Ever since we had a  
22 crane show up onsite working the third story of our  
23 building, third story and roof.

24 Q. If the line is de-energized, does that mean  
25 that nobody is receiving service off of it?

0157

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

2           Q.       That line's not necessary to serve

3 Boulevard?

4           A.       No, it's not.

5           Q.       Is the line on 26th Street necessary to

6 serve Boulevard?

7           A.       Not directly, no.

8           Q.       When dealing with Kansas City Power &

9 Light -- wait a minute.

10                   MR. FINNEGAN: I'd like to make an offer of

11 Exhibit 21 at this point.

12                   JUDGE DALE: Are there any objections?

13                   MR. BLANC: I haven't received a copy of

14 it.

15                   MR. FINNEGAN: I'm sorry.

16                   MR. BLANC: No objections.

17                   JUDGE DALE: Thank you. Exhibit 21 is

18 accepted into evidence.

19                   (EXHIBIT NO. 21 WAS RECEIVED INTO

20 EVIDENCE.)

21 BY MR. FINNEGAN:

22           Q.       In dealing with Kansas City Power & Light,

23 did you receive estimates from them as to the cost of the

24 lines, underground lines or overhead or whatever?

25           A.       We did receive some estimates. I believe

0158

1 the last ones we received were the fall. I don't remember  
2 the exact date -- pardon me -- for that. And I don't know  
3 if I'd call them detailed estimates, except that they  
4 provide some level of breakdown for category of materials,  
5 labor, vehicle costs and indirect costs.

6 (EXHIBIT NO. 22 WAS MARKED FOR  
7 IDENTIFICATION.)

8 BY MR. FINNEGAN:

9 Q. Mr. Utz, I hand you what's been marked as  
10 Exhibit 22, which is also Attachment 7 to the Complaint.  
11 Do you have that document?

12 A. Yes, I do.

13 Q. Have you seen that document before?

14 A. I have seen it before, yes.

15 Q. And does it show some of the cost  
16 estimates?

17 A. Yes, it does, in the categories as I  
18 described, labor, material costs, vehicle costs and  
19 indirect costs.

20 Q. Are there any -- are you familiar with any  
21 breakdowns or have you received any breakdown further than  
22 this from the company?

23 A. I received a breakdown, not in more detail  
24 than this, except that it had point in span number  
25 reference, which I can't relate to, unfortunately. But in

0159

1     that one it didn't -- there's nothing that describes a  
2     level of cost, hourly rates, material, cost per foot for  
3     cable, things like that, that I've seen.

4             Q.       When you deal with other people, do you  
5     usually get detailed estimates of what you're paying for?

6             A.       If I request that level of detail, yes.

7             Q.       And have you discussed the possibility or  
8     have you talked to other contractors, electrical  
9     contractors about the possibility of them performing the  
10    construction?

11            A.       I've asked some contractors if they could  
12    perform the work, and they informed me that they could  
13    not.

14            Q.       And why was that?

15            A.       I don't know if it's illegal. It's against  
16    the -- well, I guess it is illegal probably for them to  
17    work on Kansas City Power & Light owned equipment.

18            Q.       Do they do work for KCP&L?

19            A.       Well, they also do significant work for  
20    KCP&L.

21            Q.       What's the name of the other company?

22            A.       Capital Electric is one.

23            Q.       And they were unable to help you because  
24    they do work for KCP&L?

25            A.       That was one of the points of discussion,

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1     yes.

2             Q.       So it's your understanding that KCP&L does  
3     hire contractors, outside contractors other than their own  
4     in-house people to do construction work for them?

5             A.       I understand that they use Capital Electric  
6     for subcontracting.

7             Q.       Have you asked them if -- Kansas City  
8     Power & Light if you could do our own construction on the  
9     job?

10            A.       I believe I did ask that in a meeting, and  
11     I was informed that we could not use our own contractor.

12            Q.       Do you have any idea what it might cost if  
13     an independent contractor did this job?

14            A.       No, but I believe Greg Elam has prepared  
15     some estimates.

16                   MR. FINNEGAN:   Okay.   At this time I'd like  
17     to offer Exhibit 22.

18                   JUDGE DALE:   Is there any objection to  
19     Exhibit 22?

20                   MR. FINNEGAN:   It's Attachment 7 to the --  
21     Appendix 7 to the Complaint.

22                   MR. BLANC:   I don't think I have any  
23     objections.  I just want to confirm.  Attachment 7?  No  
24     objections.

25                   JUDGE DALE:   Thank you.  Exhibit 22 will be



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1     accepted into evidence.

2                     (EXHIBIT NO. 22 WAS RECEIVED INTO  
3     EVIDENCE.)

4                     MR. FINNEGAN: I believe that's all the  
5     questions I have. Thank you.

6                     JUDGE DALE: Okay. Is there any cross by  
7     PIEA?

8                     MS. BROWN: No, thank you.

9                     JUDGE DALE: KCP&L?

10                    MR. BLANC: Yes, your Honor.

11     CROSS-EXAMINATION BY MR. BLANC:

12             Q.     Good afternoon.

13             A.     Good afternoon.

14             Q.     I'd like to refer you to the e-mail that I  
15     believe was -- was it Exhibit 19, the chain of e-mails?

16             A.     Was the last one dated October 25th?

17             Q.     It's on -- it's the latter pages of that.

18             A.     Right.

19             Q.     The exchange between you and Lori Locker.

20             A.     But that set of documents?

21             Q.     Right. Correct.

22             A.     Okay.

23             Q.     Basically, the last two pages of that  
24     dealing with the e-mail chain between you and Ms. Locker.

25             A.     Yes.

1           Q.       Now, I'd like to begin at the beginning of  
2   that exchange, if I could.  The pages are in reverse -- or  
3   the e-mails are in reverse chronological order, so that's  
4   actually the bottom of page 2.  Is there an e-mail there  
5   from you to Lori Locker dated June 15th, 2005?  I have an  
6   extra copy if that would be helpful.

7           A.       June 15th?  I do not see one on there.  
8   That page is missing, I would guess.

9           Q.       I've got an extra copy.

10          A.       This one's missing the June 15th.

11                  JUDGE DALE:  Excuse me, Mr. Blanc.  There's  
12   several page 2s.

13                  MR. BLANC:  This is an e-mail exchange  
14   between Lori Locker and Mike Utz.  It's included in  
15   Mr. Finnegan's attachment.  For the sake of confusion, we  
16   can admit this as a separate exhibit, but because it's  
17   contained within another --

18                  JUDGE DALE:  If you have the dates, maybe  
19   we can figure out.

20                  MR. BLANC:  It begins July 7th, 2005, or  
21   that's the last e-mail in the exchange.  That's from Mike  
22   Utz to Lori Locker.  It appears this exchange may not be  
23   in that, so I would like to offer it as a second exhibit.

24                  JUDGE DALE:  So that will be 23.

25                  MR. BLANC:  I think that's right.

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1                   (EXHIBIT NO. 23 WAS MARKED FOR  
2 IDENTIFICATION.)

3 BY MR. BLANC:

4           Q.       And that was provided as Attachment 1 to  
5 our answer.

6                   Okay. Is this an e-mail exchange between  
7 you and Ms. Locker that occurred between June 15th, 2005  
8 and July 5th, 2005 -- or July 7th, 2005?

9           A.       Yes.

10          Q.       Okay. I'd like to start, as I said, with  
11 the first e-mail in the chain, which appears on the bottom  
12 of page 2.

13          A.       Uh-huh.

14          Q.       Is that an e-mail from you to Ms. Locker  
15 dated June 15th, 2005?

16          A.       Yes, it is.

17          Q.       I'd like to just deal with the Belleview,  
18 the discussion of the Belleview options. Could you please  
19 read Option A?

20          A.       Option A, underground feed from the  
21 switchgear to new terminal pole at Clarkson, clean up  
22 overhead from 25th to 26th Street, eliminate old terminal  
23 pole, in parentheses \$35,000 Kansas City Power & Light,  
24 \$31,000 -- or \$3,100 Westhues Electric.

25          Q.       So based upon that option, how does

1 Option A suggest that facilities on Boulevard be treated  
2 between 25th Street and 26th Street -- 25th Street and  
3 26th Street?

4 A. That was to essentially cleaning up the  
5 overhead lines, reduce the number of poles and making the  
6 ones that are remaining more sightly.

7 Q. All right. And could read Option C for me?

8 A. Option C, all underground feed from  
9 existing manhole to 26th Street and 25th Street, overhead  
10 feed to new transformer pole at Clarkson, underground  
11 secondaries, overhead secondaries, No. 2, \$135,000 KCPL,  
12 \$45,000 Westhues.

13 Q. Okay. So just to clarify, how does  
14 Option C propose the Belleview facilities between  
15 25th Street and 26th Street are dealt with?

16 A. Underground.

17 Q. Okay. Now if I could, I would like to flip  
18 to, on the bottom of page 1, your July 5th, 2005 e-mail to  
19 Ms. Locker.

20 A. Yes.

21 Q. If you could please read that e-mail.

22 A. Lori, we would like to proceed with  
23 Option A below for both systems. I understand that there  
24 will be a number of weeks involved in the engineering and  
25 planning phases of this project, but would like to have

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1 detailed cost estimates in our hands as soon as possible.  
2 I also need a schedule for the work as soon as you can get  
3 it to us. Please call me if you have any questions and to  
4 update me on the status of these projects when you have a  
5 few minutes.

6 Q. Okay. So your e-mail indicates that at  
7 that time anyway, Boulevard didn't want to bury the  
8 Belleview facilities, it just wanted to clean them up; is  
9 that right?

10 A. Based on the information we had in front of  
11 us, that's correct.

12 Q. Okay. Does your e-mail in any way imply or  
13 indicate that KCPL should prepare a detailed design or  
14 detailed cost estimates for burying the Belleview  
15 facilities, putting them underground?

16 A. This e-mail does not, no.

17 MR. BLANC: No further questions, your  
18 Honor.

19 JUDGE DALE: Is there any redirect?

20 (No response.)

21 JUDGE DALE: And as there are no questions  
22 from the Bench, you may step down.

23 THE WITNESS: Thank you.

24 MR. FINNEGAN: Your Honor, could I have a  
25 short break here to get organized?

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1 JUDGE DALE: Certainly.

2 MR. FINNEGAN: And then we'll call

3 Mr. Elam.

4 I'd like to call Mr. Greg Elam.

5 JUDGE DALE: Thank you.

6 (Witness sworn.)

7 JUDGE DALE: Thank you. Please be seated.

8 GREGORY ELAM testified as follows:

9 DIRECT EXAMINATION BY MR. FINNEGAN:

10 Q. Will you state your name, please, for the  
11 record.

12 A. My name is Gregory Elam, E-l-a-m.

13 Q. And what is your occupation?

14 A. I'm CEO of American Energy.

15 Q. And what is American Energy?

16 A. American Energy is an energy consulting and  
17 management firm that was specifically developed to  
18 represent customers with the interface with utilities  
19 on -- and marketers on supply of power and infrastructure  
20 improvements.

21 Q. How long has American Energy been in  
22 business?

23 A. Going on our tenth year now.

24 Q. And how long have you been the CEO?

25 A. All ten years.

1           Q.       Now, what is your background and experience  
2 with electric matters?

3           A.       My background is actually broken up in two  
4 areas. One is electrical operations, utility operations,  
5 and with bulk power issues. My electric operations, I  
6 spent 12 years with Cincinnati Gas and Electric Company.  
7 All 12 years were in operations, and probably I think it's  
8 8 of the 12 years I worked in the systems operations  
9 center where we managed distribution transmission lines,  
10 performed all switching, tagging, those type of functions.

11          Q.       By tagging and switching, would you  
12 describe that further?

13          A.       There's times when you operate an  
14 electrical distribution system that you either need to  
15 take lines out for service and make it safe for people to  
16 work on it, so there's a formal process of which you would  
17 open switches and tag them for the safety of those  
18 personnel at the same time while maintaining reliability.

19                   I also wanted to add, that was during my  
20 years as the -- at Cincinnati Gas and Electric. During my  
21 years at American Energy, we spent time with hundreds of  
22 customers working on distribution infrastructure for  
23 clients across the country. We work in about 43 different  
24 states.

25          Q.       Have you worked in the Kansas City area?

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1           A.       Yes.

2           Q.       Where is American Energy located, by the  
3 way, the headquarters?

4           A.       One Ward Parkway, Kansas City, Missouri.

5           Q.       And when did you become involved with the  
6 Boulevard Brewery?

7           A.       I believe I originally got my first call to  
8 be engaged was late August of '04.

9           Q.       And what was that in respect to?

10          A.       That was with respect to providing service  
11 to the Boulevard, the new service to the site, and  
12 although we had discussions with the lines on Belleview  
13 and on 26, a lot of times those were tabled at KCPL's  
14 request.

15          Q.       And so was the service successfully  
16 concluded, the new service to Boulevard?

17          A.       The service as well as other cleanup down  
18 the alley.

19          Q.       And what did they clean up?

20          A.       It was pretty ugly down the alley with the  
21 Jianus Building, which I think was described earlier, a  
22 neighbor to Boulevard. And we worked on -- I worked with  
23 the KCPL engineers about helping really design kind of the  
24 features of how they would serve Jianus in the future as  
25 well.



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1           Q.       And then when did you get involved with  
2 Boulevard again?

3           A.       I believe sometime in October of '05.

4           Q.       Was Boulevard already engaged in  
5 discussions with Kansas City Power & Light when you came  
6 in?

7           A.       Yes.

8           Q.       And what was the nature of those  
9 discussions?

10          A.       The discussions they'd had at least prior  
11 to me coming was still centered around what to do on  
12 Belleview and on 26th Street, and seemed to be a lot of  
13 haggling over cost and the enormous costs that were  
14 involved.

15          Q.       And had you worked on behalf of clients  
16 involved with Kansas City Power & Light matters before?

17          A.       Other clients?

18          Q.       Yes.

19          A.       Yes.

20          Q.       Can you name some?

21          A.       Sprint being one. We worked on the world  
22 headquarters campus for Sprint. We -- in that case, we  
23 negotiated both the infrastructure and energy supply to  
24 the campus. We've worked for Nall Valley, which is over  
25 on the Kansas side as well. Just numerous number of

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1 clients, and most of those relate to infrastructure  
2 improvements on distribution systems or relocations right  
3 now.

4 Q. With respect -- you said Nall Valley. KCPL  
5 in its answers said that they had only one formal  
6 complaint about relocation matters, and that that came  
7 from American Energy Service -- Solutions. I'm sorry.

8 A. No. I think that needs to be clarified.  
9 American Energy -- back up to clarify one of my original,  
10 I guess, opening statements. American Energy, as I  
11 mentioned, was developed to represent the best interests  
12 of the client. It's really kind of become at least common  
13 knowledge to us that a lot of clients just are unaware of  
14 what rights or what maybe the law is or what rights they  
15 have with respect to redevelopment.

16 So the Nall Valley issue was really  
17 centered around relocating the feeder, very similar to  
18 this, the discussion. It primarily got into -- we filed  
19 the complaint originally. American Energy not being a  
20 legal firm, basically the complaint was actually refiled  
21 by Nall Valley, and Nall Valley's the complainant in  
22 there. We're just their consultant.

23 Q. With respect to your discussions with  
24 Kansas City Power & Light, which you said began just about  
25 when?

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1           A.       I believe it was October when -- October of  
2    '05.

3           Q.       October of '05 on Boulevard Brewery the  
4    second time?

5           A.       On the second time, correct.

6           Q.       And have you run into any problems with  
7    those discussions?

8           A.       We've ran into problems from -- since  
9    August on this entire issue.  If I can iterate, back in  
10   August of '04 when I first contacted Mike Lucas, that we  
11   went for a significant amount of time, and I'd have to go  
12   back and look at documents to find out, but little or no  
13   response.  We originally met with Mike sometime, I'd say,  
14   in September of '04, went through the discussions with him  
15   on all the things that needed to transpire, discussed it  
16   in great detail with him of what needed to happen,  
17   including the line on Belleview, summed it up in a memo.  
18   I think the memo was the 21st of September, so  
19   thereabouts, and never heard back from KCPL with respect  
20   to that memo as far as denying anything that we said.

21                   But since that time -- and to Mike Utz's  
22   comment earlier, you know, Lori Locker was brought on  
23   ultimately, and I think Lori was maybe brought on maybe  
24   around the November time frame.  So it took a substantial  
25   amount of time to get KCPL to listen to us, but -- so it

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1     was about November, I think, we got in contact with Russ  
2     Wiley, one of the engineers, sometime in December, I  
3     believe. Russ can correct us later, but I believe he was  
4     on vacation 'til the end of the year.

5                     So this project really never got started  
6     until January of '05. Since then -- and I'll kind of set  
7     that aside. Since I've been involved now since October on  
8     this -- mostly this Belleview and 26th Street location,  
9     we've been talking again. A couple different issues. One  
10    is the -- whether the feeder's needed or not on Belleview.  
11    The CIAC tax issue is a very important issue as well.  
12    We've had those discussions.

13                    And what really kind of led to this  
14    blighted area being, like I say, from me kind of being  
15    discovered is I had no idea prior to that that area is  
16    considered, quote, blighted. I just didn't think about  
17    it. We were looking -- we'd already gotten an e-mail from  
18    Lori on the CIAC tax, that they would waive the CIAC tax  
19    on the 26 portion. They agreed that it was not a taxable  
20    event.

21                    Looking at the Belleview portion, the  
22    comment I believe I got from them was if we could provide  
23    Mary Wells, which I think was in their regulatory  
24    department, some form of that the lines needed to be  
25    buried, the CIAC tax would go away. So as we started

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1 looking, discovered that this area was a blighted area,  
2 obviously I recalled some other work I'd done on the  
3 blighted area for downtown Kansas City, and brought it to  
4 Boulevard's attention that really they shouldn't be paying  
5 for this relocation.

6 Q. What was your prior experience on this with  
7 downtown Kansas City?

8 A. It was actually working with the -- on the  
9 IRS project. That was since negotiated out, so it was  
10 never brought to a head.

11 Q. Have you prepared a timeline as to the  
12 negotiations with Kansas City Power & Light?

13 A. Yes, I did.

14 (EXHIBIT NO. 24 WAS MARKED FOR  
15 IDENTIFICATION.)

16 BY MR. FINNEGAN:

17 Q. Do you have before you what's been marked  
18 as Exhibit 24?

19 JUDGE DALE: I'm sorry. If he gives us --  
20 if you're giving us ones that he's prefiled as exhibits,  
21 you can just refer to his exhibit number for our copies  
22 anyway.

23 BY MR. FINNEGAN:

24 Q. Which is -- which was Exhibit 15 that was  
25 prefiled.

1 A. That's correct.

2 Q. And you have that before you?

3 A. Yes.

4 Q. Was this prepared by you?

5 A. Yes.

6 Q. And does this list pretty much the

7 negotiations that you -- contacts you've had with KCP&L?

8 A. The ones that I could quickly put together.

9 I think it's evidence my involvement just because there's  
10 a gap between probably February and somewhere around  
11 November.

12 MR. FINNEGAN: Okay. Let me -- we have  
13 this Exhibit 4 that was prefiled. How do we want to treat  
14 that?

15 JUDGE DALE: This will be 25. I don't know  
16 if you have it in your prefiled. It appears to have been  
17 attempted to be prefiled, but I don't have it in my  
18 material.

19 MR. FINNEGAN: I think what happened, there  
20 were some filed, then there were additional ones filed.  
21 They might be back further.

22 JUDGE DALE: We'll probably find several  
23 additional copies as we go through this.

24 (EXHIBIT NO. 25 WAS MARKED FOR  
25 IDENTIFICATION.)

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1 BY MR. FINNEGAN:

2 Q. Do you have before you what's been marked  
3 Exhibit 25?

4 A. No.

5 Q. Well, everybody else does. And is this  
6 shown as Exhibit 4 of your -- that you filed, prefiled?

7 A. Yes, it is.

8 Q. Would you -- I note on your timeline there  
9 is a date of September 21st?

10 A. Okay.

11 Q. And is this the -- referring to, there's a  
12 call and then the memo dated September 21st?

13 A. Yes.

14 Q. And what was the purpose of tendering this  
15 memo?

16 A. As I mentioned, I had met with Mike Lucas,  
17 I'm not sure exactly, but sometime end of -- probably  
18 first of February -- I mean, excuse me, first of  
19 September. I don't know the exact date, but met with Mike  
20 and went over this in detail. Wanted to memorialize what  
21 our discussions were.

22 Q. Okay. And basically just what were your  
23 discussions with respect to the -- well, everything  
24 involved here? There were several things involved, looks  
25 like five different items.

1           A.       Yeah. And I'm just -- in general, there  
2   was kind of a discussion about feeding -- there was  
3   discussion about feeding the Boulevard site. I'll just go  
4   through that. That would probably be No. 4 and No. 5.

5                   Then there was discussion about relocation  
6   of the feeder on 26th Street, the need for that to happen,  
7   and then the discussion about refeeding Clarkson, which is  
8   I think the one you mentioned earlier that was very close  
9   to 25th Street. The idea was to refeed that from a  
10  different direction.

11                   And then discussion about removal of the  
12  feeder on Belleview, and that discussion really centered  
13  around a couple things. One is the jumpers that had been  
14  removed up near the corner of 26th and Southwest  
15  Boulevard, and trying to find a resolution to fix the  
16  removal of the jumpers, if you will, and then if that  
17  could be fixed, provide that tie back, then the feeder on  
18  Belleview could be removed.

19           Q.       What do you mean by the removal of the  
20  jumpers and who removed them?

21           A.       Can I use this drawing here?

22           Q.       Yes. And you're referring to -- Judge, can  
23  you see?

24                   JUDGE DALE: Yes.

25                   THE WITNESS: At the time, I guess sometime



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1 prior when the DST facility, which was -- do you want me  
2 to hold up.

3 MR. FINNEGAN: That's Exhibit 21.

4 THE WITNESS: Okay. It's marked Exhibit 20  
5 here.

6 JUDGE DALE: It was your Exhibit 20. It  
7 was actually Exhibit 21.

8 THE WITNESS: Okay. I'm sorry.

9 BY MR. FINNEGAN:

10 Q. This was prefiled.

11 A. Okay. Just very briefly, when the DST  
12 facility was put in, which is this switchgear up here, I  
13 guess the comment I heard from Mike Lucas was that DST had  
14 a concern that if a car were to hit a pole with this  
15 feeder having a tie from both ends, feeder here and  
16 without -- without drawing on here, this feeder actually  
17 continues down through here like this and attaches here  
18 and here. Without --

19 Q. That's 26th Street we're talking about?

20 A. That's 26th Street, correct. The idea is  
21 DST didn't want a common point of failure, so if a car hit  
22 a pole, it wouldn't take out both feeders. So to agree to  
23 that, KCP&L removed the jumpers here and basically used  
24 the tie through the switchgear, which is probably not as  
25 reliable as having something out here because switchgears

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1 do have problems, too. The idea is they removed this tie  
2 in.

3 What Mike and I were talking about doing  
4 is, how do we restore this without still giving a single  
5 point of failure. We contacted DST's engineer, Lannie. I  
6 forgot Lannie's last name. Pardon me. But talked to  
7 Lannie about if we could get him to agree to reestablish  
8 this tie, would he be okay with that. KCP&L's, at least  
9 Mike Lucas had agreed if we can kind of get a consensus.

10 So I ultimately went to Lannie and got  
11 Lannie to agree, but he wanted to see the drawings and so  
12 forth. Kind of from there it went downhill. That's when  
13 KCP&L, in this case Mike Lucas, just never responded  
14 anymore and everything just took a different turn.

15 But the whole solution was, at least what  
16 we discussed, a couple solutions, were to put another  
17 switch in line here to give them two breaks, so if a car  
18 did hit a pole, it wouldn't be a problem. Mike seemed to  
19 like the idea, but the idea is to put two breaks here, and  
20 by that time -- because nobody else would be served from  
21 this anymore, that this could be removed. And then, like  
22 I said, discussions kind of went downhill from there.

23 MR. FINNEGAN: This will be prefiled  
24 Exhibit 5.

25 (EXHIBIT NO. 26 WAS MARKED FOR

1 IDENTIFICATION.)

2 BY MR. FINNEGAN:

3 Q. Do you have before you what's been marked  
4 Exhibit 26, which is your Exhibit 5 prefilled?

5 A. Yes.

6 Q. And would you explain what this is?

7 A. Similar memorandum to what I did with Mike  
8 Lucas, basically following up on a meeting that we had had  
9 with KCP&L to memorialize what the discussions were.

10 Q. And what was the -- what had you -- what  
11 were you memorializing at this point? What was the  
12 agreement or what you thought was the agreement?

13 A. Again, in this case, seems to be the  
14 discussion on Belleview, that the feeder could be removed.  
15 I did ultimately get an e-mail, I think, from Russ Wiley,  
16 and we were talking about -- originally they only talked  
17 about this line being removed because we understood it's  
18 not needed. They've yet to say it was for reliability.

19 And when Russ's e-mail came in, which I  
20 believe was just right after this, maybe the 7th, the same  
21 day, could be the same day, maybe in a few days, I think,  
22 Russ had responded that the line -- well, it could be  
23 removed. And I'm just using the gist of it. The gist of  
24 it was that they wanted to keep it for potentially feeding  
25 future customers.

0180

1           Q.       And it was your -- you wanted it removed;  
2   is that correct?

3           A.       I think everybody would like to see it  
4   gone.  If I can just make a comment, you know, I think  
5   prior to -- prior to the expansion, you had customers  
6   there, you had Jianus.  Like I said, it was a mess, but  
7   yeah, it did have some purpose back there and it did serve  
8   some houses and so forth, but that's all changed now.  
9   It's not the same place that it was, you know, a year or  
10  so ago.

11          Q.       Okay.  Did you have subsequent  
12  correspondence after this with KCPL?

13          A.       I'm sure we did, but after this memo, it  
14  was -- it was -- I think some of my last communications  
15  was around February.  I had helped worked with their  
16  engineers, like I said, trying to help design.  I'm not an  
17  engineer, don't claim to be, don't want to be.  But my  
18  job, my background provides that I can help folks kind of  
19  figure out good solutions for everybody, and we helped  
20  design the feed to the Jianus Brothers and then ultimately  
21  feed KCP&L.

22                   I think one of the other e-mails, I'm  
23  thinking maybe February sometime, we talked about  
24  relocating the line even over to another street.  I think  
25  it's Madison Street.  Forgive me if I've got my directions

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1 wrong, but I think that would be east, somewhere in that  
2 direction.

3                   They actually agreed to move it to Madison  
4 Street, except when they got out and saw the field  
5 conditions, and I think the e-mail kind of just danced  
6 around it. But basically when they saw the field  
7 conditions, I think it was worded in the e-mail, being  
8 DST's building was over there, they didn't want to go that  
9 direction, so they put it back in Boulevard's lap.

10           Q.       And you indicate there was an e-mail as to  
11 that, which do you have your exhibit list there?

12           A.       I don't have it. If I can see it, I can  
13 tell you.

14           Q.       Would that help?

15           A.       I believe it's No. 6.

16                   (EXHIBIT NO. 27 WAS MARKED FOR  
17 IDENTIFICATION.)

18                   JUDGE DALE: So the Elam prefiled Exhibit  
19 No. 6 will be Exhibit No. 27.

20 BY MR. FINNEGAN:

21           Q.       And this is an e-mail to you from Russ  
22 Wiley, is that correct, Exhibit 27?

23           A.       Yes.

24           Q.       And what's the date on that?

25           A.       You know, I don't know. The way I saved

0182

1 it, I guess the header didn't save. But it's right after  
2 I sent it to Russ, so it looks like -- I've got it dated  
3 on my file when I saved it was the 15th. That's probably  
4 appropriate. Looks like I got -- it was right after it  
5 was sent from Russ.

6 Q. That's February the 15th --

7 A. Yes.

8 Q. -- of '05?

9 A. Of '05.

10 Q. And what's the significance of this  
11 response?

12 A. Well, it was what I just stated earlier.  
13 In the prior meeting we had had, they agreed that if it  
14 could be relocated -- it was just one of the settlement  
15 discussions we had. If we can try to get this thing over  
16 with, let's try it, and how about relocating it to another  
17 street. Maybe we can do the relocation above ground and  
18 help pay for that. Total settlement discussion.

19 At that point, like I said, it became, at  
20 least in our opinion, that once they saw it was DST's area  
21 over there, they just didn't want to go there.

22 Q. And then what happened?

23 A. I believe somewhere that it was -- that  
24 KCPL had actually wanted to table the issue. I can't  
25 remember which e-mail, but one of the e-mails it was --

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1 they just wanted to table the Boulevard issue. We did not  
2 from the beginning want to table it. It was something we  
3 wanted to get cleared up right away, but they wanted to  
4 table it. I think at that point the service was being  
5 installed, and I just -- I was not involved.

6 Q. And which service was being installed?

7 A. Just the service to Boulevard, which is fed  
8 from 25th Street.

9 Q. This is back in your initial negotiations  
10 with --

11 A. Yes.

12 Q. -- KCP&L?

13 A. That's correct.

14 Q. And then you say you came back into the  
15 matter in October of -- or I'm sorry. When did you come  
16 back into the matter?

17 A. Sometime around October of '05, later that  
18 year basically.

19 Q. And who did you have contact with at that  
20 point?

21 A. At KCP&L?

22 Q. Uh-huh.

23 A. Well, I believe originally it was just Lori  
24 Locker.

25 Q. And did you consult or did you communicate

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1 by e-mails?

2 A. Yes.

3 Q. If you'd refer to your exhibit list there,  
4 would you identify which e-mail?

5 A. Oh, the -- pardon me. It looks like on my  
6 Exhibit 21.

7 Q. Your Exhibit 21. That was not prefiled,  
8 was it?

9 A. I don't think so. I think that was a late  
10 one that we had, but I think you've already got that  
11 exhibit here somewhere as somebody else's exhibit. Here.  
12 It's what Mike Utz had used earlier.

13 Q. Okay. Those responses. What exhibit is  
14 that, does it show?

15 A. No, it does not show. It was dated  
16 October 25th of '05.

17 JUDGE DALE: That would be Exhibit 20.

18 BY MR. FINNEGAN:

19 Q. Exhibit 20. What other discussions have  
20 you had with KCPL with respect to the line on Belleview?

21 A. Over what period, any period?

22 Q. Yeah.

23 A. We've had, like I said, some of the e-mail  
24 discussions with Lori since then. We'd sent an e-mail on  
25 November 3rd basically saying that because it was in a



1 blighted area, Missouri law is that the client or in this  
2 case Boulevard should not be responsible to pay for it.

3                   We've also had discussions with Joe Rosa,  
4 and I've had several e-mails with Joe. I think it's fair  
5 to note, and I think Jeff Carlin alluded to it earlier, at  
6 one of our meetings with Joe, it was -- I don't know if  
7 you'd say Joe admitted. Joe stated something to the  
8 effect basically that the line on Belleview is not needed,  
9 but they may need it for future -- in the future.

10                   And that's where Jeff had came up with the  
11 idea that maybe as part of the settlement we'll just agree  
12 to put the conduits in the ground for your future use.

13           Q.       And that was not accepted by KCP&L?

14           A.       No. I think there was a -- I think that  
15 offer was not accepted, nor was the November 3rd. I think  
16 we got a December 16th letter from Lori Locker, an e-mail,  
17 plus an attached letter from KCP&L stating their position.  
18 And then I think we subsequently got a letter from Joe  
19 after the meeting, which was a very big surprise to us at  
20 the meeting, that it didn't reflect what was discussed and  
21 that the -- KCPL would stick to their original prices of  
22 whatever, \$135,000 to relocate the line and wanted  
23 Belleview to pay for it.

24           Q.       And when was this meeting?

25           A.       With Joe?

1 Q. Yes.

2 A. Sometime in January. You might say mid to  
3 late January. I'd have to look.

4 Q. After you received the response from  
5 Mr. Rosa -- let me see if I can find a copy of it here.  
6 Do you have --

7 A. What's that?

8 Q. Mr. Rosa's letter.

9 A. On the 16th of -- or the 31st? I don't  
10 know who wrote the letter. Maybe Lori wrote the letter in  
11 December. You're talking about the January 31st letter?

12 Q. I believe. No. There was a letter from  
13 Mr. Rosa to Mr. Bowers.

14 A. I believe that was January 31st. I don't  
15 have that as an exhibit.

16 Q. But in that letter, there was no reference  
17 to what was discussed or the reference was not the same as  
18 you had discussed it with him?

19 A. What I can recollect, my opinion is no, not  
20 at all.

21 Q. And what did you discuss?

22 A. The biggest one that I got was that, you  
23 know, there was a couple issues that had been raised, and  
24 one is that to the extent that they say they need the  
25 feeder on Belleview, that we would argue that that should

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1 have been in the -- if they need it to serve Boulevard, if  
2 that's the argument, that it should be included in the  
3 line extensions and it was not.

4 The other discussion was on the feeder  
5 itself for Belleview, whether it's not needed. And again,  
6 Joe stated it's not needed but it's probably needed for  
7 the future. And then, like I say, we offered kind of up  
8 an offering to make it go away. And when we get the  
9 letter it was like -- like they weren't in the meeting  
10 with us.

11 Q. And so then what happened?

12 A. I had sent numerous e-mails to Joe for  
13 clarification of any changes they're making in the area.  
14 Specifically we discussed the substation, new substation  
15 that they were looking for that could ultimately change  
16 the feed to Belleview or around Belleview -- excuse me --  
17 either change the feed to Boulevard's site or maybe even  
18 around there, and we wanted to get an idea of what they  
19 were changing.

20 I've yet to get an answer on any of the  
21 e-mails I had sent, other than -- including the CIAC tax.  
22 I think I ultimately got an answer said, well, this  
23 issue's under a complaint now, I'm not going to respond.  
24 But in all fairness, I'd sent numerous e-mails requesting  
25 kind of clarification on various things.

1           Q.       And you never received those  
2 clarifications?

3           A.       No.

4           Q.       Have you had a chance to review the  
5 estimates that KCP&L provided?

6           A.       With what little -- yeah. I reviewed the  
7 pages they provided. I think we got one memo, gosh, I  
8 can't remember when. Showed a breakdown and some credits  
9 for removal -- or not credits for removal -- credits for,  
10 like, prior life and so forth, the cost to relocate  
11 26th Street as well as the cost to overhead Belleview.  
12 Had some prior estimates from KCPL. I think they  
13 developed their storm system. As Mike Utz alluded to, you  
14 can't tell what that is other than points and spans.  
15 There's no breakout of really specifically how much they  
16 paid for different things. I've seen in prior cases where  
17 KCP&L where you get the details of how many hours it takes  
18 to put on a label, but in this case we've not gotten that.

19          Q.       So you -- what could you tell from these  
20 estimates that you received as to their costs?

21          A.       They were high. I say it kind of jokingly.  
22 You get categories, you get how much maybe a span or  
23 section costs, at least per their storm system. You get a  
24 very vague breakdown. You don't get details, as I  
25 mentioned, of how much wire cost, how many hours, nothing

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1 of that nature.

2 Q. You said storm system?

3 A. Yes, and --

4 Q. What is that?

5 A. I don't know what the acronym is for. It's  
6 what they use for their -- KCPL uses for predicting  
7 prices.

8 Q. Was this anywhere in KCPL's tariffs?

9 A. Not that I'm aware. As a matter of fact, I  
10 don't think there's anything in the tariff that alludes to  
11 any kind of calculation of -- well, in this case  
12 relocation certainly would be a case-by-case basis, but  
13 even as we've talked about even line extensions, there's  
14 no formulas to base line extensions off of or revenue  
15 credits.

16 Q. In KCPL's answer they referred to their  
17 Rule 9 extension policy.

18 A. Yes.

19 Q. Had you reviewed that rule?

20 A. Not recently, but vaguely, I think it's  
21 their undergrounding rule.

22 Q. That would be Rule 10. Rule 9 is extension  
23 policy.

24 A. Oh, line extensions. I know vaguely what  
25 the rule provides. It's very ambiguous language actually.

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1           Q.       Is there anything in it that sets out a  
2   formula for determining what the cost will be to the  
3   customer?

4           A.       No, there's no formula for cost to the  
5   customers. There's no formula to determine what revenue  
6   credits the customer would be provided in the -- in this  
7   case, relocation, there would be no revenue credits  
8   anyhow. Except let me qualify to the extent this should  
9   have been included in the line extension, we would argue  
10  or I would argue that that would apply at that point.

11          Q.       I'm sorry. The line extension, this is  
12  going back to the --

13          A.       If KCPL were to claim that the Belleview  
14  line is used to supply the feed to Boulevard, I would add  
15  that that should have been included in the line extension  
16  calculations and revenue credits, whatever they may be for  
17  the -- for the site. And I think we discussed that with  
18  Joe during our meeting in January.

19                   MR. FINNEGAN: I have a copy of Rule 9.

20                   JUDGE DALE: Okay. What I -- unless there  
21  is an objection, I will just take administrative notice of  
22  the entirety of KCP&L's presently effective tariff, and  
23  that way you won't have to hand out copies of it.

24                   MR. FINNEGAN: Okay. But I will give him  
25  one.

0191

1 BY MR. FINNEGAN:

2 Q. Do you have before you the Rule 9 of KCPL  
3 tariffs?

4 A. Yes.

5 Q. And you've seen this before?

6 A. Yes.

7 Q. Reviewing Rule 9, it says extension policy.  
8 Is that the name of it?

9 A. Yes.

10 Q. Okay. And with respect to the first  
11 paragraph there, it talks about extensions to -- I don't  
12 see any mention of -- yeah, electric premises not adjacent  
13 to existing distribution facilities. Does it mention  
14 relocation?

15 A. Not that I've seen.

16 Q. Does it mention removal of lines?

17 A. Not that I'm aware, no.

18 Q. Does it have a specified policy in here on  
19 how to determine the costs of a line extension, even if it  
20 were an extension?

21 A. Not that I'm aware.

22 Q. Would you read the second sentence there,  
23 starting with all costs?

24 A. Sure. All costs of the company referenced  
25 in the following extension policy shall include applicable

1 material, labor costs -- excuse me -- and labor costs,  
2 including allocation of indirect costs. Indirect costs  
3 are comprised -- do you want me to keep going?

4 Q. Go ahead.

5 A. Indirect costs are comprised of  
6 supervision, engineering, transportation, material  
7 handling, and administrative cost functions that support  
8 actual construction.

9 Q. Did that help you in representing Boulevard  
10 as a customer to understand what KCP&L was charging or how  
11 they computed their charges?

12 A. No. I think in every case that I looked  
13 at, I actually go back and I ask for on what details. I  
14 want to know overheads. I want to know how they calculate  
15 them. I want to know details. The reason I want to know  
16 details is very simple. I mean, it's a competitive market  
17 out there and you want to compare what you should be  
18 paying on a fair value basis.

19 Q. But does this tariff give KCP&L unlimited  
20 discretion?

21 A. In my opinion, it give KCP&L full  
22 discretion to charge -- the customer has no argument about  
23 what the numbers are, because there are no details  
24 provided to argue against them.

25 Q. And what's your choice if you don't want to



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1 pay what they say?

2 A. They don't provide service.

3 Q. Can you go elsewhere to get another  
4 customer -- another contractor to provide the service?

5 A. My opinion, you can.

6 Q. You can?

7 A. I believe you can. The tariff doesn't say  
8 you can't, but my opinion is you can, you can do it. I  
9 think KCP&L doesn't want you to and they've said you  
10 can't, but my opinion is you can do it. The tariff --  
11 I've yet to see where the tariff prohibits you. Maybe if  
12 it does, point it out. If it does say that, I'd recommend  
13 it be changed. Electrical contractors are not  
14 proprietary. There's a lot of them out there that do this  
15 type of work.

16 Q. It's not brain surgery?

17 A. It's not brain surgery, no, especially the  
18 contractor end. I think it's -- it's important, and it  
19 requires, you know, diligence and so forth and it's not to  
20 be made light of, but there's people all across the  
21 country, as I mentioned, working in multiple states and we  
22 do this all the time.

23 Q. To your knowledge, does KCP&L use outside  
24 contractors to install lines?

25 A. At times, it's my understanding they use

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1    them sometimes.  I don't know under what circumstances,  
2    but I believe they do.

3           Q.       During storms, different kinds of storms,  
4    but during storm or something, an ice storm knocks  
5    down --

6           A.       Yeah.  That's a traditional sharing of  
7    personnel that utilities do when a -- I mean, that happens  
8    all the time, whether it's the company I used to work for,  
9    Cincinnati Gas and Electric or KCP&L.  If you look at  
10   Hurricane Katrina I'm sure you saw -- you've seen the TV  
11   during that time, that there was numerous, numerous  
12   utilities that share in those resources.  And KCP&L  
13   probably -- probably sent folks down there as well.  Hats  
14   off to them.

15          Q.       And so you're saying that they do use  
16   others, other contractors, other utilities even to perform  
17   their services?

18          A.       It's my understanding they do.

19          Q.       Is that what we're asking here in the event  
20   that it's found that the Boulevard should make the  
21   payment?

22          A.       Yes.  To the extent that Boulevard's  
23   requested to pay for this, I think it's all in fairness  
24   they should be allowed to go to a contractor.  We've got  
25   prices at a high level.  Certainly we'd like to sit down

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1 with contractors on a competitive basis and look, but in  
2 all fairness to them all.

3 As a matter of fact, just -- it's not  
4 electrical, it's gas lines. Atmos Energy does exactly  
5 that. They don't install the line because they know their  
6 overhead's not -- make it non-competitive, and they allow  
7 you to go get three contractors they'll recommend that  
8 work for them and you can start taking bids from those  
9 contractors.

10 Q. Did you solicit any bids of any contractors  
11 on this case?

12 A. Yes, I did.

13 Q. And did you receive anything in response to  
14 that?

15 A. Very quick, very high-level response from  
16 Mark One Electric, and I had a pretty good conversation  
17 with them over the phone as well.

18 Q. Who is Mark One Electric?

19 A. A large electrical contractor from the City  
20 that -- actually, it performs a lot of work for a utility  
21 across the river, Board of Public Utilities, Kansas City.

22 JUDGE DALE: So, Mr. Finnegan's prefiled  
23 Exhibit No. 14 will be Exhibit No. 28.

24 (EXHIBIT NO. 28 WAS MARKED FOR  
25 IDENTIFICATION.)

1 BY MR. FINNEGAN:

2 Q. You have before you what's been marked

3 Exhibit 28.

4 A. Okay.

5 Q. Could you state what this is?

6 A. I had made a call to Mark One to discuss  
7 with him getting a high-level bid to kind of at least  
8 understand just the magnitude of what we're talking about  
9 for providing service to Belleview. I'd sent a drawing, a  
10 drawing I had received from electronically KCP&L and  
11 describing to him what we wanted to do. It looks like  
12 Carl had taken a look. He was unsure whether the portion  
13 down the alley goes with just the relocation we discussed  
14 or whether it was just the line on Belleview, so he gave  
15 two prices. He gave me the breakdown of the wire right  
16 away. I think his cost was around 6,800 -- thousand, I  
17 basically figured the rest of it was all the other -- the  
18 labor and termination piece. And again, it's high level,  
19 certainly high level, but I'm sure he had some program  
20 similar to STORMS to generate that number, I would think.

21 Q. And this is for going underground?

22 A. Yes. This would be -- what I asked him to  
23 do was we would put in the conduits, because that was the  
24 same offer we'd made KCP&L as a settlement offer, and just  
25 assuming to compare apples and apples to their 130,000

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1     number, I just wanted to see the magnitude we were talking  
2     about.

3             Q.       And did you make some comparison?

4             A.       I actually did a spreadsheet to show the  
5     comparisons of, again, kind of a hypothetical, but it's --  
6     it's very real, that the numbers would get added.

7                     MR. FINNEGAN   Can I mark this as 29?  I  
8     don't believe this was prefiled.  It's a supplement.

9                     (EXHIBIT NO. 29 WAS MARKED FOR  
10    IDENTIFICATION.)

11    BY MR. FINNEGAN:

12             Q.       Mr. Elam, do you have before you what's  
13    been marked Exhibit 29?

14             A.       Not yet.

15             Q.       Everybody else does.

16             A.       Okay.  Now I do.

17             Q.       And would you please state what this  
18    purports to be?

19             A.       Well, it's really a supplement to the  
20    e-mail that I received from Mark One.  What I did was I  
21    thought at least for my use was to show comparison of  
22    really what we're talking about, getting a bid from a  
23    contractor that includes all his overheads and so forth.  
24    And then in this case, if you -- what I did very simply,  
25    just took the wire cost and I upped it for sales tax and

0198

1 so forth, assumed the rest of it was labor and  
2 terminations as he had -- Carl had indicated in his  
3 e-mail.

4 He said in his e-mail his number did not  
5 include engineering. So typically engineering's about  
6 10 percent of the project. Could be a little more, could  
7 be a little less, but I'm sure there would be kind of a  
8 joint engineering. Let's say it's \$4,500, through  
9 miscellaneous round up to 5,000 for permits or whatnot, if  
10 they're needed, and basically came up that we'd pay a  
11 third party around 54,500 to complete this project, in  
12 addition to again putting in conduits and so forth.

13 Then what I did, I said, well, if this were  
14 KCP&L, if they're competitive like a Mark One, but when  
15 you start adding their overheads, this is how they get to  
16 the exorbitant numbers. You take labor overheads, which  
17 are consistently 92 percent, material markups, which are  
18 24 percent, which I have yet to figure out why they get to  
19 mark up material.

20 G&A is approximately 6.2, and that may be a  
21 little off, but not very much, and when you add it up, you  
22 end up with an estimate of KCPL about 93,479, assuming  
23 they were correct, which I did not believe they are on the  
24 CIAC issue, but I just want to kind of emulate their  
25 numbers, kind of how they get there. They'd add about

0199

1 25 percent to it and come up with 116,800. I believe  
2 their number was about 126,000 for the installation, so  
3 I'm close.

4 Q. And you said you do not agree with the CIAC  
5 tax?

6 A. Absolutely not. Not in this case.

7 MR. FINNEGAN: At this time I'd like to  
8 offer Exhibit 28 and 29, and any other exhibits that I  
9 have not offered so far.

10 JUDGE DALE: You have not offered from 24  
11 through 29, if you'd like to offer those.

12 MR. FINNEGAN: I would like to offer those.

13 JUDGE DALE: Are there any objections?

14 MR. BLANC: No objections, your Honor.

15 JUDGE DALE: Then Exhibits 24 through 29  
16 are accepted into the record.

17 (EXHIBIT NOS. 24 THROUGH 29 WERE RECEIVED  
18 INTO EVIDENCE.)

19 BY MR. FINNEGAN:

20 Q. Now, is it your position that no CIAC tax  
21 would apply to this particular work?

22 A. That's correct, either to Belleview or  
23 26th Street.

24 Q. And why is that?

25 A. I think it's very clear that the IRS is

0200

1 very clear on this, that the -- and I'll do it kind of in  
2 layman's terms. Basically for it to be considered CIAC  
3 contribution to the revenue for the utility, the customer  
4 has to have received benefit. What that means is the  
5 benefit is not the benefit of aesthetic. The benefit is  
6 receiving some type of a service. So, for example, and I  
7 used the exhibit in here, I think it's Exhibit 18,  
8 decision letter from Susan Reaman of the IRS where -- can  
9 we use that?

10 Q. Yes.

11 (EXHIBIT NO. 30 WAS MARKED FOR  
12 IDENTIFICATION.)

13 BY MR. FINNEGAN:

14 Q. Do you have before you what's been marked  
15 Exhibit 30?

16 A. That's correct.

17 Q. Is this the letter that you referred to,  
18 the CIAC letter?

19 A. Yes, it is.

20 Q. And in KCP&L's answer --

21 A. I'm sorry.

22 Q. In KCPL's answer, they claim that CIAC tax  
23 would apply. Do you recall that?

24 A. Yeah, they claim it would apply here, and I  
25 think we've got a couple examples from them that even



0201

1     refute that. I think there was an e-mail from Lori, and  
2     I'm sorry, I can't remember the date, but it says CIAC  
3     would not apply to -- at least to the 26th Street portion.  
4     As I alluded to earlier, that's how we got into this  
5     discussion about relocations is when we were inquiring  
6     about the CIAC tax because we were positive it wouldn't  
7     apply to the Belleview portion.

8                     In -- I'm having -- I have a hard time  
9     understanding what the difference in this relocation is or  
10    the difference in relocation that we did with the Nall  
11    Valley complaint. The relocation does not provide service  
12    or benefit, if you will, to in this case the developer or  
13    Boulevard. The IRS is very clear that the benefit is in  
14    that as a capacity as a customer, in other words,  
15    receiving some form of service, and they use the example  
16    in Ms. Reaman's letter --

17            Q.       And that's Exhibit 30?

18            A.       Exhibit -- is that what you -- yeah, my  
19    Exhibit 18, I think, your Exhibit 30. The example in this  
20    letter is clear, except it actually ruled against the  
21    individual, which is a good example. The -- in this case,  
22    the developer was widening a road but also rerouted the  
23    lines so they could connect to them. In that case, it was  
24    considered CIAC because the developer got a benefit. They  
25    could receive electric service from that utility.

1                   This is clearly not the case, and I believe  
2   if you look on page 2, the description third paragraph  
3   down about the description from the House Ways and Means  
4   Committee of the report, and then her further  
5   clarification --

6                   MR. BLANC: Your Honor, this testimony is  
7   bordering on the line of legal interpretation of this IRS  
8   letter, and when he was willing just to describe the facts  
9   of what happened here, that's fine, but I think he's  
10   veering more and more towards a legal analysis and  
11   conclusion.

12                  MR. FINNEGAN: Your Honor, I think he's  
13   just trying to point out the steps that the IRS looks at  
14   when they determine whether or not CIAC applies, and it's  
15   pretty well set forth there.

16                  THE WITNESS: Your Honor, I actually think  
17   this letter is written for laymen people to understand it,  
18   when you read the last paragraph of page 2.

19                  MR. BLANC: I'm not suggesting --

20                  JUDGE DALE: I was going to suggest that if  
21   you're merely restating what is in the letter, and the  
22   letter is written for laypeople to understand, surely the  
23   Commissioners can read it for themselves and understand,  
24   so if we can just move on to how it affects him.

25   BY MR. FINNEGAN:

1           Q.       Okay. Based on this letter, how does this  
2     affect the Boulevard Brewery situation?

3           A.       I think this letter clarifies that the idea  
4     that Boulevard Brewery does not receive service from  
5     either Bellevue or 26th Street; therefore, it does not  
6     apply -- consider CIAC.

7                   MR. BLANC: That sounds like a legal  
8     conclusion, your Honor. Move that be struck.

9                   JUDGE DALE: I'll take it as their  
10    conclusion of what they think it means.

11                  MR. BLANC: Thank you, your Honor.

12   BY MR. FINNEGAN:

13           Q.       And CIAC is a substantial impact, is it  
14    not, on a customer if they have to pay it?

15           A.       25 percent. The charges are up, increased  
16    25 percent. As I mentioned, and I'm having a hard time  
17    understanding what's at issue here and I'll explain. The  
18    letter from Lori -- and forgive me for the dates, but  
19    sometime around October, maybe October time frame -- said  
20    that CIAC was not on the 26th Street portion, they agreed  
21    to waive that. So they agreed with us.

22                   When I asked it on the Bellevue and  
23    getting clarification, the comment -- and I have to go  
24    back and look, but I think the comment was if you can show  
25    it was undergrounded because the City or the government

1 required you to do it, that would be exempt from CIAC as  
2 well.

3 I don't agree with their interpretation.  
4 I'm not trying to make a legal conclusion, but I think  
5 their conclusions in both this case and the Nall Valley  
6 case are inherently wrong, that they think because a  
7 governmental agency says that you have to underground it,  
8 and that is not my interpretation what the CIAC tax is  
9 about. It's about -- a third party can provide a payment  
10 for the benefit of somebody. It's not about a  
11 governmental agency --

12 MR. BLANC: It's a legal conclusion again,  
13 your Honor.

14 JUDGE DALE: I have to agree at this point,  
15 as we stray into Nall Valley and other interpretations.  
16 Sorry.

17 THE WITNESS: Can I finish the comment?

18 JUDGE DALE: No, actually.

19 BY MR. FINNEGAN:

20 Q. Let's cover this question then.

21 A. Sure.

22 Q. If KCPL is not required to pay the CIAC  
23 tax, then what happens if they collect a CIAC tax and not  
24 have to pay it?

25 A. Say that again.

1           Q.       Well, if KCPL charges a CIAC tax to the  
2   customer and it turns out that the interpretation is  
3   incorrect and that they did not have to pay it, what  
4   happens to the money they collect?

5           A.       Should be refunded to the customer.

6                   MR. BLANC:   That's a legal conclusion  
7   again, your Honor, and I'm not sure where he's going with  
8   this or what this would be based on.   It seems to be pure  
9   speculation.

10                  MR. FINNEGAN:   Your Honor, if they collect  
11   something --

12                  JUDGE DALE:   I think that probably you can  
13   address this tomorrow when one of your witnesses comes up  
14   and discusses how in your tariff you handle -- if you  
15   collect something from a customer that is not owed by the  
16   customer, what you then do with the amount erroneously  
17   collected.

18   BY MR. FINNEGAN:

19           Q.       Does the Belleview line serve Boulevard  
20   Brewery?

21           A.       No.

22           Q.       Does the 26th Street line serve Boulevard  
23   Brewery?

24           A.       No.

25           Q.       Boulevard receives it from a separate line;

1 is that correct?

2 A. I believe there's a tap out of manhole 669.

3 Q. Does it show on that exhibit?

4 A. I believe it's tapped out of this manhole  
5 here and goes down to feed Boulevard's site (indicating).

6 Q. Does Boulevard Brewery want this on  
7 Belleview?

8 A. I think that's better answered by  
9 Boulevard, but my discussions with them have been, no,  
10 it's kind of an eyesore.

11 MR. FINNEGAN: I think I might be finished.

12 JUDGE DALE: I'll give you a moment if you  
13 want to look through your papers.

14 MR. FINNEGAN: Could I have a moment to  
15 confer to make sure we're done?

16 JUDGE DALE: Go ahead.

17 I believe 30 is not -- has 30 been  
18 admitted?

19 THE WITNESS: Yes, that was the IRS.

20 JUDGE DALE: It's been marked, but it  
21 hasn't been admitted.

22 MR. FINNEGAN: I'll offer Exhibit 30.

23 JUDGE DALE: Is there any objection?

24 MR. BLANC: No objections, your Honor.

25 JUDGE DALE: Exhibit No. 30 is accepted

1 into evidence.

2 (EXHIBIT NO. 30 WAS RECEIVED INTO  
3 EVIDENCE.)

4 MR. FINNEGAN: At this time I would like to  
5 put the rest of these exhibits in that were marked. They  
6 can speak for themselves, but they're already attached to  
7 the -- we prefiled them.

8 JUDGE DALE: If I can, I'll go through and  
9 show you which ones I don't have marked. Exhibit No. 1,  
10 prefiled Exhibit No. 1 Elam would be 31. Exhibit No. 2  
11 would be 32. Exhibit No. 3 would be 33. Exhibits 4 and 5  
12 are already in. 6 is already in. Exhibit 7 would be 34.  
13 Exhibit No. 8A would be 35. Exhibit 8B would be 36.  
14 Exhibit 9 would be 37. Exhibit 10 would be 38.  
15 Exhibit 11 would be 39. Exhibit 12 would be 40.  
16 Exhibit 13 would be 41. Exhibit 14 is already in.  
17 Exhibit 15 is in. Exhibit 16 would be 42. And that is  
18 all I show as prefiled.

19 MR. FINNEGAN: I believe the IRS decision  
20 letter was Exhibit 30, not prefiled.

21 JUDGE DALE: It is not prefiled, but it was  
22 Exhibit 30.

23 (EXHIBIT NO. 31 WAS MARKED FOR  
24 IDENTIFICATION.)  
25 BY MR. FINNEGAN:

1 Q. Do you have before you what's been marked  
2 Exhibit 31, Mr. Elam?

3 A. Yes.

4 Q. And would you state what that is?

5 A. Of course, not being in pretty colors, it's  
6 a little hard to tell. I believe this is what we refer to  
7 as the background drawing, kind of one of the original  
8 drawings we had for KCPL for this project.

9 Q. And what does it show on here?

10 A. Well, in this case it actually shows KCP&L  
11 providing undergrounding for lines on Belleview where the  
12 section lines run, again, I guess in anticipation of  
13 feeding other customers.

14 JUDGE DALE: Is there any objection to any  
15 of those prefiled exhibits?

16 MR. BLANC: No. We'd be willing to  
17 stipulate those prefiled exhibits are fine and appropriate  
18 to be numbered as we discussed.

19 JUDGE DALE: Do you wish to offer it now?

20 MR. FINNEGAN: Yes, I do.

21 JUDGE DALE: Then in that case, Exhibits 31  
22 through 42 are admitted into evidence.

23 (EXHIBIT NOS. 31 THROUGH 42 WERE RECEIVED  
24 INTO EVIDENCE.)

25 BY MR. FINNEGAN:



1           Q.       And with respect to any of these exhibits,  
2 do you have anything you wish to make a comment on?

3           A.       No, other than I think some of the latest  
4 ones I'm somewhat disappointed that we've not gotten  
5 response from KCPL since we tried to ask for it in  
6 February, early February.

7                   MR. FINNEGAN: I think that's all the  
8 questions. Those exhibits are done?

9                   JUDGE DALE: Yes, they're admitted.

10                  MR. FINNEGAN: Thank you.

11                  JUDGE DALE: Ms. Brown?

12 CROSS-EXAMINATION BY MS. BROWN:

13           Q.       I've just handed you Exhibit 9, which is a  
14 certified copy of City Ordinance 041415. I'd refer you to  
15 Section B, condition 3. What is that condition?

16           A.       I'm sorry. I want to make sure I'm on the  
17 right page. Are you on page 2?

18           Q.       Section B.

19           A.       Section B. Okay. Got it.

20           Q.       Condition No. 3.

21           A.       Okay.

22           Q.       What is that? What does that indicate?

23           A.       It's easier just to read it.

24           Q.       Okay.

25           A.       The developer request and obtain approvals

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1 to vacate the portion of Bellevue Avenue and alley shown  
2 upon the development plan prior to the final plat being  
3 recorded.

4 Q. So the City required the vacation of  
5 portions of Bellevue?

6 A. My understanding, yes.

7 Q. And can you clarify the other public  
8 improvements that were required for the rezoning, water  
9 service, water and sewer service? Who owns water? Who  
10 provides water and sewer service?

11 A. I'm not sure. I guess the City. My belief  
12 is the City does.

13 Q. Okay. And what about streetlights?

14 A. Probably KCP&L.

15 Q. And the streets, do you know who owns the  
16 streets?

17 A. City.

18 Q. And the curbs and sidewalks?

19 A. City.

20 MS. BROWN: Thank you. That's all I have.

21 JUDGE DALE: About how long do you expect  
22 your cross to be?

23 MR. BLANC: I don't anticipate it taking  
24 long, and since it would mark the end of Complainants', I  
25 would suggest that we press on and I'll try to be brief,

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1 but I anticipate shortly after 5. I think I've got 15  
2 minutes worth of questions.

3 JUDGE DALE: Okay. If you anticipate it to  
4 be less than an hour, we'll just go ahead. I want to  
5 apprise everybody of the fact that the Commissioners have  
6 expressed a desire to be down here as much as they can.  
7 Tomorrow morning is an agenda session from 9:30. Probably  
8 reliably, having looked at it, they'll probably not end  
9 'til 11:30, but I think we can probably start up at  
10 11-ish.

11 Bearing that in mind, I need to know  
12 whether you want to start, recess or just start at  
13 11 tomorrow. I know you've got people in from out of  
14 town. I don't know how long you anticipate your witnesses  
15 will take. On the other hand, we'll have Commissioners  
16 here tomorrow. That's at least their hope.

17 MR. BLANC: I think we could complete our  
18 case between 11 and close of business tomorrow. I guess  
19 my large concern goes to the availability of one of our  
20 witnesses. As I mentioned earlier, he isn't available.  
21 He needs to be in Kansas City tomorrow, if at all  
22 possible, and I'm trying to weigh whether -- if we would  
23 have to convene to Wednesday just for the sake of hearing  
24 his testimony, if we should try and do it today. I'm  
25 really not sure. He speaks to the CIAC issue. I

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1 anticipate I would finish tomorrow, with the exception of  
2 this one witness.

3 JUDGE DALE: If you'll allow me to confer  
4 with my advisory staff and see how many questions on this  
5 kind of thing that they may have or they think the  
6 Commissioners may have, we'll decide.

7 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

8 JUDGE DALE: And my advisory staff tells me  
9 that they will need to look at this IRS letter that was  
10 not prefiled. So since they will have to have time to  
11 review that and formulate any questions for me, and I  
12 anticipate that the Commissioners may have questions about  
13 that also, we will defer that witness until Wednesday.  
14 I'm sorry he has to drive back and forth, and everybody  
15 else gets to sleep in. So without further ado, we'll do  
16 the cross-examination of Mr. Elam.

17 CROSS-EXAMINATION BY MR. BLANC:

18 Q. Good afternoon, Mr. Elam.

19 A. Hello.

20 Q. Just a couple of preliminary questions  
21 about some of the exhibits you discussed. I'd like to  
22 start with what's marked as Exhibit 24, which is the  
23 timeline you provided.

24 A. Okay.

25 Q. I note that October/November time frame and

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1     you've denoted that in orange, right?  Correct?

2             A.       Yeah.  On here it's gray.

3             Q.       Fair enough.  You've highlighted it?

4             A.       Yeah.

5             Q.       And that highlighting is intended to  
6     designate a lack of response from KCP&L?

7             A.       In all four areas.

8             Q.       And are you confident that there was no  
9     contact between KCP&L and you during that October/November  
10    time frame?

11            A.       No.  I don't remember.  There may or may  
12    not have been.  When I say lack of response, that's kind  
13    of a general lack of response, of getting it going.

14            Q.       Would you be surprised then if Lori Locker  
15    were to testify that she met with you onsite on  
16    October 20th and had documentation to confirm that  
17    meeting?

18            A.       No.  That may confirm my follow-up with  
19    when Mindy Mangold finally got Lori on the job because  
20    Mike Lucas fell off the face of the earth.

21            Q.       But that's a time frame you designated  
22    basically indicating no contact, no response from KCP&L?

23            A.       But I didn't say no contact.  I'm just  
24    telling you my recollection, and at least what I told you,  
25    I said on a cursory level, it was very inactive from KCP&L

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1 at that time. As a matter of fact, I think Mike Utz had  
2 testified that between -- sometime between this time frame  
3 and after the first of the year, I don't even think we got  
4 a drawing.

5 Q. But you had discussions with KCPL during  
6 that period?

7 A. I'm sure we did. At least we tried to at  
8 times.

9 Q. I'd like to refer you to Exhibit 25, if I  
10 could, which is the September 21st memo from you to Mike  
11 Lucas.

12 A. Okay.

13 Q. I'd like to refer you to Section 3 on page  
14 2, numbered paragraph 3 might be a better way to put it.  
15 Could you please read the first sentence of numbered  
16 paragraph 3?

17 A. Sure. It says, because of the large  
18 truck/semi trailer traffic that will be exiting onto 26th  
19 Street then to southwest Boulevard and the possibility  
20 that a new building may be located too close to the 12.47  
21 KV feeder, we have identified that a possible solution  
22 would be to relocate the feeder currently on the north  
23 side of 26th Street to the south side, with the exception  
24 of the span or two where the DST feeder emerges from  
25 underground to the pole, terminal pole.

1           Q.       That seems to say that the relocation on  
2 26th Street is necessary to accommodate Boulevard's  
3 trucks; is that correct?

4           A.       No, because it is my understanding Jianus'  
5 trucks come through as well, so just -- what was explained  
6 to me was just traffic in general.

7           Q.       You say large truck traffic, so Jianus and  
8 Boulevard?

9           A.       Could be Jianus, could be Boulevard, could  
10 be anybody else, I guess.

11          Q.       Now, you testified in your direct testimony  
12 that you're not an engineer; is that correct?

13          A.       That's correct.

14          Q.       And that you don't claim to be an engineer;  
15 is that correct?

16          A.       That's correct.

17          Q.       Okay. Thank you. What is the compensation  
18 mechanism under your contract with Boulevard? Is it a  
19 fixed fee, an hourly fee, do you get a percent of savings?

20          A.       I'm not sure that's relevant.

21          Q.       It's absolutely relevant. It goes to --  
22 well, I guess is there an objection from his counsel?

23          A.       I'm being paid hourly to be here.

24          Q.       Well, no. The general contract. I'm  
25 sorry. Not today, but for your recommendations to

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1 Boulevard concerning the relocation projects, how are you  
2 compensated?

3 A. I think it's -- I get paid -- I get paid an  
4 hourly fee, like the greater of an hourly fee maybe or a  
5 percent of what's saved, but it's a very low number.

6 Q. And what percent of what saved?

7 A. Any reductions in cost of Boulevard.

8 Q. And what percent of those savings?

9 A. I believe it's like a 20 percent number.

10 Q. Okay. So you get 20 percent of savings.

11 And what's the baseline?

12 A. But I said, I'm also paid an hourly fee.

13 Q. Sure.

14 A. So it's either/or.

15 Q. Okay. What's the baseline for determining  
16 what you save Boulevard on these relocation projects?

17 What's that percentage of savings? Where do you start  
18 from?

19 A. I believe it was from an estimate from  
20 KCP&L.

21 Q. Okay. I guess --

22 A. I don't have it in front of me. I couldn't  
23 tell you what the number is.

24 Q. Okay. So you're not sure what the baseline  
25 is for your compensation?



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1           A.       No. I mean, I know it was from a number  
2   from KCPL, but I couldn't tell you what the number is.

3           Q.       Does that number include the cost of  
4   Boulevard of undergrounding the Belleview facilities, for  
5   example?

6           A.       Actually, I don't think it does.

7           Q.       Does it include the cost of relocating the  
8   facilities --

9           A.       Actually, let me clarify. It doesn't state  
10 anything about the type of service or type of activity.

11          Q.       Does it just say based on the initial  
12 estimate of the --

13          A.       It was just a number, right.

14          Q.       But that number was based on an estimate  
15 provide by KCP&L?

16          A.       I believe that's true.

17          Q.       You've proposed changes to KCPL's design of  
18 its relocation projects, correct?

19          A.       I've actually worked with your engineers on  
20 a lot of things. As a matter of fact, I think if you  
21 question Russ Wiley, he'll say that my working with them  
22 on their feed to Jianus was in large part my suggestion.  
23 So I've done it in numerous cases with you guys.

24          Q.       That wasn't the question. The question  
25 was, did you propose changes with respect to these

0218

1 relocation projects?

2 A. Changes?

3 Q. Or specifically did you recommend that the  
4 Belleview facility isn't necessary?

5 A. Yes.

6 Q. If, for example, KCP&L adopted your  
7 recommendation and either removed facilities from its  
8 current system or design and as a result didn't charge  
9 Boulevard, you could potentially get a percent of those  
10 savings, correct?

11 A. Restate that again.

12 Q. Sure. If Boulevard -- or if KCP&L agreed  
13 to reconfigure its design of the proposed projects or  
14 agreed that the Belleview facility wasn't necessary based  
15 on your recommendation and we decided to implement that  
16 proposal, you would earn a percent of the money?

17 A. No, that's not necessarily true. I'm being  
18 paid on an hourly basis, so --

19 Q. Potentially?

20 A. Probably minor at this point, we've got so  
21 much time in it, if any.

22 Q. Do you have any obligation to ensure  
23 KCP&L's customers, including Boulevard, receive safe and  
24 adequate electric service?

25 A. No.

1           Q.       Are you or AES subject to the jurisdiction  
2 of this Commission or any other regulatory body concerning  
3 the provision of safe and adequate electric service?

4           A.       No.

5           Q.       If, contrary to the advice of its system  
6 planners and engineers, KCP&L adopted your  
7 recommendations, would KCP&L and its customers have any  
8 legal resource against you? Would you expect them to have  
9 any such legal recourse against you?

10          A.       No, but I think it's kind of a funny  
11 statement, but --

12          Q.       But no, KCP&L or its customers --

13          A.       That's with any case, anything you do. No.

14          Q.       Okay.

15          A.       We don't want you to do anything that's not  
16 right. So that's why we work with your people to try to  
17 make changes, so we're not trying to impose, what do you  
18 call it, a unilateral change.

19          Q.       You've reached an impasse with our  
20 engineers, right? They say the Belleview facilities are  
21 necessary, for example, and you say they're not?

22          A.       No, they haven't said they're necessary,  
23 not for reliability. They've never said that. They only  
24 said that they were needed to feed future customers. I  
25 think if you listen to Russ Wiley, that's exactly what he

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1     said.

2             Q.       We'll listen to Russ's testimony and he  
3     will testify that --

4             A.       Sure.

5             Q.       -- that's a liability.

6             A.       I hope it doesn't change.

7             Q.       Now, if contrary to the advice of its  
8     system planners or engineers, KCP&L adopted your  
9     recommendation, would you agree to indemnify KCP&L?

10            A.       Without sounding rude, I think that's a  
11   foolish statement, but really, it's not relevant. We  
12   wouldn't do that.

13                    JUDGE DALE:   Excuse me.   It's a yes or no  
14   question.

15                    THE WITNESS:   Okay.   No, we wouldn't.

16   BY MR. BLANC:

17             Q.       You're confident your designs are correct  
18   or you're not.   If you're confident you're correct, you  
19   should stand by them.

20             A.       No, I don't think that --

21                    JUDGE DALE:   Excuse me.   You're arguing  
22   with the witness.

23                    MR. BLANC:   It's a question --

24                    JUDGE DALE:   Ask him a question, he'll  
25   answer.

0221

1 MR. BLANC: Okay.

2 BY MR. BLANC:

3 Q. Why would you not be willing to stand  
4 behind the designs if you're confident they're correct?

5 A. I think I stated earlier, I'm not an  
6 engineer, don't claim to be, but we do evaluate engineer  
7 things with our clients, with other utilities, and so  
8 there's no reason for us to stand by it. The idea is to  
9 work with you to try to reach a solution. Unfortunately,  
10 we are at an impasse.

11 Q. Okay. We're at an impasse. They think it  
12 should be done one way, you think it should be done  
13 another?

14 A. Correct.

15 Q. But you're not --

16 A. Well, actually, I wouldn't say that's  
17 correct. Let me back up, because I think they've agreed  
18 with us in some parts, and then it seems like we get -- as  
19 I mentioned earlier, we get different answers. On one  
20 hand they will agree or they'll never tell us they don't  
21 agree, and then --

22 Q. I asked a simple question. Have you been  
23 able to reach an agreement with KCP&L about how these  
24 facilities should be designed?

25 A. I think I was trying answer it. You know,

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1 sometimes we think we've reached an agreement, and then we  
2 get a --

3 Q. As things stand today, have you been able  
4 to reach an agreement?

5 A. As it stands today, unfortunately not.

6 MR. BLANC: No further questions.

7 JUDGE DALE: Thank you. I have one  
8 follow-up question.

9 QUESTIONS BY JUDGE DALE:

10 Q. Do you know whether the contractor's  
11 estimate that you received was based specifically on  
12 KCP&L's construction standards?

13 A. I don't know. I don't know that for a  
14 fact. I think they may actually do work for KCP&L, but  
15 I'm not sure about that. They may or may not.

16 JUDGE DALE: Thank you.

17 MR. BLANC: Your Honor, that goes to my  
18 point. I would like to move to dismiss the Complaint.  
19 Count 1 of the Complaint is purely a legal issue. There  
20 are no fact -- there are no facts at issue. It's purely a  
21 legal issue whether Missouri law requires KCP&L's  
22 ratepayers to pay for this expansion project.

23 With respect to Count 2, they haven't met  
24 their burden by demonstrating by credible evidence that  
25 KCP&L's cost estimates are unjust, unreasonable, arbitrary

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1 or otherwise inconsistent with Missouri law. Their case  
2 boils down to the fact that their consultant, Greg Elam,  
3 doesn't agree with our costs.

4 The only arguably credible evidence is a  
5 bid he solicited that wasn't based on a specific design  
6 for the project, as you suggest may not have incorporated  
7 -- he doesn't know -- KCPL's project specifications. It's  
8 basically a very, very rough estimate at best. It can't  
9 be considered credible evidence, much less meet the  
10 standard of a preponderance of credible evidence.

11 JUDGE DALE: Okay. Hold on. Hold that  
12 thought. Before we go there, does anybody have any  
13 redirect, recross?

14 (No response.)

15 JUDGE DALE: Okay. I considered this,  
16 having reviewed this based on the documentary evidence  
17 that we had preceding this, and while you may want to make  
18 that motion, you may want to consider that if this matter  
19 is -- if we -- if the Commission rules for you and the  
20 Complainant appeals it, you will have less information in  
21 the record on appeal than they do.

22 Having given you that caution, do you want  
23 me to ask the Commission to essentially give you a  
24 directed verdict?

25 MR. BLANC: Yes, your Honor, we do.

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1 JUDGE DALE: Okay. I will do that before I  
2 return tomorrow morning.

3 MR. BLANC: Thank you, your Honor.

4 JUDGE DALE: And with that, we're adjourned  
5 for today.

6 WHEREUPON, the hearing of this case was  
7 recessed until March 7, 2006.

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