

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Hearing

May 17, 2011

Jefferson City, Missouri

Volume 3

In the Matter of:

KCP&L Greater Missouri       )  
Operations Company for       )  
Authority to Implement       ) File No. EO-2008-0216  
Rate Adjustments Required   )  
by 4 CSR 240.20.090(4) and   )  
the company's Approved Fuel)  
and Purchased Power Cost    )  
Recovery Mechanism.         )

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NANCY DIPPELL, Presiding  
CHIEF REGULATORY LAW JUDGE  
TERRY M. JARRETT,  
Commissioner

REPORTED BY:  
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1                   (KCP&L Exhibit Nos. 1 and 2 and Staff  
2 Exhibit No. 7 were marked for identification.)

3                   JUDGE DIPPELL: All right. Let's go  
4 ahead and go on the record.

5                   Good morning. This is Case No.  
6 EO-2008-0216 in the matter of KCP&L Greater Missouri  
7 Operations Company, formerly Aquila Inc., for  
8 authority to implement rate adjustments required by  
9 4 CSR 240-20.090(4) and the Company's approved fuel  
10 and purchase power cost recovery mechanism on remand.  
11 And as the title there just stated, this is on remand  
12 from the courts and we are addressing some limited  
13 issues this morning.

14                  And my name is Nancy Dippell by the way;  
15 I'm the regulatory law judge assigned to this.

16                  We'll begin with entries of appearance,  
17 so let's begin with the Company.

18                  MR. ZOBRIST: May it please the  
19 commission, Karl Zobrist and James M. Fischer  
20 appearing on behalf of KCP&L Greater Missouri  
21 Operations Company. We've submitted our entries of  
22 appearance to the court reporter.

23                  JUDGE DIPPELL: And Staff?

24                  MR. WILLIAMS: Nathan Williams, deputy  
25 counsel, P.O. Box 360, Jefferson City, Missouri.

1 JUDGE DIPPELL: Public counsel?

2 MR. MILLS: On behalf of the Office  
3 of the Public Counsel and the public, my name is  
4 Lewis Mills. My address is Post Office Box 2230,  
5 Jefferson City, Missouri 65102.

6 JUDGE DIPPELL: And Mr. Woodsmall?

7 MR. WOODSMALL: Thanks. David Woodsmall  
8 appearing on behalf of AGP and SIEUA.

9 JUDGE DIPPELL: And we don't have any  
10 other appearances to be made?

11 All right. Well, thank you all for  
12 coming this morning. We -- like I say, we have some  
13 limited issues and we didn't really have a full  
14 procedure set for the hearing this morning, but I'm  
15 going to let you all begin with opening statements.

16 And because the issues in this case are  
17 largely legal arguments and so forth, you can make  
18 those arguments. But I will give you the opportunity  
19 to submit yet another round of briefs if that's what  
20 you want to do, so.

21 Shall we begin with the Company this  
22 morning.

23 MR. ZOBRIST: Thank you, Judge. Karl  
24 Zobrist on behalf of KCP&L GMO. And I guess for the  
25 record, since we've now advanced so many years beyond

1 the acquisition of Aquila, I'm going to refer to the  
2 Company as GMO with Mr. Rush and the other  
3 witnesses.

4 Judge, this is a case of first  
5 impression. No other fuel adjustment case has been  
6 appealed and remanded back to the Commission since  
7 the legislature passed Senate Bill 179 and has been  
8 codified in Section 386.266.

9 Here the Commission will have to decide  
10 whether a refund or an adjustment is appropriate in  
11 the future fuel adjustment clause case for some  
12 future period as a result of fuel costs that were  
13 accumulated and calculated between June 1 and July 4,  
14 2007, which was during the initial accumulation  
15 period.

16 The Court of Appeals has stated that the  
17 Company's recovery of fuel expenses for this 34-day  
18 period constituted retroactive ratemaking. It did  
19 not order a refund or an adjustment, but it did  
20 remand back to the Commission for the proceedings as  
21 consistent with its ruling that retroactive  
22 ratemaking did occur until the time that the tariffs  
23 became effective on July 5, 2007.

24 So in the Company's view we're dealing  
25 with nothing more than that 34-day period, and I

1 believe that the testimony of Staff generally agrees  
2 with that position, that it need not -- that the  
3 Commission need not address a larger period of time.

4 The Company still believes in its heart  
5 that this was not retroactive ratemaking, but it  
6 understands what the Court of Appeals said.

7 We had pointed out to the Commission  
8 and -- and to the Court that the effective date of  
9 the tariff, although it was July 5th, 2007, actually  
10 stemmed from the report and order in the rate case  
11 that became effective back in May. And so we've  
12 taken the position that because the tariffs that were  
13 filed effective July but as of June 1, that's what  
14 they said, contained nothing but zeros and simply  
15 began the accumulation and the calculation of cost  
16 but did not impose rates, that that was not  
17 retroactive ratemaking.

18 I don't think that that precise point was  
19 addressed by the Court of Appeals, but we're still  
20 cognizant of their holding in the case, that  
21 retroactive ratemaking occurred.

22 So the question then becomes does the  
23 Commission, if it -- if it chooses to do something  
24 about those 34 days, what power does it have.

25 Some background needs to be understood by

1 the Commission in that regard. The recovery period  
2 for this initial accumulation period began in March  
3 of 2008, and it's actually that order that began the  
4 recovery period that was reversed by the Court of  
5 Appeals, and that recovery period was March 1, 2008,  
6 through the end of February 2009. That recovery  
7 period of course has been accomplished and ended.

8 Subsequent to that there was a true-up  
9 adjustment, and that occurred from September 1, 2009,  
10 through August 31 of 2010, in a different case,  
11 EO-2009-0431. That was consistent with the  
12 Commission's order of July 29, 2009.

13 Another subsequent proceeding occurred,  
14 and that was the prudence review in Case No.  
15 EO-2009-0115. That was for the period June 1, 2007,  
16 through May 31, 2008. Staff submitted its report on  
17 December 1, 2008, and the Commission issued its order  
18 on April 22nd, 2009. There was no finding of  
19 imprudence with regard to any of the fuel costs or  
20 the related fuel costs that were incurred during that  
21 initial accumulation period which included the 34  
22 days that were at issue at the Court of Appeals.

23 So any refund or adjustment that now is  
24 considered by the Commission is occurring well after  
25 the true-up adjustment and well after the prudence

1 review process contemplated by Section 28-- 386.266  
2 were completed and after the increase in rates, after  
3 the fuel adjustment clause have in essence become  
4 permanent.

5 There was no stay in this case; there was  
6 no pot of money over at the circuit court or anyplace  
7 that would -- that could be subject to a refund  
8 order. And so the Company believes that although  
9 there was -- there may have been retroactive  
10 ratemaking under the Court of Appeals' language, the  
11 concept of retroactive ratemaking also precludes the  
12 Commission from ordering a refund.

13 And our -- without going into the whole  
14 legal argument, as you said, we're going to have some  
15 post-hearing briefs, the 1979 UCCM case addresses,  
16 you know, what is retroactive ratemaking and when can  
17 a refund occur and when can it not occur. And that  
18 decision found that although the fuel adjustment  
19 clause and the roll-in charges back in that case were  
20 retroactive ratemaking, it found that it could not go  
21 back and order a refund because the utilities could  
22 have filed a rate case and recovered those charges,  
23 those fuel-related charges. That's exactly the same  
24 position that we are in today.

25 There's no question that these costs were



1        imprudent; they were found to be prudent. And the  
2        Company, had it not had the fuel adjustment cause  
3        statute, could have filed a rate case to recover  
4        those amounts.

5                And so therefore we believe that under  
6        the UCCM case, any kind of a rate adjustment or  
7        refund would clearly be confiscatory and be  
8        prohibited. It would not be like the surcharge  
9        that's discussed later in the UCCM case that was  
10       found to not only constitute retroactive ratemaking,  
11       but also collected monies that it found the utility  
12       did not have a right to collect.

13               So we think that under the -- under the  
14       legal principles of the UCCM case and based upon the  
15       statute, that any kind of rate adjustment or refund  
16       really is not permitted.

17               If the Commission believes that it still  
18       has that authority and does order it, as Mr. Rush  
19       stated in his testimony, the Commission should give  
20       serious consideration to authorizing an accounting  
21       authority order.

22               These were extraordinary times; this was  
23       an extraordinary period in Missouri regulatory  
24       history. For the first time the legislature had  
25       allowed by statute a fuel adjustment clause;

1 rulemakings occurred, other events occurred. There  
2 was no imprudence by the utility. Because of the  
3 nature of the events that occurred at this time, we  
4 believe that it meets the test of an AAO and that it  
5 should be implemented so that the Company is  
6 permitted to recover these costs which were viewed as  
7 prudent and entirely appropriate.

8 Thank you, Judge.

9 JUDGE DIPPELL: Thank you. Shall we have  
10 Staff go next.

11 MR. WILLIAMS: At your pleasure. May it  
12 please the Commission, my name's Nathan Williams and  
13 I'm appearing on behalf of the Staff.

14 As Mr. Zobrist has indicated, this is the  
15 first -- a case of first impression. It's the first  
16 case where the Commission implemented a change to  
17 rates in a fuel adjustment clause. It went up on  
18 review by courts. The Court ultimately ended up  
19 saying that the Commission had picked the wrong date  
20 for starting the comparison of costs in the first  
21 accumulation period which ran from June through  
22 November of 2007.

23 Staff's understanding of that opinion is  
24 that the costs could not have been collected prior to  
25 the effective date of the tariffs which was July 5th

1 of 2007. Therefore it's Staff's recommendation and  
2 position in this case at this point in time that the  
3 cost comparison should begin July 5th of 2007 and run  
4 through November 30th of 2007. Therefore, there was  
5 an overcollection.

6 And while the Staff is of the view the  
7 Commission doesn't have the authority to order a  
8 refund, it certainly has the authority to determine  
9 the amount that was improperly collect-- the amount  
10 of the overcollection, both for the MPS district and  
11 the L&P district.

12 And you'll hear testimony from Mr. Roos  
13 later today that based on a July 5th, '07, start date  
14 for the comparison of the cost or the accumulation of  
15 the cost using a December 31 of 2010 end date for  
16 interest accrual for the MPS rate district, the  
17 overcollection would amount to \$1,975,363, and for  
18 the L&P rate district would amount to \$484,626 that  
19 the Staff views should be returned to ratepayers.

20 However, again, Staff views that what the  
21 Commission has authority to do is true-ups and  
22 prudence reviews, and this is neither of those.  
23 Certainly someone could -- should be able to get  
24 relief through the courts.

25 Staff also has testimony refuting the

1 concept of granting an accounting authority order if  
2 a refund is ordered. Certainly if the monies were  
3 improperly collected, the Company shouldn't have an  
4 opportunity to receive them later just because --  
5 after it is found to have overcollected to begin  
6 with.

7 And Staff has consistently taken the  
8 position that it's the tariffs that control.  
9 Originally Staff looked at the tariff language which  
10 said June 1 through November 30 for its  
11 recommendation and looked at the fact that the fuel  
12 adjustment clause was approved in the Commission's  
13 report and order which preceded June 1 of 2007.

14 I think it's clear the courts disagreed  
15 with that and said that it's the effective date of  
16 the tariff that controls and that's the reason that  
17 Staff's now suggesting that July 5th is the date that  
18 should be used for the beginning of the comparison or  
19 accumulation of the cost during the first  
20 accumulation period.

21 And I think that fairly states Staff's  
22 position at this time.

23 JUDGE DIPPELL: Thank you.

24 Mr. Mills.

25 MR. MILLS: Good morning. May it please

1       the Commission. I will be very brief; in fact, I  
2       think this hearing will be very brief.

3               We're here for an evidentiary hearing  
4       with respect to the primary issue of calculation of  
5       the amounts of any refund that the Commission decides  
6       to order. Given that the Company and the Staff have  
7       come to an agreement on those numbers, and Public  
8       Counsel and I believe I can speak for Mr. Woodsmall  
9       have no disagreement with those numbers, there's  
10      really not a whole lot to accomplish here.

11              Both Mr. Williams and Mr. Zobrist went  
12      into a lot of the legal background that got us to  
13      where we are today. While I disagree with a lot of  
14      that, we're not here taking evidence from legal  
15      scholars; we're here taking evidence from fact  
16      witnesses, and we're going to establish some facts  
17      today.

18              And I think the facts will establish that  
19      with respect to a calculation of a refund that uses  
20      July 5th as a start date, the evidence will show that  
21      that is simply a rough approximation; there is no way  
22      to actually accurately calculate that number. And  
23      with respect to the refund based on an August 1, '07,  
24      start date that we do have agreed upon numbers that  
25      everyone believes are accurate. And I think that's

1        what the evidence will demonstrate in this case.

2                With respect to the accounting authority  
3        order issue, in over 20 years of practice I don't  
4        believe I've ever seen a more egregious money grab by  
5        any company. The Court of Appeals has clearly said  
6        that that was an unlawful collection, it was illegal  
7        retroactive ratemaking. And the accounting authority  
8        order is simply a desperate attempt to try to get  
9        back some of the money that the Court of Appeals said  
10       was unlawfully accumulated.

11               And that's all I have. Thank you.

12               JUDGE DIPPELL: Mr. Woodsmall?

13               MR. WOODSMALL: Thank you, your Honor.

14               JUDGE DIPPELL: Oh, I'm sorry.

15               COMMISSIONER JARRETT: No. I just wanted  
16       to say, Mr. Mills, for the record, that I think  
17       there's lots of legal scholars here in the room  
18       today.

19               MR. MILLS: Well, there are, but I don't  
20       believe any of them will be testifying

21               COMMISSIONER JARRETT: Sorry.

22               MR. WOODSMALL: Not a problem.

23               Your Honor, as you noted most of this  
24       case concerns legal issues and for that reason, I'll  
25       defer all my comments until my briefs.

1 JUDGE DIPPELL: All right.

2 MR. WOODSMALL: Thank you.

3 JUDGE DIPPELL: Well, in that case, let's  
4 go ahead and begin with the witness unless,  
5 Commissioner, you had any other questions --

6 COMMISSIONER JARRETT: No.

7 JUDGE DIPPELL: -- for the attorneys.

8 Okay. We'll go ahead and begin with the  
9 witnesses then.

10 Mr. Zobrist.

11 MR. ZOBRIST: Company will call Tim Rush  
12 to the stand.

13 (Witness sworn.)

14 JUDGE DIPPELL: Thank you.

15 And I apologize; earlier I didn't get  
16 Mr. Mills on camera, so.

17 MR. MILLS: I was just too fast for you.

18 JUDGE DIPPELL: All right. Go ahead,  
19 Mr. Zobrist.

20 \_\_\_\_\_

21 TIM RUSH

22 of lawful age, having been duly sworn, testified  
23 as follows:

24 DIRECT EXAMINATION BY MR. ZOBRIST:

25 Q. Thank you. Please state your name.

1 A. Tim Rush.

2 Q. And by whom are you employed?

3 A. Kansas City Power & Light Company.

4 Q. And on who -- on whose behalf are you  
5 testifying this morning?

6 A. I am testifying on behalf of KCP&L Greater  
7 Missouri Operations Company.

8 Q. And what's your position with Kansas City  
9 Power & Light Company?

10 A. Director of regulatory affairs.

11 Q. Did you prepare in this case direct  
12 testimony and rebuttal testimony which I have marked  
13 as Exhibits 1 and 2 and handed to the court reporter?

14 A. I did.

15 Q. Do you have any corrections to either the  
16 direct or your rebuttal testimony?

17 A. I do. In my direct testimony on page 7 on  
18 line 7 I made a typographical error, and it should  
19 read effective on May 27th, comma, 2007. And then  
20 thereafter whatever. The correction is the 217  
21 should be changed to 27, and that -- that's all the  
22 changes I have.

23 Q. And any changes or corrections to your  
24 rebuttal testimony?

25 A. No, I do not.



1           Q.     If I were to ask you those questions,  
2     would your answers be the same, Mr. Rush?

3           A.     They would.

4           MR. ZOBRIST:   Okay.   Your Honor, at this  
5     time I move the admission of Exhibits 1 and 2 on  
6     behalf of GMO.

7           JUDGE DIPPELL:   Would there be any  
8     objection to Exhibits Nos. 1 and 2?

9           MR. WOODSMALL:   Yes, your Honor,  
10    several.

11          MR. MILLS:   Can we do them separately?

12          JUDGE DIPPELL:   I was going to say, we'll  
13    start then with Exhibit No. 1.

14          MR. WOODSMALL:   Okay.   On Exhibit No. 1  
15    let's start with page 7 continuing -- line 11  
16    continuing over to page 8, line 15.   My objection is  
17    that this calls for legal conclusions.   It starts  
18    with the entire section heading, Commission authority  
19    to refund.   Then the question, Does the Commission  
20    have the authority to order a refund.   The entirety  
21    of that section is all legal conclusions.   Mr. Rush  
22    is not an attorney and is therefore not able to  
23    provide legal opinion.   So I believe this is all  
24    improper.

25          JUDGE DIPPELL:   Mr. Zobrist?

1                   MR. ZOBRIST: Judge, as you pointed out  
2                   and as I believe both Mr. Mills and Mr. Woodsmall  
3                   pointed out to the Commission and I agree with them,  
4                   there are questions that are mixed questions of law  
5                   and fact. Mr. Rush has served in a regulatory  
6                   capacity for this company and other Missouri  
7                   utilities for any many years. Some of the statements  
8                   in here do relate to tariff changes. They do relate  
9                   to the authority of the Commission, and much of that  
10                  is covered by statute, but much of that deals with  
11                  the regulatory process that Mr. Rush is entitled to  
12                  express an opinion upon.

13                  Although he is not a lawyer, he has  
14                  worked in this area for many years and I think  
15                  because this is an administrative body, that it would  
16                  be helpful and assisting to the Commission to have  
17                  the benefit of Mr. Rush's statement on these -- on  
18                  these points.

19                  MR. WOODSMALL: Your Honor, just calling  
20                  them mixed questions of law and facts don't get us  
21                  past the problem. If he wants to provide facts, I  
22                  have no problems with that. He is then opining his  
23                  opinion as to whether those facts dictate how they  
24                  affect Commission authority. I believe they're  
25                  clearly legal conclusions.

1 JUDGE DIPPELL: Is there any other  
2 objection to those specifically?

3 Mr. Mills, do you have --

4 MR. MILLS: No. I just want to echo  
5 Mr. Woodsmall's objection. I also object to that  
6 section and the ones to come.

7 JUDGE DIPPELL: Okay. I'm going to  
8 overrule it though. Those sections can come in;  
9 that'll go toward the weight of the evidence.

10 Mr. Woodsmall, you had additional  
11 objections?

12 MR. WOODSMALL: Yes. Page 8, line 20,  
13 While the Company believes that the Commission cannot  
14 order a refund. Again, and I'll do these all in --  
15 at one lump sum because I think your conclusions are  
16 going to be the same, but I'll get them all on  
17 record. Page 8 line 20; page 11, line 1 through page  
18 11, line 19. Again, providing his opinion as to the  
19 legal doctrine of retroactive ratemakings.

20 Again, he's not a -- not an attorney. If  
21 they want to cover this by Mr. Zobrist putting it in  
22 brief, they can, but here, a witness that is not an  
23 attorney providing legal conclusions is improper.

24 MR. ZOBRIST: Judge, I would have -- I  
25 have the same response.

1           A number of these sentence actually  
2       relate to what the Commission did in certain orders,  
3       and so they are not, to that extent, legal  
4       conclusions. But to the extent that he author-- that  
5       he authors an opinion that might be a legal opinion,  
6       it is based upon his experience as a regulatory  
7       person over many years.

8           Although he not does have a law degree,  
9       he is familiar with the tariffs, with the statutes,  
10      and with the regulations of this Commission. And I  
11      believe that his opinions would provide assistance to  
12      the Commission.

13          The Commission of course is free to  
14      reject any opinions that he has that may be legal or  
15      of a regulatory nature, but I think given the mixed  
16      questions of law and fact in this case, that they --  
17      that the objections should be overruled and the  
18      testimony should be admitted.

19          MR. WOODSMALL: Your Honor, in response  
20      to what he said there, what we clearly have then is  
21      sloppily drafted testimony. Just because he provides  
22      an answer that has some facts doesn't change the fact  
23      that the question is objectionable.

24          Why would that not be retroactive  
25      ratemaking as indicated by the Court of Appeals

1 ruling.

2 The question is in the sloppily drafted  
3 testimony is objectionable and what comes after  
4 doesn't matter. So the question is objectionable and  
5 it should not be allowed.

6 MR. MILLS: And I'd like to further add  
7 just to -- in response to Mr. Zobrist, I don't  
8 believe that there are mixed questions of law and  
9 fact. There are very few fact questions left in this  
10 case; there are some legal questions left. So to try  
11 to get in some testimony by a nonlegal expert on  
12 legal conclusions by sprinkling in a handful of facts  
13 I think is improper.

14 JUDGE DIPPELL: I agree that the  
15 Commission is not going to consider legal opinions  
16 from nonlegal scholars as you said earlier. I don't  
17 believe sloppily drafted testimony has ever been a  
18 reason to strike it in the past, but I'm going to  
19 overrule the objection and allow it.

20 There are some facts as they relate to  
21 the history of this case in the testimony, so I  
22 will --

23 MR. WOODSMALL: Your Honor --

24 JUDGE DIPPELL: -- allow that.

25 MR. WOODSMALL: -- can you reconcile for

1 me your statement that the Commission is not going to  
2 consider opinions of a nonlegal expert --

3 JUDGE DIPPELL: Well --

4 MR. WOODSMALL: -- and then you're  
5 saying -- which facts are you going to allow?

6 JUDGE DIPPELL: Well, for instance, in  
7 the previous ruling there were some items about how  
8 when Staff had reviewed things, when the Comp-- when  
9 the Commission had issued orders, there were orders  
10 attached in this part. I'm not going to go through  
11 word by word and pick out what is, in fact, a fact  
12 and what is a legal opinion, so.

13 MR. WOODSMALL: So you're saying the  
14 Commission won't consider it and then we have to  
15 figure out which ones they're not going to consider?  
16 I'm just asking for clarification.

17 JUDGE DIPPELL: And my ruling is that I'm  
18 just going to allow it. Any kind of a legal opinion,  
19 I'm certain that -- maybe I was -- my statement was  
20 overbroad, is going to be given the weight that it  
21 deserves.

22 MR. WOODSMALL: Which is none.

23 JUDGE DIPPELL: Most likely.

24 MR. WOODSMALL: Okay. I'm just wanting  
25 to know when we get to court review, what the ruling

1 is.

2 Okay. On page 12, line 6 through line 8,  
3 he states on both of those, The Commission wanted.  
4 On points one and two. Clearly speculation, trying  
5 to testify as to what the Commission wanted. I think  
6 that goes without any further comment.

7 JUDGE DIPPELL: Mr. Zobrist?

8 MR. ZOBRIST: I don't think it calls for  
9 speculation. You have a regulatory -- pardon me --  
10 you have a regulatory official of a regulated public  
11 utility stating that this is what the Company  
12 believed the Commission intended.

13 Mr. Mills and Mr. Woodsmall were  
14 certainly free to put in any testimony to contradict  
15 what Mr. Rush stated here to set forth their opinion  
16 and they did not.

17 It is not calling for speculation. He is  
18 simply stating what he believed the Commission's  
19 actions meant with regard to what the utilities  
20 should do.

21 JUDGE DIPPELL: I'm -- again, I'm going  
22 to overrule the -- he does state in line 5 there, I  
23 believe the following statements are true. Whether  
24 or not they are, the Commission will determine.

25 MR. WOODSMALL: Okay. Page 12, same

1 page, lines 14 through 16. I believe that the  
2 Commission has the authority to authorize an AAO.  
3 Again, a legal conclusion.

4 JUDGE DIPPELL: Mr. Zobrist?

5 MR. ZOBRIST: Well, Judge, I think that  
6 he is simply again stating what the Commission's  
7 regulations and what the practices of utilities  
8 following those regulations have been over the  
9 years. I don't think that is per se a legal  
10 conclusion. I think that is simply again stating  
11 what he believes the Commission has the authority to  
12 do based upon his background working with Missouri  
13 utilities over the past 20, 25 years.

14 JUDGE DIPPELL: Okay. Mr. Woodsmall, did  
15 you have anything further?

16 MR. WOODSMALL: No. I'm just -- I'm  
17 somewhat baffled. If you look at the purpose of  
18 expert witnesses and that is to provide opinions in  
19 matters where their expertise is needed for the  
20 Commission, clearly Mr. Rush's opinion on legal  
21 matters is not needed by the Commission which has  
22 five attorneys, five -- multiple ALJ's, five  
23 attorneys as advisors. I'm just baffled as to why  
24 the Commission feels the need to take expert opinion  
25 or opinion from a nonexpert.



1 JUDGE DIPPELL: And in this case I agree  
2 with you and I'm going to sustain your objection.  
3 This is clearly a legal opinion from a nonlegal  
4 authority. And so line 14 through 16 is not entered  
5 into evidence.

6 MR. WOODSMALL: Okay. Same objection on  
7 page 14, lines 7 through 8. Thus, the Commission has  
8 the authority to order the Commission to order a  
9 refund. Again, talking about Commission authority,  
10 nonattorney providing an opinion.

11 JUDGE DIPPELL: Mr. Zobrist?

12 MR. ZOBRIST: Well, Judge, I know we  
13 haven't gotten to Staff's testimony, but one of the  
14 issues has been, you know, what -- whether a rate  
15 adjustment should be ordered in this case. It was  
16 one of the issues listed on the joint exhibit list.  
17 And I think again, a person who has had experience in  
18 regulatory utility ratemaking, operating under the  
19 Company's tariffs, under the regulations, and under  
20 the statute, you know, is allowed to express his  
21 opinion with regard to this matter which is at issue  
22 in the case.

23 MR. MILLS: But the issue in the case is  
24 whether the Commission should, not whether the  
25 Commission has authority to. In this -- in this

1 sentence -- and by the way, I concur in all of  
2 Mr. Woodsmall's motions to strike.

3 This sentence clearly, you know, is this  
4 nonlegal expert testifying as to the Commission's  
5 legal authority to order a refund or not.

6 JUDGE DIPPELL: And again, I will sustain  
7 that objection and strike the sentence that begins,  
8 Thus, on line 7 and ends with Question on line 8.

9 MR. WOODSMALL: I believe that was all I  
10 had, your Honor.

11 JUDGE DIPPELL: All right. Mr. Mills,  
12 did you have further objections?

13 MR. MILLS: No. We both had the same  
14 objections; we went over those this morning.

15 JUDGE DIPPELL: All right. Is there  
16 anything further on Exhibit 1 before I -- all right.  
17 Then I will admit Exhibit 1 into evidence with the  
18 exception of those two previously ruled upon  
19 sentences.

20 (KCP&L Exhibit No. 1 was received into  
21 evidence; portions struck.)

22 Objections to Exhibit 2?

23 MR. MILLS: None.

24 JUDGE DIPPELL: Seeing none, then I will  
25 admit Exhibit 2.

1 (KCP&L Exhibit No. 2 was received into  
2 evidence.)

3 MR. ZOBRIST: Thank you, Judge. I tender  
4 Mr. Rush for cross-examination.

5 JUDGE DIPPELL: Thank you. We didn't  
6 talk about an order of cross. Is the order that we  
7 did the opening statements agreeable to everyone?

8 MR. MILLS: I think that's appropriate  
9 for the Company witnesses.

10 JUDGE DIPPELL: Okay.

11 MR. MILLS: And then for the Staff  
12 witnesses, I think KCP&L, and then me, and then  
13 Mr. Woodsmall.

14 JUDGE DIPPELL: All right. Then Staff.

15 MR. WILLIAMS: No questions.

16 JUDGE DIPPELL: Public counsel?

17 MR. MILLS: Just very briefly.

18 CROSS-EXAMINATION BY MR. MILLS:

19 Q. Mr. Rush, in your rebuttal testimony, the  
20 question and answer beginning at the top of page 2,  
21 is it correct that in your initial approach, you used  
22 a different method for calculating fuel costs for the  
23 first four days in July of 2007?

24 A. I did.

25 Q. And was that method incorrect?

1           A.     I believe it was, yes.

2           Q.     It was incorrect?

3           A.     Yes.

4           Q.     So is there only one correct way to  
5 calculate the fuel costs for those days?

6           A.     With the information that we have, yes.

7           Q.     If you had better information, would there  
8 be other ways to calculate the fuel costs on those  
9 days?

10          A.     There's -- possibly.

11          Q.     Okay. And because of the lack of better  
12 information, the calculation that Staff has done with  
13 which you've agreed is only an approximation of the  
14 fuel costs on those days; is that correct?

15          A.     Yes.

16          Q.     Okay. Now, also in your rebuttal  
17 testimony also on page 2, the sentence that begins on  
18 line 20 and continues to line 21, first of all, over  
19 what period of time are you suggesting that the  
20 Commission, if they do do a refund, that that refund  
21 be implemented?

22          A.     I'm sorry, say that again.

23          Q.     If the Commission does order a refund of  
24 some of the money it issued in this case --

25          A.     Right.

1           Q.     -- over what period of time are you  
2 suggesting that refund be made?

3           A.     The date soon as practical regarding the  
4 tariffs is all. What my concern was in addressing  
5 the issue there is that the Commission order and the  
6 time frame associated may not give it the time  
7 required to be able to be implemented in the  
8 September period suggested by the Staff.

9                     And if it can be, that would be fine. If  
10 it cannot, then I would say it would be the soonest  
11 practical point after that.

12          Q.     So --

13          A.     The briefs, as I understand it, the reply  
14 or the briefs are due sometimes in June, and I did  
15 not see where an order would come out in a practical  
16 time that would allow for the completion and the  
17 implementation of the refund in that -- if so  
18 ordered.

19          Q.     Okay. So you're suggesting a refund  
20 either over the -- the refund period eight or refund  
21 periods nine depending on timing; is that correct?

22          A.     Correct.

23          Q.     Okay. And wouldn't either of those be  
24 significantly past the effective date of a Commission  
25 order in this case?

1           A.     Not necessarily the first one.

2           Q.     Okay. Well, if it is the second one,  
3 would it be significantly past the effective date of  
4 the --

5           A.     Potentially --

6           Q.     -- Commission's order?

7           A.     -- yes.

8           Q.     And why do you recommend that interest be  
9 calculated cut off at the effective date of the  
10 Commission's order?

11          A.     Because that would be practical reason of  
12 when those dollars were accumulated up to.

13          Q.     And if the Commission's order is in June  
14 of this year, when would be the period that you  
15 recommend recovery begin?

16          A.     If the -- if you -- say that again. If  
17 the order is issued in June --

18          Q.     Of this year.

19          A.     -- of this year, my guess is if it were  
20 actually ordered by then and able to meet the  
21 requirements of the next FAC period, I would see  
22 putting it in the September time frame.

23          Q.     Okay. If, however, it's not until  
24 recovery period nine, that begins March 1, 2012; is  
25 that correct?

1           A.     That's correct.

2           Q.     Some ten months after the possible  
3 Commission order in this case; is that correct?

4           A.     Possibly.

5           Q.     Okay.  Shouldn't the Commission try to  
6 calculate interest to a date more closely in time to  
7 when the refunds actually take place?

8           A.     I think that would make sense, yes.

9           MR. MILLS:  Okay.  That's all I have.  
10 Thank you.

11           JUDGE DIPPELL:  Thank you.

12           Mr. Woodsmall?

13           MR. WOODSMALL:  No questions.  Thank you.

14           JUDGE DIPPELL:  All right then.

15           Is there any redirect?

16           MR. ZOBRIST:  No, your Honor.

17           JUDGE DIPPELL:  Oh, I'm sorry.

18 Commissioner, did you have questions for Mr. Rush.

19           COMMISSIONER JARRETT:  Mr. Rush, good  
20 morning.

21           MR. RUSH:  Good morning.

22           COMMISSIONER JARRETT:  I haven't seen you  
23 for a while, so good to see you again.  But I don't  
24 have any questions.

25           JUDGE DIPPELL:  All right then.

1 Mr. Rush, I believe that concludes your testimony and  
2 you may step down.

3 And I believe that concludes the  
4 Company's testimony. Am I correct?

5 MR. ZOBRIST: That's correct.

6 JUDGE DIPPELL: And then we can begin  
7 with Staff's witnesses.

8 MR. WILLIAMS: Staff calls Mr. John  
9 Rogers.

10 (Witness sworn.)

11 JUDGE DIPPELL: Thank you.

12 \_\_\_\_\_  
13 JOHN ROGERS

14 of lawful age, having been duly sworn, testified  
15 as follows:

16 DIRECT EXAMINATION BY MR. WILLIAMS:

17 Q. Please state your name.

18 A. John A. Rogers.

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

21 A. Missouri Public Service Commission as  
22 utility regulatory manager in the energy department.

23 Q. Did you prepare direct testimony that's  
24 been marked for identification as Exhibit No. 3 and  
25 rebuttal testimony that's been marked as Exhibit No.



1 4 that was filed on or about April 1st and April 22nd  
2 of this year in this case?

3 A. Yes.

4 Q. And since you filed that testimony or  
5 that -- exhibits -- since you prefiled Exhibits 3  
6 and 4, have you had an opportunity review them?

7 A. Yes.

8 Q. Do you have any changes to them?

9 A. I do.

10 Q. What changes do you have and to which  
11 exhibit?

12 A. In the direct testimony, is it Exhibit  
13 No. 3, line 1 on page 3, I'd like to insert the word  
14 "to" after the word "tariff."

15 And then on line 5 -- page 5, lines 11  
16 through 13, I think based upon the discussion  
17 Mr. Mills had with Mr. Rush, that I would like to  
18 delete the sentence that begins, Should the  
19 Commission decide, it begins on line 11 and through  
20 the end of line 13.

21 Q. Do you have any other changes to either  
22 Exhibit 3 or exhibit 4?

23 A. No.

24 Q. And with those changes, are Exhibits 3  
25 and 4 your testimony here today?

1           A.     Yes.

2           MR. WILLIAMS: Judge, I offer Exhibits 3  
3 and -- Exhibit 3 and Exhibit 4.

4           JUDGE DIPPELL: Is there any objection to  
5 Exhibit 3?

6           MR. WOODSMALL: Yes, your Honor, but  
7 first can I get a clarification? The section that he  
8 clarified or deleted was page 5, lines 11 through 13;  
9 is that correct?

10          JUDGE DIPPELL: Yes. Let me get a  
11 clarification on that as well.

12          Are you wanting to delete that or are you  
13 just recanting that or refuting that?

14          MR. WILLIAMS: It's not part of his  
15 testimony here today is what it amounts to.

16          JUDGE DIPPELL: Okay.

17          MR. WILLIAMS: If you want an  
18 explanation -- well, I think he provided one.

19          JUDGE DIPPELL: Okay.

20          MR. WOODSMALL: So it's being deleted?

21          MR. WILLIAMS: Yes.

22          MR. WOODSMALL: Okay. The entirety of  
23 that sentence.

24          You ready for objections?

25          JUDGE DIPPELL: Go ahead, Mr. Woodsmall.

1                   MR. WOODSMALL: My first objection is on  
2                   page 3 -- both of them will be on his direct  
3                   testimony, page 3, lines 20 through 23. He says, The  
4                   Court's stated rationales for its holding provide no  
5                   guidance.

6                   Again, interpreting a court opinion as to  
7                   what it provides is a legal conclusion. Ask to  
8                   strike lines 20 through 23.

9                   JUDGE DIPPELL: Is there any response,  
10                  Mr. Williams?

11                  MR. WILLIAMS: Sure. That's being  
12                  offered for the limited purpose of explaining the  
13                  Staff's recommendation, not to interpret the Court's  
14                  opinion. I mean, it is an interpretation of the  
15                  Court's opinion, but it's to explain -- it's provided  
16                  for the limited purpose of explaining Staff's  
17                  position.

18                  MR. WOODSMALL: I think that should be in  
19                  a brief then. If it's a legal interpretation how  
20                  that affects their positions, I think can certainly  
21                  be in a brief because as he says, it's a legal  
22                  interpretation.

23                  MR. WILLIAMS: And the witness is just  
24                  explaining the basis for the Staff's recommendation  
25                  that he testifies to as to what the start date should

1 be, and it's only presented for that limited purpose.

2 JUDGE DIPPELL: Give me just a moment to  
3 look at the testimony.

4 I'm going to sustain the objection. I  
5 believe that the witness explains the reasoning for  
6 his answers to the questions later in the testimony  
7 and doesn't -- that seems to be a legal conclusion,  
8 that can be argued in the briefs, so I'll strike  
9 lines 20 through 23.

10 MR. WOODSMALL: Thank you, your Honor.

11 On pages -- same piece of testimony,  
12 page 4, starting on line 9 through page 5 ending on  
13 line 2, section heading, Whether the Commission has  
14 the authority to order a refund. Again, legal  
15 opinion.

16 MR. MILLS: And, Judge, I concur in both  
17 of Mr. Woodsmall's objection and as to this piece of  
18 testimony, I have another objection which is that the  
19 question and answer beginning on line 15 on page 4  
20 and continuing through line 2 on page 5 is hearsay.

21 JUDGE DIPPELL: Mr. Williams, did you  
22 have anything in response?

23 MR. WILLIAMS: Give me a moment. May I  
24 inquire of Mr. Rush?

25 JUDGE DIPPELL: Sure.

1 BY MR. WILLIAMS:

2 Q. Mr. Rogers, were you involved in Staff's  
3 prudence review for the period of June 1st of 2007  
4 through May 31 of 2008 in File No. EO-2009-0115.

5 A. No, I was not.

6 JUDGE DIPPELL: All right. I'm going to  
7 overrule the objections. I believe that the question  
8 and answers that follow here are Mr. Rogers speaking  
9 as Staff as to what Staff's opinion is and his  
10 reasoning for that opinion, and I'm going to allow  
11 it.

12 Is there any other objections to this  
13 Exhibit?

14 MR. WOODSMALL: Not on that one, your  
15 Honor.

16 JUDGE DIPPELL: All right. Then, are  
17 there -- Mr. Zobrist, did you have any objections to  
18 this Exhibit?

19 MR. ZOBRIST: I did not.

20 JUDGE DIPPELL: All right. Then I will  
21 admit the Exhibit with the exception of the portion  
22 that I struck on page 3.

23 (Staff Exhibit No. 3 was received into  
24 evidence; portions struck.)

25 Is there objections to Exhibit No. 4?

1                   MR. WOODSMALL: Yes, your Honor. Page 2,  
2 lines 12 through lines 20, you can see there that the  
3 language is virtually, if not exactly the language  
4 that you struck on page 3 of his direct photocopy.

5                   JUDGE DIPPELL: So you're object--  
6 objecting based on a legal conclusion?

7                   MR. WOODSMALL: Yes. I'm objecting on  
8 whatever you got you to throw it out in the first  
9 piece.

10                  MR. WILLIAMS: Which lines it was again?

11                  MR. WOODSMALL: Lines 12 through line 20.

12                  JUDGE DIPPELL: Well, I'm going to  
13 overrule this one because of the fact that he's  
14 responding to testimony that I allowed from Mr. Rush  
15 in this particular question and answer series.

16                  So I'm going to allow it, and the  
17 Commission will give it to the weight that it  
18 deserves as to any legal conclusion.

19                  Is there any other objections to Exhibit  
20 4?

21                  In that case, I will admit Exhibit 4 into  
22 the record.

23                  (Staff Exhibit No. 4 was received into  
24 evidence.)

25                  All right. Then, Mr. Williams, you

1 can -- are you tendering your witness for cross-  
2 examination at this time? Do you have anything  
3 further?

4 MR. WILLIAMS: Yes, I am.

5 JUDGE DIPPELL: And we're going to --  
6 which order are we going in?

7 MR. MILLS: KCP&L, then me, then  
8 Mr. Woodsmall.

9 MR. ZOBRIST: It's unusual, but I'll go  
10 ahead.

11 JUDGE DIPPELL: I started to say, it  
12 doesn't -- it appears that -- I'm not sure who's the  
13 most adverse to Staff's witnesses, so.

14 MR. WOODSMALL: We are.

15 MR. MILLS: We are.

16 MR. WILLIAMS: Given they're proposing  
17 August 1st, I'd say they are.

18 JUDGE DIPPELL: Mr. Zobrist, would you go  
19 ahead.

20 MR. ZOBRIST: Thank you, Judge.

21 CROSS-EXAMINATION BY MR. ZOBRIST:

22 Q. Now, Mr. Rogers, I understand you didn't  
23 start working for the Commission until December 2008;  
24 is that correct?

25 A. Correct.

1 Q. Okay. So you weren't here when Senate  
2 Bill 179 became law which was codified as Section  
3 386.266?

4 A. Correct.

5 Q. Are you aware based upon your work at  
6 Staff since that time that -- that that change in the  
7 law occurred and that prior to that time fuel  
8 adjustment clauses were not permitted in Missouri?

9 A. Yes, I am.

10 Q. Are you generally aware of how utilities  
11 recovered their fuel and fuel-related costs prior to  
12 the passage of Senate Bill 179?

13 A. Yes.

14 Q. Okay. And just generally, how was that  
15 done?

16 A. Through permanent rates.

17 Q. Okay. And based upon your experience here  
18 at the Commission since December of 2008, would it be  
19 fair to say that the advent of Senate Bill 179 as  
20 Section 386.266 changed the ordinary and typical way  
21 by which utility could recover its fuel and fuel-  
22 related costs?

23 A. Yes.

24 Q. And were you involved in any of the -- I  
25 guess the point is you were not here in 2007 when GMO



1 through its predecessor filed its tariffs that  
2 actually became part of the tariffs that we're  
3 discussing here; is that correct?

4 A. Correct, I was not here then.

5 Q. Okay. But you're still aware that a  
6 substantially different system was ushered in as a  
7 result of the passage of Senate Bill 179?

8 A. Yes.

9 Q. Okay. Are you aware of -- if there has  
10 ever been a refund considered with regard to a fuel  
11 adjustment clause until this case?

12 A. Well, I believe as in the Ameren Missouri  
13 prudence review case, there is a refund or credit  
14 ordered by the -- by the Commission.

15 Q. Okay. And I guess what I was saying is is  
16 that in the context of a fuel adjustment clause where  
17 an appellate court found a period of retroactive  
18 ratemaking, this is the first case where those  
19 particular facts have been considered; is that true?

20 A. I believe that's correct.

21 Q. And are you familiar, even though you  
22 weren't involved in the prudence review, are you  
23 familiar with the results of the prudence review for  
24 the first accumulation period for GMO?

25 A. I have not reviewed it.

1 Q. Okay. So you're not aware of the results?

2 A. I'm not -- I'm not familiar with any  
3 details --

4 Q. Okay.

5 A. -- of that prudence review.

6 Q. And I understand you also were not  
7 involved in the true-up that was carried out in a  
8 different proceeding?

9 A. Correct.

10 MR. ZOBRIST: Okay. All right. I think  
11 that's all I have, Judge.

12 JUDGE DIPPELL: Thank you. Is there  
13 anything from Office of Public Counsel?

14 MR. MILLS: I have no questions.

15 JUDGE DIPPELL: Intervenors?

16 MR. WOODSMALL: No questions.

17 JUDGE DIPPELL: Is there any Commission  
18 questions?

19 COMMISSIONER JARRETT: Mr. Rogers, no  
20 questions, thank you.

21 JUDGE DIPPELL: Is there any redirect?

22 MR. WILLIAMS: No. Thank you, Judge.

23 JUDGE DIPPELL: All right. Then,  
24 Mr. Rogers, I believe that concludes your testimony.  
25 Thank you.

1 MR. WILLIAMS: Staff calls David Roos.

2 (Witness sworn.

3 JUDGE DIPPELL: Thank you.

4 Go ahead, Mr. Williams.

5 \_\_\_\_\_  
6 DAVID ROOS

7 of lawful age, having been duly sworn, testified  
8 as follows:

9 DIRECT EXAMINATION BY MR. WILLIAMS:

10 Q. Please state your name.

11 A. David C. Roos.

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

14 A. I'm a regulatory economist at the Missouri  
15 Public Service Commission.

16 Q. Did you prepare and prefile direct  
17 testimony and rebuttal testimony that have been  
18 marked for identification as Exhibit Nos. 5 and 6  
19 respectively?

20 A. Yes, I did.

21 Q. And were those filed on or about April 1st  
22 and April 22nd of this year?

23 A. That's correct.

24 Q. And do you have any revisions to Exhibit  
25 No. 5 which is your direct testimony?

1           A.     No, I do not.

2           Q.     And do you have any revisions to Exhibit  
3 No. 6 which is your rebuttal testimony?

4           A.     Yes, I do.

5           Q.     And are some of those revisions reflected  
6 on a table that's been marked as Exhibit No. 7 for  
7 identification?

8           A.     Yes, they are.

9           Q.     And would you explain or provide the  
10 revisions you have to your rebuttal testimony which  
11 has been marked as Exhibit No. 6.

12          A.     On page 2, the table, the values don't  
13 change, but the locations in that table, the  
14 values -- the locations change. For -- on the column  
15 marked August 1st, 2007, for the row of MPS, the  
16 value should be \$7,84,354. In the column marked  
17 July 5th, 2007, the row marked L&P, the correct value  
18 should be \$484,626.

19          Q.     And is that correction reflected in what's  
20 been marked as Exhibit 7?

21          A.     Yes, it is.

22          Q.     Do you have any further revisions to your  
23 rebut testimony?

24          A.     Yes, I do. And these are a change in the  
25 tariff references on page 3. Starting with line 7,

1 FPA should be stricken and replaced by CAF.

2 Also on line 7, the R value should be  
3 changed to the C value.

4 On line 8, the number 6 should replaced by  
5 the number 7.

6 And also on line 8, tariff sheet number  
7 98.14 should be replaced with tariff sheet number  
8 127.

9 And on line 9 after the end of the  
10 sentence ending with, Recovery period, after that  
11 from line 9 through line 13 should be stricken.

12 Q. And what's the reason for those changes?

13 A. The reasons is that that reference is an  
14 Ameren tariff and not a GMO tariff.

15 Q. Do you have any further changes to your  
16 testimony?

17 A. That's it.

18 Q. And with those changes to Exhibit No. 6,  
19 are Exhibits 5, 6, and 7 your testimony here today?

20 A. Yes, they are.

21 MR. WILLIAMS: Judge, I offer Exhibits 5,  
22 6 and 7.

23 JUDGE DIPPELL: Is there any objection to  
24 Exhibit No. 5?

25 MR. ZOBRIST: No, objection.

1 JUDGE DIPPELL: I'm looking at  
2 Mr. Woodsmall.

3 MR. WOODSMALL: No, I'm sorry.

4 JUDGE DIPPELL: Then I will admit Exhibit  
5 No. 5.

6 (Staff Exhibit No. 5 was received into  
7 evidence.)

8 Exhibit No. 6, any objection?

9 Then that is admitted.

10 (Staff Exhibit No. 6 was received into  
11 evidence.)

12 And Exhibit No. 7?

13 Then Exhibit No. 7 is admitted.

14 (Staff Exhibit No. 7 was received into  
15 evidence.)

16 MR. WILLIAMS: And I offer Mr. Roos for  
17 examination.

18 JUDGE DIPPELL: All right. Is there any  
19 cross-examination from the Company? Go ahead.

20 MR. ZOBRIST: Yes, Judge.

21 CROSS-EXAMINATION BY MR. ZOBRIST:

22 Q. Good morning, Mr. Roos.

23 A. Morning.

24 Q. As I understand it, you came to the  
25 Commission in March of 2006; is that correct?

1           A.     That's correct.

2           Q.     Okay. And that would have been the year  
3 following the enactment of Senate Bill 179 which was  
4 codified in Section 386.266, the rate adjustment  
5 mechanism and fuel adjustment clause statute,  
6 correct?

7           A.     Correct.

8           Q.     And are you familiar generally with how  
9 utilities recovered their fuel and fuel-related costs  
10 prior to the passage of Senate Bill 179?

11          A.     In general they recovered them in rate  
12 cases.

13          Q.     And would you agree that the passage of  
14 this new legislation was a significant event?

15          A.     Yes.

16          Q.     And would you agree that as a result,  
17 companies like GMO changed the ordinary and typical  
18 way that utilities recovered their fuel and  
19 fuel-related costs?

20          A.     Yes.

21          Q.     Were you involved in the rulemakings that  
22 followed the enactment of Senate Bill 179?

23          A.     No, I was not.

24          Q.     Okay. Are you aware generally of the  
25 rulemakings that occurred beginning I think in

1 mid-2006 and resulting in final rules becoming  
2 effective in January of 2007?

3 A. In general, yes.

4 Q. Okay. And was -- would you agree that  
5 that was a complex, arduous process to promulgate  
6 those rules to implement the legislation?

7 MR. WOODSMALL: Object, your Honor, he  
8 said he wasn't involved in that rulemaking.

9 MR. ZOBRIST: Judge, I think he said he  
10 was familiar with the rulemaking.

11 JUDGE DIPPELL: Would you ask your  
12 question again?

13 MR. ZOBRIST: Sure.

14 BY MR. ZOBRIST:

15 Q. Mr. Roos, I understand you weren't  
16 involved in the rulemaking; is that correct?

17 A. That's correct.

18 Q. Were you familiar with the process that  
19 was ongoing at the Commission at that time?

20 A. No.

21 Q. Okay. Have you read the report and order  
22 in this case issued by the Commission -- pardon me,  
23 not in this case, but the report and order that  
24 implemented a -- or approved the adoption of a fuel  
25 adjustment clause by GMO's predecessor?



1           A.     I have -- I have scanned that.

2           Q.     Okay. Are you generally familiar with the  
3 orders that led up to the final tariffs becoming  
4 effective as of July 5th, 2007?

5           A.     Generally, yes.

6           Q.     Okay. And is it fair to say that there  
7 were a series of rulings made by the Commission  
8 rejecting tariff sheets and accepting certain tariff  
9 sheets until that final order of June 29, 2007, that  
10 approved the FAC tariffs in this case?

11          A.     I think there were some revisions that  
12 occurred. I'm not familiar with the details.

13          Q.     Okay. So you were not working on that  
14 matter at that time?

15          A.     No.

16          Q.     Okay. Now, I understand that you did work  
17 on the prudence review and the true-up filing that  
18 pertains to the first accumulation period that's at  
19 issue in this case; is that correct?

20          A.     I did work on the prudence review.  
21 Possibly the true-up.

22          Q.     Okay.

23          A.     I'd have to check.

24          Q.     Okay. The prudence review, I believe that  
25 you signed an affidavit dated December 1st, 2008,

1       concurring with certain portions that you authored,  
2       and that was in Case No. EO-2009-0115.

3           A.     Yes.

4           Q.     Okay. And what was the result of that  
5       prudence audit?

6           A.     The general result was that we found no  
7       imprudence.

8           Q.     And I believe that in the true-up filing  
9       which was EO-2009-0431, you did submit an affidavit  
10      on June 26th, 2009. Does that refresh your  
11      recollection?

12          A.     No.

13          Q.     Okay. Okay. Well, the record will show,  
14      correct, the Commission's filings as to what role you  
15      played in that?

16          A.     Yes.

17          Q.     Okay. You just can't recall what you did  
18      at that time?

19          A.     That's correct.

20          Q.     Okay. Is it your belief that this is the  
21      first case where a fuel adjustment clause has been  
22      returned to the Commission on remand for the  
23      Commission to consider whether an adjustment or a  
24      refund should occur?

25          A.     Yes, to the best of my knowledge.

1           Q.     So you'd agree with what the lawyers are  
2 saying here, that this is a case of first  
3 impression?

4           A.     I -- I'm not sure what case of first  
5 impression --

6           Q.     That's probably a fair statement to have  
7 me rephrase.

8                     Is this the first time that you're aware  
9 that the Commission has dealt with these kinds of  
10 facts here, where a fuel adjustment clause was  
11 remanded back to the Commission for it to make  
12 further decisions?

13          A.     Yes.

14          Q.     Are you familiar with accounting authority  
15 orders?

16          A.     No.

17          Q.     You're not an accountant; is that correct?

18          A.     That's correct.

19                     MR. ZOBRIST: Okay. Judge, no further  
20 questions.

21                     JUDGE DIPPELL: Thank you. Is there  
22 anything from Public Counsel?

23                     MR. MILLS: Just a few.

24 CROSS-EXAMINATION BY MR. MILLS:

25          Q.     Mr. Roos, if I -- do you have your direct

1 testimony or rebuttal testimony there?

2 A. Yes.

3 Q. At page 4, line 6 of your direct  
4 testimony, you refer to recovery period eight; is  
5 that correct?

6 A. That's correct.

7 Q. In your rebuttal testimony at page 3,  
8 line 19, you have a fairly similar statement, but you  
9 refer to recovery period nine; is that correct?

10 A. That's correct.

11 Q. What is the reason for that change?

12 A. The reason of that change is just the --  
13 the timing of the Commission's order in this case.  
14 The final briefs in this case are, I believe, due  
15 June 17th, and in order to make the recovery period  
16 eight billing cycle of these, we would have to have a  
17 Commission order in about two or three weeks. And  
18 it's just a matter of timing.

19 Q. Okay. In both your direct testimony and  
20 your rebuttal testimony, isn't your answer predicated  
21 on a Commission order issued in mid-August, 2011?

22 A. I believe they are.

23 Q. Okay. So if the Commission order is  
24 issued in mid-August 2011, in your direct testimony,  
25 you say recovery period eight, if the Commission's

1 order is issued in mid-August 2011, in your rebuttal  
2 testimony, you say recovery period nine; is that  
3 correct?

4 A. That's correct.

5 Q. What changed between the time of your  
6 direct testimony and the time of your rebuttal  
7 testimony to make you change your opinion?

8 A. I reviewed the schedule for the filing  
9 dates and also the schedule for the recovery periods.  
10 September is the beginning of the recovery period.  
11 There is a 60-day window prior to that where the  
12 Staff reviews the Company's calculations and the  
13 Commission also reviews Staff's findings. Prior  
14 to that there is a filing date by the Company of July  
15 1st.

16 So depending on when the Commission order  
17 is and for the Company to prepare the filing and for  
18 us to review the calculations, I didn't think that  
19 there was enough time allowed for -- to be sure of a  
20 September recovery period.

21 Q. But there could be?

22 A. It's possible.

23 Q. If the Commission issued an order in  
24 mid-August that says the refund that should be  
25 included in recovery period eight is X number of

1       dollars, whatever the Commission decides in this  
2       case, is that not a fairly simple calculation to  
3       make, to plug that number into the refund  
4       calculation?

5           A.     It's not a simple calculation.

6           Q.     And I'm not asking you about the overall  
7       calculation of what all the factors should be, but to  
8       simply add in one more number, would that not be a  
9       relatively simple calculation?

10          A.     If we agreed on how that number was added  
11       in, I think it would be a relatively simple  
12       calculation.

13          Q.     So if the Commission order is clear about  
14       how that should be added in, then that would be a  
15       relatively simple calculation; is that correct?

16          A.     I believe so.

17          Q.     Now, turning back to your direct testimony  
18       on page 4, lines 12 through 14.

19          A.     I'm sorry, rebuttal testimony?

20          Q.     No, I'm sorry. Direct testimony, page 4,  
21       lines 12 through 14, is that where you explain the  
22       calculation of how you calculated fuel costs for a  
23       partial month?

24          A.     Yes, that's correct.

25          Q.     Okay. Does that calculation determine the

1 actual fuel use for the first four days of July  
2 2007?

3 A. It's an allocation method; it's not a --  
4 not a direct assignment of the costs.

5 Q. Does it take into account any variations  
6 in weather throughout the month of July 2007?

7 A. By using energy for those days, whatever  
8 energy was used, it's a weighted average based on  
9 energy usage.

10 Q. So is your answer, yes, it does to a  
11 certain degree?

12 A. My answer is yes, to a certain degree as  
13 weather would affect energy usage on those days.

14 Q. Are there -- would there be different ways  
15 to calculate the actual fuel usage for those first  
16 four days of July given the data that you had?

17 A. Yes.

18 Q. Okay. And given more complete and more  
19 accurate data, could you have actually determined the  
20 fuel use for those four days?

21 A. Yes.

22 Q. Okay. But that data was not available to  
23 you; is that correct?

24 A. That's correct.

25 Q. Okay. Now, you -- I think you just

1        answered that you believe there are other ways to  
2        calculate it, and let me see if I can refine that a  
3        little further. Do you believe there are other  
4        reasonable ways to calculate fuel use for those four  
5        first days?

6            A.     I think that the method I used was the  
7        most reasonable.

8            Q.     The most reasonable. Are there others  
9        that would be reasonable?

10          A.     That I think would be a matter of opinion.  
11        I -- for example, you could use a day count.

12          Q.     Is that more or less what the Company used  
13        originally?

14          A.     That's correct.

15          Q.     Okay. Do you have any reason to believe  
16        that when the Company made that calculation, they  
17        thought it was unreasonable?

18          A.     No.

19                  MR. MILLS: Okay. Judge, that's all I  
20        have. Thank you.

21                  JUDGE DIPPELL: Thank you.

22                  Mr. Woodsmall?

23                  MR. WOODSMALL: Thank you, your Honor.

24        CROSS-EXAMINATION BY MR. WOODSMALL:

25          Q.     Continuing with what Mr. Mills was asking



1       you, would you agree that your calculation of the  
2       fuel for the first four days of July 2007 was an  
3       approximation?

4           A.     Yes.

5           Q.     Did you go back, in order to test this  
6       approximation, did you go back and review whether any  
7       of the GMO generating facilities were not available  
8       during those first four days?

9           A.     No, I did not.

10          Q.     Okay. So you don't know if Sibley might  
11       have been offline one of those days?

12          A.     No, I do not.

13          Q.     Did you go back and review whether any of  
14       the units were available or unavailable the last 27  
15       days of that month?

16          A.     No, I did not.

17          Q.     Okay. Are you involved, in your current  
18       duties, in performing true-ups of fuel adjustment  
19       clauses?

20          A.     Yes, I am.

21          Q.     If you were to face the situation now  
22       where a fuel adjustment clause went into effect on  
23       July 5th, when would you begin your true-up?

24          A.     I believe I would start July 5th.

25          Q.     You would start on July 5th. Are you

1 familiar with the Commission's FAC rules?

2 A. Generally.

3 Q. And you say you start -- you would start  
4 your true-up on July 5th. Would your -- does that  
5 mean your true-up year would start on July 5th?

6 A. I think that July --

7 MR. WILLIAMS: I'm going to object to that  
8 question. I believe it's ambiguous in that you do  
9 not define what you mean by true-up year.

10 MR. WOODSMALL: I don't think I need to  
11 because he's familiar with rules and they're defined  
12 in the rules.

13 MR. WILLIAMS: Well, so you're asking  
14 under the rule definition?

15 MR. WOODSMALL: I think that's what I  
16 asked him, yes.

17 MR. WILLIAMS: Thank you for the  
18 clarification.

19 BY MR. WOODSMALL:

20 Q. Can you tell me when your true-up year  
21 would start?

22 A. I'd have to review the rules.

23 MR. WOODSMALL: May I approach the  
24 witness, your Honor?

25 JUDGE DIPPELL: Yes. Show that to his

1 counsel first.

2 BY MR. WOODSMALL:

3 Q. Ask you to review Commission rule  
4 4 CSR 240-3.161(G). Tell me when you've reviewed  
5 that.

6 A. I've reviewed it.

7 Q. If a fuel adjustment clause tariff was to  
8 become effective on July 5, can you tell me when your  
9 true-up year would start?

10 A. I believe it would start August 1st.

11 MR. WOODSMALL: Thank you. No further  
12 questions.

13 JUDGE DIPPELL: Thank you. Are there any  
14 Commissioner questions?

15 COMMISSIONER JARRETT: I don't have any  
16 questions. Thank you.

17 JUDGE DIPPELL: Is there any redirect?

18 MR. WILLIAMS: Thank you, Judge.

19 REDIRECT EXAMINATION BY MR. WILLIAMS:

20 Q. Mr. Roos, you had several questions  
21 regarding the first four days of July. Do you recall  
22 those?

23 A. Yes, I do.

24 Q. Do you know what value those days were  
25 relative to the total accumulation period calculation

1       you did in, let's use the July 5th start date?

2           A.     Could you --

3           Q.     I'm not looking for a precise number, but  
4       relative to the total amount, what kind of value  
5       would those first four days have if you know?

6           A.     Relatively it would be a small amount.

7           Q.     Well, for MPS you have almost \$2 million  
8       total from July 5th of '07 going through the end of  
9       2010 with interest. Can you tie it down more than  
10      just saying a small amount? I mean, are you talking  
11      about tens of thousands or thousands of dollars or do  
12      you know?

13          A.     I don't know.

14          Q.     Do you know what difference there was  
15      between what you came up with when you used the, was  
16      it average energy you used, real-- and the Company  
17      used day count; is that correct?

18          A.     I'm sorry. Could you repeat that  
19      question?

20          Q.     What I really want to get at is with the  
21      methodology you used and the Company used the day  
22      count for the first four days of July, do you know  
23      how much difference there was in the result? Was  
24      there a significant difference?

25          A.     I don't believe so.

1           Q.     And do you believe the Commission should  
2     determine what the start point is for accumulating  
3     costs in the first accumulation period based on how  
4     good the information it has or that's available for  
5     determining the fuel and purchase power cost?

6           A.     No, I do not.

7           Q.     Couldn't you always get a better result if  
8     you have better and more complete and accurate data?

9           A.     That's correct.

10          MR. WILLIAMS:  No further questions.

11          JUDGE DIPPELL:  Thank you.

12          Mr. Roos, I believe that concludes your  
13     testimony.  You may step down.

14          MR. WILLIAMS:  Staff calls Mark  
15     Oligschlaeger.

16                 (Witness sworn.)

17          JUDGE DIPPELL:  Thank you.

18                         \_\_\_\_\_  
19                         MARK OLIGSCHLAEGER

20     of lawful age, having been duly sworn, testified  
21     as follows:

22     DIRECT EXAMINATION BY MR. WILLIAMS:

23           Q.     Would you please state your name.

24           A.     My name is Mark L. Oligschlaeger.

25           Q.     By whom are you employed and in what

1 capacity?

2 A. I am the acting manager of the auditing  
3 department for the Missouri Public Service  
4 Commission.

5 Q. Mr. Oligschlaeger, did you prepare  
6 rebuttal testimony that's been marked as Exhibit No.  
7 8 on or about April 22nd, of this year?

8 A. Yes, I did.

9 Q. And do you have any changes to that  
10 testimony here today?

11 A. I do not.

12 Q. Is that -- is Exhibit No. 8 your testimony  
13 before the Commission here today?

14 A. Yes, it is.

15 MR. WILLIAMS: I offer Exhibit 8.

16 JUDGE DIPPELL: Are there any objections  
17 to Exhibit No. 8?

18 MR. ZOBRIST: No objection.

19 JUDGE DIPPELL: Seeing none, I will admit  
20 it.

21 (Staff Exhibit No. 8 was received into  
22 evidence.)

23 MR. WILLIAMS: I offer the witness for  
24 examination.

25 JUDGE DIPPELL: Is there cross-

1 examination by GMO?

2 MR. ZOBRIST: Yes, your Honor. Thank  
3 you.

4 CROSS-EXAMINATION BY MR. ZOBRIST:

5 Q. Morning.

6 A. Good morning.

7 Q. Mr. Oligschlaeger, you were here at the  
8 Commission when Senate Bill 179 was enacted in 2005;  
9 is that correct?

10 A. Yes.

11 Q. And would you agree that it changed the  
12 manner in which electric utilities among others were  
13 permitted to recover their fuel and fuel-related  
14 costs?

15 A. Yes.

16 Q. And did it change the ordinary and typical  
17 way that a utility recovered those costs?

18 A. Yes.

19 Q. Okay. And that was a significant change  
20 from the prior system whereby those costs were  
21 recovered in general rates cases. Is that generally  
22 true?

23 A. I would agree with that.

24 Q. Were you involved in the -- pardon me.  
25 Were you involved in the rulemakings that followed

1 after the passage of Senate Bill 179?

2 A. I was not directly assigned to those  
3 proceedings.

4 Q. Okay. Were you generally aware that  
5 rulemakings occurred that resulted in a filing and  
6 reporting requirement section and also a new section  
7 in the electric utilities, part of the code of state  
8 regulation for the Commission.

9 A. Yes.

10 Q. Okay. And were you familiar enough with  
11 those proceedings to understand that they were  
12 lengthy and complex discussions?

13 A. Yes.

14 Q. And is that a fair characterization, that  
15 they were lengthy and complex?

16 A. I would agree with your characterization.

17 Q. Now, were you involved in the tariff  
18 filings that occurred in June of 2007 when GMO's  
19 predecessor first obtained Commission approval to  
20 implement a fuel adjustment clause?

21 A. Yes, but only to the degree that I believe  
22 it was Ms. Mantel asked for my opinion concerning  
23 some questions on how interest should be calculated  
24 concerning overcollections or undercollections of  
25 fuel and purchase power expense.



1           Q.     And were those events that occurred back  
2     in June 2007 the first time that electric utility in  
3     Missouri was filing proposed tariff sheets to  
4     implement a fuel adjustment clause?

5           A.     Under the SB 179 rules, yes.

6           Q.     Okay. And those were the rules that were  
7     implemented in those two rulemakings pursuant to what  
8     became Section 386.266, correct?

9           A.     I believe so.

10          Q.     Okay. And were you aware that that was a  
11     fairly compressed time schedule when GMO's  
12     predecessor was attempting to get fuel adjustment  
13     clause tariffs approved by the Commission?

14          A.     I'll accept your characterization in that.

15          Q.     And there were issues related to the  
16     interest issue that you just spoke of but also  
17     related to certain billing disclosures that needed to  
18     be made as well as whether SO2 quash should be  
19     included, is that fair to say?

20          A.     It's my understanding there were a number  
21     of items that were discussed at that time.

22          Q.     Now, are you generally aware of the  
23     prudence review and the true-up proceeding that  
24     occurred with regard to this first accumulation  
25     period for GMO?

1           A.     No. I had no involvement in that.

2           Q.     Were you generally aware that the Staff  
3 did not find any imprudence by GMO during its review  
4 with regard to the first accumulation period?

5           A.     I'm aware of that as a result of reading  
6 the testimony in this proceeding.

7           Q.     Okay. Now, in your rebuttal testimony  
8 generally on page 3 you talked about the uniform  
9 system of accounts under which the Commission  
10 operates; is that correct?

11          A.     Correct.

12          Q.     And the uniform system of accounts is  
13 actually found in the Code of Federal Regulations and  
14 the Commission has adopted those FERC regulations and  
15 imposed those requirements upon the electric  
16 utilities that operate in Missouri. Is that  
17 generally true?

18          A.     Yes.

19          Q.     Okay. And an accounting authority order  
20 has been -- that concept has been in existence in  
21 Missouri since you've been here at Commission for  
22 almost 30 years, isn't that correct?

23          A.     Yes.

24          Q.     Okay. And as you stated in your  
25 testimony, this generally allows a utility to defer

1 and capitalize certain expenses until the next time  
2 that it files a subsequent rate case?

3 A. That's the most common use of it in this  
4 jurisdiction.

5 Q. And the uniform system of accounts permits  
6 this when an unusual or extraordinary event has  
7 occurred; is that correct?

8 A. Yes.

9 Q. Okay. And am I correct that that is --  
10 that's actually defined, the word "extraordinary  
11 item" is defined in the uniform system of accounts?

12 A. I believe so; I don't have the text in  
13 front of me.

14 Q. I've got some text here, so let me hand it  
15 to you and see if you are familiar with it.

16 MR. ZOBRIST: Judge, could we have that  
17 marked as Exhibit 9 please?

18 JUDGE DIPPELL: Certainly. Mark that as  
19 Exhibit 9.

20 (KCP&L Exhibit No. 9 was marked for  
21 identification.)

22 JUDGE DIPPELL: And I believe you've --  
23 what it is is that -- can you tell us what section  
24 that is?

25 MR. ZOBRIST: Yes, Judge. This is --

1       this is Section 7 which is part of the general  
2       instructions that is part of 18 CFR, part 101 which  
3       is the uniform system of accounts. And I've got  
4       copies for the bench here too.

5               JUDGE DIPPELL: Thank you.

6               MR. ZOBRIST: Can I hand that to the  
7       witness?

8       BY MR. ZOBRIST:

9               Q.     Mr. Oligschlaeger, I've handed you what  
10       I've marked as Exhibit 9 and it's a page out of the  
11       Code of Federal Regulations. And take a moment to  
12       study it if you will, but does that appear to be the  
13       definition of extraordinary items in the USOA that  
14       this Commission and Staff have regularly followed?

15              A.     Yes.

16              Q.     Okay. Now, you stated in your testimony  
17       that it was not appropriate to allow a utility to  
18       seek subsequent recovery in an AAO of costs that  
19       should be refunded. Do you recall that testimony?

20              A.     Yes, I do.

21              Q.     Okay. What is the standard or the test  
22       that you applied to arrive at that opinion?

23              A.     In the Staff's view points these costs or  
24       the refunds in questions should not be afforded  
25       recovery in a subsequent rate case due to their very

1 nature and for that reason it would not be  
2 appropriate to defer them at this time.

3 Q. Okay. Now you said, "due to their very  
4 nature." What do you mean by that?

5 A. It's my understanding that any refunds the  
6 Commission may order would be pursuant to a court  
7 judgment or a court order. And for that reason we  
8 believe, again, if the Commission decides it's  
9 appropriate, any refunds that are either orders or  
10 attempts through a court proceeding to implement  
11 should be final in nature and not subsequent to later  
12 attempts to recover the costs.

13 Q. And I'm going to -- have you read the  
14 Court of Appeals' decision in this case?

15 A. I have not.

16 Q. I'll represent to you that what the Court  
17 did was not order a refund, but remand the proceeding  
18 to the Commission for it to conduct further  
19 proceedings. If you would accept that, that the  
20 Court did not order a refund and just told the  
21 Commission to make further proceedings, because it  
22 did not order a refund, isn't that different from  
23 what you just said?

24 A. That's my understanding as well, that they  
25 did not directly order refunds. However, I believe

1       that is one option that is presented to the  
2       Commission as how they should proceed in this  
3       situation.

4           Q.     And you're aware of reading the record in  
5       this remanded proceeding and the testimony of the  
6       witnesses that there was no finding of imprudence  
7       with regard to the fuel and fuel adjustment -- pardon  
8       me -- the fuel and fuel-related expenses that were  
9       collected during this 34-day period from June 1 to  
10      July 4, 2007?

11          A.     Based on the testimony filed in this  
12      proceeding, I'm not aware that anyone has alleged  
13      imprudent actions or costs.

14          Q.     So is it your testimony that there is a  
15      per se rule that this Commission should follow that  
16      simply because retroactive ratemaking apparently  
17      occurred, that none of these costs should be eligible  
18      for an accounting authority order even though a new  
19      statute was being implemented and tariffs were being  
20      filed and the effective date was just 34 days too  
21      late?

22          A.     Well, I certainly didn't base the opinions  
23      in my testimony on retroactive ratemaking directly.  
24      I think that's more of a legal concept.

25                 I think where Staff is coming from is when

1       you look at these questions of cost, should they be  
2       deferred through an accounting authority order,  
3       there's kind of a two-pronged test. I mean, first of  
4       all in most cases the Commission has indicated they  
5       need a finding that the costs are extraordinary, but  
6       also that the costs themselves we would assert are of  
7       the nature that should be allowed rate recovery.

8           Q.     Well, I think that we've established that  
9       this -- this change in the law and the change in the  
10      manner in which fuel and fuel-related expenses are  
11      recovered, that would -- that was an extraordinary  
12      event. That was a big change in Missouri.

13          A.     It could be characterized as  
14      extraordinary; I don't think I would quibble on that.

15          Q.     So then the question is whether these  
16      amounts should be allowed in an AAO to be considered  
17      in a future rate case.

18          A.     Yes.

19          Q.     And what you're saying is that Staff has  
20      said no to that question, that it should not be the  
21      subject of an AAO?

22          A.     Correct.

23          Q.     Okay. And again, what is -- what's the  
24      basis for that? If the costs were not found to be  
25      imprudent in Staff's review, what's the reason for

1 not permitting them to be collected in an AAO and  
2 subject to a future rate case?

3 A. Okay. Again, if the Commission believes  
4 that refunds are appropriate in this -- in this  
5 situation as a result of a court decision, our belief  
6 is to allow deferral of those refunds, and the  
7 opportunity for future recovery would be in a sense a  
8 circumvention of what the Court itself -- or what the  
9 Commission itself is interpreting the Court as  
10 saying.

11 Q. Okay. And that's Staff's opinion even  
12 though Staff believes that prudent fuel costs should  
13 be recovered by public utilities?

14 A. As a general rule, yes, prudent costs  
15 should be eligible for rate recovery.

16 MR. ZOBRIST: No further questions, Judge.

17 JUDGE DIPPELL: Thank you. Anything from  
18 Public Counsel?

19 MR. MILLS: Yes.

20 CROSS-EXAMINATION BY MR. MILLS:

21 Q. Mr. Oligschlaeger, with respect to fuel  
22 adjustment clauses in general, do you believe that  
23 they should operate to allow utilities to recover  
24 costs which the Commission has determined should not  
25 be recovered?



1           A.     No.

2           Q.     Okay.  And with respect to accounting  
3 authority orders in general, in your 29 and a half  
4 years or more time at the Commission, have you ever  
5 seen the Commission authorize an accounting authority  
6 order in response to a court order finding that the  
7 Commission had acted unlawfully?

8           A.     I don't believe that has ever been an  
9 issue before the Commission.

10          Q.     Can you recall an utility ever even asking  
11 for such a thing?

12          A.     I cannot recall that, no.

13                 MR. MILLS:  Okay.  That's all I have.

14 Thank you.

15                 JUDGE DIPPELL:  Thank you.

16                 Anything from Intervenors?

17                 MR. WOODSMALL:  Yes, briefly, your Honor.

18 CROSS-EXAMINATION BY MR. WOODSMALL:

19          Q.     Mr. Oligschlaeger, can you tell me some of  
20 the items that are collected by a fuel adjustment  
21 clause.

22          A.     In general terms a utility's fuel and  
23 purchase power expense which would include the cost  
24 it incurs for coal, natural gas, nuclear fuel, oil,  
25 wind, all other types of technologies that are used

1 to generate electricity for provision to its  
2 customers. Also of course purchase power; the power  
3 it may purchase from other entities in order to  
4 provide its retail load. I'll leave it at that.

5 Q. Okay. You have Exhibit 9 in front of you  
6 still?

7 A. Yes, I do.

8 Q. Can you read me the sentence in Section 7  
9 starting, I think it's the second sentence starting  
10 with the words, Those items?

11 A. Yes. Those items related to the effects  
12 of events and transactions which have occurred during  
13 the current period and which are of unusual nature  
14 and infrequent occurrence shall be considered  
15 extraordinary items.

16 Q. Of the items that you listed that are  
17 captured within a fuel adjustment clause, would you  
18 consider any of those items of unusual nature and  
19 infrequent occurrence?

20 A. The items I listed, no.

21 Q. Okay. When you were asked earlier, you  
22 say -- you stated earlier that you considered the  
23 passage of SB 179 to be an extraordinary event; is  
24 that correct?

25 A. I think the Commission itself in some past

1 cases has said the first time a major new rule or  
2 regulation goes into effect, it can be considered  
3 extraordinary.

4 Q. Okay. When you use that, you're referring  
5 solely to the passage of the rule and not to the  
6 collection of any of those fuel and purchase power  
7 items; is that correct?

8 A. Well, those items have been collected in  
9 utility rates for many years if that's what your  
10 question is.

11 MR. WOODSMALL: Thank you. No further  
12 questions.

13 JUDGE DIPPELL: Are there any  
14 Commissioner questions?

15 COMMISSIONER JARRETT: No questions,  
16 Mr. Oligschlaeger.

17 MR. ZOBRIST: Could I offer into evidence  
18 Exhibit 9 please.

19 JUDGE DIPPELL: Would there be any  
20 objection to Exhibit 9?

21 MR. MILLS: I object. There's not a  
22 sufficient foundation. The witness didn't say he was  
23 familiar with this. He didn't say that this has any  
24 bearing on the Commission's operations. Whether the  
25 Commission operates under the 4-1-10 edition or some

1       other edition or anything of that nature.  There's  
2       simply not a sufficient foundation.

3               MR. ZOBRIST:  I think he agreed that this  
4       was the definition that the Commission operated  
5       under.  I'd be glad to conduct further inquiry, but I  
6       thought Mr. Oligschlaeger said that he accepted this  
7       as the definition of extraordinary items under which  
8       the Commission has operated.

9               JUDGE DIPPELL:  I thought that that was  
10       his testimony as well.

11              Mr. Woodsmall, you wanted to jump in?

12              MR. WOODSMALL:  Not so much an objection,  
13       but ask to be allowed to supplement this.  It's  
14       simply one rule taken out of context, and I don't  
15       know for sure what the remainder of the rule.  So if  
16       I could have maybe a day to supplement it with what  
17       is on either side of it.

18              JUDGE DIPPELL:  Well, it -- this is the  
19       Code of Federal Regulations, correct?

20              MR. ZOBRIST:  Correct.  I mean, this is  
21       really as much demonstrative evidence as it is  
22       substantive.

23              MR. WILLIAMS:  Judge, the pertinent one  
24       would be whatever the Commission's rule has adopted  
25       from the federal uniform system of accounts.

1 JUDGE DIPPELL: I agree. So for now I  
2 won't allow it. I'm not going to allow it into  
3 evidence; I'll sustain the objection. We'll take it  
4 as part of the legal arguments in the briefs as to  
5 what is -- actually although as I say that, he did  
6 testify as to this particular -- his testimony  
7 relates as to this particular item, so I guess in  
8 that instance it is demonstrative, but.

9 MR. ZOBRIST: Well, I think it clearly  
10 comes in as demonstrative evidence. I mean, I can --  
11 be glad to voir dire the witness again on this. If  
12 he's got any qualms about this definition, then he  
13 can tell the Commission. I mean, this is just a copy  
14 of the page from the Code of Federal Regulations. We  
15 don't know need to put the whole code into evidence  
16 because it's the subject of the citation.

17 JUDGE DIPPELL: I'm just going to go  
18 ahead with my earlier ruling and overrule -- or  
19 sustain the objection rather. I'll let you all argue  
20 about the legal text in your briefs.

21 Is there anything further? Oh, let's  
22 see. Was there redirect?

23 MR. WILLIAMS: Just a few questions I  
24 believe.

25 JUDGE DIPPELL: Okay.

1 REDIRECT EXAMINATION BY MR. WILLIAMS:

2 Q. Mr. Oligschlaeger, do you recall a number  
3 of questions regarding the fuel adjustment clause,  
4 refund ratemaking, and accounting authority orders?

5 A. Yes, I do.

6 Q. If the fuel adjustment clause mechanism  
7 was unavailable, would we be even here discussing the  
8 issue of refunding any monies?

9 A. I don't believe so.

10 Q. And why is that?

11 A. Because the refund mechanism is part of  
12 the fuel adjustment clause process now implemented by  
13 the Commission pursuant to SB 179, but normal  
14 ratemaking and certainly ratemaking for fuel and  
15 purchase power expense prior to that treated that  
16 item as a normal item of expense like any other and  
17 was not normally subject to refund based on under or  
18 overcollections of -- by comparisons of actual costs  
19 versus the levels in rates.

20 Q. And the costs that we're talking about  
21 that relate to the refund, fuel and purchase power  
22 related costs, were companies able -- did the  
23 Commission ever grant any accounting authority orders  
24 for those costs?

25 A. I won't answer that comprehensively. I'm

1       aware of at least one instance in which a utility  
2       requested deferral authority over purchase power  
3       cost, but I believe the Commission denied that  
4       request.

5           Q.     And what was the context of that request?

6           A.     My recollection is that the -- actually it  
7       was Missouri Public Service, the predecessor company  
8       to GMO asserted that certain increases in purchase  
9       power costs had incurred in the early 1990's should  
10      be deemed to be extraordinary and deferred for later  
11      recovery.

12          Q.     And what was its basis for seeking that  
13      those be deemed extraordinary, if you know?

14          A.     My recollection is that this was  
15      pursuant -- these were costs pursuant to a contract  
16      it had with another entity and over time the prices  
17      for the purchase power, certainly the demand charges  
18      and perhaps the energy charges as well, I don't  
19      really remember, periodically increased. And it was  
20      those -- the amount of the increase that, at that  
21      point, MPS sought to be deferred.

22          Q.     Did the Commission grant that request?

23          A.     They did not.

24               MR. WILLIAMS: No further questions.

25               JUDGE DIPPELL: Thank you. I believe

1 the -- unless there's anything further from the  
2 Commission, that that was the end of  
3 Mr. Oligschlaeger's testimony then.

4 Mr. Oligschlaeger, thank you. You can  
5 step down.

6 Is there anything further from Staff?

7 MR. WILLIAMS: No, Judge.

8 JUDGE DIPPELL: Are there any other  
9 witnesses that I've overlooked?

10 All right then. I believe that that  
11 concludes the witness testimony. And one of the  
12 witnesses suggested that I've already set a briefing  
13 schedule for this, but I -- I can't recall if that's  
14 in the procedural schedule already.

15 MR. ZOBRIST: Yeah, it is, Judge.

16 JUDGE DIPPELL: One round of briefs I  
17 hope?

18 MR. ZOBRIST: Actually two. June 3rd for  
19 initial posthearing, and final briefs, June 17th.

20 JUDGE DIPPELL: All right then. Do you  
21 all still want to do two rounds?

22 MR. ZOBRIST: Yes.

23 JUDGE DIPPELL: All right. We'll go  
24 forward with that schedule then.

25 Is there anything else before we go off



1 the record?

2 Seeing nothing else, we can adjourn.

3 Thank you. We can go off the record.

4 (Off the record.)

5 (Staff Exhibit Nos. 3, 4, 5, 6 and KCP&L

6 Exhibit No. 8 were marked for identification.)

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## 1 CERTIFICATE

2 I, Shelley L. Mayer, a Certified Court Reporter,  
3 CCR No. 679, the officer before whom the foregoing  
4 hearing was taken, do hereby certify that the  
5 testimony which appears in the foregoing hearing was  
6 taken by me to the best of my ability and thereafter  
7 reduced to typewriting under my direction; that I am  
8 neither counsel for, related to, nor employed by any  
9 of the parties to the action in which this hearing  
10 was taken, and further, that I am not a relative or  
11 employee of any attorney or counsel employed by the  
12 parties thereto, nor financially or otherwise  
13 interested in the outcome of the action.

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16 \_\_\_\_\_  
17 Shelley L. Mayer, CCR  
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