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1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 TRANSCRIPT OF PROCEEDINGS

5 Hearing
6 March 8, 2006
7 Jefferson City, Missouri
8 Volume 3

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 STEVE GAW,
20 ROBERT M. CLAYTON,
COMMISSIONERS.

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22 REPORTED BY:

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

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

2 JUDGE DALE: We are back on the record and
3 ready to begin the last KCP&L witness, I believe

4 (Witness sworn.)

5 JUDGE DALE: Thank you. Please be seated.

6 PHILIP BURRIGHT testified as follows:

7 DIRECT EXAMINATION BY MR. BLANC:

8 Q. Good morning.

9 A. Good morning.

10 Q. Would you please state and spell your name
11 for the record.

12 A. My name is Phillip Burright, P-h-i-l-i-p,
13 B-u-r-r-i-g-h-t.

14 Q. Thank you. What is your position at Kansas
15 City Power & Light?

16 A. My position is director of tax.

17 Q. And what are your duties in that position?

18 A. My duties that I'm responsible for income
19 tax, property, miscellaneous tax for the company.

20 Q. CIAC tax, would that fall within your
21 jurisdiction?

22 A. Yes, it does.

23 Q. What is the CIAC grossup tax, contribution
24 in aid of construction CIAC grossup?

25 A. There's two parts when we talk about the

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1 CIAC. The first part is the actual cost that we receive
2 from a customer that represents the cost of the project.
3 The second part that we refer to as the grossup, and that
4 part is the tax that we collect from a customer that
5 represents the company's tax cost of that initial CIAC.

6 Q. Okay. We'll start with the CIAC, the
7 contribution from the customer itself. I guess what
8 triggers tax implications?

9 A. There's several different factors that
10 trigger the implications for the CIAC, but primarily it
11 is --

12 MR. FINNEGAN: I object to this until his
13 qualifications are set forth.

14 MR. BLANC: He establishes KCPL's policy
15 for the CIAC, so he developed the policy, he applied it
16 here.

17 MR. FINNEGAN: Well --

18 MR. BLANC: You're challenging that KCP&L
19 inappropriately --

20 MR. FINNEGAN: Who he is, is he an
21 attorney, is he a CPA or what's his experience?

22 BY MR. BLANC:

23 Q. Okay. What's your educational background?

24 A. I have an accounting degree. I am a CPA,
25 and I have a master's in business administration.

1 Q. Thank you very much. Getting back on
2 track, does the Internal Revenue Service require KCP&L to
3 treat a contribution, a CIAC from a customer as taxable
4 income?

5 A. Yes, they do. Not in all cases, but in a
6 majority of cases they will.

7 Q. And in cases where it finds it's taxable
8 income, is it taxed for the current period, depreciated,
9 how is it handled?

10 A. If it is found that -- based on the facts
11 of the project that it is a CIAC, we would -- Kansas City
12 Power & Light would have to include that amount in income
13 currently. It also represents an asset, a tax asset that
14 we would recover the corresponding tax on that through
15 depreciation expense.

16 Q. So KCP&L has to pay taxes on the
17 contribution; is that what you're saying?

18 A. That's correct, on the up-front
19 contribution.

20 Q. Do you know approximately what that tax
21 rate is on every dollar of CIAC money that KCPL receives?

22 A. It's approximately 39 percent.

23 Q. And we pay all of that in year one, but
24 then have to depreciate it over 20 years; is that right?

25 A. That's correct.

1 Q. And so I think this takes us to the
2 grossup. What is the grossup mechanism intended to do?

3 A. The grossup mechanism is the ability for
4 Kansas City Power & Light to collect that tax that Kansas
5 City Power & Light is having to pay on that CIAC.

6 Q. And why does KCP&L require the customer in
7 this case to pay the grossup or the net present value of
8 that tax liability?

9 A. It is to make sure that the customer is
10 paying for that tax, that it doesn't get spread to the
11 other customers.

12 Q. Is the IRS providing much guidance on the
13 applicability of the CIAC?

14 A. There's a lot of guidance out there in
15 respect to private letter rulings and tech advice
16 memorandums. They also have some Congressional records
17 when the laws are passed.

18 Q. The letter rulings and memorandums you
19 mentioned, are they fact specific?

20 A. Yes.

21 Q. Are -- do they have any statements about
22 their applicability elsewhere?

23 A. With respect?

24 Q. Sorry. Their applicability to other
25 factual scenarios?

1 A. You can -- you can garner what the -- how
2 the IRS would rule based on that fact pattern, but you
3 cannot use a tech advice memorandum or a private letter
4 ruling as precedent, or you cannot cite that.

5 Q. They're decided on a case-by-case basis?

6 A. That's correct.

7 Q. How did KCP&L decide to treat the Boulevard
8 relocation projects for CIAC's purposes?

9 A. We broke it out into two different
10 categories of the same project. Based on the information
11 we had at the time when we made some preliminary
12 conclusions, we believe that the part that dealt with the
13 widening of the road was -- based on the information we
14 had at the time, was more directed toward benefiting the
15 community and that there was going to be increased traffic
16 in that area based on development in that area, and that
17 the City was requiring the widening of that road.

18 We at the same time realized that there was
19 expansion going on at the Boulevard Brewery, that they
20 needed that for egress and regress of the trucks coming in
21 and out of the warehouse, but we believed that that set of
22 fact patterns that the City was more or less mandating the
23 widening of that road because of increased traffic other
24 than Boulevard Brewery, that we believed that that met a
25 pattern that it would not be taxable.

1 Q. Did any of the testimony that you heard
2 earlier in this proceeding, does that affect your initial
3 decision?

4 A. I'm a little bit more concerned, a little
5 bit more troubled by the fact that testimony -- I did hear
6 that the production was going to be quadrupled, and that
7 leads me to believe that there's going to be additional
8 truck traffic. And also it was my understanding that in
9 order for the trucks to turn out of that warehouse, that
10 that was really a driving reason for a relocation of some
11 of our facilities. So it's a little bit different fact
12 pattern than what we initially made the conclusion that it
13 would not be taxable.

14 Q. If the Commission determined, for example,
15 that the widening of the road was really a Boulevard
16 project and not a City project, how would your CIAC
17 determination be affected, if at all?

18 A. It would be -- I would recommend that we
19 would consider that to be a taxable CIAC under that fact
20 pattern.

21 Q. Thank you. Is there any specific IRS
22 guidance you relied upon in making your decision?

23 A. With respect to the widening of the road?

24 Q. Yes.

25 A. There are several different rulings out

1 there that talk about the public benefit and especially
2 widening of the roads, in that if it's mandated by a
3 governmental entity and it's for the general public at
4 large, that would be the ruling we relied on. There was
5 not a specific one that we relied on for that part of the
6 project.

7 Q. Can I -- I'd like to show you an IRS
8 technical advice memorandum dated --

9 A. Yes.

10 Q. -- September 17th, 2004.

11 MR. BLANC: I'd like this marked as Hearing
12 Exhibit 44.

13 (EXHIBIT NO. 44 WAS MARKED FOR
14 IDENTIFICATION.)
15 BY MR. BLANC:

16 Q. Could you please just describe the facts
17 involved here, the type of project that was being
18 undertaken and the reasons stated for the project?

19 A. In this particular memorandum, it talked
20 about a -- a state-chartered public university that was
21 developing a campus in a certain location, and in the
22 middle of that particular project was a transmission
23 overhead line, and the -- that that transmission line
24 needed to be relocated. And throughout -- within this
25 particular fact pattern that the campus already had

1 services provided to it, so it was not directly related,
2 that they didn't have to actually provide or the
3 provisioning of services to this university, they didn't
4 have to change any of the services that were already
5 provided. It was simply a case where they needed to move
6 this overhead transmission line out of the development
7 area.

8 Q. So they didn't want the transmission line
9 running through the center of their campus, so they asked
10 the utility to build it around the campus?

11 A. That's correct.

12 Q. And how did the IRS, what was their
13 conclusion?

14 A. The IRS concluded that in this case that it
15 would be taxable, that it would be a taxable contribution
16 in aid of construction, and so the utility would have to
17 pick that up in taxable income. And they really made
18 reference to that it benefited the transfer or -- the
19 transfer or is considered to the customer, that it was a
20 benefit to them.

21 Q. Is there a mechanism for Boulevard to get a
22 definitive answer from the IRS on this issue, on the
23 relocation projects we're talking about in this
24 proceeding?

25 A. Yes, there would be. It would be that we

1 Kansas City Power & Light as the taxpayer would have to
2 file for a similar private letter ruling that would be
3 fact specific to get their ruling.

4 Q. Okay. And if the Commission determined
5 that IRS -- the guidance provided by the IRS was too
6 unclear to make a determination here, would KCPL, upon the
7 Commission's direction, be willing to seek a letter
8 ruling?

9 A. Yes, we would.

10 Q. And does KCP&L have a policy about who
11 should bear the cost of such a letter ruling?

12 A. Yes, we do.

13 Q. What's that policy?

14 A. That policy would be that ultimately it
15 would be the customer's cost and responsibility to draft
16 up the private letter ruling, and that cost again goes to
17 who should bear the cost of this project, not the
18 ratepayers, but rather the specific customer.

19 Q. Does the IRS regularly audit KCP&L?

20 A. Yes, they do.

21 Q. Have they ever alleged or concluded that
22 KCP&L's treatment of CIAC or CIAC taxes are inappropriate?

23 A. No, they have not. And that's -- since
24 I've been there six years, we've been audited for nine
25 years. There's been no assertion.

1 MR. BLANC: Thank you very much. No
2 further questions.

3 JUDGE DALE: Mr. Finnegan will cross, and
4 then we'll have questions from the Bench.

5 CROSS-EXAMINATION BY MR. FINNEGAN:

6 Q. Mr. Burright, you indicated or you --

7 MR. FINNEGAN: I'm not sure. Was this
8 introduced as an exhibit?

9 MR. BLANC: I would like to move for the
10 admission of that exhibit.

11 MR. FINNEGAN: What is it, what number?

12 JUDGE DALE: Exhibit No. 44.

13 MR. FINNEGAN: No objection.

14 JUDGE DALE: Then Exhibit No. 44 is
15 admitted into evidence.

16 MR. BLANC: Thank you, your Honor.

17 (EXHIBIT NO. 44 WAS RECEIVED INTO
18 EVIDENCE.)

19 BY MR. FINNEGAN:

20 Q. What was the purpose of introducing
21 Exhibit 44?

22 A. For me, it led to the complexity of the
23 issue, specific really to Boulevard this relocation
24 project would be a taxable CIAC or not.

25 Q. Is Boulevard Brewery a university?

1 A. No, it's not.

2 Q. Is it asking to develop a new campus?

3 A. It speaks to Boulevard Brewery is
4 expanding, just like this campus was expanding, but the
5 issue that really came out was -- in the testimony that I
6 heard on Monday from Greg Elam was that when you look to
7 the benefit of the contributor, that it has to be related
8 to the provisioning of services, and that is not always
9 the case, as this tech advice memorandum indicates, that
10 it really looks like if the contributor benefits in any
11 way, that CIAC would be taxable.

12 Q. Isn't the requirement that the customer
13 benefits as a customer of the utility?

14 A. Not necessarily. Benefits in any way. And
15 if you look through this, that they were not benefiting
16 from any increased services or increased reliability, but
17 rather it was simply that it brought cohesiveness to the
18 campus, it improved the aesthetics, and that is very
19 similar to the Boulevard Brewery situation.

20 Q. You were not here yesterday, were you?

21 A. Not yesterday.

22 Q. Did you hear -- so you didn't hear the
23 testimony that Boulevard receives no direct service from
24 the 26th Street line?

25 A. That is my understanding.

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1 Q. They are not connected to that line?

2 A. True.

3 Q. So as a customer of Kansas City Power &
4 Light, they do not receive a benefit from that line, do
5 they?

6 A. That is correct, from the provisioning of
7 that service.

8 Q. And under the Internal Revenue Code,
9 Section 118A, that's a non-CIAC situation, is it not?

10 A. I can't conclude to that. There's other
11 fact patterns you have to look at besides just the
12 provisioning of services, based on this tech advice and
13 other references.

14 Q. But you rely on tech advisory opinions; is
15 that correct?

16 A. And private letter rulings.

17 Q. Private letter. You kind of keep track of
18 these?

19 A. Uh-huh.

20 Q. But you're talking about if -- in this case
21 it's okay for Boulevard to seek a private letter ruling if
22 they pay for it, that you will -- Kansas City Power &
23 Light will seek that if Boulevard pays?

24 A. That is our policy, correct.

25 Q. How much is that?

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1 A. \$10,000.

2 Q. \$10,000. To write a letter to the Internal
3 Revenue Service?

4 A. That would be the cost just to apply for
5 the private letter ruling.

6 Q. And who do you pay that \$10,000 to?

7 A. Internal Revenue Service.

8 Q. You pay them \$10,000 to get a private
9 letter ruling?

10 A. That's correct.

11 Q. So you don't do that very often, do you?

12 A. That is correct.

13 Q. You'd rather rely on what other precedent
14 has been?

15 A. To the extent that we can find a fact
16 pattern that is very closely aligned to our fact pattern,
17 yes, we rely on that.

18 Q. Now, if you recall, I'm sure you're
19 familiar with the Nall Valley complaint in the Kansas --
20 before the Kansas Corporation Commission?

21 A. I am aware of it. I have not been directly
22 involved with that particular project.

23 Q. Do you know in that case that KCP&L in its
24 answer admitted that this was not a CIAC-taxable event?

25 A. I'm aware that that was our initial

1 response.

2 MR. FINNEGAN: Can I have this exhibit
3 marked, please?

4 (EXHIBIT NO. 45 WAS MARKED FOR
5 IDENTIFICATION.)

6 BY MR. FINNEGAN:

7 Q. You have before you Exhibit 45.

8 A. Okay. Yes.

9 Q. And is that a two-page document, the first
10 of which has a synopsis of what was said in paragraph 19
11 of KCPL's answer and that answer -- part of the answer is
12 attached?

13 A. Let me take a look at it. Okay. Repeat
14 your question.

15 Q. Okay. This two-sheet exhibit, the first
16 sheet is a -- says paragraph C, then some paragraph 19,
17 and on the second page there's the actual sheet from the
18 actual brief itself?

19 A. Okay.

20 Q. Now, could you read this into the record,
21 please, or just the first page?

22 A. Starting with C?

23 Q. Yeah.

24 A. The CIAC issue is moot because KCP&L agrees
25 that it should not collect CIAC tax from Nall Valley for

1 the projects. Nall Valley and AES argue that KCPL should
2 not collect CIAC tax for this relocation. KCPL initially
3 treated Nall Valley's request to relocate facilities
4 underground simply as a developer-initiated request to
5 relocate facilities. Under those circumstances, it would
6 not have been entirely appropriate for KCPL to collect a
7 CIAC tax from Nall Valley.

8 Q. I'm sorry. I think you put a not in there.

9 A. Has been entirely appropriate for KCPL to
10 collect a CIAC tax from Nall Valley. However, through
11 subsequent conversations with AES and Nall Valley, KCPL
12 concluded that City of Leewood was ultimately responsible
13 for requesting the relocation. This is no -- this being
14 no longer the case, it is no longer appropriate for KCPL
15 to collect a CIAC tax from Nall Valley. Consequently,
16 KCPL agreed to refund \$34,136.189 to Nall Valley, the full
17 amount of the CIAC taxes collected from Nall Valley.

18 Q. And that particular case, it was the
19 developer had -- you had charged the developer for
20 undergrounding and you charged the CIAC tax to the
21 developer for undergrounding for the aesthetic purposes of
22 the City?

23 A. Again, I'm not overly familiar with the
24 exact specifics of this particular project.

25 Q. But in that case, you recognized that CIAC

1 did not apply?

2 A. Based on that statement, yes.

3 Q. You -- in the answer to this Complaint,
4 there was a reference to TMSA Bulletin 87-82?

5 A. That's correct.

6 Q. Do you have that before you?

7 A. I do.

8 Q. Does notice 87-82 provide guidance for
9 utility companies?

10 A. Yes, it does.

11 MR. FINNEGAN: Just a moment. I'm looking
12 for an additional copy of Exhibit 30.

13 JUDGE DALE: What was it?

14 MR. FINNEGAN: Exhibit 30 was a private
15 revenue ruling.

16 JUDGE DALE: The one you handed out
17 yesterday?

18 BY MR. FINNEGAN:

19 Q. I'd like to hand you what's been marked
20 Exhibit 30 in this case and accepted in evidence. Would
21 you take a look at that, please?

22 A. Okay.

23 Q. And is this a private letter ruling?

24 A. Yes, it is.

25 Q. Have you ever seen this before?

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1 A. Not before -- my recollection, not before
2 Monday.

3 Q. Okay. But you have seen this?

4 A. Yes, I have.

5 Q. Okay. On page 2, at the bottom of the
6 page, you see where it starts with, Notice 87-82 provides
7 additional guidance?

8 A. Yes, I do.

9 Q. Okay. Could you read that, please?

10 A. Just that sentence or --

11 Q. No, beyond that. The Notice 87-82 follows
12 the language from the House report?

13 A. And you'll tell me when to stop?

14 Q. Yes. Well, I want you to read the whole
15 paragraph.

16 A. Oh, okay. Thank you. Notice 87-82 1987-2
17 CB 389 provides additional guidance. Notice 87-82 follows
18 the language from the House report and states that a
19 payment received by a utility is not a CIAC if it does not
20 reasonably relate to the provision of services by the
21 utility or for the benefit of --

22 Q. I'm sorry. You missed a "to."

23 A. Relate to the provision of services by the
24 utility to or for the benefit of the person making the
25 payment, but rather relates to the benefit of the public

1 at large. Notice 87-28 provides as an example of a
2 payment benefiting the public at large a relocation
3 payment received by a utility under a government program
4 to replace utility lines underground. In that situation,
5 the relocation payment is not considered a CIAC, where the
6 relocation is undertaken for purposes of community
7 aesthetics and public safety and does not directly benefit
8 particular customers of the utility in their capacity as
9 customers. Notice 87-82 provides as additional example
10 reimbursements received by a utility for costs of
11 relocating utility lines to accommodate the construction
12 or expansion of a highway and not for the provision of
13 utilities.

14 Q. Do not those guidelines apply in this case?

15 A. Again, it goes to the complexity of the
16 fact patterns involved. When you look at this particular
17 private letter ruling, it talks about an emphasis on the
18 provisioning of services, and in this case there was
19 not -- the provisioning of services, so the conclusion was
20 is it was for aesthetics and a CIAC was not applicable.

21 Q. The guidelines are in 87-82, the one that
22 was cited in the brief, right, have you seen -- basically
23 these are what the guidelines are, you have no question of
24 that?

25 A. There's other references within 87-82 that

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1 goes beyond just the provisioning of services. They talk
2 about they make references to Brown Shoe versus
3 Commissioners, which they talk about if a utility would
4 receive a gift, for instance, that would benefit the
5 contributor, that that would be a taxable event. So it is
6 not just limited solely to benefits related to the
7 provisioning of services.

8 Q. Well, in this particular example, about the
9 relocation to put lines underground, which we're talking
10 about on Belleview in this case --

11 A. Correct.

12 Q. -- that is for the purpose of clearing up
13 blight that was declared, that overhead lines were
14 declared blights in the general development plan?

15 A. By PIEA.

16 Q. By PIEA.

17 A. Yes, that's my understanding.

18 Q. And approved by the City of Kansas City --

19 A. Uh-huh.

20 Q. -- which PIE is an agency of, do you
21 understand that?

22 A. Yeah, I understand that, the relationship.

23 Q. And you understand that PIEA owns the
24 building that the -- that Boulevard is expanding into?

25 A. Yes, I do. I understand that that was due

1 to the Chapter 100 financing, and really, that fact
2 pattern adds to the complexity of this issue in that, you
3 know, when you start looking at who is the contributor,
4 who is benefiting, if in fact PIEA owns the building and
5 the land and they're receiving lease payments from
6 Boulevard, I get to be a little bit troubled because I do
7 not know of any private letter rulings or tech advice
8 memorandums that talk to who is really benefiting when you
9 start talking about PIEA has the ability to declare a
10 blighted area so specific to this particular project.

11 And I just -- I'm a little bit concerned
12 about when you look at the benefit and why this is being
13 relocated or put underground or cleaned up, that how this
14 could not benefit either PIEA or that it does benefit PIEA
15 and Boulevard, based on this other tech advice memorandum
16 that I think fits a fact pattern more closely in line with
17 the Boulevard expansion.

18 Q. A college campus is more -- fits the
19 situation where utility lines are being set underground
20 for the purpose of aesthetics and public safety and does
21 not directly benefit particular customers of the utility
22 in their capacity as customers?

23 A. Exactly. I mean, I am saying that this
24 is -- I recognize that Boulevard Brewery is not a campus,
25 but I think the reason why this other private letter

1 ruling was submitted is because the reference was made
2 that it was only if it related to the provisioning of
3 services. That is what a benefit was related to. But if
4 you look at this tech advice memorandum and some of the
5 other notations that are within 87-82, that it doesn't
6 necessarily have to be solely for the provisioning of
7 services as a customer.

8 Q. Well, this particular guideline is, isn't
9 it?

10 A. This particular --

11 Q. The one that says that if you put them
12 underground as a result of a requirement from the City,
13 that --

14 A. In this fact pattern.

15 Q. Right. And it makes no -- it's been
16 testified that KCP-- or that Boulevard does not receive
17 service from the lines on Belleview?

18 A. Neither did the campus in this tech advice
19 memorandum. And then in that case it was considered to be
20 taxable.

21 Q. But in this case, they're saying it was
22 not, this advisory opinion?

23 A. That's correct, sir.

24 Q. And if you agreed with that, or if you --
25 you could follow that without having run afoul of the IRS

1 code?

2 A. Again, I think there's -- private letter
3 rulings are fact sensitive, and I see within this private
4 letter ruling not a complete parallel to the fact pattern
5 that's involved with Boulevard Brewery.

6 Q. Well, neither was the other one. I mean,
7 private letter rulings, like you say, are private letter
8 rulings, they're applicable to a particular case?

9 A. Uh-huh.

10 Q. The advisory, the guidance that is provided
11 here is for you to look at it and come up with a decision,
12 some kind of a standard setup there.

13 A. Right. And my responsibility is that I
14 need to look at fact patterns as most clearly in line with
15 the issue -- with the issue, and it wasn't the issue of
16 provisioning of the services, but rather the definition of
17 what benefit means. And when I look throughout the
18 cumulative bulletin that there's instances where it talks
19 about the benefit, and based on that, I could not rely
20 solely on this. There's other private letter rulings that
21 come to these same conclusions where it's not taxable
22 because of undergrounding. But the fact pattern does not
23 fit.

24 So when I look for rulings and advice, I
25 look for a fact pattern that is most in line with what

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1 we're dealing with, and then I make the conclusion as to
2 whether it's a taxable CIAC or not.

3 Q. So with respect to the utility lines that
4 were requested to be put underground because they're
5 blighted, that they cause blight, this is a requirement of
6 the City, is not a benefit to Boulevard as a customer of
7 Kansas City Power & Light to have these underground, is
8 it?

9 A. Not as a customer for services, correct.

10 Q. And with respect to the relocation of the
11 lines on 26th Street, this was required pursuant to a
12 traffic study by the City of Kansas City; is that correct?

13 A. That's correct.

14 Q. And the traffic study -- and who's in
15 control of the streets of Kansas City?

16 A. Kansas City.

17 Q. The City looks at the development in this
18 area and decides that there's certain lines need to be
19 relocated, it is for the City's benefit for traffic
20 purposes; is that not true?

21 A. That would be true.

22 Q. Once again, moving these lines across the
23 street has no benefit to Boulevard as a customer of KCP&L?

24 A. But it does provide a benefit to Boulevard
25 in order for them to have access for their trucks to make

1 the turn of the corner. My point is, is that there's
2 other things that need to be considered other than just
3 the provisioning of services when you're looking at
4 whether a contribution in aid of construction or any sort
5 of contribution to a company that is a non-shareholder
6 contribution is taxable.

7 Q. And we're talking about a substantial sum
8 here, aren't we, a substantial percentage of the cost?

9 A. Yes, it's approximately 26 percent.

10 Q. With respect to the -- the line, relocation
11 of the line, you initially indicated a portion of this was
12 not CIAC and now you changed your mind?

13 A. Well, I'm not saying I'm changing my mind,
14 but I think that based on what I'm hearing through the
15 course of this hearing, that there is more evidence of
16 benefit to Boulevard Brewery than just the fact of a
17 simple traffic pattern study. You know, I would need to
18 look at that study to say what was the driving purpose of
19 expanding that street? Was it really because the
20 expansion of the IRS and the other traffic or was it
21 predicated on Boulevard Brewery expanding?

22 Q. Is it -- is that your requirement to make
23 that decision when the City has already said so, that this
24 is to be relocated for traffic?

25 A. When Kansas City Power & Light is making

1 determinations of who is responsible for incurring these
2 costs, I think I have a diligence to the ratepayers, as
3 well as Kansas City Power & Light, to investigate the
4 facts to make sure that I understand what's the driving
5 reason for this. And like I said, -- well, that's not
6 relating to the street.

7 Q. But the 26th Street is not just there to
8 serve Boulevard, is it?

9 A. That's correct.

10 Q. It serves other customers, and it runs all
11 the way up -- you mentioned the IRS. They are going to
12 have, what, 8,000 employees?

13 A. That's correct.

14 Q. And they have to get to and from the IRS
15 building some way, do they not?

16 A. Yes, they do.

17 Q. And one of the ways there is on
18 26th Street?

19 A. Uh-huh.

20 Q. Ingress and egress, they can get on
21 26th Street to leave and get off on Southwest Boulevard?

22 A. That's correct.

23 Q. And Boulevard has some trucks. Presently
24 they use 26th Street. There's no problem now. So we get
25 down to this second guideline, additional example -- is

1 this applicable to 26th Street, provides as additional
2 example reimbursements received by a utility for the cost
3 of relocating utility lines to accommodate the
4 construction or expansion of a highway and not for the
5 provision of utility services. The 26th Street line is
6 not being relocated to provide utility services to
7 Boulevard, is it?

8 A. That's my understanding, it is not.

9 MR. FINNEGAN: I believe that's all the
10 questions, your Honor. I'd like to offer Exhibit 45 into
11 evidence.

12 JUDGE DALE: Any objection?

13 MR. BLANC: No objections, your Honor.

14 JUDGE DALE: Then Exhibit 45 will be
15 accepted.

16 (EXHIBIT NO. 45 WAS RECEIVED INTO
17 EVIDENCE.)

18 JUDGE DALE: Any questions from the Bench?

19 (Witness sworn.)

20 JUDGE DALE: No questions, and I have none.
21 You may step down.

22 MR. BLANC: Your Honor?

23 JUDGE DALE: Oh, wait. I'm sorry.

24 MR. BLANC: Just to clarify one point on
25 redirect.

1 REDIRECT EXAMINATION BY MR. BLANC:

2 Q. Do you have specific knowledge of the facts
3 involving the Nall Valley complaint?

4 A. I do not.

5 Q. And CIAC determinations are very
6 fact-specific determinations, correct?

7 A. That is correct.

8 Q. Does anything that you read in paragraph 19
9 or rather that Mr. Finnegan had you read in paragraph 19,
10 does it change your opinion of KCP&L's CIAC treatment of
11 the Boulevard relocation projects?

12 A. No, it does not.

13 MR. BLANC: Thank you.

14 JUDGE DALE: Did you have any recross based
15 on that redirect?

16 MR. FINNEGAN: I have no recross.

17 JUDGE DALE: Now you may really step down.

18 (Witness excused.)

19 JUDGE DALE: At this time we would like to
20 recall some cost witnesses who have already -- you have no
21 more witnesses; is that correct?

22 MR. BLANC: That's correct, your Honor.

23 JUDGE DALE: We would like to recall some
24 witnesses pertaining to cost. The two witnesses who are
25 here presently pertaining to those are Mr. Wiley and

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1 Mr. Elam, and I will allow Commissioner Gaw to tell me who
2 he wants to talk to first.

3 COMMISSIONER GAW: I don't care. Just
4 whoever wants to go first is fine.

5 JUDGE DALE: Mr. Elam, if you will come up.
6 Commissioner Gaw has a copy of the chart that you drew up
7 comparing the costs, your cost estimates. You may want to
8 have that. It's Exhibit 29. I'll remind you that you're
9 under oath.

10 THE WITNESS: Yes, ma'am.

11 GREG ELAM testified as follows:

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. You may have been over some of this before.
16 I apologize if that's the case.

17 A. That's okay.

18 Q. Let me -- I need some very, very basic
19 information, first of all. As far as the -- I need to
20 have broken down the costs in regard to the -- to the --
21 all the lines are involved here, according to where they
22 exist. And I need first of all an overview of what lines
23 are where --

24 A. Okay.

25 Q. -- in regard to the streets that are around

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1 the location that we're discussing.

2 A. Can I use the map?

3 Q. That would be fine.

4 A. That may be helpful to you.

5 Q. Sure.

6 A. The line when we talk about Belleview is
7 this line right here (indicating).

8 Q. Okay.

9 A. This spur off of Belleview is gone or soon
10 to be gone, if it's not already. Russ can probably speak
11 to that. One served some buildings back here and some
12 houses. The only thing we're really focusing on is this
13 section here (indicating), on Belleview.

14 Q. All right.

15 A. The 26th Street location is -- there's an
16 existing line that comes -- this is the existing line
17 (indicating). It's just not shown because it's a
18 different circuit number.

19 Q. All right.

20 A. So you can imagine it shows part of it but
21 not all of it, and it's on -- I get my directions -- it's
22 on this side of the street right now (indicating).

23 Q. You when say this side, it looks like
24 you're saying --

25 A. North.

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1 Q. -- north.

2 A. Is it north? It's on the north side of the
3 street.

4 Q. Yes. The arrow is showing that that would
5 be north.

6 A. Okay. And the idea would be to move it to
7 the south, because I believe there's an existing Janus
8 building here (indicating) and a small sidewalk that
9 doesn't allow it to be moved the other way.

10 Q. Okay. Are those the two main locations
11 that we're discussing?

12 A. Yes, sir.

13 Q. All right. Now let's start with Belleview
14 first. Tell me specifically what is proposed by your
15 company to do with the lines along Belleview.

16 A. Okay. First of all, we're just an advisor
17 of Boulevard, so we would not --

18 Q. I apologize.

19 A. That's all right. I just wanted to
20 clarify. If you don't mind, I think it would probably be
21 state the objective of actually doing this and some of the
22 discussions we've had. It's not -- while the intent is
23 certainly to do it at a lower cost, in my opinion, and I
24 work in several states around the country, we see that
25 it's applicable in many states that customers can do their

1 own work. Now, they also kind of live and die by that.
2 If they do it cheaper, that's fine; if they don't, that's
3 fine, too. But they have that liberty to do that, and I
4 think that's what we're seeking here.

5 The intent is obviously to do it lower
6 than, and the numbers that we have here, high level where
7 we discussed with a local contractor that does work for
8 another utility, a neighboring utility, and we sent them
9 the drawing from KCP&L, specifically in this case only as
10 an example. We used the Belleview. We sent them a
11 drawing and said, here's what we're looking to do, give us
12 a high-level number.

13 Q. Okay.

14 A. And from that is where the two numbers at
15 the top came -- if you add those up, it should equal or
16 come real close to his quote.

17 Q. Okay. Now I want to stop you because I'm
18 not to the -- I don't want to get to these numbers quite
19 yet.

20 A. Okay.

21 Q. And because -- because of the scheduling
22 yesterday, I'm going to have to review some of the
23 transcript, because I wasn't here, so again, some of this
24 is probably repetitive. You need to tell me what it is
25 that's proposed on Belleview.

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1 A. Okay. The -- and it may be helpful, the
2 discussion with this contractor was trying to make an
3 apples-to-apples comparison. And the reason I say that, I
4 think the question was asked yesterday or the day before
5 when I was here, is this done to KCPL specs? The answer,
6 I said I didn't know --

7 Q. I want to stop you again. I need a much,
8 much-higher level --

9 A. Okay.

10 Q. -- picture first.

11 A. The --

12 Q. What is supposed to occur on Belleview
13 regarding the lines that are there?

14 A. Okay. There's from -- if you don't mind me
15 standing --

16 Q. Not from a financial standpoint at this
17 point, just from a visual standpoint.

18 A. Visual standpoint, Clarkson, which is being
19 served right now from Belleview.

20 Q. Okay.

21 A. The discussion we had had was to serve them
22 either from another underground location, like I believe
23 it was from Boulevard's existing, the new service it has
24 now.

25 Q. All right.

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1 A. Which would be like running from here over
2 to Clarkson.

3 Q. All right.

4 A. Or we discussed having some feed from
5 25th Street over to Clarkson.

6 Q. Okay.

7 A. That would take care of the only customer
8 that's fed on Belleview right now.

9 Q. All right. And the only customer on
10 Belleview is who?

11 A. Clarkson.

12 Q. And what is Clarkson, if you know.

13 MR. UTZ: It's a power --

14 COMMISSIONER GAW: Hold on. Time out.

15 Judge, I don't mind, but you need to direct traffic so
16 I'll defer to you on how to handle that.

17 THE WITNESS: A manufacturer of some sort.

18 JUDGE DALE: Actually, what I would like to
19 have is for Mr. Wiley and Mr. Utz to come sit up here at
20 the front table where there is a microphone. You are all
21 still under oath, and that way, if there are any questions
22 that can be fielded by anybody who's here, if Mr. Elam
23 defers to one of those, we'll go with that.

24 COMMISSIONER GAW: That will be fine.

25 Thank you.

1 BY COMMISSIONER GAW:

2 Q. Now, you were referring to someone, who
3 were you deferring to?

4 A. Mr. Utz.

5 MR. UTZ: Clarkson Power Flow is a
6 pneumatic equipment sales -- or hydraulic equipment sales
7 company. They have some warehousing operations and some
8 repair operations.

9 COMMISSIONER GAW: Okay.

10 JUDGE DALE: And if you'll let me interrupt
11 just a second. Let me explain that Mr. Utz is internal
12 with Boulevard Brewing, one of their officers --
13 operations?

14 MR. UTZ: Engineering.

15 JUDGE DALE: -- engineering, and Mr. Wiley
16 is with KCP&L for costing.

17 COMMISSIONER GAW: Thank you for that.
18 It's Mr. Utz. I pronounce that differently from my
19 knowledge.

20 MR. UTZ: Some way Utz, but I say Utz.

21 COMMISSIONER GAW: That phonetically looks
22 correct, but from those who I know with that last name, it
23 would not be.

24 MR. UTZ: Understood.

25 COMMISSIONER GAW: And my good friend, Sug

1 Utz would probably not appreciate the fact that I didn't
2 at least ask.

3 BY COMMISSIONER GAW:

4 Q. So back to this -- back to this question,
5 then, what currently exists on Belleview? What will I see
6 if I go look there in regard to electric lines?

7 A. Currently you'll see what we call overhead
8 poles from here all the way down Belleview from their
9 transformers feeding Clarkson.

10 Q. All right. And the desire is for those
11 overhead lines to disappear and go away, correct?

12 A. Yes, sir.

13 Q. Okay. And then -- and is it true that the
14 only thing on those lines as far as Boulevard Brewery is
15 concerned is this Clarkson company?

16 A. That's true.

17 Q. Is there anything being done to the street
18 on Belleview?

19 A. I would defer to Mike.

20 MR. UTZ: Yes, there is. We will repave,
21 put in sidewalks and some parking, on-street parking.

22 COMMISSIONER GAW: All right. Would any of
23 that result in having to move the lines, if we're talking
24 about just the street changes, and/or the sidewalk
25 changes?

1 MR. UTZ: Currently, we have seven poles on
2 that street. Our parking study for the development
3 project has stated that we need the additional parking
4 spaces required from the City, and we used every space to
5 satisfy that requirement. That necessitated originally
6 that the poles be moved, relocated, eliminated. Optimally
7 they're eliminated so you don't have to deal with them.

8 COMMISSIONER GAW: I understand. So you're
9 telling me that this is as a result of changes in the
10 street itself when you're talking about the parking issue?

11 MR. UTZ: As part of the development, that
12 required us to put in parking to satisfy our facility
13 requirements.

14 COMMISSIONER GAW: Okay. What I'm not
15 clear about is what you're talking about when you say
16 parking. Are you talking about a lot, are you talking
17 about parking on the street?

18 MR. UTZ: It's on-street parking.

19 COMMISSIONER GAW: Okay. And this
20 on-street parking, then, is a part of the street itself;
21 is that true?

22 MR. UTZ: That's correct.

23 COMMISSIONER GAW: All right. And that
24 street is a street that is maintained by Kansas City
25 itself?

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1 MR. UTZ: It was formerly, but now it's
2 been privatized. We've essentially made that a one-way
3 street.

4 COMMISSIONER GAW: So who maintains it
5 afterwards, after this construction is completed?

6 MR. UTZ: I would assume that it's
7 Boulevard, and the utilities have easements for their
8 facilities.

9 COMMISSIONER GAW: Okay. And was that
10 privatization done by some action of the City of Kansas
11 City, if you know?

12 MR. UTZ: I do not know.

13 COMMISSIONER GAW: And is there someone who
14 can tell me the answer to that question?

15 MS. BROWN: Yes. One of the City
16 ordinances involved with this project involved the
17 vacation or required the vacation of that street.

18 COMMISSIONER GAW: And has that been done?

19 MS. BROWN: Yes, it has.

20 COMMISSIONER GAW: So currently this is no
21 longer a street maintained by the City of Kansas City when
22 we're talking about Belleview?

23 MS. BROWN: Yes. I believe that the
24 vacation ordinance required that it not be gated, but it's
25 open. But it is not a public street.

1 COMMISSIONER GAW: Okay. Does it have a
2 new name, by the way, or is it still called Belleview?

3 MR. UTZ: It's currently called Belleview.

4 COMMISSIONER GAW: Okay. Does the brewery
5 contend on Belleview that the costs should be borne by
6 Kansas City Power & Light or that any portion of the costs
7 should be borne by Kansas City Power & Light? Who can
8 answer that question?

9 MR. UTZ: Mr. Finnegan should, I believe.
10 That's part of the Complaint, I believe.

11 JUDGE DALE: Ms. --

12 MR. FINNEGAN: That is correct. It is part
13 of the Complaint that the undergrounding was required by
14 the development plan because, to clear the blight and part
15 of the blighted area which was determined, overhead lights
16 lines were considered part of the blighting.

17 COMMISSIONER GAW: Okay. All right. So is
18 it the Brewery's position that all of the costs of
19 relocating these lines should be borne by KCP&L in its
20 position in this case on Belleview?

21 MR. FINNEGAN: On Belleview, yes, it is.

22 COMMISSIONER GAW: Now --

23 MR. FINNEGAN: May I just clarify,
24 relocating or doing away with the line altogether. It's
25 not -- Boulevard doesn't care what happens, just so the

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1 overhead lines are removed. If they want to put them
2 underground, if they want to go on another street, that's
3 okay, too.

4 COMMISSIONER GAW: I understand.

5 BY COMMISSIONER GAW:

6 Q. Now, back to you, sir. If you could tell
7 me, now, on your -- on I think it's Exhibit 29. Is that
8 what you have in front of you?

9 A. It was my Exhibit No. 14, I believe, so is
10 it the chart like this (indicating)?

11 Q. Yes. And what I have here is something
12 that says supplement to Exhibit 14.

13 A. It is a supplement. They went together.

14 Q. Okay. And then it says No. 29 in the
15 corner.

16 JUDGE DALE: It's officially No. 29.

17 BY COMMISSIONER GAW:

18 Q. It's officially No. 29. We have the same
19 thing in front of us, though, I think?

20 A. Yes, sir.

21 Q. Explain this to me if you would. What does
22 it represent as we work down the exhibit?

23 A. What it represents is on Exhibit -- the
24 exhibit that was attached with this was a high-level
25 number I'd gotten from a contractor to look at performing

1 work on Belleview, and it was trying to make at least at a
2 high level apples-to-apples comparison, and what I mean by
3 that is KCP&L in their estimate said, if we bury the line,
4 Boulevard, you will still be required to put in the
5 conduits and everything per our specs, and you'll pay the
6 cost for that.

7 So when I sent this to Mark One, I said we
8 would be responsible in this case. We only want you to
9 price the wire and terminations and other such work. What
10 I got back be from him -- and Carl's very open, here's how
11 much the wire is today and so forth. So he gave me a call
12 me back after he looked at the drawings and so forth -- or
13 actually sent me an e-mail, said here's the number if we
14 bury it on Belleview, just do the labor, terminations.
15 You'll have to add engineering and some other, so when you
16 look at this, you'll see I broke out the wire cost by
17 itself.

18 The rest of it I just did simple math from
19 his number and said the rest of it has to be labor and
20 terminations. He said his number did not include
21 engineering. Typically on jobs we see engineering's about
22 a 10 percent cost, so I added that number and then put a
23 \$5,000 miscellaneous number. To get there, it basically
24 gave us almost \$55,000. Is it dead on? No. Could be. I
25 don't know how high he priced or how low he priced, so

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1 that was?

2 MR. BLANC: Basically premised on the fact
3 that we're ultimately responsible for the safe and
4 reliable operation of our system, and so we're willing to
5 delegate that on some level under some circumstances, if
6 there are indemnifications in place and if they're subject
7 to our supervision, but we're not willing to trust someone
8 with our potential liability under all circumstances.

9 COMMISSIONER GAW: Okay. And --

10 MR. FINNEGAN: May I clarify something on
11 that?

12 COMMISSIONER GAW: Sure.

13 MR. FINNEGAN: The witness yesterday,
14 Mr. Roth, indicated that under some circumstances they
15 would be willing to work with Boulevard to let Boulevard
16 do the work, which was kind of a surprise to me. And I
17 couldn't quite understand all the conditions.

18 MR. BLANC: Mr. Rush, our tariff witness
19 yesterday, I believe just testified to the fact that under
20 some conceivable notion it would potentially be possible
21 that KCP&L would agree to have a contractor do this work,
22 but the engineer's who actually in charge of making that
23 decision said no.

24 COMMISSIONER GAW: Was this overnight?

25 MR. BLANC: No. Their testimony and

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1 consistently what they told Boulevard throughout this
2 proceeding.

3 COMMISSIONER GAW: Okay. I'm following
4 you. Now, in regard to the pricing that KCP&L gave, what
5 is the price on the Belleview project?

6 MR. BLANC: Mr. Wiley can speak to that.
7 He designed and prepared the cost estimates for the
8 relocation projects.

9 MR. WILEY: The high-level estimate -- it
10 was just a ballpark figure -- was 134,315.

11 COMMISSIONER GAW: 134,315?

12 MR. WILEY: That did include CIAC.

13 COMMISSIONER GAW: Okay. Do you have a
14 chart that's been put in evidence that breaks that down?

15 MR. BLANC: No.

16 COMMISSIONER GAW. There is --

17 MR. BLANC: I take that back. There is an
18 exhibit in the record, I believe it's an e-mail or a
19 letter from Lori Locker to either Mr. Elam or Mr. Utz, I
20 don't recall, but with a breakdown of the costs.

21 MR. WILEY: And we did provide that to
22 Boulevard, the high-level estimate which broke down
23 basically number of poles, wire footage and such.

24 THE WITNESS: Excuse me, Commissioner, I
25 think when he talks about poles, we're talking about two

1 different things. That's overhead and we're talking about
2 underground, two different.

3 MR. WILEY: I'm sorry. The overhead has to
4 be removed for the underground to go in, so there's some
5 costs there, and there is also terminal poles that do need
6 to be installed in order to get the underground back up to
7 the overhead on 25th, because that is the feed as it
8 exists today.

9 COMMISSIONER GAW: Does KCP&L agree that
10 the current lines along Bellevue are unnecessary?

11 MR. WILEY: No, we don't.

12 COMMISSIONER GAW: And tell me why you
13 think they are necessary. I'm sure you've already said
14 this.

15 MR. WILEY: Yes. They're there for
16 contingency factors, and that was determined by our
17 engineering department in order to pick up various parts
18 of another circuit in case parts of it go down. And I had
19 deferred that to engineering when Mr. Elam asked me if it
20 could go away, and they know they're contingency plans, so
21 I left that decision up to them.

22 COMMISSIONER GAW: What is the size of
23 those lines were on Bellevue?

24 MR. WILEY: The primary wire is one out
25 copper and there would be three of those horizontally on a

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1 cross arm.

2 COMMISSIONER GAW: What's the capacity,
3 though, for those lines?

4 MR. WILEY: I'd have to look at the chart.
5 There's standards I would have to --

6 COMMISSIONER GAW: They're just
7 distribution?

8 MR. WILEY: They are a feeder class.

9 COMMISSIONER GAW: Okay.

10 MR. WILEY: And that's what the -- the
11 lines along Bellevue are feeder class, and they exist to
12 tie two separate feeder class wires or circuits together.

13 COMMISSIONER GAW: Okay. So in regard to
14 estimating how much the costs would be to this, let me ask
15 you this first: Your cost includes taking down the poles
16 and lines that exist along Bellevue --

17 MR. WILEY: Yes.

18 COMMISSIONER GAW: -- for one, and then
19 burying a line that would carry similar capacity
20 underground; is that correct?

21 MR. WILEY: Yes.

22 BY COMMISSIONER GAW:

23 Q. Now, let me ask you this: Your estimates,
24 they include taking down the poles and lines?

25 A. They did not include taking down -- I think

1 it was like 7,000 what was he included, I just --

2 Q. They do not include that?

3 A. No, they do not include that. That's a
4 small number.

5 Q. Do they include burying the line along
6 Belleview?

7 A. Yes.

8 Q. So I'm a little confused because I thought
9 you said earlier that you didn't think it was necessary to
10 have that line there?

11 A. Well, no. We still contend it's not
12 necessary, but assuming that we did.

13 Q. But your costs that you've got here on
14 Exhibit 29 do include burying that line?

15 A. Yes. We still contend it's not needed.

16 Q. Okay. So your estimate based upon what
17 information you have is about 116,000, which includes the
18 tax question, correct?

19 A. Our estimate that we could do it for is
20 probably in the \$54,000 number, plus if you added let's
21 say \$7,000 for removal, you'd be at about 60, 61,000
22 total.

23 Q. Okay. So you think around 54 if you-all
24 did it. You think KCP&L -- is that the 116,000,
25 117,000 number?

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1 A. Correct. Just trying to see about how they
2 got their numbers.

3 Q. Okay. And have you seen a breakdown of the
4 \$134,000 number?

5 A. No. As a matter of fact, any number we've
6 gotten from them has been all high level, high-level
7 numbers.

8 COMMISSIONER GAW: Okay. Let me ask you,
9 sir, what would you say is wrong with 116, 117,000 number?

10 MR. WILEY: Our number? Or the number that
11 he gives?

12 COMMISSIONER GAW: The number that he has
13 on what he estimates you-all might be able to do it with?

14 MR. WILEY: I don't see -- the things
15 that -- let me -- maybe this will explain it. The
16 estimate that we're looking at, the table --

17 COMMISSIONER GAW: Yes, on 29?

18 MR. WILEY: -- which I was just looking at,
19 the things it doesn't include is a terminal pole at the
20 north end.

21 COMMISSIONER GAW: Tell me what that costs,
22 if you know.

23 MR. WILEY: They're around -- right around
24 13,000 to build, give or take.

25 COMMISSIONER GAW: Okay.

1 MR. WILEY: Sectionalizer, which is a pole
2 box that we would supply is not included in this estimate.

3 COMMISSIONER GAW: Okay. What's the cost
4 of that?

5 MR. WILEY: The new one's I think around
6 7,000 installation. The bore across 25th Street, we would
7 have to go underground from Belleview to get back to the
8 north side of 25th Street.

9 COMMISSIONER GAW: What's that cost?

10 MR. WILEY: Let me look here. The high
11 level we did on that was about 2,000.

12 COMMISSIONER GAW: All right.

13 MR. WILEY: The cost to refeed Clarkson,
14 which for the three phase was estimated at about 9,950,
15 and the single phase about 2,500. So you'd be looking at
16 about 13,000 there.

17 COMMISSIONER GAW: Okay.

18 MR. WILEY: And then as mentioned, the
19 removal of the overhead. That's all I could see in this
20 short time that wasn't included.

21 COMMISSIONER GAW: Which part are you
22 looking at? Are you looking at the first part of 29 where
23 he's estimating what it could cost him or are you looking
24 at the second part where he's estimated what it could cost
25 KCP&L when you're saying what's not in there?

4 THE WITNESS: Yeah. Yes, sir.

6 THE WITNESS: Yeah. Just took what we
7 thought, to see how they get there.

13 COMMISSIONER GAW: Okay. So you're not
14 necessarily disagreeing with what he has on here on the
15 second part of his exhibit, you're just -- you just don't
16 think he has everything in there that needs to be?

21 BY COMMISSIONER GAW:

23 A. I think he just proved our point that their
24 overheads really shove a job far from being competitive.

1 A. Well, if you take a third-party contractor
2 and let's say when it's Mark One or Capital who actually
3 does work for them, which I would assume two contractors
4 are probably pretty competitive on a day-to-day basis. If
5 you took their numbers, their numbers already include
6 their overheads, and we think that the market kind of
7 develops the most competitive price, and then to have
8 these 92 percent overheads for labor and the material
9 markups, it just starts to inflate a cost that makes it
10 cost prohibitive for the -- for a project.

11 MR. WILEY: May I?

12 COMMISSIONER GAW: Yes, sir. And I'd
13 better stop this because I have a feeling it's going to
14 get confusing in the record. I'll give you one more shot.

15 MR. WILEY: I broke mine down, the high
16 level to removal, installation of underground along
17 Bellevue. My installation of underground estimate was
18 75,100. If that clears anything up. That is with
19 overheads.

20 JUDGE DALE: If I may ask, then you believe
21 that as nearly as we can get to apples-to-apples
22 comparison, your 75,100 is comparable to the actual work
23 that he has included in his 54,500?

24 MR. WILEY: I don't believe it -- that part
25 of it does not include the terminal pole, which is a

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1 \$13,000 or so item.

2 JUDGE DALE: So if we added 13,000 to his
3 54,500 that would be the apples-to-apples comparison to
4 your 75,100, as nearly as you can tell?

5 MR. WILEY: As nearly as I can tell. And
6 not to confuse things, you have to also add extra cable to
7 get it across 25th Street and extra cable to get it up a
8 terminal pole.

9 COMMISSIONER GAW: Let me -- Judge, were
10 you finished? I'm sorry.

11 JUDGE DALE: Yes. Thank you. You can go
12 ahead.

13 BY COMMISSIONER GAW:

14 Q. Let me move on to the other street for a
15 moment.

16 A. 26th Street.

17 Q. Yes.

18 A. Okay.

19 Q. Now, in that -- on that street, what
20 currently is there?

21 A. Currently there's overhead lines from --
22 actually start up here and 26th, but they run down
23 26th Street to here (indicating).

24 Q. Okay.

25 A. And stop. There's a set of open jumpers we

0410

1 discussed yesterday. It stops at the open jumpers, so
2 these are not connected right now.

3 Q. All right. And that street, is it being
4 changed as a result of this project?

5 A. Part of this parking -- or not parking, but
6 I believe traffic study, my understanding it's being
7 widened for some turning lanes.

8 Q. Okay. Now, does the widening of that
9 street require the moving of the utility electric lines?

10 A. Yes, sir.

11 Q. Okay. And is that true -- first of all,
12 let me ask you this: Are all of -- what is the proposal
13 from the Brewery in regard to the lines along 26th?

14 A. I think the proposal is from here
15 (indicating) down to 26th to have it widened.

16 Q. You need to be more specific other than
17 pointing to the map for me.

18 A. I'm sorry.

19 Q. If you could say -- when you say from here,
20 what do you mean?

21 A. I'm sorry. From Belleview -- how far --
22 I'm sorry. Can I defer to Mr. Utz on how far it's
23 widening? I don't know.

24 COMMISSIONER GAW: If he's better for me to
25 ask these questions, I'll --

0411

1 THE WITNESS: Yeah. I know the electric
2 side, but I don't know the street portion.

3 COMMISSIONER GAW: Let me ask Mr. Utz then,
4 if you want to go up there. Describe for me what's
5 occurring in regard to that street on the 26th Street.

6 MR. UTZ: Existing conditions on
7 26th Street, the overhead power feed comes from Summit.
8 And Mr. Wiley can probably say where it comes from there,
9 but on Summit the lines are located on the south side of
10 the street all the way to Belleview. At Belleview, the
11 lines move over to the north side of the street, which is
12 along our property line, come down here to the curb at the
13 old alley that we talked about the existing alley, which
14 is the corner of Jianus Brothers, our neighbor, and stay
15 on the north side of that street. The street -- 26th
16 Street is being widened from the alley to Southwest
17 Boulevard, and it's being widened on the north side of
18 that street.

19 COMMISSIONER GAW: All right. And do you
20 agree that the widening of that street requires that the
21 utility electric lines along that street be moved?

22 MR. UTZ: Yes.

23 COMMISSIONER GAW: Is that through -- and
24 what is the proposal of the Brewery in regard to those
25 lines?

1 MR. UTZ: The proposal is to move those
2 lines to the south side of that street in the easement,
3 sidewalk essentially, on the south side of that street.
4 And further, I think it's required when we move those,
5 there's some line requirements -- and Mr. Wiley can
6 probably speak to this -- but instead of those lines
7 coming in and making a sharper turn down here at the alley
8 going to Southwest Boulevard, it probably makes more sense
9 to just move the entire line to the south side of the
10 street to keep the stresses. Again, I don't know exactly
11 the line design unfortunately, but the proposal would be
12 just to go ahead and move that entire line section to the
13 south side of 26th Street.

14 COMMISSIONER GAW: All right. Now, when
15 you say -- you're referring to the alley. I want you to
16 describe for me where the alley is in regard to the
17 streets on the east and the west that you've been
18 referring to as the beginning and ending.

19 MR. UTZ: Okay. The alley runs diagonal to
20 Belleview and 26th Street. 26th Street is an east/west
21 street until it gets to the alley, changes diagonal
22 perpendicular to Southwest Boulevard. So the alley is
23 angular to those -- to that street. Belleview is a
24 north/south street.

25 COMMISSIONER GAW: And the alley, from the

0413

1 alley going would be west, northwest to Southwest
2 Boulevard, that's where the street is being widened on
3 26th; is that correct?

4 MR. UTZ: Going northwest, that's correct.

5 COMMISSIONER GAW: Okay. Now, in regard to
6 this area where the street is being widened, did the City
7 authorize the widening of that street? Who can answer
8 that question for me?

9 MS. BROWN: The City required the widening
10 of that street in connection with their rezoning, and the
11 rezoning was also required by the City.

12 COMMISSIONER GAW: And when did that occur,
13 approximately, if you can estimate that for me?

14 MS. BROWN: Probably a year ago or longer.

15 MR. UTZ: As part of the traffic study.

16 MS. BROWN: Yes.

17 MR. UTZ: That was, what, October of --

18 MS. BROWN: 2004.

19 MR. UTZ: 2004. I don't think it was
20 adopted by the City -- I can't answer that question
21 unfortunately. I don't know the exact dates.

22 MS. BROWN: There's an ordinance in the
23 record as an exhibit that has those requirements, the
24 rezoning ordinance. And I can get that number.

25 COMMISSIONER GAW: Does that ordinance or

0414

1 anything that the City has done refer to the moving of the
2 utility lines or electric lines along 26th Street?

3 MS. BROWN: Yes. The map that you have is
4 part of the City's approved development plan, which is
5 approved by that ordinance, and it indicates that those
6 lines are to be relocated.

7 COMMISSIONER GAW: Okay. Now this map
8 needs to be in the record.

9 Judge, I was --

10 JUDGE DALE: Actually, I was going to ask,
11 there are a series of maps that you provided yesterday,
12 and everyone else has seen those?

13 MR. BLANC: Are they the ones that were
14 prefiled exhibits?

15 MS. BROWN: I didn't prefile them, but I
16 just handed them to you. They are attachments to an
17 affidavit of Virginia Walsh, who was a --

18 JUDGE DALE: Does anybody have any
19 objection to admitting just that set of maps into
20 evidence?

21 MR. BLANC: No objections, your Honor.

22 MR. FINNEGAN: The affidavit was
23 Exhibit 13.

24 JUDGE DALE: Oh, okay. So we'll just admit
25 them all in as attachments to 13.

0415

1 COMMISSIONER GAW: And again, this
2 particular map that I'm looking at is included in that
3 exhibit, correct?

4 MS. BROWN: Yes.

5 COMMISSIONER GAW: And is there an
6 identifier on this map that I'm looking at, so that if I'm
7 looking at the exhibit I can -- I and others looking at
8 that time could tell which one -- which page it was of the
9 exhibit, page or pages?

10 MS. BROWN: I believe the page number is at
11 the bottom and the right. The front page of those maps
12 indicate that the development plan was approved by the
13 City the Kansas City. You have a page that's further
14 back, but there are probably eight pages in that.

15 COMMISSIONER GAW: There's a sheet number,
16 is that it?

17 MS. BROWN: Yes.

18 COMMISSIONER GAW: The sheet number appears
19 to say C4.1?

20 MS. BROWN: Yes.

21 COMMISSIONER GAW: That's what you're
22 referring to?

23 MS. BROWN: Yes.

24 COMMISSIONER GAW: All right. Now this map
25 again in regard to showing that the electrical lines

0416

1 should be moved, this map was approved by the City in some
2 action?

3 MS. BROWN: Yes.

4 COMMISSIONER GAW: Okay. Now, the lines
5 are to be moved according to this action from where to
6 where, whoever can answer that for me?

7 MS. BROWN: I think it's on the map.

8 COMMISSIONER GAW: I know it is.

9 MS. BROWN: Sorry.

10 MR. UTZ: Do you want me to point it out on
11 the map?

12 COMMISSIONER GAW: I want you to tell me.
13 You can refer to the map if that's helpful to you.

14 MR. UTZ: I actually need to look at it.

15 COMMISSIONER GAW: You go right ahead. You
16 can have access to it. I'm wanting to make sure that
17 someone is actually testifying to it.

18 MR. UTZ: On sheet 4.1 it shows the
19 electric line the entire length from Southwest Boulevard
20 and 26th Street intersection, moving to the south all the
21 way up to the Belleview and 26th Street intersection.

22 COMMISSIONER GAW: Okay. Now --

23 MR. UTZ: Which is the entire section of
24 that line that is not on the south side of the street.

25 COMMISSIONER GAW: Okay. Which is that --

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1 that is consistent with what was testified earlier in
2 regard to moving all of the lines on the south side of the
3 street from the beginning point to the end, not just from
4 the alley to Southwest Boulevard?

5 MR. UTZ: That's correct.

6 COMMISSIONER GAW: Okay. Now, I need to
7 ask if KCP&L has anyone here who can tell me whether or
8 not the move of that line from the alley going east is
9 necessary, if the line is moved over to the outside of the
10 street from the alley going west.

11 MR. BLANC: Mr. Wiley may or may not. I'll
12 leave that him. I don't know if that would need to go to
13 Emeka, which is one of our other witnesses, or if
14 Mr. Wiley can answer that.

15 MR. WILEY: No. It's really just a matter
16 of the angle, and I don't know if you can see it up there,
17 but I'll try.

18 COMMISSIONER GAW: Go ahead.

19 MR. WILEY: 26th Street runs down to this
20 point (indicating), and this is approximately at the
21 alley.

22 COMMISSIONER GAW: All right.

23 MR. WILEY: And it turns this way
24 (indicating). With it being on the north side, moving
25 just this portion to the south actually creates less of an

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1 angle than moving everything to the south. It creates a
2 transition from the north side across the angle to the
3 south. So it's not necessary when you move from the north
4 side to the south side, west of the valley, to move
5 everything east of there.

6 COMMISSIONER GAW: Is it -- if you do that,
7 then, the lines will cross over the top of the street; is
8 that correct?

9 MR. WILEY: Yes.

10 MR. ELAM: Twice.

11 COMMISSIONER GAW: Is that problematic?

12 MR. WILEY: Not if we have the proper
13 clearances. It's not for us if we maintain the proper
14 clearance.

15 COMMISSIONER GAW: That -- from a safety
16 standpoint, is that an issue that KCP&L normally factors
17 in or not?

18 MR. WILEY: I don't believe the crossing of
19 the street is, as long as the height is maintained.
20 Either way you have poles next to the street, which I
21 would be more concerned about being hit, more than
22 something hitting a cross line.

23 COMMISSIONER GAW: Now, I heard someone say
24 that you have to cross the street twice if that crossing
25 were done there around the alley area. Is that -- is that

0419

1 correct?

2 MR. WILEY: It would create a second

3 crossing, yes.

4 COMMISSIONER GAW: And where would that be?

5 MR. WILEY: Well, the first, it crosses up

6 here just east of Belleview. It's on the south side of

7 26th Street.

8 COMMISSIONER GAW: It's already crossing

9 over?

10 MR. WILEY: Yes. It comes down the south

11 side of 26th Street just east of Belleview, crosses to the

12 north side.

13 COMMISSIONER GAW: All right.

14 MR. WILEY: Comes down the north side all

15 the way.

16 COMMISSIONER GAW: Okay. Okay. So if the

17 crossing -- if the line were moved to the south side of

18 the street going west from the alley to Southwest

19 Boulevard, then the end result is it crosses the street

20 from south to north somewhere around Belleview, stays

21 north 'til you get to the alley, and then crosses over and

22 goes south back to Southwest Boulevard?

23 MR. WILEY: Yes.

24 COMMISSIONER GAW: I'm following, I think.

25 Okay. Now, what costs do we have on relocation of this

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1 line in the record so far?

2 MR. ELAM: We only have KCPL's cost. We
3 have not priced that one.

4 COMMISSIONER GAW: KCPL, what's your cost
5 estimate on this and for what work?

6 MR. WILEY: Let me see if I can find the
7 piece. Our actual -- the actual STORMS cost that I did
8 was for cleaning up Belleview and relocating 26, which was
9 the work we were going to do, so I have a total cost on
10 that, but are you wanting the piece just on 26th?

11 COMMISSIONER GAW: Just on 26th.

12 MR. WILEY: I'm not sure that we broke that
13 piece out.

14 MR. BLANC: There's a letter in the record
15 from Lori locker of KCPL to Greg Elam. If I could provide
16 that to Mr. Wiley, I think it has the data he's --

17 MR. FINNEGAN: He's referring to
18 Exhibit 35, which was Mr. Elam's Exhibit 8A.

19 COMMISSIONER GAW: There is an exhibit --
20 it may be -- this one appears to say 22. I don't know if
21 it's related or not. That's a December 16th letter to
22 Greg Elam.

23 JUDGE DALE: Yes. It's in there as its own
24 thing and then as an attachment.

25 COMMISSIONER GAW: So is that the right

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1 letter?

2 MR. BLANC: I think they're different
3 correspondence, but I think the numbers are the same.

4 COMMISSIONER GAW: Okay. That's fair
5 enough.

6 MR. ELAM: And I believe, sir, that that
7 includes a CIAC tax as well. I'm not for sure, I don't
8 know, but --

9 COMMISSIONER GAW: Let's see if we can get
10 that clarified when we get to that point. Go ahead, sir,
11 can you?

12 MR. WILEY: The cost we gave to Boulevard
13 was 60,435.15, and I believe that was after some
14 discussion and the original cost, the actual cost was --
15 this is -- I believe is a negotiated amount.

16 COMMISSIONER GAW: The 60,000 is?

17 MR. WILEY: I believe so.

18 COMMISSIONER GAW: Negotiated in what
19 sense?

20 MR. WILEY: Well, I'm not -- okay. Since I
21 wasn't --

22 MR. BLANC: There's testimony in the record
23 on this point. It wasn't his testimony, but there's
24 testimony in the record on this point.

25 COMMISSIONER GAW: Okay.

1 MR. WILEY: I put the equipment in and the
2 time and the labor, and Lori takes the cost and bills the
3 customer, and I can't speak to exactly what it was that
4 she dealt with. I believe she testified to that.

5 COMMISSIONER GAW: Okay. Hopefully that
6 will be something I can dig from the transcript then. Do
7 you know whether this estimate includes the tax or not?

8 MR. WILEY: I do not know.

9 COMMISSIONER GAW: And do you know whether
10 or not this estimate provides for the relocation of the
11 line to the south side of the street from Belleview to the
12 alley?

13 MR. WILEY: From Bell-- yes, it does.

14 COMMISSIONER GAW: It does. So this is
15 moving all of the lines south?

16 MR. WILEY: Yes, it is.

17 COMMISSIONER GAW: Okay. And do you know
18 what the breakout would be if that portion of the line
19 were not moved west going west from the alley -- excuse
20 me -- east from the alley?

21 MR. WILEY: No, I don't.

22 COMMISSIONER GAW: That hasn't been broken
23 down?

24 MR. WILEY: No.

25 COMMISSIONER GAW: Okay. Does anyone else

0423

1 have any cost information on any of this that would be
2 helpful?

3 (No response.)

4 COMMISSIONER GAW: Okay. I think that's
5 all.

6 JUDGE DALE: I'm sorry. I believe that was
7 just answered, but does KCP&L's CIAC witness know whether
8 it was in the estimate? You just answered that you did
9 not know if it was in the estimate or if it is -- oh.

10 MR. BLANC: The CIAC witness is a different
11 person.

12 JUDGE DALE: Oh, okay. Do you know if it
13 was included in the estimate?

14 MR. BURRIGHT: I do not know in that
15 particular number, but I know with regard to talking to
16 Lori, that the piece from the alleyway to 26th Street only
17 was the piece that would not have the CIAC.

18 MR. BLANC: And that is addressed in
19 Ms. Locker's testimony.

20 JUDGE DALE: All right. Commissioner Gaw,
21 did you get that?

22 If there -- the only part that KCP&L
23 determined would not have CIAC would be the part from the
24 alley to --

25 MR. BURRIGHT: Southwest Boulevard.

1 COMMISSIONER GAW: Okay. Does KCP&L
2 question the payment of moving the line from the alley
3 west to Southwest Boulevard in this case?

4 MR. BLANC: Sorry, do you -- I'm not sure.

5 COMMISSIONER GAW: Is it your position that
6 KCP&L should not pay for the movement of that line from
7 the alley west to Southwest Boulevard?

8 MR. BLANC: Our position is that the entire
9 project is predicated and the result of Boulevard's
10 activities and wouldn't happen absent Boulevard's
11 activities, so KCPL should not bear this cost.

12 COMMISSIONER GAW: I just needed a yes or
13 no.

14 MR. BLANC: KCPL should not bear those
15 costs. I'm sorry.

16 MR. UTZ: Commissioner Gaw?

17 COMMISSIONER GAW: Yes, sir, go right
18 ahead. I'm about done.

19 MR. UTZ: It was in regards to the traffic
20 study, I believe you were wondering if it was adopted or
21 if we had something that showed if it was approved by the
22 City. It was Exhibit 9, and page 2 -- actually sheet 3 of
23 that exhibit.

24 COMMISSIONER GAW: Okay.

25 MR. UTZ: Bullet point No. 4.

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1 COMMISSIONER GAW: What does it say?

2 MR. UTZ: It says that the developer make
3 improvements required by the approved traffic study and
4 walkability study as required by the Department of Public
5 Works.

6 COMMISSIONER GAW: Okay. I think that's
7 all I have, except for Mr. Rush, since he's back and since
8 I see him here. I wasn't going to ask him any questions
9 if he didn't make it back. I wasn't going to say we
10 should delay waiting or anything.

11 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

12 JUDGE DALE: Having had a brief Bench
13 conference, we're going to break for lunch, come back and
14 finish any questions that are remaining for the cost
15 witnesses, the CIAC witness, Mr. Rush, and have closing
16 arguments.

17 We will reconvene at 1:30.

18 (A BREAK WAS TAKEN.)

19 JUDGE DALE: We're back on the record and
20 resuming without Commissioner Clayton, who has gotten
21 caught up in the business upstairs.

22 Commissioner Gaw, did you have any other
23 questions before we move on to closing arguments?

24 COMMISSIONER GAW: I did of --

25 JUDGE DALE: Of Mr. Rush.

1 COMMISSIONER GAW: He is still here.

2 JUDGE DALE: Yes, he is still here. I'll

3 remind you, Mr. Rush, that you are still under oath.

4 TIM RUSH testified as follows:

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. I don't think I had much --

7 A. That's all right.

8 Q. -- at all. I just -- is there a
9 significant difference in regard to what you view as
10 KCP&L's concern about the payment of the 26th Street
11 changes if it were -- we're talking about the whole
12 stretch as opposed to a portion of the change, moving the
13 lines to the south side of the street?

14 A. I'm not sure. Is there -- do we have much
15 concern about that or --

16 Q. Do you have a -- is your position entirely
17 one of all or nothing on that on that street, do you know?

18 A. Well, our position is that it's an all
19 thing, where they owe the whole amount.

20 Q. Right.

21 A. You kind of look at the whole package of
22 everything that we've done --

23 Q. Right.

24 A. -- to date, and you consider all of that,
25 all we've done, and then you look at the practices that we

1 have for everything else, and, you know, we pretty much as
2 far as, like, when you look at the revenue and the
3 investments and everything associated with it, we've used
4 all of the -- basically the revenue that's going to be
5 there from the project up on the other work that's been
6 done. The rest of it's remaining, but also the policies
7 would say that you would charge for those things also.

8 Q. Do you think that based upon the -- and if
9 you don't know, that's fine. This may be borderline a
10 legal question. So if it is, just say I'd like to defer
11 it.

12 A. Okay.

13 Q. If the provision on the City actions
14 regarding 26th Street portion and moving the line to the
15 south side of the street, do you believe that requires
16 that line to be moved at this point, it's just a question
17 of who pays for it, or do you know?

18 A. The line needs to be moved because of the
19 City's action, and as I understand, they asked the -- told
20 the developer that that road has to be widened as a part
21 of this, which means that the line has to be moved and the
22 City -- then the utility needs to do that work and the
23 developer needs to pay for it.

24 Q. Okay. And the line needs to be moved where
25 the street isn't being widened as well from the alley

1 going east over to Belleview?

2 A. That I don't know. I don't know the
3 particulars of that.

4 Q. That's all right. I think I've searched
5 that out already.

6 A. Okay.

7 Q. What was your primary purpose in testifying
8 when you did?

9 A. I testified on the tariffs and how they're
10 applied, how our standard overhead service -- our standard
11 service is overhead by our tariffs, that's how we do our
12 business, and that the tariffs basically say that
13 customers are responsible to pay the difference between
14 overhead and underground. That happens in all cases.

15 I also testified that, you know, what's
16 contained in our tariffs and how they operate. I said
17 that -- I talked about in our tariffs we have a municipal
18 tariff that basically says if a city directs something to
19 be done underground and they have an ordinance that would,
20 for example, say that things should be underground --

21 Q. Yes.

22 A. -- then there's an application of a tariff
23 that we are to take that difference and, with an agreement
24 through the city, charge the city for that.

25 Q. Okay. How long has that tariff been in

1 effect, if you know?

2 A. I think it's over ten years.

3 Q. That's fine. That's close enough.

4 A. I think I also testified --

5 Q. Go ahead.

6 A. -- that this is really in my mind an equity
7 issue, where you talk about whether you have customers
8 paying for something or you have a developer paying for
9 something, and I think that was to me one of the primary
10 questions of the whole case.

11 Q. And KCP&L does not believe it would be
12 appropriate for the -- another entity to do the work on
13 the underground provisions along, is it Belleview?

14 A. I said that, you know, it could be
15 contracted out, but it's KCPL's responsibility, and I did
16 talk a little bit about that.

17 Q. Well, I heard -- what we heard -- I don't
18 know whether you had gotten back when there was some
19 statement made by your counsel that the engineers had
20 disagreed with you perhaps. I may be mischaracterizing
21 that. And I don't know if you had any other discussion,
22 but I'm a little -- I'm a little unsure about whether
23 there is a difference between your testimony and what the
24 position is from your counsel.

25 A. I don't know about that.

1 Q. If you weren't here when he said that, then
2 I understand. That's putting you at a disadvantage, and I
3 may be mischaracterizing what was said.

4 A. I believe our -- I'm not sure what the
5 differences are between the counsel and what I've said in
6 the past.

7 COMMISSIONER GAW: Counsel, do you want to
8 explain to him what you said earlier, and maybe then he
9 can respond to me?

10 MR. BLANC: Sure. I don't recall now if it
11 was Mr. Finnegan or a question from Mr. Gaw that suggested
12 that you had agreed that Boulevard could do this work
13 themselves, and I believe wherever that was initiated
14 Mr. Gaw asked a follow-up question if that was our
15 position. And I attempted to clarify that your testimony
16 really didn't say that Boulevard could do this, that your
17 testimony had said that if certain conditions were met,
18 indemnification, certain other requirements, kind of
19 potential maybe maybe maybe looked at, it would be
20 possible, but then our engineers had testified that they
21 had looked at the maybe maybe maybe and concluded no.

22 THE WITNESS: That's right. I did say
23 that, you know, if they wanted to be in that kind of
24 business of doing underground work as a contractor for
25 KCPL --

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1 COMMISSIONER GAW: Yes.

2 THE WITNESS: -- and all the maybe maybe
3 maybes could be met, it may be able to occur, but at the
4 same -- you're talking about a stretch of an awful lot of
5 things, and I don't think -- you know, we take bids and
6 look at -- evaluate projects all the time. We try to do
7 things as low cost as possible, but we also have to -- we
8 have this huge responsibility that says we have to provide
9 safe and reliable service.

10 BY COMMISSIONER GAW:

11 Q. So what does that mean to you that the
12 engineer said no, it couldn't be done or something?
13 That's what I'm trying to understand.

14 A. Well, I think that there were a lot of
15 elements to this undergrounding job, and they were
16 referencing a contractor that may not perform that
17 specific kind of work that may be required for this
18 project. But we would be talking about contracting with
19 somebody that would have to have some indemnification to
20 do that work, and I think there's a lot of legal hurdles
21 that would have to be reached even to do it.

22 Q. Okay.

23 A. I'm not certain -- when you look at the
24 engineering area, they may have had experience that would
25 say, you know, I know these people don't do this type of

1 work or something to that effect.

2 Q. Okay. So it may have been the specific --

3 A. Exactly.

4 Q. -- contractor that was the problem?

5 A. What I'm saying to try say is, we're not
6 trying to say customers can't come up with better ideas or
7 customers can't have suggestions that can help lower our
8 costs, but we also have to deal with we have the ultimate
9 responsibility for that reliability and safety of that
10 situation.

11 Q. Yes, sir. I don't have any other
12 questions. I apologize for you having to come back down
13 here.

14 A. That's all right. No problem.

15 JUDGE DALE: Does anybody have any recross
16 based on questions from the Bench for Mr. Rush?

17 MR. FINNEGAN: I've got -- yes, I've got a
18 couple questions.

19 RECROSS-EXAMINATION BY MR. FINNEGAN:

20 Q. Mr. Rush, on the question of contracting
21 out to another to cust-- to another person to do the work,
22 you do that all the time?

23 A. The company does, yes.

24 Q. And if you had a qualified contractor that
25 you use all the time, would you find that an acceptable

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1 situation to use to do the work?

2 A. I mean, I don't see why we wouldn't, if the
3 bids were right and if they were low cost and it was
4 something we felt safe. I'm not sure about this
5 particular situation because I don't know the details of
6 the engineering.

7 Q. But if you had the details of the
8 engineering with all the specifics, all the specifications
9 were there, and a qualified contractor was available and
10 willing to do this at a much lower cost than what KCP&L
11 has been quoting to Boulevard, is that possible in this
12 particular case?

13 A. I'm probably not the one that would make
14 that call, but I cannot see why we wouldn't if it met all
15 the criteria, and I mean I'm talking about everything. It
16 would have to meet the need. We, for example,
17 determine -- you know, there's cost of where we have to
18 have our workers make the connections. We're talking
19 about working on something that is already in our system.
20 But I really would want -- I think if you're really
21 wanting to talk whether we would or wouldn't, we would
22 want to make sure that we talk to the engineering team
23 that would make that decision, and we' have to deal with
24 the circumstances as we would have them out there.

25 If it was -- for example, if Mark One I

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1 think was one that you mentioned, I don't know the details
2 of that. I mean, I don't know the correspondence that has
3 taken place, and we've seen some memo that had a price on
4 it and that's all I know.

5 Q. You're familiar with Mark One?

6 A. A little bit.

7 Q. And have you ever used Mark One to do any
8 of your work?

9 A. I think, as I understand it, we have used
10 Mark One in the past for various projects, but I don't
11 think they have done anything what we're -- like what
12 we're talking about here.

13 Q. Do you use Capital Electric also?

14 A. Yes.

15 Q. Have they done anything like this before
16 for you?

17 A. I don't think so, because I think they
18 mainly work in greenfield areas where there's open space.

19 Q. You don't know if they're qualified or not?

20 A. I didn't say that. I don't know that.

21 Q. I mean, this is not brain surgery, is it?
22 Qualified --

23 A. Qualified is qualified.

24 Q. Right. Whether he works for KCP&L or
25 whether he works for Capital Electric?

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1 A. Uh-huh.

2 Q. And if they can do the work just as well
3 for less, shouldn't Boulevard have the benefit of that?

4 A. I would say yeah. Yes, I would. I would
5 say yes.

6 Q. You mentioned something about your tariff
7 provision. Which tariff -- I can't specifically recall
8 just which tariff provision it was, but you've got
9 something in there about who pays for undergrounding; is
10 that correct?

11 A. The difference of overhead and underground?

12 Q. Yes.

13 A. Yes. That's Section 10 of our line
14 extension policy.

15 Q. The question is, with respect to state law,
16 if the -- the common law of the state of Missouri is that
17 a utility pays for the relocation of facilities if it's
18 for a public purpose?

19 A. I don't think that's exactly the case.

20 MR. BLANC: Calls for a legal conclusion,
21 what the common law is.

22 BY MR. FINNEGAN:

23 Q. And are we talking about a line extension
24 here or a relocation?

25 A. Which one are you talking about?

1 Q. In our particular -- either one.

2 A. One of them is moving a line. The other is
3 a conversion from an overhead to an underground line.

4 Q. So there is no extension of service, just
5 the relocation or the removal?

6 A. I'm going to reiterate what I said
7 initially is that what we looked at was a project to serve
8 Boulevard Brewery. Included in that was the extension of
9 service, which included a number of things, both
10 underground and I think there were maybe some overheads.
11 And then there was the movement on Belleview from overhead
12 lines to underground lines, and then there was a
13 relocation to facilitate some kind of a truck movement on
14 26th Street. That was looked in total combination. So if
15 you say was there extension, yes, there was.

16 Q. The one extension has already occurred,
17 though, has it not?

18 A. One phase of the project has occurred, as I
19 understand it, yes.

20 Q. And that was an extension from one place to
21 another?

22 A. That's correct.

23 Q. Not just a replacement or a moving across
24 the street?

25 A. As I understand it, it was an upgrade of

1 service of some kind for the load that was going to be
2 there and some undergrounding work and some overhead work.

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

4 JUDGE DALE: Thank you. Commissioner
5 Clayton?

6 COMMISSIONER CLAYTON: Yes?

7 JUDGE DALE: Do you have questions?

8 COMMISSIONER CLAYTON: No.

9 JUDGE DALE: For anyone?

10 COMMISSIONER CLAYTON: No.

11 JUDGE DALE: Then we will begin with
12 closing statements, beginning with the City or PIEA.

13 MS. BROWN: Thank you.

14 JUDGE DALE: Earlier we had some witnesses
15 sitting up here as a group. Did anyone have any
16 questions, recross, that kind of thing, for that group
17 of --

18 MR. BLANC: No, your Honor.

19 JUDGE DALE: Okay.

20 MR. FINNEGAN: No.

21 JUDGE DALE: Okay. Thank you.

22 MS. BROWN: May it please the Commission?
23 I want to thank you-all for letting me appear before you.
24 This is the first time I've ever appeared before the
25 Public Service Commission. It hasn't been near as bad as

1 I thought it would be. So I appreciate that, and we
2 appreciate your giving consideration to this case in this
3 expedited manner.

4 I'm going to confine my remarks to Count 1
5 of the Complaint. The question that PIEA and the City
6 feel is the key question here is whether Union Electric
7 applies to the facts of this case. Our position is that
8 it absolutely applies and it absolutely controls. The
9 removal of blight is clearly a public purpose.

10 The redevelopment plan, which was approved
11 by the City, required the removal of the overhead lines
12 and the widening of 26th Street, and the entire plan had
13 clear -- was clearly related to local governmental
14 objectives. In the plan it was stated that they are to
15 stabilize and redevelop the City's core, to foster
16 temporary and permanent employment in the City, to make
17 necessary public improvements, increase private investment
18 and remove blighting factors identified by the City. One
19 of those blighting factors was overhead power lines.

20 In addition, the City required the widening
21 of 26th Street for traffic safety, and the relocation of
22 those lines was required in connection with that widening.
23 The City also required the vacation of Belleview Avenue
24 and -- in order to provide parking for the project. Both
25 the general development plan and the city's development

1 plan, which was the map that you looked at which related
2 to the rezoning, required the relocation of those lines.

3 To hold that the removal of blight is not a
4 public purpose but rather is a private purpose would be
5 contrary to the planned industrial expansion law and
6 contrary to the well-established case law.

7 The Missouri Supreme Court in Tierney vs.
8 the Planned Industrial Expansion Authority of Kansas City,
9 which is 742 SW 2d at 146, that's a Missouri Supreme Court
10 case from 1987 -- and by the way, that case did go to the
11 U.S. Supreme Court and was dismissed -- held that the
12 redevelopment of blighted, substandard or insanitary areas
13 is a public service. And that case further held that that
14 determination of whether an area is blighted is a
15 legislative determination.

16 And if there's no public purpose in an
17 ordered plan of blight removal, cities would lose the
18 tools they have to rid themselves of blight. Without a
19 public purpose, one cannot defend either the tax abatement
20 or the condemnation provisions of the PIEA law, and both
21 of those have been upheld many times by Missouri courts.

22 The difference in the Union Electric case
23 and the Home Builders case is simply that there was no
24 finding of blight in the Home Builders case.

25 Boulevard's representatives testified that

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1 redeveloping the urban core is an expensive and difficult
2 task. The benefits of the PIEA law barely offset the
3 additional cost of developing a blighted urban area. Both
4 the State of Missouri and the City of Kansas City have
5 determined it's vitally important to preserve this kind of
6 commitment to the urban core.

7 This state has passed a number of laws
8 designed at redeveloping urban cores in cities. Why? The
9 State Legislature understands that vital urban cores
10 preserve the livability of their larger cities.

11 Why is that? Most people, including all of
12 the suburbanites, we want our city to be cool. We want
13 amenities. We want performing arts centers, football
14 stadiums, baseball stadiums, libraries, arenas, arts
15 districts, and even local breweries. We want jobs, public
16 safety, good schools, smooth streets, decent property
17 values. We want property owners to keep their property in
18 good repair, to look nice, to be safe, and we want these
19 things in the urban core.

20 What's so important about the urban core?
21 The urban core geographically is the closest destination
22 to most of the people within a geographical area or
23 metropolitan area. Therefore, it makes sense to locate
24 the major attractions and amenities within the urban core,
25 and the urban car needs all the help it can get.

1 time, which was the 1875 charter, was not silent. The
2 charter of the City stated in Article 2, Section 1,
3 paragraph 7, that the City had the power to have exclusive
4 control and power over the streets, sidewalks, alleys,
5 landings, public grounds and highways of the city to open,
6 alter, widen, extend, establish, grade, pave or otherwise
7 improve, clean and keep in repair the same, to prevent and
8 remove all encroachments thereon or obstructions thereof,
9 to put drains and sewers in the same and to regulate the
10 building of vaults under our sidewalks.

11 The one and a half page franchise ordinance
12 from 1881 did not address relocation of lines. It did not
13 need to. The franchise ordinance could not in any way
14 alter the City's charter authority over its streets and
15 public ways.

16 Nor could the franchise affect the common
17 law premise that the utility company must relocate its
18 facilities in public streets when required by public
19 necessity. In Union Electric, the Supreme Court
20 recognized this common law right applicable to franchises,
21 and it was the common law that the Supreme Court applied
22 in Union Electric, not the franchise, and it was the
23 common law that made the distinction between governmental
24 and proprietary functions, not the St. Louis franchise.

25 And the common law which was upheld in

1 Union Electric was that redevelopment of blighted -- of
2 the blighted area, even though it involved the
3 construction of a privately owned hotel, was governmental.

4 This case could not be more on point. Here
5 we have an area designated as blighted both by the City
6 and the PIA and the rehabilitation and expansion of a
7 brewery which will ultimately be privately owned but is
8 now owned by the PIA. City policy mandated the rezoning,
9 and the development plan approved by the City pursuant to
10 that rezoning required the relocation of the overhead
11 lines.

12 The PIEA and the City found that the
13 overhead lines were a blighting factor and approved a
14 development plan which provided for the widening of the
15 street and removal and burial of the overhead lines. As
16 in Union Electric, the acts of the City and the PIA in
17 removing blight and carrying out the redevelopment plan
18 designed to clear blight were governmental and not
19 proprietary.

20 And although the Respondent makes much of
21 the fact of the language in the original general
22 development plan originally allocated the cost of the
23 relocation to the developer, it is clear that the
24 statement was not intended to be dispositive of the issue.

25 It is true that PIEA amended the language,

1 but its stated intention in the amending resolution was to
2 make its intention clear. Aside from calling all the
3 board members as witnesses, the modification was the only
4 way that the board could have communicated its intention
5 to the Commission.

6 Respondent likes to seize upon the language
7 in the development plan when it suits he, but he complains
8 when the language is changed and doesn't suit his
9 purposes.

10 PIEA did not prejudice the Respondent by
11 making that modification. They didn't -- PIA did not
12 change the allocation to the utility. It left it open,
13 and left the determination of the matter to the Commission
14 pursuant to law.

15 And furthermore, the modification was
16 minor. The statute provides that only substantial
17 modifications require city council approval. The Tierney
18 case held that a major or substantial modification is one
19 which would substantially alter the nature of the
20 contemplated development. In the Tierney case, the
21 Supreme Court of Missouri held that the change in plan by
22 the Authority from a hotel to an office building and the
23 reconfiguration of streets within a plan was a minor
24 modification, not a substantial modification.

25 So no approval of the city council was

1 required for those changes. In this case, the nature of
2 the contemplated development, the renovation/expansion of
3 the business, and the clearing of the blighting factors
4 remains the same after the modification by the PIEA.

5 I have found some cases in which courts
6 have placed the burden of relocating facilities on the
7 utility where blight was not a factor but merely at the
8 direction of the government. It was pursuant to a
9 governmental plan of action. And those are New Jersey
10 cases, Fellowship Bank vs. Public Service Electric and Gas
11 Company, 385 Atlantic 2d 887, and that's from 1978, and
12 Pine Belt Chevrolet vs. Jersey Central Power & Light
13 Company, 626 Atlantic 2d 434, which is a 1993 case.

14 This case, though, is all about the blight.
15 The City and PIEA strongly believe that the preservation
16 of the tools the Legislature has given to cities to
17 redevelop their urban cores is essential for cities in
18 Missouri to remain livable, viable and competitive with
19 other states.

20 The City has supported the 25th and
21 Southwest Boulevard plan and the redevelopment in the
22 immediately surrounding area. The City has also invested
23 heavily in the entire urban core from the KC Live
24 Entertainment District and the new arena and downtown to
25 the River Market, 18th and Vine, Crossroads Arts District,

1 Union Station, the IRS and post office facilities.

2 The City has received local governmental
3 support as well as state governmental support in the form
4 of state supplemental TIF, tax credits and brownfield
5 grants.

6 The City of Kansas City and the PIEA
7 request that the Commission consider the established case
8 law in Union Electric and urge the Commission to consider
9 the statutory mandate that the planned industrial
10 expansion law be liberally construed pursuant to
11 Section 100.610, RSMo to effectuate its purpose, which is
12 the removal of the blight and the revitalization of the
13 urban core.

14 The cost of relocation of the overhead
15 power lines in the area declared blighted should be borne
16 by the Respondent. Thank you.

17 JUDGE DALE: I have one question. Well,
18 maybe it's two questions. Has the City notified -- the
19 City or PIEA directly required KCP&L to remove or modify
20 or bury the lines in question?

21 MS. BROWN: I believe that the approval of
22 the general development plan which required that does make
23 that requirement, not directly to KCP&L.

24 JUDGE DALE: So you have -- so you approved
25 the redevelopment plan that provides that someone, not the

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1 City or PIEA, pay for this removal or change or
2 alteration?

3 MS. BROWN: Yes.

4 JUDGE DALE: But it has not been required
5 in any particular fashion as in you must bury this line on
6 or before X date?

7 MS. BROWN: No. That is correct.

8 JUDGE DALE: Thank you. Mr. Finnegan?

9 MR. FINNEGAN: May it please the Commission
10 and Judge Dale?

11 My closing statement has been considerably
12 shortened by Ms. Brown's very nice closing statement, and
13 on behalf of Boulevard, we agree wholeheartedly with what
14 she had to say there, that -- and, of course, that's why
15 we're here, because of the Union Electric case, which is
16 clear.

17 This is -- like in Union Electric, it's to
18 clear up a blighted area in Kansas City, and the PIEA and
19 the City of Kansas City have declared the area blighted.
20 In the general development plan, it was stated that the
21 removal of overhead utility lines was necessary to
22 remediate various -- one of the blighting factors. The
23 traffic study that was implemented by the City of Kansas
24 City has required the -- well, required to install a left
25 and right hand lane on 26th Street, and as a result it's

1 necessary to move the power lines that are along that
2 street across the street.

3 Neither of these power lines that we're
4 talking about here serve Boulevard Brewery. They have no
5 connection, no service line running from them to
6 Boulevard. They are no more important to Boulevard than
7 any other line in the city is to any other customer, in
8 general, but not directly.

9 In the Union Electric case, it says that
10 when the primary purpose of the project, the redevelopment
11 or renewal of what is implicitly a blighted area of the
12 city, has been declared legislatively to be a public
13 purpose. And in this particular case, as in there, there
14 was a vacation of a street. There was a requirement that
15 facilities -- it turned out the power lines need to be
16 removed and relocated.

17 The Supreme Court said that the
18 requirement -- this is for Union Electric, the
19 requirement, same here, to remove its facilities to make
20 the thoroughfare available for use as a part of this
21 project or acts of the City and the Authority in the
22 exercise of a governmental rather than a proprietary
23 function.

24 And the common law in Missouri as stated by
25 Judge McQuellen, former Commissioner, many, many years

1 ago, before my time even, pointed out that the common law
2 is when a city requires the utilities to be moved for the
3 purpose of a --a public purpose, that it's to be done at
4 the expense of the utilities.

5 The Home Builders case, which is the only
6 case relied on by Kansas City Power & Light, it's
7 784 SW 2d 287, does not involve a blighted area or a
8 declaration of a public purpose of the city. In that
9 particular case, it was a developer wanted to -- wanted to
10 develop an area, and as a result of developing the area
11 the City said, you've got to widen the streets. That was
12 for the private purpose of the developer and not the
13 public purpose of clearing blight.

14 With respect to Count 2, there are several
15 items in there. We have proved that there is no Kansas
16 City Power & Light rule that specifically says the word or
17 refers to relocation or removal. The only rule close to
18 this is Rule 9, the extension policy, and the first
19 sentence of the extension policy starts that the company
20 will supply electric services -- electric service at
21 premises not adjacent to its existing distribution
22 facilities which are adequate and suitable as to capacity,
23 et cetera, for the electric service required by the
24 customer in accordance with the following extension
25 policy.

1 The customer does not require the removal
2 of the lines on 26th Street. The customer does not
3 require the undergrounding of the utility. It's the City
4 that required the undergrounding. It's the City that
5 required the relocation. So even if Rule 9 would apply,
6 which we deny because there is no mention of extension --
7 I mean of removal or relocation, the rule further
8 specifically indicates that it's got to be for the benefit
9 of the customer, for service required by the customer.
10 The customer doesn't require the service.

11 The second problem with this rule, Rule 9
12 and also Rule 9.02, which Mr. Rush claimed were
13 applicable, do not have any specified standards therein
14 that a member of the public or for that matter a member of
15 the utility can look at this and say, here's how we're
16 supposed to charge somebody. It's very vague. It leaves
17 sole discretion in the utility as to whether or not -- how
18 much of the material, labor costs should be in there, how
19 much in the way of revenue should be -- requirement should
20 be determined. The company can use any figure it desires.
21 The customer does not have the opportunity, except under
22 apparently, according to Mr. Rush, under some rather
23 restrictive conditions, to use an outside contractor.

24 and if we were -- one of the things the
25 Commission would come up with that would be very, very

1 beneficial to all customers of Kansas City Power & Light,
2 not only Boulevard Brewery, to have the ability to get an
3 outside contractor, who is qualified, who will build
4 according to the specifications, who will turn over to
5 the -- to Kansas City Power & Light a same piece of
6 structure that Kansas City Power & Light would have built
7 themselves but at a lesser cost, then the customer should
8 have that ability.

9 And even if the customer doesn't exercise
10 it, at least the customer has the understanding of how
11 much it really cost and whether or not Kansas City Power &
12 Light was overstating their case as to how much money they
13 need. That is very important for the public.

14 The other issue we have is with respect to
15 the CIAC taxes, or the CIAC taxes. And we believe we've
16 shown through the language in Notice 87-82 of the --
17 related to the Internal Revenue Code relating to
18 Sections 118A and 118B, that in circumstances such as
19 presently here in the evidence, in this case, that CIAC
20 does not apply, that it is a contribution under 118A and
21 not a contribution in aid of construction under 118B.

22 The reason is that the -- when the City
23 requires a utility to go -- to place their services
24 underground, such as in this case, to relocate
25 underground, the relocation payment is not considered a

1 CIAC where the relocation is undertaken with the purposes
2 of community aesthetics and public safety and does not
3 directly benefit particular customers of the utility in
4 their capacity as customers.

5 And Boulevard Brewery does not receive any
6 benefit from this -- from the relocation or from the
7 undergrounding in their capacity as a customer of Kansas
8 City Power & Light because these lines don't serve them.
9 And the Notice 87-82 also has another additional example,
10 that reimbursements received by a utility for the cost of
11 relocating utility lines to accommodate the construction
12 or expansion of a highway and not for the provision of
13 utility services is also exempted from CIAC.

14 And in this particular case, specifically
15 with reference to the 26th Street, this has to do with
16 the, not highway, but public thoroughfare, a street of the
17 City, and it's not for the provision of service, utility
18 service to Boulevard. The customer receives no benefit.
19 The City receives the benefit of having a wider street.
20 The public receives the benefit of having a safer and
21 wider street.

22 And the line does not serve Boulevard.
23 They are not connected to this line. And to require them
24 to do this would be grossly unjust, and to require them to
25 pay CIAC charges, which are over 25 percent, is just

1 outrageous when the law is clear on that point.

2 And in conclusion, I'd like to once again
3 thank the Commission for giving us the opportunity and
4 expediting this proceeding. We're very, very grateful.
5 We're sorry we got in this position, but we couldn't
6 bargain any further with the company, so here we are.
7 Thank you.

8 JUDGE DALE: Thank you, Mr. Finnegan.
9 Mr. Blanc?

10 MR. BLANC: Judge Dale, Commissioner Gaw, I
11 would like to start off with a few clarifications that I
12 think are necessary that were raised in the City of Kansas
13 City and PIEA's closing.

14 KCPL does not challenge the City's of
15 blight nor question their purposes or methods or reasons
16 for finding such blight. We support urban development and
17 think it's a good thing for the City. That's frankly not
18 the issue here.

19 KCPL also supports Boulevard's expansion
20 project. It's undisputed here that KCPL has already done
21 about \$90,000 worth of work at Boulevard in support of its
22 project at no cost to Boulevard.

23 Furthermore, KCPL does not object to
24 relocating its facilities to accommodate Boulevard's
25 expansion. The only issues here are Count 1, which

1 addresses whether Boulevard or KCPL, which ultimately
2 means KCPL's ratepayers, should pay for the relocation
3 projects, and Count 2, should the Commission find that
4 Boulevard should bear the costs, is whether KCP&L's cost
5 estimates are unjust, unreasonable, discriminatory or
6 otherwise contrary to Missouri law.

7 Complainants bear the burden of proof here.
8 To prevail, they must demonstrate by a preponderance of
9 the credible evidence that they are entitled to the relief
10 they seek. They have not done so.

11 Regarding the projects, starting with the
12 Belleview project, it's undisputed here that Boulevard
13 requested that KCP&L either remove its facilities on
14 Belleview or relocate them underground. Evidence
15 presented regarding the reason for Boulevard's request is
16 as follows:

17 Mr. Krum testified that there are two
18 reasons Boulevard requested that the Belleview facilities
19 be removed or buried. The first he testified to was to
20 ensure that Boulevard had the increased number of parking
21 spaces it needed to accommodate a demand by the City that
22 was predicated on this expansion project.

23 The second he cited was to ensure that the
24 lines would not be visible from Boulevard's new third
25 floor terrace and conference center.

1 Mr. Wiley, the planner for KCP&L who
2 designed the relocation projects, explained that to
3 accommodate Boulevard's parking space concern, Boulevard
4 designed the so-called cleanup of its Belleview facilities
5 so that only one parking space would be eliminated.

6 Joe Rosa, a lawyer for Kansas City Power &
7 Light, testified that he was told by Mr. Krum that the
8 reason he wanted the facilities relocated was that he
9 didn't want to see them from his new third floor terrace
10 and conference center.

11 Further evidence that the parking space
12 rationale is not significant, Krum testified that if the
13 Commission concluded that Boulevard must pay for the
14 project, Boulevard wouldn't bury them. Boulevard would
15 just clean them up and leave the poles above ground.

16 When taken together, it's clear that the
17 primary reason Boulevard wants the Belleview facilities
18 removed or buried is to improve the new view from its
19 third floor terrace and conference center.

20 We would also like to note the inconsistent
21 treatment that Complainants have afforded the finding of
22 blight. With respect to Belleview, the finding of blight
23 says the facilities need to be removed underground, they
24 say, but then Mr. Krum testified that he'll leave them
25 above ground if he has to bear those costs. Although 26th

1 Street is also in the blighted area, this's no assertion
2 that those facilities need to be underground. Overhead
3 facilities will remain.

4 And speaking of the 26th Street project,
5 it's undisputed that Boulevard requested KCP&L to relocate
6 its facilities on 26th Street for a road widening project.
7 Evidence presented as to whether the road widening is a
8 City project or a Boulevard project is as follows:

9 The traffic study, which is here as
10 Exhibit 13, states that it studies, quote, the traffic
11 impacts regarding the proposed Boulevard expansion
12 development, end quote. Joe Rosa testified that
13 Boulevard's representatives explained to him that the road
14 widening was necessary to accommodate Boulevard's delivery
15 trucks.

16 Mr. Krum at Boulevard testified that
17 Boulevard's trucks do not presently use this exit onto
18 26th Street to leave the brewery but would once the
19 expansion was complete. Similarly, Mr. Elam's e-mail to
20 KCP&L dated September 21st, 2004, which is hearing
21 Exhibit 25, at paragraph 3 it states that the relocation
22 is necessary to accommodate semis that will be exiting the
23 brewery onto 26th Street.

24 Mr. Wiley also testified, KCP&L planner,
25 that when he designs facility relocations for a city road

1 widening, the City requests the relocations and the City
2 provides the drawings. In this case he testified
3 Boulevard requested the relocations and Boulevard required
4 the -- provided the drawings.

5 In testimony from -- I don't recall if it
6 was Mr. Krum or Mr. Figuly, but it would be borne out in
7 review of the record, said that Boulevard would be paying
8 for the road widening. When taken together, it's clear
9 that the widening of 26th Street is a Boulevard project
10 and not a City project.

11 With respect to Count 1, the Complainants
12 have asked the Commission to decide whether KCP&L's
13 ratepayers or Boulevard should bear the cost of the
14 relocation projects. It's clear under Missouri law that
15 under the present facts KCP&L's ratepayers should not be
16 required to subsidize Boulevard's expansion project.

17 As conformed by Mr. Figuly on
18 cross-examination, none of the City ordinances relied upon
19 by the Complainants or entered into evidence direct that
20 KCP&L's overhead lines be buried or say anything about who
21 should pay for such projects. Similarly, none of PIEA's
22 resolutions, other than 1083 which I'll discuss in a
23 moment, direct undergrounding or relocating or say
24 anything about who should bear those costs.

25 Complainants rely exclusively on the

1 general development plan for those points. Such reliance
2 is only reasonable if we're willing to accept one
3 provision of the plan and ignore another. Page 20 lists
4 overhead lines among various blighting factors that need
5 to be remedied or should be remedied under the plan. Page
6 34 says that utility relocation should be, quote, at the
7 developer's expense.

8 Complainants cannot pick and choose which
9 provisions of the development plan are City mandates and
10 which are not. If the first provision requires KCP&L's
11 facilities to be put underground, the second provision
12 requires that Boulevard pay for it.

13 As we discovered at this hearing, with the
14 exception of KCP&L, Boulevard has consistently paid to
15 remedy the other blighting factors listed in the
16 development plan. Mr. Figuly testified that Boulevard
17 paid to remedy, in fact, all the other blighting
18 conditions that were applicable here.

19 The construction of the -- the construction
20 of the project itself, obviously Boulevard's paying for
21 that. New curbs that were found to be necessary to remedy
22 blight, Boulevard's paying for that. New gutters that
23 were found to be necessary to remedy blight, Boulevard's
24 paying for that. New sidewalks that were found to be
25 necessary to remedy blight, Boulevard's paying for that.

1 Mr. Figuly also testified that Boulevard is
2 paying to relocate fire hydrants owned by the City of
3 Kansas City in its capacity as the water utility. The
4 development plan did not list fire hydrants as necessary
5 to remedy blight, but I think it's pretty clear that they
6 provide a public safety benefit.

7 Complainants have not explained why they
8 seek -- why they seek to treat KCP&L differently than the
9 other service providers under the development plan and of
10 the City as in its function as a public utility. The
11 development plan, simply put, as it was approved by the
12 city council, expressly states that the developer should
13 pay for these relocation projects.

14 One of the Complainants has sought to
15 obscure this issue by passing a resolution. One week ago
16 today, on March 1st, one of the Complainants, PIEA,
17 approved a resolution that seeks to amend the development
18 plan. That resolution is hearing Exhibit No. 4.
19 They seek to amend the plan to change the developer pays
20 provision to read that utility relocation costs should be,
21 quote, incurred and financed by the affected utilities or
22 other parties. Mr. Figuly testified that this was simply
23 a minor clarification.

24 As a preliminary matter, KCP&L disagrees
25 with that characterization. With respect to our

1 interests, we go from having no liability or cost
2 responsibility whatsoever to being first in line.

3 Other evidence attributable to Mr. Figuly
4 is also contrary to his assertion that it's simply a minor
5 modification of PIEA's intent. Mr. Figuly testified that
6 Boulevard sought the change that the resolution caused.
7 He also testified that PIEA had not sought to amend any of
8 its other many active development plans. Nor did he
9 indicate that PIEA intended to.

10 Also, the resolution itself says that it is
11 intended to ensure that page 34 of the development plan
12 has no bearing on this proceeding. That's the stated
13 purpose of the resolution.

14 Because 1083 is not a minor modification
15 the law that established PIEA clearly provides that it
16 needs to be approved by the city council to be effective.
17 The city council has not approved 1083 and the amendment
18 it seeks to make to the development plan and, therefore,
19 the amendment is not valid.

20 Even if the Commission finds that PIEA's
21 last-minute resolution is valid, it remains clear that
22 Missouri law does not require KCP&L's ratepayers to pay
23 for the relocation projects. The Union Electric case,
24 which is discussed here, and is the only case cited by
25 Complainants in support of their contention that Missouri

1 common law requires the KCP&L pay, is clearly based on the
2 condition in Union Electric's franchise with St. Louis
3 that is not in KCP&L's franchise, which is hearing
4 Exhibit 43.

5 Union Electric's franchise includes an
6 express condition that permits St. Louis to direct Union
7 Electric to relocate its distribution facilities. The
8 court's decision is premised on the fact that Union
9 Electric accepted that condition as part of its franchise.

10 As testified to by Mr. Rush and undisputed
11 by the Complainants, KCP&L's franchise does not contain an
12 analogous provision. Consequently, Union Electric does
13 not apply.

14 Now, Complainants want to jump to Step 2 of
15 a two-prong plan, of a two-step analysis in Union
16 Electric, and the court's language is very clear on this
17 point. There was some debate early on in the proceeding
18 about whether or not it was a two-prong test. But if you
19 go up a couple of paragraphs from the question -- from the
20 provision of the decision that was just read by
21 Mr. Finnegan in his closing, you'll see language that
22 says -- it's on page 32, the West version -- that it's
23 premised on the City's reservation of the right in the
24 utility's franchise to require the facility -- the utility
25 to relocate its facilities.

1 And before it gets to the proprietary
2 versus government analysis that the Complainants base
3 their case on, it says, I quote, in light of this
4 agreed-to reservation, and the reservation it's referring
5 to is, I quote, a reservation of the right to direct
6 relocation of electric distribution facilities.

7 So I think a plain and simple reading of
8 Union Electric demonstrates that it is a two-part
9 analysis. You look first if the utility agreed to such a
10 condition in its franchise, and then, if it did, whether
11 the utility should pay is a second question, and then you
12 get into the proprietary versus governmental. Here we
13 don't get past the first step. KCPL's franchise does not
14 contain the same provision.

15 Requiring Boulevard to pay for the
16 relocation projects is not only the correct legal
17 conclusion, it's also the most equitable one. It's hard
18 to imagine under what circumstances it would be
19 appropriate to require KCPL's ratepayers to pay for the
20 relocation of the 26th Street project, which is only
21 necessary to accommodate Boulevard's delivery trucks or,
22 worse yet, the burial of KCP&L's facilities on Belleview
23 which Boulevard requested to ensure that its view from its
24 new third-floor terrace is unobstructed.

25 Krum himself testified that it was not his

1 intention that KCP&L pay for the whole project. Mr. Elam
2 on the other happened, as testified to by Ms. Locker,
3 suggested very early on in this process to her that KCPL
4 should require its other ratepayers to pay for these
5 facilities. That's not the legally required outcome and
6 it's not the equitable outcome.

7 Count 2 of the Complaint, which is only
8 supported by Boulevard, is comprised of a list of
9 allegations that Boulevard has not substantiated during
10 this proceeding. A lot of the testimony we heard and a
11 lot of the evidence goes to the allegation that KCP&L was
12 unresponsive during this -- during the discussions of
13 these projects.

14 KCP&L takes customer services very
15 seriously and regrets that Boulevard feels the way it
16 does. However, as Ms. Locker testified, there were also
17 delays that were attributable to KCP&L waiting for
18 information from Boulevard. Ms. Locker and Mr. Wiley
19 testified that delays were also attributable to Boulevard
20 deciding to underground Belleview instead of cleaning it
21 up. We're not trying to point fingers here. I don't
22 think that's productive. But what we're saying, that
23 instead of a lack of responsiveness on KCPL's part, I
24 think it really demonstrates just they expected the
25 project to go more quickly than it did.

1 However, even if the Commission were to
2 conclude that KCP&L was not as responsive as maybe it
3 should or could have been, that has no bearing on who pays
4 or whether KCP&L's cost estimates are just and reasonable.

5 In Count 2, they also raise certain
6 allegations about our tariffs. Specifically, they say we
7 have no authority to recover the cost of the relocation
8 projects in our tariffs, and that the tariffs afford KCP&L
9 too much discretion.

10 With respect to their first argument,
11 Mr. Rush testified that KCPL's tariffs enable it to
12 recover from Boulevard the cost of both relocation
13 projects. He explained that in great detail, how that
14 worked. Boulevard did not provide any evidence to the
15 contrary.

16 Boulevard bases its argument on the fact
17 that the word relocate does not appear in Rule 9 of
18 KCP&L's tariff. But as Mr. Rush explained in great
19 detail, that's only if you look at, I think this would be
20 Phase 3 of an overall project. The overall project is
21 clearly an extension of service to Boulevard, and they
22 just want to say page 3 -- sorry -- Phase 3 doesn't
23 involve an extension, so we don't think your tariff
24 applies. I don't think that's a reasonable reading of our
25 tariffs or an interpretation of these projects.

1 Their second allegation is that the
2 Commission has afforded us too much discretion regarding
3 cost estimates and designing such projects. The only
4 evidence to this point is Mr. Elam's testimony that it's
5 his opinion that that's the case. There's no credible
6 evidence that the Complainants have met their burden.

7 What Complainants don't note is that once
8 approved by this Commission, tariffs have the same force
9 and effect as statutes. They've not met their burden to
10 demonstrate by a preponderance of the evidence that the
11 discretion that this Commission has decided to give KCP&L
12 is unjust or unreasonable. In fact, Mr. Rush testified
13 that KCP&L'S customers generally benefit from the
14 flexibility that this discretion -- the flexibility that
15 this discretion gives KCP&L.

16 He testified that of the thousands of
17 projects KCP&L has undertaken regarding extension, removal
18 of facilities, only two Commission complaints have been
19 filed, both of which directly involve Mr. Elam.

20 They also allege that KCP&L's cost
21 estimates for the projects are not just and reasonable.
22 In support of that allegation, they list several things.
23 They say that the projects were designed inappropriately,
24 that the cost estimates for the projects KCP&L provided
25 are too high, that the CIAC grossup tax shouldn't apply,

1 and that Boulevard should be able to complete the projects
2 or would be able to complete the projects for less money.

3 Starting with their first allegation
4 regarding design. The only evidence is Mr. Elam's opinion
5 that the projects include more facilities than are
6 necessary and that the Belleview line is entirely
7 unnecessary.

8 As he testified, he's not an engineer. He
9 appears to have no experience in a public utility planning
10 projects like this. He testified, in fact, that he has a
11 financial incentive to remove facilities from the project.
12 He also testified that he has no responsibility for the
13 reliability of KCP&L's system. He also testified that he
14 would not be willing to indemnify KCP&L for liabilities
15 that arise as a direct result of adopting his
16 recommendations.

17 Complainants also allege that the fact that
18 Boulevard -- that part of the Belleview facilities is
19 currently de-energized demonstrates that we don't need
20 that for reliability. What they don't discuss is what our
21 witnesses discussed, that that segment was de-energized in
22 order to accommodate construction. There's a crane
23 nearby, and it was a safety issue and that portion of the
24 facility needed to be de-energized to accommodate their
25 construction. What they also failed to mention is that it

1 was de-energized in such a fashion that it could be
2 re-energized very quickly in the event that KCPL needed it
3 for reliability.

4 Regarding Mr. Elam's suggestion that the
5 Belleview facility could be removed entirely, KCPL planner
6 and engineers testified, confirmed under oath that they
7 considered and evaluated Mr. Elam's proposals but
8 concluded that it would potentially jeopardize the
9 reliability of KCPL's system. They also testified that
10 part of the Belleview facilities that Mr. Elam recommends
11 be removed are presently serving another customer.

12 Mr. Rush testified that KCP&L can be held
13 liable under its tariffs for safety and
14 reliability-related issues under a gross negligence
15 standard. We look at the facts here. We have a
16 consultant that has recommended changes to KCP&L's design
17 of the relocation projects. He stated to us that he's not
18 an engineer, that he has a financial incentive to remove
19 facilities from the project, has no responsibility for the
20 adequate and safe operation of KCP&L's system. And
21 KCP&L's own planners and engineers have reviewed and
22 evaluated the recommendations and concluded that they
23 potentially jeopardize reliability of KCPL's system.

24 Put together, I think that would be a
25 pretty compelling case of gross negligence on KCP&L's part

1 if it adopted these plans and something bad were to occur.

2 Going to their second point that the cost
3 estimates that KCP&L provided are unjust and unreasonable,
4 the only evidence they presented is Mr. Elam's opinion
5 that the costs are too high, and then an e-mail he
6 received from Mark One with some dollar figures in it.

7 I think some testimony borne out today on
8 Mr. Gaw's -- pursuant to Mr. Gaw's or Commissioner Gaw's
9 questions indicated that when these two bids are -- cost
10 estimates are really compared on an apples to apples basis
11 and, as Mr. Wiley testified, all the facilities that are
12 truly necessary are added to the cost estimate, the cost
13 estimates are pretty close.

14 In any event, such a last-minute rough
15 estimate does not satisfy Boulevard's burden of proof to
16 demonstrate by a preponderance of the credible evidence
17 that our cost estimates are unjust and unreasonable.

18 Their next allegation goes to the CIAC tax
19 grossup issue. Once again, Boulevard relies exclusively
20 on the opinion of Mr. Elam and his reading of some IRS
21 letters. The CIAC tax issue is admittedly very
22 complicated. It's very fact specific and is based on
23 case-by-case determinations.

24 Burright explained KCP&L's CIAC policy and
25 how it was applied here. He showed a memo, a guidance

1 memo from the IRS, which is hearing Exhibit 44, that was
2 analogous here.

3 Mr. Finnegan has made much of the fact that
4 Boulevard is not directly connected to the facilities that
5 are being removed and that the work being done isn't
6 necessary to serve Boulevard, the relocations aren't
7 necessary to serve Boulevard.

8 Where the -- Mr. Burright testified to the
9 memorandum he was looking at. The facts there involved
10 were similar. They involved a college campus already
11 receiving electric service and requested that facilities
12 be relocated. That request wasn't necessary to serve the
13 college. They were just doing it for aesthetic reasons.
14 And the IRS held there that the CIAC tax did apply.

15 Which actually goes to the point, this
16 really is an IRS issue. It's a complicated area, and KCPL
17 has testified through Mr. Burright that if the Commission
18 did not feel comfortable addressing the CIAC issue and
19 directed KCPL to do so, it would seek a letter ruling on
20 Boulevard's behalf that would basically ask the IRS to
21 look at these facts and decide whether the CIAC tax
22 applied.

23 Our policy on such letter rulings is that
24 the customer pay, just to avoid the problem we have here.
25 Our whole ratepayers shouldn't have to -- shouldn't have

1 to bear the cost of Boulevard confirming whether or not
2 its project is -- whether CIAC applies.

3 Also, Mr. Burright testified that KCPL is
4 audited regularly by the IRS. He testified that while
5 he's there -- while he has been with the company, the IRS
6 has audited nine years worth of books for KCP&L. He also
7 testified that there's been no allegations or conclusions
8 from the IRS that KCP&L has ever treated the CIAC tax
9 issue inappropriately.

10 Their final point goes to equipment
11 construction. They simply allege that KCPL's policies are
12 inappropriate and result in unjust and unreasonable rates.
13 KCPL does, in fact, allow customers to do some of the
14 work. In this case the cost estimates KCP&L provided, as
15 testified to by Ms. Locker and Mr. Wiley, allow Boulevard
16 and anticipate that Boulevard will build the underground
17 facilities through which our facilities will be placed.

18 Mr. Rush also testified that we use
19 contractors for some types of projects. Our engineers
20 testified that it's very particular, fact-specific. We
21 use contractors for certain types of work in certain types
22 of circumstances.

23 Boulevard's vague and unsupported
24 allegations fail to satisfy its burden as the Complainant
25 to demonstrate by a preponderance of the credible evidence

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1 that KCP&L's cost estimates for the relocation projects
2 are unreasonable, unjust, discriminatory or otherwise
3 inconsistent with KCP&L's tariffs or Missouri law.

4 Boulevard's position also fails to
5 recognize that at the end of the day, neither Boulevard
6 nor its consultant is responsible or held accountable for
7 the safe and reliable operation of KCP&L's system.
8 Under Missouri law, KCP&L is solely responsible for the
9 safe and adequate provision of electric service in its
10 service territory.

11 Thank you very much.

12 JUDGE DALE: Thank you, Mr. Blanc. Do I
13 have Commissioner questions?

14 COMMISSIONER GAW: Yes, a few, Judge. I
15 hope a few.

16 Let me start out with Kansas City itself,
17 and some of this will be repetitive. This issue in regard
18 to whether or not the initial franchise does or does not
19 have the appropriate conditions in it regarding KCP&L
20 moving its lines in the event of a street widening, I
21 want -- I want you to shed some light on that for me, and
22 then I want to come back over to KCPL again after I finish
23 that, whoever wants to handle it.

24 MS. BROWN: Well, it's my understanding
25 that the -- and I read it last night -- that there's

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1 nothing in there that discusses relocation of lines.

2 COMMISSIONER GAW: So there's no -- the
3 franchise itself, does it grant KCP&L the right to lay
4 lines along the streets on the right of way of the City?

5 MS. BROWN: I believe it does.

6 COMMISSIONER GAW: Does someone have that?
7 And while they're looking for that, let me ask KCP&L
8 whether or not they have ever relocated any lines as a
9 result of a change in the streets in Kansas City over the
10 last --

11 MR. BLANC: Undoubtedly, sir.

12 COMMISSIONER GAW: And can you tell me who
13 pays for that whenever that occurs?

14 MR. BLANC: I think it's case-by-case, and
15 Mr. Rush can probably speak to --

16 MR. FINNEGAN: We've had closing arguments.

17 MR. BLANC: Right. It's a fact question.
18 I know there are examples where the City has paid. I know
19 there are examples where a developer has paid. It's very
20 fact specific.

21 COMMISSIONER GAW: Okay. I'm -- just give
22 me the -- from a legal standpoint, if a street is being
23 widened, ignore the issues of whether or not it's a
24 developer involved, just a street being widened, clearly
25 for a public purpose, does KCP&L dispute whether or not

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1 they would have to pay to relocate their lines in that
2 event?

3 MR. BLANC: If there's no developer
4 involved and the City --

5 COMMISSIONER GAW: Yes.

6 MR. BLANC: -- just decided sua sponte that
7 the road needs to be widened?

8 COMMISSIONER GAW: Yes, that's my question.

9 MR. BLANC: I honestly don't know the
10 answer to that question. I believe that --

11 COMMISSIONER GAW: You're telling me that
12 after all of these years, that is a question that cannot
13 be answered by this utility?

14 MR. BLANC: Not by me, sir, is what I'm
15 saying.

16 COMMISSIONER GAW: So Kansas City Power &
17 Light has no legal position on whether or not it is -- it
18 should or should not be paying for those relocations?

19 MR. BLANC: I don't think that's an
20 accurate portrayal either, sir.

21 COMMISSIONER GAW: I doubt it. So what is
22 the legal position that KCPL has in regard to relocating
23 those lines if a street is widened so that the lines have
24 to be moved to accommodate that?

25 MR. BLANC: An example I am aware of is,

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1 for example, if the City requires us to move facilities
2 underground, there's a specific provision of our tariff
3 that says that it bears those -- the City bears those
4 costs.

5 COMMISSIONER GAW: I'm not asking --

6 MR. BLANC: As part of a road project, I'm
7 saying, going to your question --

8 COMMISSIONER GAW: Would that then suggest
9 to me that the answer is that if the lines are being
10 relocated aboveground, that KCPL would normally pay?

11 MR. BLANC: I don't think that's correct.
12 Subject to check, I believe the City would pay.

13 COMMISSIONER GAW: The City would pay for
14 an above the ground moving of those lines if the street
15 were widened?

16 MR. BLANC: Yeah. I would like to reserve
17 the right to research and --

18 COMMISSIONER GAW: Let me ask Kansas City
19 Power & Light -- excuse me -- Kansas City itself. Does
20 Kansas City pay for the relocation of those lines if a
21 street is widened.

22 MS. BROWN: I don't believe so, but I'm
23 sorry, I don't know the answer to the question.

24 COMMISSIONER GAW: You know, this is a very
25 important basic question to me.

1 MR. BLANC: I am aware of the
2 distinguishing fact now, and I had looked at this earlier.
3 The issue is whether it's in a public right of way or in a
4 private easement. If the City requests sua sponte that we
5 move facilities, if it's in a public right of way that the
6 City provided, we do it at our own cost. If it's in a
7 private right of way that we own, the City pays to find a
8 new right of way and for the relocation.

9 COMMISSIONER GAW: Now we're getting
10 somewhere.

11 MR. BLANC: I apologize that that took a
12 moment and some confusion.

13 COMMISSIONER GAW: That's okay. I just
14 want to get to the answer today.

15 And is there a disagreement about whether
16 or not these lines that are in controversy as they sat
17 before the construction are in a private easement or in
18 city right of way?

19 MS. BROWN: I believe they're in the public
20 right of way.

21 COMMISSIONER GAW: Let me -- Commissioner
22 Clayton is asking whether or not you agree with his
23 previous statement about the -- when KCP&L pays and when
24 the City pays.

25 MS. BROWN: I believe that's true, and I

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1 believe that that is borne out in the Union Electric case
2 where they talked about the common law applicable to
3 franchises.

4 COMMISSIONER GAW: All right. We still
5 have dispute about where that case applies and doesn't,
6 but if we can -- if I can work through this one tiny step
7 at a time. So in -- so what was my next question? Now
8 I've lost it.

9 COMMISSIONER CLAYTON: Do they agree that
10 these lines in question are --

11 COMMISSIONER GAW: Yes. Are these lines in
12 question, at least prior to the construction, all in
13 public right of way?

14 MS. BROWN: Public right of way.

15 MR. BLANC: I'm sorry. What was the
16 question? I apologize.

17 COMMISSIONER GAW: Are the lines in
18 question before the construction, before the privatization
19 of whatever this Belleview Street was, were they all in
20 public right of way?

21 MR. BLANC: My understanding is that
22 Belleview was in a private right of way or private
23 easement.

24 COMMISSIONER GAW: Beforehand?

25 MR. BLANC: Yeah.

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1 COMMISSIONER GAW: Before all this?

2 MR. BLANC: Yes, it was in a private
3 easement.

4 MR. FINNEGAN: No. Belleview. Mr. Wiley
5 is saying no, they were all in public right of way.

6 COMMISSIONER GAW: I want to get this
7 completely straight here before we -- so I've got one
8 little tiny thing sticking out of the water to stand on.

9 MR. BLANC: I believe that the Belleview
10 facilities were in a public right of way.

11 COMMISSIONER GAW: So that everyone agrees
12 to? No one disagrees? Let me put it that way.

13 MR. FINNEGAN: 26th Street also.

14 COMMISSIONER GAW: All right. Both of
15 them?

16 MS. BROWN: Right.

17 COMMISSIONER GAW: Okay. That helps me to
18 start. Now, that being the case, then, the Union Electric
19 case that continues to come up here from the Supreme Court
20 of Missouri in 1977, in regard to the 26th Street
21 portion -- well, let me say for both portions. Do the
22 parties believe that in the event -- let me start over.

23 If we had a situation like I described
24 earlier where a street was being widened and the utility
25 was in the public right of way, is there a requirement

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1 under any of the tariffs or case law or city ordinances or
2 anything that requires there to be a specific kind of
3 notice delivered to the utility by the City in order for
4 that -- in order for KCP&L to be liable for moving those
5 lines?

6 MS. BROWN: I'm not aware of any statutory
7 legal requirement. I just think maybe as a practical
8 matter they need to be told, you know, these are our plans
9 and this is what we're doing, but I don't know of any
10 statutory or other legal requirement.

11 COMMISSIONER GAW: And I'm trying to
12 eliminate points of disagreement here. I'll ask KCP&L the
13 same question.

14 MR. BLANC: I know in the standard course
15 we get such notifications from the City, but I don't know
16 if it's required by regulation or statute, but I know we
17 regularly get them.

18 COMMISSIONER GAW: Okay. All right. Now,
19 then if I'm -- then from this point forward I think I'm
20 not going to get much agreement, but it will help me a
21 little bit, I think, if I ask these questions.

22 Now, so in -- in regard to the -- to the
23 26th Street improvement, is it -- is it clear on that
24 portion that the reason for the move of the lines at least
25 in regard to the portion that extends from the alley west

1 to Southwest Boulevard has to be done with the street
2 being widened, that there is no choice but if the street
3 widens, you have to move those lines? Do you all agree
4 with that?

5 MR. BLANC: That's correct.

6 MS. BROWN: Yes.

7 COMMISSIONER GAW: And everyone else.
8 Okay. Now, the portion going the other direction from the
9 alley going east, would that be required to be moved
10 because of the street being widened?

11 MS. BROWN: I don't know, but I don't
12 believe so.

13 COMMISSIONER GAW: And would you agree with
14 that?

15 MR. BLANC: I think -- kind of separate the
16 issues. I think our engineers testified that while
17 strictly speaking, right, the road is literally not
18 getting wider on that end to necessitate it, but the
19 necessity to remove the poles up where it is being widened
20 necessitated that those poles be moved as well, and that
21 the engineers designed it that way to accommodate the road
22 widening.

23 COMMISSIONER GAW: That's -- okay. That's
24 helpful to me, because I wasn't clear on that earlier.

25 MR. FINNEGAN: I'd like to clarify that.

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1 COMMISSIONER GAW: All right. Go ahead.

2 MR. FINNEGAN: My understanding of what the
3 engineer said, that they're doing that because it would
4 avoid two crossings of 26th Street.

5 COMMISSIONER GAW: Yes.

6 MR. FINNEGAN: Because right now the line's
7 over there. We don't need those lines moved to operate
8 anything.

9 COMMISSIONER GAW: I understand, but I'm
10 trying to -- trying to gather here the cause and effect
11 thing. My poor old science professors would be upset with
12 me if I didn't ask things that had to do with cause and
13 effect.

14 So in regard to the Belleview portion, I'm
15 going to ask you to make an assumption that isn't correct
16 here. If the Belleview street were left as a public
17 street and the changes were made that are either
18 contemplated to be made or are being made now, I don't
19 know what the status is, would those poles and lines have
20 to be moved physically in order to accommodate the
21 widening of that street?

22 MR. BLANC: My --

23 COMMISSIONER GAW: Whoever wants to go
24 first.

25 MR. BLANC: My understanding is, no, that

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1 the poles could exist if the road remained a public road.

2 COMMISSIONER GAW: If it were widened like
3 it is contemplated it will be widened?

4 MR. BLANC: My understanding is yes.

5 COMMISSIONER GAW: Is there a disagreement
6 on that question?

7 MS. BROWN: I believe that the City has
8 required that those poles be removed to provide for
9 additional parking, and the parking is a City requirement
10 of the development.

11 COMMISSIONER GAW: I'll get into that in a
12 moment, but are those -- and I think there's evidence on
13 this, and I'm not trying to get back into the evidence
14 that we've already hashed out. I'm just trying to
15 understand where the parties agree factually here.

16 Now, if I get into the question of public
17 purpose on the Belleview extension, I want to take a
18 little bit of a jag first with this question. Does anyone
19 have any law or cases to point out, what occurs in the
20 event that an easement is -- excuse me -- that a utility
21 is using a public right of way that is abandoned back to a
22 private use, what occurs with the right of that utility to
23 continue to utilize what was a right of way under -- and
24 keyed into, I guess, into their franchise initially? Does
25 anyone have any cases on that question?

1 MS. BROWN: I can tell you what the City's
2 practice is. When we require -- when a street is vacated,
3 there's notice to any of the utilities who are located in
4 the street. And if the utilities object to the vacation
5 of the street and the removal of their facilities, then it
6 is required that an easement be given to the utility to
7 continue to maintain those lines, is my understanding.

8 COMMISSIONER GAW: Does KCPL agree with
9 that?

10 MR. BLANC: Yeah. I think that's, in fact,
11 what has happened here.

12 MR. FINNEGAN: I'd like to add to this.

13 COMMISSIONER GAW: Sure. Let him finish.

14 MR. BLANC: I think, yeah, we've been given
15 a private easement for the new facilities.

16 COMMISSIONER GAW: Okay. All right.
17 That's helpful. Yes, sir.

18 MR. FINNEGAN: Let me say this. They were
19 given a private easement so that the condition of allowing
20 the street to be vacated, but the Union Electric case
21 involved the vacation of a street and the removal of
22 lines, and that's what we've got here.

23 COMMISSIONER GAW: I'm not stopping yet.
24 I'm just asking these questions for my own sake here.
25 All right. So at least -- at least as -- there's some

1 sort of agreement as to practice in regard to easements
2 being granted when a street is abandoned, right?

3 MS. BROWN: Yes.

4 COMMISSIONER GAW: As a general rule?

5 MR. FINNEGAN: That's the way to get to
6 done.

7 COMMISSIONER GAW: Okay. Now, the Union
8 Electric case as it applies to this public purpose
9 question, you've said it so many times now, I hate to ask
10 you again, but I want you to tell me one more time from
11 KCP&L's point, what is it about this Belleview portion of
12 this case that is different than what the facts were in
13 the -- in the Union Electric case?

14 MR. BLANC: I'd like to preface that with I
15 don't think we have to get to that question.

16 COMMISSIONER GAW: I understand, but -- and
17 I may come back to let you go back to that argument as
18 well, but get to that second question for me if you would.
19 What distinguishes the fact situation here from the fact
20 situation in the Union Electric case?

21 MR. BLANC: I would say the largest factual
22 distinction is the document relied upon for the finding of
23 blight and the finding of the public purpose, everything
24 that the City of Kansas City has discussed, and that lists
25 overhead utilities as a blight, that same document also

1 says the developer pays, where that's very different than
2 Union Electric.

3 COMMISSIONER GAW: You mean the Union
4 Electric case, what was -- what was stated in regard to
5 that question?

6 MR. BLANC: In the Union Electric case,
7 there wasn't a document that said the developer had to
8 pay, so I guess that issue wasn't relevant.

9 COMMISSIONER GAW: Okay. Was there a
10 specific city ordinance adopted by Kansas City
11 regarding -- that was similar to the one that was -- that
12 was referred to in the Union Electric case, the ordinance
13 that -- I think there were two ordinances actually
14 mentioned there, perhaps, but the second ordinance that
15 related to the project itself?

16 MS. BROWN: The Kansas City -- Kansas City
17 approved the general development plan through an
18 ordinance. Later it was amended by the PIEA. That
19 amendment was not approved by the council.

20 COMMISSIONER GAW: All right. But the
21 initial ordinance, what did that -- how did that relate to
22 what's in the ordinance that was discussed in this case,
23 in the Union Electric case?

24 MS. BROWN: I'm -- I think that the
25 original plan approved by the LCRA in the Union Electric

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1 case was very similar. They don't raise -- that issue was
2 not raised about whether or not there was developer
3 expense.

4 COMMISSIONER GAW: Ignore that for me for a
5 moment. What was in the original -- in regard to this
6 project, what was in the original Kansas City ordinance?
7 Was there a Kansas City ordinance on this project?

8 MS. BROWN: Yes, there -- no. There was
9 one on the general development plan. The way the statute
10 is structured, the individual projects do not go back to
11 the city council for approval. They are just approved by
12 the PIA board.

13 COMMISSIONER GAW: And then is the PI -- is
14 PIA or PIEA?

15 MS. BROWN: PIEA. Either one.

16 COMMISSIONER GAW: All right. Is that
17 board delegated authority from the City to do other things
18 regarding the specifics of the project?

19 MS. BROWN: Actually, the delegation is not
20 through the City. It's through the statute. What happens
21 is a general plan is approved, and then after the council
22 approves that, then the PIEA will advertise for developers
23 and they'll come in with a project. The PIEA approves
24 that project, like the Boulevard project, and sends a
25 notice to the council, and the council has 30 -- the PIEA

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1 cannot enter into a contract with that developer for
2 30 days. After that 30 days is up, typically the PIEA
3 will enter into a contract with the developer.

4 But the council -- the council
5 participation is at the general development plan and
6 blight study level. It's not on the individual projects.
7 Some of -- some of the general development plans are much
8 larger areas and may have more than one project. This was
9 a smaller one. It had just one project in it.

10 COMMISSIONER GAW: Okay. In the Union
11 Electric case, there's a reference to this
12 Ordinance 56831. Do you see that?

13 MS. BROWN: Yes.

14 COMMISSIONER GAW: Union Electric
15 challenged it as being unconstitutional and some other
16 things.

17 MS. BROWN: I think that's the vacation
18 ordinance.

19 COMMISSIONER GAW: And do you have a
20 similar ordinance in Kansas City?

21 MS. BROWN: I did not enter that into the
22 record, but yes, we do.

23 COMMISSIONER GAW: You do, but it's not in
24 the record?

25 MS. BROWN: Right.

1 COMMISSIONER GAW: Okay.

2 MS. BROWN: May I clarify?

3 JUDGE DALE: If you could file that as a
4 late-filed exhibit, please.

5 MS. BROWN: Yes. We do have it in our
6 Kansas City record, not in this record.

7 JUDGE DALE: But it's not one of the
8 ordinances you've previously --

9 MS. BROWN: No.

10 JUDGE DALE: If you could just go ahead
11 and -- what are we up to, 46?

12 MR. BLANC: Yes.

13 MS. BROWN: I can do that. That's not a
14 problem.

15 JUDGE DALE: That would be great. Is there
16 any objection to her filing that?

17 MR. BLANC: No, your Honor.

18 COMMISSIONER GAW: Can you tell me what
19 that ordinance, the gist of that ordinance is?

20 MS. BROWN: It simply would vacate -- it
21 simply is going to be an ordinance that vacates that
22 Belleview Avenue, and then the property, the ownership of
23 the property reverts to the owners on either side of
24 the -- from the centerline to either side, the property
25 owners on either side of the street.

1 COMMISSIONER GAW: And then --

2 MS. BROWN: Excuse me. And then probably
3 retains the easements.

4 COMMISSIONER GAW: And then is it your
5 argument, then, that the reason for that change and the
6 dedication of that area, then, is for a similar public
7 purpose as what was contained in the Union Electric case?

8 MS. BROWN: Yes. It's part of the project.
9 It was -- that vacation was recommended by City staff as
10 part of the rezoning, and it was to accommodate parking
11 and other issues. It was -- actually, it's a very narrow
12 street, so widening it would not really be feasible. They
13 made it a one-way street, and it connects now to the
14 one-way street, I think, which is to the --

15 COMMISSIONER GAW: Without getting into
16 facts that aren't -- I don't want to get into facts that
17 aren't in the record now. Just argument on what's there.

18 MS. BROWN: It was required by the City as
19 part of the rezoning, which was also -- which was also a
20 City requirement to approval of the plan.

21 COMMISSIONER GAW: Okay. Now, I'm back to
22 KCP&L real quick. Tell me why on that second part, on the
23 facts again, why is that different than what is in this
24 case, the Union Electric case?

25 MR. BLANC: I think a key difference is the

1 fact that PIEA owns the property and will be receiving
2 lease payments, which starts to sound more like a
3 proprietary function. I don't have the cite, but we cited
4 in our answer a case that dealt with the city vacating
5 property to establish a city market, and the court found
6 in that case that because the city was acting in a
7 proprietary function owning the city market, that it was
8 indeed a proprietary function.

9 COMMISSIONER GAW: What is it that was
10 being built in the Union Electric case?

11 MR. BLANC: I believe a -- I think it
12 was -- just make sure. I remember reading a housing
13 project case and a hotel case, and I want to make sure.

14 MR. FINNEGAN: This is a --

15 COMMISSIONER GAW: Is this the one that had
16 the hotel, a hotel as a part of St. Louis' new downtown
17 convention center?

18 MR. BLANC: And there's no indication that
19 the City planned to own a hotel or an agent of the City
20 planned to own the hotel.

21 MR. FINNEGAN: It says here that it was to
22 accommodate -- include the convention plaza and a
23 privately owned and operated hotel.

24 MR. BLANC: Privately owned.

25 COMMISSIONER GAW: So are you arguing that

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1 it's better, that it's a stronger case for you that this
2 matter is quasi-publicly owned as opposed to privately
3 owned? That's confusing.

4 MR. BLANC: I say it supports Kansas City
5 Power & Light's argument that PIEA in acting in a
6 proprietary nature because it is the owner of the
7 facility, has an ownership interest, a financial interest
8 in the facility. It's not acting in a purely governmental
9 capacity.

10 COMMISSIONER GAW: How is owning a hotel --

11 MR. BLANC: I think we're mixing the facts
12 of the two cases.

13 COMMISSIONER GAW: I think we are. That's
14 why I'm trying to clear it up for myself.

15 MR. BLANC: In Union Electric, a private
16 developer, not the City, is owning the hotel. And so you
17 can go to the City's finding of blight, and the City has
18 no disinterested third party saying this development's
19 necessary. It's a government purpose. That
20 determination's government.

21 In the facts we have here, that
22 disinterested third party is a little muddled because PIEA
23 isn't truly disinterested. It's an owner of the property
24 and it receives lease payments, so it's acting in a
25 proprietary function.

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1 COMMISSIONER GAW: So if this project were
2 owned by a private entity, would you believe that then you
3 should pay for the removal of the lines under this case,
4 assuming that you don't have the first of your arguments
5 on the table?

6 MR. BLANC: Right. Assuming that the fact
7 that that condition isn't in our ordinance or isn't in our
8 franchise, there was -- the answer is still -- I'm sorry.
9 Would you repeat the question? We got sidetracked on the
10 ordinance.

11 COMMISSIONER GAW: Yes. If the -- if the
12 project were being built by a private developer in this
13 case but it still had all the other elements that are in
14 the Union Electric case --

15 MR. BLANC: Then we would rely on the fact
16 that the general development plan that the city council
17 approved says the developer pays.

18 COMMISSIONER GAW: So you're back to that
19 language in the -- that's what you're hanging your hat on?
20 If I take that language out, then your argument goes away
21 on that second point?

22 MR. BLANC: One argument goes away. I
23 guess there --

24 COMMISSIONER GAW: I'm not going to -- I
25 know you have to come up with all the arguments you can

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1 think of. I'm not trying to take those away from you.

2 I'm just trying to narrow them down one at a time.

3 MR. BLANC: I can narrow it to two primary
4 arguments that would be --

5 COMMISSIONER GAW: No. Just on this issue.
6 I'm trying to understand how it is better for -- if better
7 means trying to get KCP&L to pay for the moving of these
8 lines, how is it better in that case for us to have a
9 private developer involved as opposed to a quasi-public
10 developer involved?

11 MR. BLANC: I think it goes to the fact of
12 the discussion in Union Electric of a government entity
13 acting in its governmental or proprietary function. I
14 think -- and Union Electric stands for the proposition
15 that the utility had to pay in that case because the
16 government was acting in a governmental function.

17 But I think here, with respect to PIEA,
18 they're not acting in a purely governmental function.
19 It's demonstrated they're an owner. They have a financial
20 interest in the project.

21 MR. FINNEGAN: May I respond?

22 COMMISSIONER GAW: Go ahead.

23 MR. FINNEGAN: That's ludicrous. I mean,
24 it doesn't make any difference who is the owner, whether
25 it's the City or the -- it's not the governmental

1 function. What it says right here in Union Electric is
2 the primary purpose of the project is what's important.
3 The primary purpose of the project, the redevelopment or
4 renewal of what is implicitly a blighted area of the City
5 has been declared legislatively to be a public purpose.
6 That's the part that -- the blight that's -- no matter who
7 goes on the ground to declare the blight, it's to take
8 care of the blight.

9 MR. BLANC: I'd refer to the case in our
10 answer. I can flip and find the cite, but involving the
11 city market that the city owned, and the court held that
12 that was a proprietary purpose and therefore --

13 COMMISSIONER GAW: I understand. I
14 think -- and I think those cases, that case needs to be
15 looked at, too.

16 All right. And I've got, I guess, maybe
17 one or two more things, and then I'm done. How does --
18 how does the City get around the fact that they -- that in
19 their ordinance they say the developer's going to pay for
20 this relocation?

21 MS. BROWN: The City's position is that
22 that's a minor modification. The PIEA is authorized by
23 the statute to make minor modifications to the plan
24 without council approval. If you look at the Tierney
25 case, that's the only case in Missouri or the only case I

1 know of that describes what a modification is.

2 COMMISSIONER GAW: Help me to understand
3 something. This project is an important project in the
4 area, obviously. You-all are down here arguing this for
5 the last three days. Everybody's here and trying to do
6 their best to get this resolved.

7 Why didn't the City of Kansas City do
8 something about that ordinance if they felt like that they
9 wanted some different result than what's expressed by its
10 terms?

11 MS. BROWN: I think the City was
12 comfortable with the modification by the PIEA.

13 COMMISSIONER GAW: How do I conclude that?
14 How do I sitting up here conclude that the city council
15 intended for something different in their language than
16 what was expressed in that ordinance?

17 MR. FINNEGAN: It's not in the ordinance.
18 The ordinance approved the plan.

19 COMMISSIONER GAW: Okay. Where is it
20 again?

21 MR. FINNEGAN: The language is in the PIEA
22 plan that the City approved. So the city ordinance makes
23 no mention of that particular item, just that they
24 approve --

25 COMMISSIONER GAW: But they did approve it

1 with it in there?

2 MR. FINNEGAN: They did approve it with it
3 in there.

4 COMMISSIONER GAW: I've got to assume, even
5 though I know better than this, I have to assume that they
6 looked at that portion when they approved it.

7 MR. FINNEGAN: They did, but the PIEA is
8 also allowed to make minor modifications.

9 COMMISSIONER GAW: And how do I know -- how
10 do I conclude what is a minor change and what is not from
11 the bench?

12 MS. BROWN: The Tierney case says that a
13 substantial modification which would require council
14 approval would substantially alter the nature of the
15 contemplated development.

16 In the Tierney case, there was -- the PIEA
17 modified a plan previously approved by the council. The
18 council did not approve the modification. They switched,
19 I think, from an office building to a hotel or vice versa.
20 They also changed the streets around. But the court said
21 that didn't change the whole development. You've got to
22 look at the whole development. You know, it may have made
23 a huge difference to somebody whether or not there was a
24 hotel or an office building, but the court said that
25 didn't change the whole nature of the entire development.

1 So you've got to look at it as a whole, not
2 just whether a minor change has an effect on certain
3 parties. I mean, the configuration of the streets might
4 have made a big difference to somebody who didn't want a
5 street to go a certain place, but you've got to look at
6 the whole plan.

7 COMMISSIONER GAW: Did the Union Electric
8 case involve burying lines?

9 MS. BROWN: I think it was complete removal
10 of the lines, I believe.

11 COMMISSIONER GAW: I guess one more
12 question, and that is, is it -- do you-all all agree that
13 the City of Crestwood cases have no applicability to this
14 matter?

15 MS. BROWN: I'm not familiar with them.

16 MR. BLANC: Didn't come across them in my
17 research.

18 MR. FINNEGAN: Mine neither.

19 MR. BLANC: I believe not. Diligent
20 search.

21 COMMISSIONER GAW: Well, I would suspect
22 that it would be KCPL that would appreciate them most,
23 but -- and I don't know whether or not they're applicable
24 to this fact situation.

25 MR. FINNEGAN: Insofar as -- and I have not

1 read them -- that they do not refer to improving for being
2 for a public service and legislatively declaring that,
3 declaring a blighted area --

4 COMMISSIONER GAW: They do have to do with
5 the City's ability to dictate whether or not lines are
6 buried or not, if I recall properly, and I may be
7 incorrect. I haven't looked at them for a few couple
8 months anyway. All right. Well, I thought if there was a
9 reaction and I could get one, that would be helpful.

10 I don't have any further questions. Thank
11 you all very much. I know Commissioner Clayton has some.

12 COMMISSIONER CLAYTON: I just have a few
13 questions. A lot of ground was covered by Commissioner
14 Gaw, but I did have some questions in the exchange going
15 back and forth.

16 If you -- setting aside your initial
17 argument, Mr. Blanc, the argument about the reference in
18 the plan that is approved by the ordinance, if you didn't
19 have the financing arrangement where the City takes hold
20 of the property or owns the property, would you agree --
21 and in that assumption, that Boulevard is the owner of the
22 property, and taking away your initial argument, would the
23 UE case be on point and KCP&L be required to pay for the
24 modification of the facilities?

25 MR. BLANC: I think with all the

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1 assumptions you made, we need to look at --

2 COMMISSIONER CLAYTON: Be two. I guess

3 two.

4 MR. BLANC: Right. Two assumptions. I
5 think we have to look at 26th Street and the Belleview
6 projects differently. 26th Street would be a closer call,
7 and since we'd be moving out of the public right of way,
8 there's probably a strong case there that KCPL would have
9 to bear those costs.

10 But that's different with respect to
11 Belleview -- sorry, -- with respect to moving the
12 Belleview facilities underground because there's a
13 specific provision in our tariff that says if the
14 municipality directs us to move facilities underground,
15 the municipality pays, and that's force and effect of a
16 statute.

17 MR. FINNEGAN: May I respond?

18 COMMISSIONER CLAYTON: Please, if you're
19 finished, Mr. Blanc. If you've finished with your
20 thought, go ahead.

21 MR. FINNEGAN: A, there's no requirement
22 that the facilities be put underground, just that they
23 would be removed. Now, what KCP&L does with them, that's
24 their prerogative. They can move them. They can run a
25 feeder down another street. But the fact that the

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1 overhead lines should be removed.

2 The second one with respect to the Union
3 Electric case and the ordinance, the issue in that case
4 concerning the ordinance that was involved was raised by
5 Union Electric was whether or not -- it was a
6 constitutional question whether it violated their -- the
7 obligation of a contract. That issue has not been raised
8 in this case. That was the only purpose that the
9 ordinance was about.

10 Then they went next -- they moved from that
11 and went to what the common law of the state was, and it
12 says that, with respect to the ordinance and the prior,
13 the previous ordinance, they said that is not an
14 impairment of the obligation of the contract.

15 COMMISSIONER CLAYTON: Ms. Brown, do you
16 have anything to add? Don't feel like you have to. Just
17 give you a chance.

18 MS. BROWN: Of course I do. I was asked to
19 supply the vacation ordinance, a certified copy of the
20 vacation ordinance. Earlier in the questioning there was
21 questions about our process. I could also supply our
22 charter provisions which set forth the vacation process if
23 that would be helpful.

24 COMMISSIONER CLAYTON: Is that a part of
25 the city code?

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1 MS. BROWN: Yes.

2 COMMISSIONER CLAYTON: So it's a public
3 record. As long as there's no objection.

4 MR. BLANC: No objection if it's part of
5 the public record.

6 COMMISSIONER CLAYTON:

7 MS. BROWN: My only last comment will be
8 that in regard to the other public improvements, the
9 streets, the sidewalks, curbs, gutters, there was some
10 discussion about why Boulevard was paying for those and
11 not the City or being assessed to someone else.

12 The City has the -- has the authority to
13 assess any of those public improvements to the abutting
14 property owners. The City allowed Boulevard to construct
15 those or is allowing Boulevard to construct those itself,
16 and that's because it's quicker and cheaper for Boulevard
17 to do that. The City could construct all those and assess
18 those to Boulevard, and certainly has that authority.

19 COMMISSIONER CLAYTON: Now, back to you,
20 Mr. Blanc. Your initial argument hinges on the existence
21 of the language in the development plan approved by
22 ordinance that says that it is the developer's
23 responsibility to pay for any utility modifications?

24 MR. BLANC: Correct, sir.

25 COMMISSIONER CLAYTON: Correct? Now, this

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1 is where some confusion sets in for me, because I don't
2 understand how you have an arrangement that is between a
3 developer and the City for certain activities, it is an
4 arrangement between those two parties, and that language
5 in an agreement that they have which makes reference to
6 you, who is not a party to the agreement, considering that
7 you have no consideration in the contract, there's no
8 promise, there's no back and forth from your part, how
9 does an agreement between those parties affect your rights
10 or duties?

11 MR. BLANC: Once the city council approves
12 it and then the City mandates that it be implemented,
13 that's when it begins to impact us.

14 COMMISSIONER CLAYTON: Okay. So is your
15 argument that -- say, for example, the plan said KCP&L
16 will bear all these costs. If that were the case, would
17 you agree that you owed, that you would be responsible for
18 those costs, if the plan said that, or would KCP&L have
19 taken assertive action to oppose the ordinance?

20 MR. BLANC: I think we would have taken
21 assertive action and challenged the ordinance, perhaps on
22 a takings ground distinguishable from Union Electric,
23 because that condition isn't in our franchise would give
24 us a stronger takings argument. It may be an argument we
25 would pursue.

1 COMMISSIONER CLAYTON: Okay. Do you-all
2 have any comment on that? No.

3 MS. BROWN: Well, my comment just is that
4 the City and the -- or the PIEA and the developer's
5 contract does have an impact on KCP&L, but that's just --
6 it just recognizes what we consider to be their legal
7 obligation.

8 MR. FINNEGAN: I would like to add that the
9 ordinance that the city council approved was directed to
10 PIEA, gave them the authority. That ordinance or the
11 other ordinances and the law of Missouri allows PIEA to
12 make minor modifications, as long as they're not
13 substantial.

14 COMMISSIONER CLAYTON: Common law
15 authority.

16 MR. FINNEGAN: Common law authority.
17 There's statutes, too, Chapter 100.

18 COMMISSIONER CLAYTON: Chapter 100. Boy,
19 that chapter comes up around here more than you want to
20 know.

21 Okay. In my list of case law, I just want
22 to go through this quickly, there have been references to
23 the UE case, the Tierney case, the Home Builders case, and
24 then there was a City Market case that was referenced by
25 somebody. Was that citation given to the Judge?

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1 MR. BLANC: No. It's in our answer.

2 COMMISSIONER CLAYTON: It's referenced in
3 our answer?

4 MR. BLANC: Yes, it is.

5 COMMISSIONER CLAYTON: Is it City Market
6 vs. -- what's the --

7 MR. BLANC: I don't believe so. I think it
8 just involves the City Market. Let me see if I can find
9 it quickly.

10 COMMISSIONER CLAYTON: I think that
11 involved a definition between governmental and proprietary
12 interests?

13 MR. BLANC: Yes, sir.

14 COMMISSIONER CLAYTON: Judge, if we can
15 just identify that in the answer, I think we can find
16 that.

17 MR. FINNEGAN: Could have been the
18 Baltimore Gas and Electric case that's cited.

19 COMMISSIONER CLAYTON: If it's cited in the
20 answer, we'll track that down.

21 I don't have any other questions. This is
22 a very interesting case, and we don't get interesting
23 cases around here very often. But I appreciate the
24 arguments. Everyone I think has been very effective at
25 conveying the different sides to the issues, and I

1 appreciate it. So thank you.

2 MR. BLANC: Thank you.

3 MS. BROWN: Thank you.

4 MR. FINNEGAN: Thank you.

5 JUDGE DALE: Do I have any outstanding
6 procedural matters that I need to address?

7 (No response.)

8 JUDGE DALE: We will then be receiving,
9 hopefully electronically -- actually, if you can -- if you
10 have it electronically and you're unable to file it
11 electronically, if you'll e-mail it directly to me and to
12 the other parties, we can take it from there.

13 The transcript has been expedited, and
14 there are no follow-up documents necessary from any of the
15 rest of you. Hopefully you'll be --

16 MR. FINNEGAN: There are from the City.

17 JUDGE DALE: Just from the City, right.
18 But from everybody else, there are no post-hearing briefs
19 of any kind. So you'll be getting a decision in writing
20 sometime in the future. This year. This calendar year.
21 Let's not limit ourselves to this fiscal year. If there's
22 nothing else, then we are adjourned.

23 WHEREUPON, the hearing of this case was
24 concluded

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I N D E X

2

KCP&L'S EVIDENCE:

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