

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 OF THE STATE OF MISSOURI

3
4 TRANSCRIPT OF PROCEEDINGS

5 Prehearing Conference
6 October 12, 2005
7 Jefferson City, Missouri
8 Volume 2

9 In the Matter of the Application)
10 Of WST, Inc., a Missouri)
11 Corporation, for a Variance from) Case No.
12 Kansas City Power & Light) EE-2006-0123
13 Company's General Rules and)
14 Regulations Requiring Individual)
15 Metering)

16
17 MORRIS WOODRUFF, Presiding,
18 Senior Regulatory Law Judge

19
20 REPORTED BY:
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Commission

1 PROCEEDINGS

2 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION
3 BY THE COURT REPORTER.)

4 JUDGE WOODRUFF: Let's go ahead and get
5 started. We're here today for a hearing in
6 Case No. EE-2006-0123, which is the Application of WST,
7 Incorporated, for a Variance from Kansas City Power & Light
8 Company's General Rules and Regulations Regarding [sic]
9 Individual Metering. And we'll begin today by taking entries
10 of appearance, beginning with Kansas City Power & Light.

11 MR. BLANC: Curtis Blanc, Kansas City Power &
12 Light, 1201 Walnut, Kansas City, Missouri, 64106.

13 JUDGE WOODRUFF: And for WST?

14 MR. STEWART: Shawn Stewart with the law firm
15 of Stewart Law Firm, offices at 4505 Madison Avenue, Kansas
16 City, Missouri, 64111, appearing on behalf of WST, the
17 applicant.

18 JUDGE WOODRUFF: Thank you. And for Staff?

19 MR. WILLIAMS: Dana K. Joyce and Nathan
20 Williams, PO Box 360, Jefferson City, Missouri, 65102.

21 JUDGE WOODRUFF: Thank you. And I don't see
22 anyone here for Public Counsel. Well, that will be all the
23 parties then. This hearing is going on on very short notice
24 because there was a request that the Commission act on very
25 short information in this case, so there's not been any

1 pre-filed testimony and so forth. So what we're going to do
2 is we'll start with opening statements, and then I'll let you
3 call your witnesses. Since WST is the applicant in this
4 case, we'll let them go first. So if you would like to make
5 your opening statement.

6 MR. STEWART: Thank you, Mr. Chairman. Again,
7 Shawn Stewart on behalf of WST, Inc. We're here before the
8 Commission this morning to request a variance to Kansas City
9 Power & Light's general rules and regulations, and
10 specifically, Article 5 relating to the individual metering
11 requirements, and specifically, 5.03, which provides for
12 resale and redistribution prohibitions. And in this case, we
13 have also asked for the Commission to indicate that a
14 variance is not required to Title 4, Division 240, Chapter
15 20.050 of the Commission's rules relating to individual
16 metering because the building in question was constructed
17 prior to June 1 of 1980.

18 And Mr. Fredock, who is here on behalf of WST,
19 Inc., will provide the Commission with testimony regarding
20 the condominium project that is in question, and why it's
21 necessary to allow for a master metering of the project. And
22 we believe that there is good cause for this variance.
23 We believe that the Commission has the authority to grant the
24 variance. And in brief conclusion, we would ask that the
25 Commission grant the variance this morning. Thank you.

1 JUDGE WOODRUFF: Thank you. Mr. Williams for
2 Staff?

3 MR. WILLIAMS: May it please the Commission.
4 It's Staff's understanding that in this situation, WST is
5 renovating a building that was used for commercial and retail
6 purposes, and supplied power in a different fashion than
7 would be done under the master metering rule, which requires
8 individual metering to each unit in a multi-unit residential
9 housing facility. It's Staff's understanding that this is
10 going to end up being a 20-story building that has 153
11 condominium units in it.

12 Because of the date the building was
13 originally constructed, it's the Staff's view that the
14 Commission's separate metering rule -- master metering rule
15 does not apply. However, KCP&L's tariff has provisions in
16 it. In particular, 5.01, which deals with individual
17 metering for separate premises, which is more restrictive
18 than the Commission's master metering rule. In addition,
19 5.03, which prohibits resale and redistribution from
20 customers taking power from KCP&L and then reselling that
21 power.

22 And I would also direct the Commission's
23 attention to 5.07, which deals with renovation. Staff's
24 unclear as to the applicability of that provision at this
25 point. It's the Staff's view that the Commission doesn't

1 have the authority to waive these particular tariff
2 provisions. There's, to the Staff's knowledge, no provision
3 within the tariffs to grant the Commission of that authority
4 to grant a variance and where the legislature has deemed it
5 appropriate for the Commission to have that authority, it's
6 so done by statute.

7 Therefore, it's the Staff's view, at this
8 point, with what it understands the facts to be, that this
9 application should be denied. Staff also points out that
10 while it's not advocating this position, it's a possibility
11 that it could be viewed that WST is a utility, but not a
12 public utility, in which event it could sell power to
13 customers without being under this Commission's jurisdiction.

14 And I did provide the Commission with an
15 exhibit. I don't know if the Commission wants to mark that
16 now or at some future time.

17 JUDGE WOODRUFF: It was marked as Exhibit 1
18 before we went on the record, and I'll assume you'll offer it
19 at an appropriate time.

20 MR. WILLIAMS: Sure.

21 JUDGE WOODRUFF: All right. For Kansas City
22 Power & Light?

23 MR. BLANC: Good morning. We're here largely
24 because Kansas City Power & Light believes that it couldn't
25 provide service that WST's request without violating

1 provision of its tariff. Specifically, we were concerned
2 that Section 5.03, which prohibits the provision of service
3 for resale or redistribution -- we were concerned that we
4 would violate that provision if we provided service to WST as
5 we understood their metering and cost recovery practices to
6 be. Given that set of facts, we suggested that WST
7 seek a variance from the Commission from that provision of
8 our tariff, and that is the application that initiated this
9 proceeding. Kansas City Power & Light does not have a
10 position as to whether the Commission grants or does not
11 grant this application, we just simply believe that we
12 couldn't provide the service they were requesting without
13 some form of Commission authorization. Thank you.

14 JUDGE WOODRUFF: All right. Thank you. All
15 right. Well, let's go ahead and start taking evidence then.
16 And we'll begin with WST.

17 MR. STEWART: Mr. Chairman, the applicant
18 calls Mr. Brian Fredock to the stand.

19 JUDGE WOODRUFF: Mr. Fredock, if you'll come
20 over here to the witness stand.

21 (THE WITNESS WAS SWORN.)

22 JUDGE WOODRUFF: You may be seated. Could you
23 spell your name for me first?

24 THE WITNESS: Brian, B-R-I-A-N, Fredock,
25 F-R-E-D-O-C-K.

1 JUDGE WOODRUFF: All right. You can inquire.

2 DIRECT EXAMINATION

3 QUESTIONS BY MR. STEWART:

4 Q. Again, Brian, would you please state your name
5 for the record?

6 A. Brian Fredock.

7 Q. And what is your address?

8 A. My address is 510 East Wea, Paola, Kansas,
9 66071.

10 Q. And Brian, who are you employed by?

11 A. I'm employed by WST, Inc.

12 Q. And what is your position with WST, Inc.?

13 A. I'm the owner's representative and
14 construction manager of the project.

15 Q. So you are familiar with the ins and outs of
16 the condominium project that is currently under construction
17 at 1101 Walnut Street?

18 A. Yes, I am.

19 Q. Could you briefly describe the project as far
20 as how many units there are and what kind of a project it is?

21 A. As I understand it, the -- the building was a
22 mixed-use office, commercial building, and it was purchased.
23 And currently we're undergoing a renovation to still keep it
24 a mixed-use with mostly residential units, and a few
25 commercial or retail spaces available. The -- the

1 residential units is -- right now, they right now consist of
2 approximately 143 units with a potential of four commercial
3 units in the building.

4 Q. Could you explain how the existing power is
5 channeled through the building as it exists?

6 A. Sure. Currently, KCP&L has a series of
7 transformers in the building, and they -- in a vault, which
8 is dedicated to that use. From the -- from that -- from the
9 transformers, it is sent to a master meter, and then -- and
10 then sent to our distribution switchboard. From that
11 switchboard, it is sent throughout the building on a series
12 of two bus ducts, where it's distributed throughout to the
13 individual units. And each bus duct, in itself, can't supply
14 the whole building, that's why -- that's why two are
15 installed for -- for that use of the commercial spaces.

16 Q. And it's WST, Inc.'s intent to continue with
17 this existing electrical supply and to allow for a master
18 meter to continue with the project?

19 A. It is. The -- the distribution system is set
20 up in such a way that you can't -- you can't separate the
21 power to each individual unit without renovating the entire
22 system. We would have to install a new switch gear at an
23 enormous cost, and then we would have to take that switch
24 gear and -- and provide separate -- separate backbone
25 throughout the entire building for that.

1 Estimates right now, just for the switch gear
2 alone, are above \$250,000, and it's -- it would be
3 astronomical to -- at this day and age -- to redistribute the
4 power from there in the current -- in the current floor plan
5 that we have, and in the current -- the way that the building
6 is just set up. It's not economically possible for us to do
7 that right now.

8 Q. Do you recall having any conversations with
9 Kansas City Power & Light representatives regarding the issue
10 of metering?

11 A. Yes, we've had several meetings with them
12 about that, in which we discussed the probability of -- well,
13 if we separated the -- the power distribution system, it
14 would cost -- it would cost, basically, a small fortune to do
15 that.

16 Q. And did Kansas City Power & Light inform you
17 that they believed that a variance to their rules and
18 regulations would be necessary from the Commission in order
19 to allow WST, Inc. to proceed with the master metering
20 concept?

21 A. Yes, they did.

22 Q. With respect to your master metering, do you
23 have any intention of installing any additional metering
24 devices to monitor the usage of each unit's electric?

25 A. We've selected a -- a monitoring system that's

1 proven to be very accurate, and several states in the country
2 have -- have authorized its use. For example, the -- the
3 state of California has -- has had a similar situation
4 where -- where this system was used to monitor different --
5 different facilities, and it's -- from those hearings, it's
6 authorized its use in the state of California.

7 The New York City Department of Buildings has
8 authorized its use in -- in high-rise development down there.
9 In New York, they're undergoing a lot of renovations similar
10 to what we're undertaking in Kansas City. And I also have
11 some -- some information that the -- that the Pacific Gas and
12 Electric Company has -- has tested the -- the metering system
13 that we're intending on using there, and they -- they
14 recommended that it meets their requirements for their
15 metering as well.

16 And again, I have several other documents that
17 show that the quality of the metering is very accurate, and
18 that several states around the country have no problem with
19 entering that -- or letting their developers use that in
20 their high-rise development.

21 Q. So would the individual meters be installed on
22 the same floor as the units that they serve and monitor?

23 A. Yes, they would.

24 Q. Can you explain how -- well, let me rephrase
25 this.

1 Are you familiar with the Wall Street Tower
2 Condominium's Association, Inc. that has been formed and
3 organized under the Missouri Secretary of State's office?

4 A. Yes, I am.

5 Q. And are you familiar with the declaration that
6 would govern the condominium project and the terms and
7 conditions of that declaration?

8 A. Yes.

9 Q. Can you explain how the billing would work
10 from the association to the unit owner if, in fact, that's
11 what the case would be?

12 A. As I understand it, the meter will come
13 into -- excuse me, the building would come into the
14 homeowner's association, and through the reports that are
15 developed by -- by the -- the monitoring system, with the --
16 that's available right now, each individual unit owner would
17 be billed exactly what their usage is.

18 And we could derive that from the -- from the
19 billing information, from the taxes, and the -- what KCP&L
20 charges on the bill, and they do show that. So -- so
21 after -- after everything is disseminated and correctly
22 billed for the tenant use, the homeowner's association
23 would -- would take the rest of the bill and apply that to
24 the -- the common use areas, and then -- then they would send
25 in one complete payment to KCP&L.

1 Q. Are the unit owners members of the condominium
2 association?

3 A. Yes, they are. They have equal voting
4 privileges, one vote per member.

5 Q. Are there any other parties that would be
6 members of the association?

7 A. Not to my knowledge, no.

8 Q. So your understanding of the declaration of
9 the association is such that the unit owners have a vote in
10 the association, would have the power to call certain
11 meetings, if desired, of the association board, and other
12 powers available under the declaration and bylaws?

13 A. Yes.

14 Q. With respect to the meters that you intend to
15 install, that would be the exact amount -- that would bill
16 for the exact amount shown on the meters' use per month; is
17 that right?

18 A. Yes, it would.

19 Q. And can you give us any other details as far
20 as what the individual -- the capabilities of the individual
21 meters on a daily, weekly, monthly basis?

22 A. Well, we can -- we can give realtime data to
23 the individual tenant, meaning that -- that if -- if they --
24 if they put in a request to the homeowner's association, they
25 could receive printouts of daily and hourly usage of what

1 their -- what their unit is doing.

2 Currently, on KCP&L's billing, and I
3 understand that they have the capability of doing a little
4 bit more as well, they show a monthly usage throughout the
5 year. We can provide the -- the tenant with more up-to-date
6 and a more usable format than -- than monthly or even weekly.
7 We can show the tenant peak times and peak loads during the
8 day of power usage. It would -- it's even as accurate or
9 sensitive to -- to show when the washing machine turns on,
10 when it stops, when they use the microwave, just things of
11 that nature.

12 Q. And do you know approximately how much it
13 would cost to comply with the individual metering
14 requirements of Kansas City Power & Light?

15 A. To the best of my knowledge, the information
16 we're getting from our subcontractors, the -- just to redo or
17 reconfigure the -- the main distribution panel, or main
18 switch gear, is going to be about \$250,000. The -- and from
19 there, the distribution system needs to be -- to be
20 demolished, and then reinstalled. That figure comes up to
21 anywhere from \$550,000 to \$650,000.

22 So essentially, to retrofit Wall Street Tower
23 Condominiums with a new power distribution system, you're
24 talking an extra million dollars, where just installing this
25 metering system that we propose, it costs about \$45,000.

1 Q. And is it your belief that the individual
2 metering system that you intend to install would increase
3 electric conservation and allow for each unit owner to
4 conserve energy?

5 A. It would. I mean, just because of the fact
6 that they can see how much power they're using, and it would
7 also be an incentive to homeowners to try to even out their
8 power consumption during the day. And another example, we
9 have several tenants that are -- are absentee, if you will,
10 that won't be there maybe just a few months during the year.
11 It will -- that's an incentive for them to purchase a
12 condominium in our building because they're -- their billing
13 will be such that they'll only be billed for what they use
14 during the year.

15 There's been several articles published as an
16 example. Here's the Bank of America Center in downtown San
17 Francisco that installed this system, and as an average
18 savings, they saved the first year that it was installed.
19 They saved over a million dollars in their energy costs, so
20 this is a very -- this is a very accurate system, and there's
21 just a lot of opportunities for the tenants in our building
22 to -- to create an energy savings.

23 Q. Are you familiar with the general development
24 plan for the downtown loop planning area that was approved by
25 the city of Kansas City, Missouri?

1 A. Yes, I am.

2 Q. And pursuant to that plan, was the area that
3 Wall Street Tower is located was declared a blighted area?

4 A. Yes, it was a blighted area, and Kansas City
5 took the -- the initiative to create a redevelopment area in
6 downtown.

7 Q. And is the Wall Street Tower project a
8 redevelopment project in accordance with that plan?

9 A. Yes, it is.

10 Q. And the material part of the plan is to
11 encourage the redevelopment of Kansas City's downtown urban
12 core?

13 A. Yes.

14 Q. Does the project qualify for any economic
15 incentives, such as real estate property tax abatement?

16 A. Yes, it does.

17 Q. And so the project -- would it be your opinion
18 that the project is encouraging the elimination of blighted
19 conditions in downtown Kansas City, Missouri?

20 A. Absolutely.

21 Q. When is the first unit expected to be conveyed
22 on this project?

23 A. The first unit -- the first date of delivery
24 is October 19th.

25 Q. And is that pursuant to a contract that was

1 entered into between WST, Inc. and that buyer?

2 A. Yes, it is.

3 Q. And there would be ramifications to --
4 potential ramifications under that contract to WST, Inc. if
5 that closing did not occur?

6 A. Yes.

7 Q. Do you have any estimated time frame as to how
8 long it would take to bring the project into compliance with
9 the individual metering concept?

10 A. It would delay the -- I mean, just to get the
11 new switch gear in, we're looking at anywhere from a 90- to
12 120-day delivery time just for that -- just for that system.
13 So I would -- I would think that the -- I think that the
14 project would be delayed approximately about six months.

15 MR. STEWART: Mr. Chairman, I have no further
16 questions at this time.

17 JUDGE WOODRUFF: Okay. Thank you. Let's go
18 for cross-examination then, beginning with Staff.

19 MR. WILLIAMS: Thank you, Judge.

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. WILLIAMS:

22 Q. The building located at 1101 Walnut Street,
23 when did WST begin renovation of that building?

24 A. It's my understanding it was -- the major
25 renovations started in -- in April of this year, with

1 wholesale demolition of the tenant spaces.

2 Q. What was the extent -- what is -- what has
3 been the extent of the renovation? You talked about
4 demolition of the tenant spaces. Was the building gutted?

5 A. The building was gutted, the window systems
6 have been replaced. Before we billed out an entire floor,
7 everything is going to be demoed [ph. sp.], from the exterior
8 walls, we're going to have the concrete floor, the existing
9 metal -- metal subfloor, you know, for the upper deck. The
10 only things that we've left in place are the distribution
11 systems and the central core, which included the elevators
12 and emergency egress.

13 Q. When did the plans for the building renovation
14 begin and when were they finalized?

15 A. I'm not sure when they began, but the -- they
16 were finalized -- we received a -- a building permit in July
17 of this year.

18 Q. Do you know approximately when the planning
19 began?

20 A. The planning began approximately, I believe,
21 August -- sometime in August, '04, is when I became familiar
22 with the project.

23 Q. You indicated that's when you became familiar
24 with the project. Was someone else involved with it before
25 you?

1 A. The -- the owners had -- had a design
2 development team involved with it before then.

3 Q. Do you know when the developers first got in
4 touch with Kansas City Power & Light about electrical supply
5 to the building in connection with the renovation?

6 A. We first got in contact with Kansas City Power
7 & Light in -- I believe it was in September of '04.

8 Q. And what was the nature of that contact?

9 A. It was -- it was to -- to verify the current
10 distribution system in the building. And at that time, there
11 was -- there's no mention of individual metering, or
12 requirement for that, at that time.

13 Q. When did WST, or the developer, talk to KCP&L
14 about its intention to put in multiple condominium units in
15 the building?

16 A. They knew about it at the first meeting that I
17 attended.

18 Q. And when was that?

19 A. In September of 2004.

20 Q. And has the renovation that's taken place at
21 this building exceeded 50 percent of -- been 50 percent or
22 more of its value?

23 A. No.

24 Q. Were there any renovations done to the
25 electrical system within the building?

1 A. Currently? I'm not sure if -- I mean, prior
2 to that date or -- I'm sorry?

3 Q. You indicated the building was gutted. From
4 the time it was acquired by the developer until now, have
5 there been any renovations done to the electrical systems in
6 the building?

7 A. On the individual floors, we've -- we've
8 removed the -- the lighting and electrical distribution on
9 that floor, that's specific to the floor. And we've left
10 the -- the main -- the main backbone of the system still
11 intact.

12 Q. Is this a 20-story building?

13 A. Yes, it is.

14 Q. And how has the renovation progressed? Have
15 you been doing it floor-by-floor, or have you done the entire
16 building at once?

17 A. We've started floor-by-floor. For example,
18 demolition started on the 20th floor, and worked its way
19 down. And in the meantime, when there's demolition on the
20 lower floors, we've started to reconstruct the upper floors
21 according to our -- our permit.

22 Q. And then you've indicated that the residential
23 space in the building is going to be condominiums; is that
24 correct?

25 A. Yes, the greater percentage is going to be

1 condominiums.

2 Q. And do you know what price range those
3 condominium units will be sold at?

4 A. I would think the -- the average price of the
5 condominiums is about \$300,000.

6 Q. Is that in the price range of the condominium
7 the developer is wanting to close, I guess it's October 19th
8 of this year?

9 A. The -- I believe the price range in -- in the
10 condominium -- the first condominium closing is more like
11 \$475,000.

12 Q. And when did the developer first learn from
13 KCP&L that it was going to have issues with the type of power
14 it was wanting to receive from KCP&L?

15 A. I believe the -- the first meeting we had this
16 year with KCP&L was in -- was in May. And at that time, we
17 discussed the -- the power requirements and the -- the
18 requirements for individual metering. I think it was in May.

19 Q. Was there some reason the developer didn't
20 file an application with the Commission until September, if
21 the issue had been raised as early as May?

22 A. With -- with the investigations -- from what I
23 understand, the investigations that KCP&L was undertaking was
24 to see if there was an economical solution to the
25 distribution of the building, and -- and until -- until just

1 recently, we received a letter from KCP&L verifying that --
2 that there was really no economical way to redistribute power
3 to the building, and that's when they -- they said that they
4 would -- we wouldn't be able to get anything but individual
5 metering for the building.

6 Q. Under the setup that you've described, which
7 as I understand, KCP&L would supply, basically, master power
8 to the building, and then the condominium association would
9 -- I'm going to use word sell --

10 A. Sure.

11 Q. -- because they're going to charge per -- on a
12 usage basis to the condominium owners, that power. What
13 would happen to the individual condominium owners if the bill
14 from KCP&L was not paid by the condominium association or
15 anyone else?

16 A. I mean, what would happen to the individual
17 owners? The individual owners control whether or not the
18 bill gets paid from the homeowner's association by their
19 right to vote for that. I don't think that the -- a
20 homeowner's association would just arbitrarily not pay the
21 bill when each individual homeowner pays the homeowner's
22 association.

23 Now, the -- and in the event that single, or
24 maybe even a few, of the condominium owners don't pay their
25 bill, the homeowner's association will have a fund to draw

1 from so that the bill will get paid. I mean, it's
2 essentially, for example, like if the Town Pavilion next door
3 just all of a sudden doesn't pay the bill. I mean,
4 eventually, you know, in that instance where they have
5 individual tenants there as well, there's a -- there's a base
6 moral obligation to ensure that the -- the bills get paid.

7 Q. And these, I don't know, rules and
8 regulations, or guidelines for the condominium association --

9 A. Uh-huh.

10 Q. -- is that something that's in a formal
11 document?

12 A. Yes, it is.

13 Q. And has it been executed and filed of record?

14 A. I'm not -- I don't know. I don't know if it
15 has been or not, but we're making provisions in that document
16 so that the -- the membership of the -- the homeowner's
17 association, or the individual condominium owners, will not
18 have the power to vote not to pay the bill.

19 Q. Is this a plan of the developer that hasn't
20 been formalized yet, pending, perhaps, on the outcome of this
21 proceeding?

22 A. No, the -- the -- from what I understand that,
23 we're -- there's just a few other items, issues not related
24 to this -- this hearing today that need to get fulfilled
25 before that document is final.

1 Q. So there's a commitment in that document to --
2 for the condominium's association to do resale of power
3 received from Kansas City Power & Light?

4 A. Well, I don't believe it's resale. For me, I
5 guess in my terms, if I sell something, I'm going to make a
6 profit on it. Obviously, KCP&L is in the business to make a
7 profit as well. So by making a profit, I would -- I would
8 conclude that that would be a resale.

9 Right now, there is no intention of upcharging
10 anything to the condominium owners, even to -- to provide for
11 the -- for the staff services necessary to -- to separate the
12 billing. That won't be a back -- that won't be a charge to
13 the owners either. So basically, they are just
14 redistributing that bill according to what the condominium
15 owners use, and forwarding the payment to KCP&L.

16 Q. Can that document be provided to the
17 Commission?

18 A. Yes, it will.

19 Q. And I think I want to get more into your
20 example of if an owner doesn't pay his particular bill.

21 A. Okay.

22 Q. Condominium owner -- under the way you've
23 described what the developer's planning on doing, and maybe
24 has begun setting in motion, what would happen if a
25 particular condominium owner declined to make payment to the

1 condominium association that was, in part, to be used for
2 paying for electrical usage?

3 A. Well, the -- the document would have
4 provisions that -- that -- for the homeowner that doesn't pay
5 the bill. Again, you know, just like KCP&L does, they allow
6 a certain amount of time, and give a certain amount of
7 warning to individual homeowners before they -- before they
8 cut the power off and remove the meter.

9 And in this case, it would be -- be under the
10 same guidelines where -- where that individual condominium
11 owner would -- would be afforded the opportunity and every
12 effort made so that they could be able to pay their bill.
13 But in -- in the last resort, the -- the homeowner would --
14 power would be disconnected until such a time when they did
15 pay the bill.

16 Q. And who would make that decision about
17 disconnection?

18 A. It would be the -- the -- the homeowner's
19 association as a group.

20 Q. What is the current status of the
21 developer's -- well, back up.

22 Is the developer taking power currently from
23 Kansas City Power & Light currently that you know of?

24 A. Yes.

25 Q. And what is the current status of the

1 developer's billings from KCP&L?

2 A. From what I understand, they're up-to-date.

3 Q. You talked about savings of a million dollars
4 in connection with the meters that you were planning on using
5 for monitoring electrical usage to each condominium unit; is
6 that correct?

7 A. Yes, but I am not saying that we would save a
8 million dollars. I'm saying that there's an article here
9 that I have about the Bank of America Center. They had a
10 problem with -- when their tenants came in, they had a set
11 fee in their -- in their rent for the units, and they figure
12 a certain percentage that has to be electrical use. Well,
13 their tenants would leave the lights on day and night and run
14 different equipment and everything where their power usage
15 was beyond what they expected.

16 So when they paid -- when they installed this
17 system, they gave notice to the tenants, and they -- they --
18 above and beyond their normal usage, that they would get a
19 charge for. Well, after the first -- after the first few
20 months where the tenants were getting this extra charge, the
21 tenants were encouraged to -- to conserve energy. And by
22 doing so, the first -- the -- after the first year, the --
23 the submetering of that building saved the -- the developers,
24 or the owners, a million dollars in electrical bill.

25 Now, in our situation, it will -- it will

1 encourage the tenants to do the same thing, where we are not
2 going to be responsible for the bill, however, but the
3 tenants will, and it will -- it will encourage each
4 individual homeowner to save power.

5 Q. Do you know what the acquisition cost was of
6 the developer of the building at 1101 Walnut Street?

7 A. No, I'm not exactly sure.

8 Q. Do you have any idea?

9 A. I would say probably around \$12, \$14 million.

10 Q. And do you know what the total cost of the
11 renovation has been to date?

12 A. To date?

13 Q. Yes.

14 A. Well, I know that we have -- for the overall
15 project, once it's completed, the renovations will probably
16 be about \$20 million.

17 Q. Would the developer have any objection if
18 KCP&L were to agree to bill individual condominium units
19 based on the meters that the developer is planning on putting
20 in place?

21 A. From what I understand, KCP&L has -- has let
22 us know that they -- that they have no -- have no desire to
23 do that.

24 Q. I'm asking whether or not the developer would
25 have an objection to that being done.

1 A. I'd have to present that to the -- to the
2 investor group, but from my knowledge, I don't believe that
3 they would -- that they would have any objection to that.

4 Q. Do you have any familiarity with Kansas City
5 Power & Light's tariffs?

6 A. Yes, I do.

7 Q. I have what's been marked as Exhibit 1 for
8 purposes of this hearing. And what that is is a
9 particular -- some particular pages from Kansas City Power &
10 Light's tariff.

11 A. Uh-huh.

12 Q. And in particular, I'm going to call it
13 section, I'm not sure what they may call it, but five, that
14 addresses multiple occupancy premises.

15 A. Uh-huh.

16 Q. And also, all or part of Section 6 on
17 metering, and in particular, 6.03, that talks about multiple
18 occupancy buildings. Have you seen those tariff provisions
19 before?

20 A. I believe I have, yes.

21 Q. Do you have some familiarity with them?

22 A. I have some familiarity.

23 Q. Looking at Provision 5.01, can you tell me how
24 the building at 1101 Walnut Street, as you described with the
25 condominium association -- metering and billing condominium

1 owners based on their usage, falls within 5.01?

2 A. I'm not sure if I understand the whole content
3 of the -- of the tariff, or the rules, but basically what it
4 says is that each -- each multiple -- or each occupant in a
5 multiple-occupant building will be individually metered.

6 Q. And doesn't it also say "and supplied electric
7 service as the Customer of the Company", referring to Kansas
8 City Power & Light?

9 A. Well, yes, it does; however, in this case,
10 KCP&L is not supplying that customer directly. KCP&L has a
11 transformer located in the building, and then everything
12 after that transformer is owned by WST, Inc., whereas, for
13 example, in a -- in a smaller building, or even in a two- or
14 three-story building, it's more economical for -- for KCP&L
15 to provide that power.

16 If that was -- if that was the case, if we
17 were to provide the homeowner with a meter, and for example,
18 on the 20th floor, on the -- in an electrical room on the
19 20th floor, and that's where we, as the developer, intended
20 to put that meter box, then according to the, you know, I
21 guess literal verbiage of this, KCP&L would be required to
22 supply us power up to the 20th floor. Well, they're not
23 willing to do that either.

24 So -- so in essence, we're -- we're being
25 penalized for having somebody live on the 20th floor of the

1 building, and KCP&L is not wanting to provide power up to
2 them.

3 Q. Wouldn't WST require a variance from 5.01 as
4 well, as I think it's asked for a variance from 5.03?

5 MR. STEWART: Your Honor, if I may. I'm going
6 to object to this line of questioning. Mr. Fredock is a
7 factual witness on behalf of WST, Inc. He's not an expert in
8 interpreting. I don't think his interpretation of Kansas
9 City Power & Light's rules and regulations has any merit or
10 relevancy in this case.

11 JUDGE WOODRUFF: Mr. Williams, what's the
12 relevancy of this witness' testimony on this tariff?

13 MR. WILLIAMS: I don't know that his
14 interpretation is relevant. I think his understanding is,
15 and how his view of what WST's doing complies with it may be
16 relevant.

17 JUDGE WOODRUFF: Response?

18 MR. STEWART: Your Honor, WST, Inc. has simply
19 said, and has indicated to the Commission, that if a variance
20 is necessary from the tariffs, that that is what we are
21 asking for, but Mr. Fredock has no qualifications or ability
22 to make any kind of opinion based upon his interpretation of
23 Kansas City Power & Light's rules and regulations.

24 If Kansas City Power & Light wishes to make an
25 opinion on their own interpretation of their own rules and

1 regulations, and subsequent to that, to the Commission, that
2 would be appropriate. But to ask Mr. Fredock, who is not an
3 attorney, who is not related at all to Kansas City Power &
4 Light's rules and regulations, is simply irrelevant.

5 JUDGE WOODRUFF: I'll sustain the objection.
6 You can move onto another area.

7 MR. WILLIAMS: No further questions.

8 JUDGE WOODRUFF: All right. Cross-examination
9 from KCP&L?

10 MR. BLANC: Kansas City Power & Light does not
11 have any questions for this witness.

12 JUDGE WOODRUFF: All right. Thank you. I
13 have some questions for you, Mr. Fredock.

14 THE WITNESS: Yes, sir.

15 QUESTIONS BY JUDGE WOODRUFF:

16 Q. First of all, this building, it's in downtown
17 Kansas City, I understand.

18 A. Yes, it is.

19 Q. I think you said it was 11th and Walnut?

20 A. Uh-huh.

21 Q. I'm trying to visualize where that is.

22 A. It's on -- if you're familiar with the Town
23 Pavilion, it sits just to the east of that, across the
24 street. There's a small park that's on the same block; it's
25 to the southwest of the building.

1 Q. Okay. And what was in this building before
2 you renovated it?

3 A. There was a series of offices, law offices,
4 people of that nature were renting space in the building.

5 Q. Okay. So it was just general commercial?

6 A. Yes, uh-huh.

7 Q. Okay. And do you know when this building was
8 constructed?

9 A. To the best of my knowledge, looking at the
10 information that I had, the building started sometime in
11 1973.

12 Q. Okay. So it's a fairly new building then?

13 A. Well, it's about 30 years old.

14 Q. Yeah. 1973 sounds very current to me.

15 A. That's true. That's true.

16 Q. It's all relative, I guess.

17 A. I guess.

18 Q. But anyways, it was constructed before 1981 is
19 the key point?

20 A. Yes, yes.

21 Q. Okay. And you've been talking about these
22 individual meters.

23 A. Uh-huh.

24 Q. And Mr. Williams asked you some questions
25 about that as well, I know. Is there a technical reason why

1 KCP&L could not just go ahead and bill off those meters? I
2 think you called them submeters.

3 A. Okay. We would provide KCP&L with the data
4 necessary to -- to individually bill the -- the tenant owner
5 or condominium owners. And they would -- through that
6 information, they would have all the required data to do that
7 billing.

8 Q. Okay. But there's no technical reason why
9 they couldn't do that that you know of?

10 A. I'm not aware of any.

11 Q. But you're not an electrical engineer, I
12 assume.

13 A. By any means, no.

14 Q. Okay. What happens on the 19th of October
15 with this closing if there is no variance at that point?

16 A. The -- the owners are prepared to -- to absorb
17 the cost of the bill until such a time as we can -- we can
18 get the variance.

19 Q. By "owners", you mean owners of the building?

20 A. Yes.

21 Q. So closing could still go on on the 19th?

22 A. Yes.

23 Q. Okay. And did you know if there are any other
24 closings scheduled shortly thereafter?

25 A. Yes, there's more closings scheduled on the

1 31st of October and the 4th of November. At that time, we'll
2 have the upper four floors closed upon with as much as 30
3 clients, or 30 homeowners, up there. And then the -- the
4 percentages and the usage would increase. I don't believe
5 that the -- the owners of the building would want to take on
6 that responsibility of that part of the electric bill at that
7 time.

8 Q. Okay. So at this point, the tenants could get
9 electricity, but it would be up to the owners of the building
10 to be paying the bill?

11 A. Yes.

12 Q. And that obviously can't go on forever.

13 A. No, it can't.

14 Q. Okay. And as the condominium owner's
15 association, I assume at this point -- well, there are no
16 condominium owners at this point, so I assume the developer,
17 the owner of the building, is -- is the association -- or the
18 only member of the association at this point?

19 A. It -- until -- until the first unit is closed
20 on, there really is no active homeowner's association. And
21 once there are people that close on the units, then yes,
22 there will be one, and the -- the developer will have a -- a
23 vote in the association.

24 Q. Is that based on the unsold units?

25 A. Uh-huh.

1 Q. So once all the units are sold, then the
2 developer is out of the picture?

3 A. Correct, yes.

4 Q. Other than -- do they still have the voice for
5 the common areas?

6 A. No, no, it's going to be totally to the
7 homeowner's association. The developers, once all the units
8 are sold, will have no say in the association whatsoever.
9 And -- yeah.

10 Q. Okay. And it's the association that would be
11 -- under your plan, would be paying the bill each month to
12 KCP&L?

13 A. Yes.

14 Q. Okay.

15 JUDGE WOODRUFF: Well, that's all the
16 questions I have. I'll give you an opportunity for recross
17 based on the questions from the bench, and then we'll come
18 back to redirect.

19 Mr. Williams, do you have any questions based
20 on my questions?

21 MR. WILLIAMS: Yes.

22 JUDGE WOODRUFF: Go ahead.

23 RE CROSS-EXAMINATION

24 QUESTIONS BY MR. WILLIAMS:

25 Q. The judge asked you if there were any

1 technical reasons why KCP&L couldn't rely on the meters that
2 the developer's planning on installing for use by the
3 homeowner's association. Do you recall that?

4 A. I don't believe he said to rely on the meters.
5 I think he said that if there's any -- any -- any reason why
6 KCP&L couldn't bill off the information that we provided
7 them.

8 Q. How could that information be provided? Could
9 it be that the --

10 A. We can send it via computer modem to them.
11 Any system that had capability of Microsoft 2000 can -- or
12 after that -- can read this information. And we would be
13 willing to -- to download the software to -- to KCP&L's
14 computer, if they requested that.

15 Q. Would the developer also be willing to allow
16 KCP&L access to verify the meters and collect the information
17 directly?

18 A. I'd have to take a look and find if they can
19 take all the information directly from the -- from the
20 meters. What the intent of the system is is to send all this
21 information to one -- to one source, one computer or two
22 computers or -- I don't believe -- now, they can test the
23 meters for accuracy on each floor, if that's what you're --
24 if that's what the intent of the question is, and absolutely.

25 And there's information here that has verified

1 the meters within plus or minus .01 percent accurate through
2 anywhere from zero to maximum load on the meter. So by all
3 means, they would be able to come in and verify, you know,
4 that information, if requested to do so.

5 Q. Well, there are two aspects. One is the
6 accuracy of the equipment, and the other is the accuracy of
7 the information that was being transmitted by the third
8 party.

9 A. Sure.

10 Q. So I was just asking if --

11 A. I believe -- I believe that the owners are
12 going to be open to -- to any -- any, I guess, relevant
13 requests or normal requests by KCP&L. You know, that's --
14 that would verify the accuracy of the meters and monitoring
15 system, you know, up to a certain point, I believe.

16 Q. Do you know if that would go so far as to
17 provide an access easement to Kansas City Power & Light?

18 A. Access easement? I'm not sure if I
19 understand.

20 Q. Giving KCP&L power, or the right, to come into
21 the building to look at the meters or collect information.

22 A. I couldn't answer that. I'd have to present
23 that to the owners; however, now, KCP&L does have -- I mean,
24 they come into the building and read the meters that we
25 presently have. I don't think there would be any -- any

1 difference in that.

2 Q. Are those meters publicly accessible?

3 A. No.

4 Q. Whose meters are those?

5 A. The meters are -- I mean, the meter heads and
6 everything are KCP&L's. They're just right outside of
7 their -- their transformer vault.

8 Q. And the meters we've been talking about going
9 to the individual condominium owners would not be KCP&L
10 meters, correct?

11 A. Correct.

12 MR. WILLIAMS: No further questions.

13 JUDGE WOODRUFF: KCP&L have any questions?

14 MR. BLANC: No recross, your Honor.

15 JUDGE WOODRUFF: Any redirect?

16 REDIRECT EXAMINATION

17 QUESTIONS BY MR. STEWART:

18 Q. Mr. Fredock, let's take you back to the
19 declaration. Are you aware of any provisions that would
20 require the association to grant easements to utility
21 companies for access to the common elements for purposes
22 relating to the services provided by those utility companies?

23 A. I'm not aware of any declarations like that or
24 anything.

25 Q. Would that be possible, in the event that --

1 if you're not aware of it, is it possible for that provision
2 to be included in the declaration at this time?

3 A. I'm sure it could be.

4 Q. And again, the association will be comprised
5 of the unit owners, correct?

6 A. Absolutely, yes.

7 Q. So the association is a group of the unit
8 owners?

9 A. Right.

10 MR. STEWART: I have no further questions,
11 your Honor.

12 JUDGE WOODRUFF: All right. Thank you. And
13 Mr. Fredock, you may step down.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: Does Staff have any witnesses
16 they wish to call?

17 MR. WILLIAMS: Yeah, Staff calls James
18 Watkins.

19 (THE WITNESS WAS SWORN.)

20 JUDGE WOODRUFF: And you may inquire.

21 MR. WILLIAMS: Judge, I think at this time,
22 I'll go ahead and ask the Commission to take notice of Kansas
23 City Power & Light Company's tariff P.S.C. MO. No. 2, sheet
24 number -- Second Sheet No. 1.18, and P.S.C. MO. No. 2, Second
25 Sheet No. 1.19, P.S.C. MO. No. 2, Second Sheet No. 1.20,

1 P.S.C. MO. No. 2, Fourth Sheet No. 1.21, and P.S.C. MO.
2 No. 2, Fifth Sheet No. 1.22.

3 JUDGE WOODRUFF: Thank you. And these are the
4 sheets that you previously marked as Exhibit No. 1; is that
5 correct?

6 MR. WILLIAMS: Exhibit No. 1 is copies of
7 those particular tariff sheets, yes.

8 JUDGE WOODRUFF: Yes. Okay. For convenience
9 sake, I'm going to take that as an offering of the exhibit
10 itself.

11 MR. WILLIAMS: I'll go ahead and offer the
12 exhibit.

13 JUDGE WOODRUFF: Okay. I understand the
14 Commission will probably take administrative notice of those
15 tariffs as well, but just for convenience of the record, we
16 will take them in as Exhibit No. 1. Exhibit 1 has been
17 offered, is there any objections to its receipt? Hearing
18 none, it will be received into evidence.

19 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE BY
20 THE JUDGE.)

21 JUDGE WOODRUFF: All right. You may inquire
22 of Mr. Watkins.

23 DIRECT EXAMINATION

24 QUESTIONS BY MR. WILLIAMS:

25 Q. Mr. Watkins, will you please state and spell

1 your name?

2 A. James C. Watkins, W-A-T-K-I-N-S.

3 Q. By whom are you employed, Mr. Watkins?

4 A. Missouri Public Service Commission.

5 Q. And what's your position with the Missouri
6 Public Service Commission?

7 A. I'm the manager of economic analysis.

8 Q. And in your position as manager of economic
9 analysis -- well, back up.

10 How long have you been employed at the Public
11 Service Commission?

12 A. Since August 1st, 1982.

13 Q. And over the course of your employment, have
14 you had involvement with the tariffs of utilities that are
15 now filed with the Commission?

16 A. Yes, limited to the electric utilities.

17 Q. And has that been over the course of your
18 career, or a portion of it?

19 A. A portion. I had very limited dealings with
20 the tariffs themselves early on.

21 Q. I'm sorry?

22 A. I had very limited dealings with the tariffs
23 early on, but have had increasing responsibility, you know,
24 since that time. I'm unofficially in charge of the electric
25 tariffs -- their tariff filings.

1 Q. Are you familiar with the Commission's
2 variance committee?

3 A. Yes, I'm a member of that committee.

4 Q. And how long have you been a member of that
5 committee?

6 A. I couldn't tell you the exact date, but for
7 several years.

8 Q. Do you have familiarity with Kansas City
9 Power & Light's tariffs dealing with multiple occupancy
10 premises?

11 A. Yes.

12 Q. And what is the nature of your familiarity
13 with those tariffs?

14 A. I have a general understanding of what those
15 tariffs have to say about metering -- master metering, and
16 prohibitions against resale and redistribution, which are
17 typically in all of the electric utility tariffs.

18 Q. Can you go ahead and explain your
19 understanding?

20 A. Basically, the Commission has a rule which
21 each of the utilities have adopted, basically as the
22 Commission rule, or a more restrictive form of that rule,
23 that prohibits the master metering of multiple-occupancy
24 buildings that were constructed after, like, June 1, 1981.

25 And in addition, there are prohibitions

1 against the customer of the company reselling or
2 redistributing electricity to basically anyone, whether that
3 be on a set per kilowatt hour basis or square foot basis or
4 whatever -- whatever basis that would be, with the exclusion
5 of those buildings that received service prior to -- that
6 were constructed prior to 1981 and have received service on
7 that basis since that time, on a rent-inclusion basis.

8 Q. Do you have any knowledge of the basis for why
9 there would be a prohibition against resale or redistribution
10 if power came from utilities regulated by the Commission,
11 particularly regulated?

12 A. To me, the big reason is the Commission has a
13 whole set of rules regarding how utilities relate to their
14 customers and to the service that they provide. When you --
15 when you separate the customer from the utility, then the
16 consumer no longer has those protections, you know,
17 protections, you know, as simple as, requirements that the
18 utility test and verify that the meters are reading
19 accurately, provisions for notice of cutoffs, how many days
20 they get to pay their bill. You know, all the consumer
21 protections that are built into the Commission's rules would
22 not apply to a -- basically a third-party non-utility resale
23 or redistribute of electricity.

24 MR. WILLIAMS: No further questions.

25 JUDGE WOODRUFF: All right. For cross, then,

1 WST?

2 CROSS-EXAMINATION

3 QUESTIONS BY MR. STEWART:

4 Q. Mr. Watkins, you indicated that you're a
5 member of the Electric Meter Variance Committee.

6 A. Yes.

7 Q. And can you tell me what your role on that
8 committee is? Make recommendations to the Commission, is
9 that effectively what you do?

10 A. That's the committee's role, yes.

11 Q. That's the committee's role. And how many
12 members are on that committee?

13 A. There are four.

14 Q. Has that committee ever received a request by
15 any person to the Commission to vary the terms of a utility
16 company's tariff?

17 A. I'd have to say yes.

18 Q. And specifically, this section that you're --
19 you have referred to with -- let me step back.

20 I don't know if you referred specifically to
21 Article 5 of the Kansas City Power & Light's general rules
22 and regulations, but you are familiar with those rules and
23 regulations, correct?

24 A. Yes.

25 Q. Do you recall ever receiving a request from

1 Kansas City Power & Light to vary -- to the Commission for
2 the approval of a variance to Section 5.03?

3 A. Yes, I recall that.

4 Q. I have in my hand a memorandum that was
5 prepared by the Electric Meter Variance Committee to Missouri
6 Public Service Commission on Case No. EE-2003-0199. I
7 apologize, I don't have an extra copy, but I'd like for you
8 to --

9 MR. STEWART: If I could, approach the
10 witness?

11 JUDGE WOODRUFF: You may.

12 MR. STEWART: And if the Court would take that
13 case under judicial notice. Again, that's -- for the court
14 reporter, did you get that case number?

15 COURT REPORTER: I did.

16 BY MR. STEWART:

17 Q. If I could refer you to that memorandum, does
18 it state that -- does it cite to 4 CSR Division 240, Chapter
19 20.050(c), which states, the Commission, in its discretion,
20 may approve tariffs filed by an electric corporation, which
21 are more restrictive of master metering than the provisions
22 of this rule. That would appear on the second page, I
23 believe.

24 A. 2.0506?

25 Q. Uh-huh.

1 A. It appears at the top of Page 3, yeah.

2 Q. Page 3. Does it go on to refer to Section
3 5.03(b) of KCP&L's general rules and regulations supplying
4 electric service?

5 A. Yes.

6 Q. And specifically, it states, with respect to
7 any multiple occupancy premises, the company will not supply
8 electric service to the owner, lessee, or operator thereof as
9 the customer of the company and permit redistribution by such
10 customer to his office or residential tenants therein, except
11 for those premises being supplied such service on the
12 effective date of this schedule?

13 A. That's correct.

14 Q. Could you also confirm that the memorandum
15 concludes the Electric Meter Variance Committee recommends
16 that the Commission grant KCP&L a variance from Section
17 5.03(b) of its tariff?

18 A. Yes, it does.

19 Q. Could you explain why now you believe that
20 there's no authority for the Commission to grant a variance
21 when you indicated -- at least your committee indicated in
22 this case that the variance be granted to Section 5.03(b)?

23 A. That's based on advice of counsel.

24 Q. And could you also testify as to whether, and
25 I believe you've already stated this -- actually, let me back

1 up.

2 Do you know what the outcome of that case was
3 by the Commission?

4 A. The Commission approved the variance --
5 approved the recommendation, I'll say.

6 Q. And how was that case different than this
7 case?

8 A. That's been a little while ago.

9 Q. Are you familiar with -- and I know some of
10 these cases just don't appear to you off the top of your
11 head. Are you familiar with, in the matter of the request of
12 Kansas City Power & Light Company, EE-2001-663, which granted
13 the request variance -- the requested variance in ordering of
14 KCP&L to amend its tariff sheet? Are you familiar with that
15 case?

16 A. I don't remember them by the case numbers.

17 Q. The question would be, are you familiar with
18 multiple cases where this Commission has granted variances to
19 tariffs similar to the Kansas City Power & Light tariff that
20 is present before the Commission today?

21 A. Yes, and you asked before about the nature of
22 those cases, and those are all cases where the buildings --
23 the multiple occupancy building is by tenants who are renting
24 their apartment with utilities included. None of those cases
25 have to do with individually-owned condominium units.

1 Q. And does the -- the rule or the statute
2 distinguish the two?

3 A. I'm not familiar with the statute, and
4 wouldn't venture to interpret it. My reading of the rule
5 seems to indicate to me that it is aimed toward allowing
6 multiple metering on a rent-inclusion basis to
7 tenant-occupied buildings --

8 Q. Is that on the rule?

9 A. -- as a variance.

10 Q. Is that on the rule, or Kansas City Power &
11 Light's rules and regulations?

12 A. I'm talking about the Commission's rule.

13 Q. But you don't have a cite that you could give
14 me that distinguishes on -- distinguishes the rule on
15 rent-inclusion basis?

16 A. The rule? Actually, I don't have the rule
17 with me.

18 JUDGE WOODRUFF: I have a copy of the rule
19 right here, Mr. Watkins, if you'd like to take a look at it.

20 BY MR. STEWART:

21 Q. If I could refer you to the rule --

22 A. Uh-huh.

23 Q. -- Mr. Watkins, to Subsection 1(g), does that
24 section state that a residential unit is defined as one or
25 more rooms for the use of one or more persons as a

1 housekeeping unit with space for eating, living, and sleeping
2 and permanent provisions for cooking and sanitation?

3 A. Yes, it does.

4 Q. Does that section distinguish between
5 rent-inclusion and condominium units?

6 A. No, it does not.

7 Q. Anywhere else do you see that it makes the
8 distinction?

9 A. I mean, my recollection is that that
10 distinction is not spelled out clearly in the rule at all,
11 and -- and probably not in KCP&L's tariff.

12 Q. Mr. Watkins, would it be more fair to say that
13 it's more a policy of the committee and/or Staff to separate
14 and distinguish the two, and that there is no distinguished
15 rule or regulation on the two?

16 A. There's a couple of things that are -- that
17 are involved in that. One is that no variance request, to my
18 knowledge, has come to the -- to the variance committee
19 dealing with condominiums. Okay.

20 Q. Again --

21 A. So -- so they have never had -- the variance
22 committee has never had to distinguish between condominiums
23 and rental units.

24 Q. From a policy standpoint?

25 A. I thought that's what you asked.

1 Q. Well, my question is, would it be accurate?
2 If you can cite -- if you cannot cite to any rule that
3 distinguishes condominium units and apartment buildings -- or
4 rent-inclusion buildings, would it be more accurate to
5 testify that this is simply a recommendation of either yours,
6 or possibly the committee's, as opposed to authority that is
7 provided in either a rule or a statute? If I could rephrase
8 that.

9 A. Yeah, I don't understand the question.

10 Q. I understand that no request for a variance on
11 a condominium project has been presented to your committee.
12 That doesn't answer the question. The question is if you
13 believe that a rule or a statute distinguishes between a
14 condominium project and a rental project? And if not, then
15 if your basis to distinguish the two is predicated on policy
16 issues of yours or the committee's?

17 A. I agree there is no clear distinction within
18 the rule or the tariff regarding tenants and owners. And
19 thus, that's -- that's, I guess, partly my policy belief
20 and -- and it's partly that, you know, condominiums were
21 probably not that big a deal back when this rule was adopted.
22 They're -- they're listings of, you know, particular types of
23 things which are excluded from requiring individual meters.

24 Some of the things which have come into
25 existence since then, like assisted living facilities, you

1 know, aren't listed, but at some point, a decision has to be
2 made about whether they are similar enough to those things
3 that are listed, and have the same policy characteristics,
4 you know, that would allow granting a variance or a finding
5 that the rule did not apply to them.

6 Q. Would it be your belief that apartments were
7 that big of a deal at the enactment of 240-220?

8 A. Yes.

9 Q. Apartments were a big deal?

10 A. And I think a lot of the apartments were
11 master metered.

12 Q. So if it were a big deal, do you also think it
13 probably would have been a big deal to the Commission to
14 exclude apartments from the individual metering requirement?

15 MR. WILLIAMS: I'm going to object to that as
16 calling for speculation.

17 JUDGE WOODRUFF: Overruled.

18 THE WITNESS: I think quite the opposite. I
19 think, if I understood your question correctly, I would
20 assume that the rule is aimed at multiple-occupancy rental
21 apartment buildings, that condominiums were probably not
22 contemplated at that time.

23 BY MR. STEWART:

24 Q. But apartment buildings were contemplated at
25 that time?

1 A. I think the rule is directed at them, yes.

2 Q. But again, you've not cited any section of
3 this rule that states apartment buildings are exempt from the
4 rule?

5 A. You're correct. It allows for variances to be
6 granted to the rule for apartment buildings.

7 Q. So if it --

8 A. It allows those -- those master-metered
9 apartment buildings that were buildings constructed prior to
10 1981 to continue master metering.

11 Q. That's not what the rule says, right?

12 A. Yeah.

13 Q. Let's just read the rule.

14 A. Okay.

15 Q. If we could refer you to 4 CSR 240-20.050(2),
16 each residential and commercial unit in a multiple-occupancy
17 building, construction which has begun after June 1, 1981,
18 shall have installed a separate electric meter for each
19 residential or commercial unit. So that doesn't distinguish
20 between apartments and condominiums, correct?

21 A. That's correct.

22 Q. Go on to subsection four, which is where I'm
23 stating there's no exception for apartment buildings. It
24 states, for the purpose of carrying out the provisions of
25 section two and three, the following sections apply, and

1 separate metering will not be required. There's A, B, C, D,
2 E, F. Anywhere in there, does it exclude apartment
3 buildings?

4 A. There is no exception for apartment buildings.

5 Q. So there's no distinction between apartment
6 buildings and condominium projects under that rule?

7 A. Let's back up to what I was saying, which was,
8 at the time the rule was -- was adopted, I believe that it
9 was not uncommon in these older buildings to have -- to rent
10 the apartments with utilities, or at least electric included.
11 And this rule was adopted to end that practice, because it
12 does not -- it does not apply to buildings that were
13 constructed prior to 1981. Only those buildings after that,
14 and it does not distinguish which of those new buildings,
15 apartments, condominiums, commercial space, whatever, would
16 be exempt, other than those items that are listed as
17 examples.

18 Q. So getting back to the original question.

19 A. Okay.

20 Q. The committee has recommended that the
21 Commission grant variances to utility company's tariffs
22 similar to Kansas City Power & Light's Section 5.03 in the
23 past, correct?

24 A. Is your question limited to Kansas City Power
25 & Light?

1 Q. No, similar. Any utility company, and it
2 could be limited -- I guess the question, as we referred to
3 case -- the case that you have in front of you, that case
4 granted a variance to Section 5.03(b) of Kansas City Power &
5 Light's tariffs, correct?

6 A. Yes, it has.

7 Q. And your reasoning -- I don't mean to put
8 words in your mouth. I'm asking the question. Was it your
9 reasoning that the reason that they granted the variance was
10 because it was an apartment building as opposed to a
11 condominium project?

12 A. Yes.

13 Q. But nowhere in the rule does it -- does it
14 make a distinction between an apartment building and a
15 condominium project?

16 A. I mean, as to whether a variance could be
17 granted?

18 Q. Right.

19 A. No.

20 Q. Are you familiar with Section 393.140(11) of
21 the Missouri Statutes?

22 A. No, or certainly not by that cite.

23 Q. If I number -- I could give you a copy of
24 this, if you'd like to read it, but if you don't have any
25 familiarity with it, it's regarding the power -- powers of

1 the Commission. Are you familiar with that section?

2 A. Well, I'm generally aware of it, but I'm not
3 an attorney.

4 Q. That's fair. Even though you're not an
5 attorney, you make recommendations -- your committee makes
6 recommendations to the Commission, correct?

7 A. Yes, it does.

8 Q. And so in connection with making those
9 recommendations, do you solely rely on advice of counsel, or
10 do you analyze the provisions of the electric company's
11 tariffs, analyze provisions of Missouri statutes, analyze
12 provisions of the Commission's rules, and then make a
13 determination?

14 A. I think, in general, the variance committee
15 relies on its own understanding of the Commission's rules.
16 There is an attorney on that variance committee, so I assume
17 if we were doing something wrong, and he knew it, that he'd
18 let us know. Actually, there are more than one attorney.

19 Q. So when the committee recommended that
20 variances be granted to tariffs similar to Kansas City Power
21 & Light's Section 5.03, at the time, you presumed that the
22 Commission would have the authority to grant the variance?

23 A. When you say, to utilities with provisions
24 like 5.03, my only other recollection of another utility is
25 Union Electric Company were granted -- variances have been

1 recommended to be granted. The tariffs of Union Electric
2 Company specifically states that variances can be granted to
3 the provision for mastering metering, they can be granted for
4 the provisions that renovation projects that meet certain
5 circumstances can be provided a variance by application to
6 the Commission. It's basically the same -- same blurb, I
7 believe, that's in the rule, or very similar language.

8 Q. But does the -- does the utility company grant
9 the variance?

10 A. The Commission grants the variance.

11 Q. So does it matter what's in the rules and
12 regulations regarding granting variances? Does -- let me ask
13 that question and then go on to the next.

14 A. I think you're getting into the legal
15 question.

16 Q. Okay.

17 A. So you can take my legal opinion for what it's
18 worth, which is probably nothing. I mean, I think the -- the
19 Commission's rules, and Union Electric's tariffs, for
20 example, do provide for the Commission, for a good cause
21 shown, to grant variances to those provisions restricting
22 master metering. The Commission relies on its variance
23 committee to look at the factual situation, and make a
24 recommendation to the Commission about whether that variance
25 should be granted.

1 Q. Well, let's get --

2 A. The case with KCP&L is different. We have
3 learned now, which is there are -- the Commission has
4 approved tariffs for Kansas City Power & Light that do not
5 provide for the granting of variances of those provisions.

6 Q. Was that -- was their tariffs any different in
7 2003 on the case that you have in front of you, EE-2003-0199?
8 Have their tariffs, to your knowledge, changed since then?

9 A. No, but my advice from counsel has changed.

10 Q. You mentioned the good cause shown section in
11 Union Electric's tariffs, and I'll just refer you to the
12 statute Section 393.140(11), states that the Commission, for
13 good cause shown, may allow changes under such conditions as
14 it may prescribe. Would it be your opinion that that's
15 why -- that's where Union Electric gets their draws from
16 their -- the authority to insert a provision regarding
17 granting variances to their tariffs, or did they just -- you
18 think they just inserted that on a collective decision on
19 their own?

20 A. Actually, I'm not sure I heard enough of
21 what's embodied in that section to understand that that's not
22 the Commission has the authority to approve tariff changes.
23 Is there something other than that?

24 Q. Well, it states, unless the Commission
25 otherwise orders, no change shall be made in any rate or

1 charge, or in any form of contract or agreement, or any rule
2 or regulation relating to any rate charge or service, or in
3 any general privilege or facility. So that section
4 authorizes the Commission to change an electric company's
5 tariff.

6 A. I think that's right.

7 Q. If the Commission were to take a position that
8 it doesn't have the authority to grant this variance, could
9 you tell me what your position would be on how that effects
10 the previous cases that the Commission did grant the
11 variances on?

12 A. I don't really know the answer to that.

13 Q. Would you, in your position, would you make
14 any recommendations to the Commission that they should take
15 those cases back up for reconsideration?

16 A. That would be a decision which would go
17 through general counsel's office. It wouldn't be up to me.

18 Q. You rely solely on legal on that?

19 A. Huh?

20 Q. Your committee would rely solely on counsel
21 for that?

22 A. Well, I don't think -- I don't think the
23 variance committee -- I don't think the role of the variance
24 committee is expanded to do anything other than make
25 recommendations about whether a variance should be approved

1 or not. I don't think they have any -- any purpose to go
2 back and make recommendations about how things should have
3 been differently. It would be the Staff of the Commission,
4 or some other party that would have to try to correct those
5 changes.

6 Q. Do you believe that the installation of the
7 metering devices that Mr. Fredock referred to would assist in
8 complying with the goal of energy conservation?

9 A. Based on his testimony, it would -- it would
10 appear that -- that would be the case, that when customers --
11 or when energy consumers receive the financial benefits of
12 their own conservation efforts, that promotes the
13 conservation goal. That appears to be the case, whether
14 they're billed by the utility company or whether they're
15 billed by the condominium association. I mean, the financial
16 incentive is the same.

17 Q. And are you familiar with the -- the PURPA Act
18 that was passed by Congress, the Public Utilities
19 Regulation --

20 A. I know what you're talking about, that was a
21 long, long time ago. I believe that was '79. That was
22 slightly before I was -- I came to the Commission, and I knew
23 the --

24 Q. But to your knowledge, that law is still in
25 effect?

1 A. Yes, it is.

2 Q. Is one of the goals that PURPA sought in
3 connection with individual metering was to conserve energy?

4 A. Absolutely. That was the primary goal of that
5 act --

6 Q. And would it be your opinion that --

7 A. -- and provision.

8 Q. -- that the metering system that WST has
9 proposed would accomplish that goal?

10 A. I really have very little knowledge of what
11 that, quote, metering system is, other than what I've heard
12 today, and in some previous discussions. I'm not an
13 engineer, you know, to know what the latest things are in
14 metering technology, and how reliable and accurate they are.
15 But -- but on the basis of what's been presented, I mean, it
16 seemed like that type of metering, and you know, rebilling
17 the electricity, would promote conservation as much as if
18 they were individually metered and billed by the utility
19 company. I don't see a distinction there in terms of the
20 goals of PURPA.

21 MR. STEWART: Mr. Watkins, I really appreciate
22 your time. I don't have any further questions at this time.

23 JUDGE WOODRUFF: Thank you. Does KCP&L have
24 any questions for Mr. Watkins?

25 MR. BLANC: No questions for Mr. Watkins, your

1 Honor.

2 JUDGE WOODRUFF: Okay. I don't have any
3 questions from the bench, so no recross. Any redirect?

4 MR. WILLIAMS: Yes.

5 REDIRECT EXAMINATION

6 QUESTIONS BY MR. WILLIAMS:

7 Q. Is it your understanding that WST has not
8 requested this Commission to change KCP&L's tariffs in this
9 application?

10 A. As far as I know, all they've -- they've
11 requested is a variance -- a variance from the tariff, and a
12 ruling that the Commission's rule does not apply. They have
13 not requested that KCP&L be ordered to change its tariff.

14 Q. And in connection with master metering and the
15 Commission's rule regarding variances for master metering,
16 you've drawn a distinction between condominiums and
17 apartments. Can you explain the basis for your distinction?
18 Does it pertain to relationships between different parties,
19 or what are the factors that make them different in your
20 mind?

21 A. Are you asking me specifically related to the
22 master metering rule?

23 Q. Yes.

24 A. Or other aspects of regulation?

25 Q. Well, I think it's part of the master metering

1 rule, but it could go beyond that.

2 A. Okay. I mean, the master metering of
3 apartments was in existence at the time the rule was adopted.
4 And the decision was made to end that practice, except in
5 certain circumstances that were listed. I apologize, but
6 I've lost track of your question. Could you repeat it?

7 Q. Well, you were drawing a distinction between
8 condominiums and apartments.

9 A. Yes.

10 Q. And I'm trying to get you to explain what, in
11 your mind, the distinction is.

12 A. In my mind, that's not directly related to the
13 Commission's rule, whether it's a condominium or a rental
14 unit, whether it's an ownership unit or a rental unit. To
15 me, it's the -- and I can't point you to any specifics,
16 necessarily, but it's the -- the -- the body of the
17 Commission's rules, and in particular, Chapter 13, regarding
18 the dealings of utilities with residential customers, you
19 know, that are certainly different, depending on whether it's
20 a condominium or whether it's a tenant.

21 To me, it just seems that you can be opening a
22 can of worms when you have individual residences that are
23 owned and occupied, you know, for domestic use that are not
24 the direct customer of the utility. I have thought about
25 this situation, you know, and they present a rosy picture and

1 it seems fine, but if the tariffs of the utilities were
2 changed to permit this kind of resale and redistribution, I
3 can also imagine other situations like situations we've had
4 in the past that were extreme nightmares, because the link
5 between the actual customer and user of the electric service
6 and the electric utility was disconnected by some
7 intermediate party that may or may not pay the bill for
8 electricity, you know, may or may not provide truly safe and
9 adequate service to the actual user of the electricity, and
10 there have been examples that I have heard of.

11 And I think KCP&L has had a recent example
12 with a trailer park where the -- I guess the owner or manager
13 of the trailer park was actually their customer, but through
14 some sort of wiring, they were -- they were able to hookup a
15 bunch of trailers around it, and I think they were ordered to
16 shut off that meter by the fire department or fire marshal,
17 you know, as an unsafe, you know, situation. So changing the
18 tariff to permit that seems to me to be the wrong thing to
19 do.

20 Q. Are the members of the variance committee
21 infallible?

22 A. You want me to say just me? No. No, we're
23 all human.

24 Q. And if something came to the committee's
25 attention that caused it to change its view, would it then do

1 so, if it were appropriate?

2 A. Yes.

3 MR. WILLIAMS: No further questions.

4 JUDGE WOODRUFF: All right. Well, with that,
5 then, Mr. Watkins, you can step down. And we're due for a
6 break. We'll take a break now and come back at 10:30.

7 (A BREAK WAS HELD.)

8 JUDGE WOODRUFF: Let's go back on the record.
9 We are back from our break, and Mr. Watkins has finished
10 testifying. Did Staff have any other evidence?

11 MR. WILLIAMS: No, Judge.

12 JUDGE WOODRUFF: All right. For KCP&L then?

13 MR. BLANC: Tim Rush.

14 (THE WITNESS WAS SWORN.)

15 JUDGE WOODRUFF: You may be seated, and you
16 may inquire.

17 DIRECT EXAMINATION

18 QUESTIONS BY MR. BLANC:

19 Q. Would you please state your name for the
20 record, please?

21 A. Tim Rush.

22 Q. And who is your employer?

23 A. Kansas City Power & Light Company.

24 Q. And what is your position at KCP&L?

25 A. I'm the director of regulatory affairs.

1 Q. And did you hear Mr. Fredock's testimony this
2 morning?

3 A. Yes, I did.

4 Q. Okay. Very good. And you have a general
5 understanding of how their power usage, monitoring, and
6 billing procedures would work? In general, I understand.

7 A. How they're recommending, yes.

8 Q. Yes, their proposal. As you understand it,
9 would that constitute a resale or redistribution under the
10 provisions of KCP&L's tariff?

11 A. Yes, it would.

12 Q. Does Kansas City Power & Light have a position
13 whether the Commission grants or does not grant the
14 application for variance that WST has requested?

15 A. We do not. We would prefer that be a decision
16 for the Commission to make.

17 MR. BLANC: We have no further questions. I
18 tender him for further examination.

19 JUDGE WOODRUFF: All right. For cross, then,
20 beginning with Staff.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. WILLIAMS:

23 Q. Mr. Rush, are you also familiar with Section
24 5.1 of KCP&L's tariff under the general provisions?

25 A. Reasonably familiar, yes.

1 Q. And if -- in your understanding of what WST is
2 proposing to do with regard to electrical service to
3 condominium owners within the building at 1101 Walnut, would
4 they also require a variance from Section 5.01, as well as
5 5.07?

6 A. Well, there's a possibility that they would
7 require that. I would suggest that they receive a variance,
8 if the Commission so deems, that the variance would state
9 that they -- that states what they're allowed to do, and if
10 that provision of 5.01 is one of those elements that they do.
11 If 5.07, I believe it was, that talks about if renovation is
12 added, if that is a component, that they would receive a
13 variance associated with that, that we would address the
14 whole thing in that order so by the Commission, if that's
15 what the Commission decided to do.

16 Q. Does KCP&L have a position as to whether or
17 not 5.01 and 5.07, as well as 5.03, are applicable to the
18 facts as relayed in this hearing?

19 A. They probably have some component part, yes.
20 I mean, in general, the whole rules and regulations, as set
21 out by the KCP&L, you know, are at issue in this whole
22 process, so if you grant a variance from one element, it
23 effects many other elements, too.

24 Q. There was a discussion about the use of meters
25 to particular condominiums that would be owned by, at least

1 initially, the developer. Is there any technical reason that
2 Kansas City Power & Light could not use that information to
3 bill condominium owners?

4 A. Is there any technical -- we don't understand
5 enough of the technical requirements of the -- or
6 specifications of the meters to be able to do it is probably
7 the first thing that would start out.

8 Q. So at this point you do not know?

9 A. We do not know. I mean, I think there are
10 some other components that talked about our ownership of
11 equipment in our tariffs that we would have to address. It
12 talks about the ownership of the metering. I think there are
13 some issues about, you know, access and other things like
14 that. I think -- I just think there are a lot of questions
15 associated with it that were -- basically, we were unable to
16 answer with the time that we were talking about here, where
17 they're asking for something done by, I think its 19th or so
18 of this month.

19 So, you know, in my mind, if we were even
20 considering, and that is I mean the word considering, the use
21 of this as a technology to bill from KCP&L's point, I think
22 we would have to have a lengthy period of review to be able
23 to assure that we were able to do it, that it met the
24 criteria, that it was not a monitoring device but was a
25 billing suitable meter, and that will take some time.

1 Q. Do you have any idea as to how much time?

2 A. Well, I would think, minimally, just to do the
3 evaluation stage, we -- we actually talked to our metering
4 shop about that, and they felt that they would at least need
5 90 days to do an evaluation, but that doesn't even get to the
6 point of being able, then, to bill it, and how to deal with
7 it. It doesn't address the issues of, you know, the typical
8 utility requirements of connections and disconnections, and
9 how that process would work.

10 It doesn't deal with many of the other aspects
11 of -- of just accesses and things that you've talked about
12 this morning. So there are a lot of considerations that
13 would have to be done in order to accomplish that. And from
14 what I gathered, 90 days just to simply do the evaluation of
15 the metering would probably be, like, a minimal time. And
16 I'm even -- I'm very nervous of that.

17 We put in a meter technology not too long ago
18 that we spent several years evaluating, and I mean, it was
19 just a very long process. I realize this is a much smaller
20 situation.

21 Q. When did Kansas City Power & Light learn that
22 there was a desire by the developer to master meter
23 apartments -- or I'm sorry, individual residential units at
24 1101 Walnut?

25 A. Well, from the records that I have, from

1 individual memos of people that have met, it would appear to
2 me that -- that sometime in October of last year we talked
3 about separately metering and talked about metering on
4 individual floors -- or every other floor. It seems to me
5 that about March, there was some kind of a letter sent that
6 talked about individual metering from KCP&L to -- to WST.

7 But I believe each time WST would come back
8 and talk about, you know, master metering, and problems they
9 were having, too. So I believe all that process, or the
10 discussion, was taking place throughout this whole time of
11 discussions that occurred.

12 Q. Do you know when Kansas City Power & Light
13 formally told WST that it would not be able to provide master
14 metering service under its tariffs to the developer at that
15 location, 1101 Walnut?

16 A. What do you mean by "formally"?

17 Q. By letter or other formal communications
18 saying, we can't do this because of our tariffs?

19 A. Well, I know that -- I believe it was in
20 August that I believe a letter was sent to us from WST of
21 which we then responded to, probably in the August time
22 period, talking about we're not going to do this, you need to
23 seek a variance from the Commission, I believe is the time
24 frame of that.

25 I believe in March, there was a letter sent

1 from the engineering group, but -- that talked about
2 individual metering, but I'm not sure I recall that, you
3 know. That should have been inferred as a showstopper, that
4 they needed to do something, but whether that's a formal
5 letter going to their corporate, I'm not sure. It could have
6 gone to their engineering or construction manager, I am not
7 really sure.

8 Q. Well, the way you described it, there were
9 discussions back and forth. What I'm looking for is the date
10 that Kansas City Power & Light said, we're not going to do
11 this. And maybe that was at the beginning the discussion.

12 A. It was probably the beginning of the
13 discussions, but that doesn't talk about customers wanting --
14 or you know, the developer saying, I want you to look at
15 alternatives and discussing those. I don't know.

16 Q. I understand that.

17 MR. WILLIAMS: I don't have any further
18 questions of this witness.

19 JUDGE WOODRUFF: All right. Questions from
20 WST?

21 MR. STEWART: I don't have any questions, your
22 Honor.

23 JUDGE WOODRUFF: All right. Well, I guess I
24 don't have any questions either. So no recross. Any
25 redirect?

1 MR. BLANC: No redirect, your Honor.

2 JUDGE WOODRUFF: All right. Then Mr. Rush,
3 you can step down.

4 THE WITNESS: Okay.

5 JUDGE WOODRUFF: Now, in the order
6 establishing this hearing, I indicated there would not be
7 post-hearing briefs, and that we would have oral arguments
8 instead on the legal issues. As I've been thinking about
9 that today, I may have changed my mind. Mr. Williams, you
10 don't have to grin too much back there.

11 MR. WILLIAMS: No, I would just rather get it
12 over with.

13 JUDGE WOODRUFF: I'll give you that option.
14 The other option would be to have a written filings tomorrow,
15 particularly on the legal issues. I'm going to expedite the
16 transcript so we can get that as soon as possible, and just
17 so you know, I'm looking to try to get this on agenda for
18 next Tuesday, which would be the 18th. Anyone want to have
19 any say on whether we do oral arguments now or written
20 submissions tomorrow?

21 MR. WILLIAMS: Well, Judge, I prefer to go
22 ahead and state Staff's position orally and get it done
23 today.

24 JUDGE WOODRUFF: Any strong feelings from any
25 other party?

1 MR. BLANC: No, your Honor.

2 JUDGE WOODRUFF: Well, let's go ahead and do
3 it today then. We can get it out of the way. All right.
4 Well, beginning with WST then.

5 MR. STEWART: Thank you, your Honor. In WST's
6 application, WST, Inc. indicated that based upon a letter
7 that it received from Kansas City Power & Light suggesting
8 that Kansas City Power & Light did not believe that WST, Inc.
9 could master meter this project without a variance to its
10 tariffs, in good faith, WST, Inc. filed a request with the
11 Commission, specifically in the application seeking a
12 variance from the applicable tariffs of KCP&L on individual
13 metering with respect to the Wall Street Tower condominium
14 project located at 1101 Walnut Street.

15 JUDGE WOODRUFF: Slow down, I'm sure the Court
16 Reporter will appreciate it.

17 MR. STEWART: I'll rephrase. Granting a
18 variance from the applicable tariffs of KCP&L on individual
19 metering with respect to the Wall Street Tower condominium
20 project located at 1101 Walnut Street, Kansas City, Missouri,
21 including in that tariff, set forth in Section 5.03 of the
22 general rules and regulations, applying to electric service
23 filed with the Commission by KCP&L on January 19th, 1981,
24 allowing a single master meter for the entire tour, and for
25 such other -- in further relief as may be just and proper.

1 In this case, it may very well be the case
2 that Article 5 does not even apply to this project. Pursuant
3 to the general rules and regulations applying to electric
4 service, Article 6, Subsection 6.03, Kansas City Power &
5 Light submitted to the Commission under Sheet No. 1.22, which
6 was approved by the Commission on November 16th, 1994,
7 indicating that when a building, construction of which began
8 after June 1, 1981, is occupied by more than one customer,
9 the company shall -- will set as many meters as there are
10 separate customers within the building, and will furnish
11 electric service conductors to the building sufficient to
12 supply the requirements of all customers within the building.
13 The internal building wiring and metering board shall be so
14 arranged as to permit separate premises, and the installation
15 of the company's meters immediately adjacent to each other.

16 Again, that states, when a building
17 construction of which began after June 1, 1981. If the
18 section in question here, in Article 5, is relevant and is
19 unambiguous, there would have been no need for KCP&L to
20 submit Article 6, Subsection 03, to the Commission for
21 approval. Effectively, there's an ambiguity between
22 Article 5 and Article 6, where Article 5 talks about
23 prohibition of resale and redistribution without regard to
24 the construction date of the building, yet Article 6 refers
25 to the construction date of the building being June 1, 1981.

1 As was testified by Mr. Fredock in this case,
2 the Wall Street Tower building was constructed in the early
3 1970's, probably around 1973, but in any event, before June 1
4 of 1981. It is WST, Inc.'s position, and I will get to the
5 remaining legal arguments after making this position, but it
6 is WST, Inc.'s position that Article 5 was revised and made
7 subject to Article 6 by virtue of the fact that Article 6 was
8 filed and approved after Article 5 on November 16th, 1994,
9 specifically applying the individual metering to buildings
10 after June 1, 1981.

11 And again, there would be no need for this
12 provision to be enacted by the Commission or submitted by
13 KCP&L without a purpose. Rules and regulations have to have
14 a purpose, and there is an ambiguity if the determination is
15 that Article 5 applies, which restricts resale and
16 redistribution to all buildings, then 6.03 isn't necessary.
17 There has to be an intent behind that, and the -- a very
18 strong argument could be made that the intent is to comply
19 with the Commission's rule and to distinguish buildings that
20 were constructed prior to June 1, 1981, and buildings that
21 were constructed after June 1, 1981.

22 And those that were constructed prior to June
23 1, 1981, do not qualify and are not required to have
24 individual meters installed. Even if the Commission elects
25 to disagree with WST, Inc. on that position, this Commission

1 has the authority to grant a variance to Article 5. So if
2 Article 6 doesn't apply, and by virtue of it not applying,
3 it's rendered irrelevant, which no section can have that
4 interpretation. It has to have relevance.

5 If Article 5 applies, this Commission has the
6 authority to grant the variance. Pursuant to the revised
7 statutes of Missouri, 393.140(11) reads, the Commission shall
8 have power to require every electrical corporation to file
9 with the Commission and to print and keep open to public
10 inspections schedules showing all rates and charges made, and
11 all rules and regulations relating to rates, charges, or
12 service used or to be used.

13 Unless the Commission otherwise orders, no
14 change shall be made in any rate or charge, or in any form of
15 contract or agreement, or any rule or regulation relating to
16 any rate charged or service, or in any general privilege or
17 facility, which shall have been filed and published by
18 electrical corporation, except after 30 days notice to the
19 Commission, and publication for 30 days as required by order
20 of the Commission, which shall plainly state the changes
21 proposed to be made in the schedule then in force. And the
22 time when the change will go into effect. The Commission,
23 for good cause shown, may allow changes without requiring the
24 30 days notice under such conditions as it may prescribe.

25 The Commission is a creature by statute. It

1 gets its power from the Missouri statutes. It cannot deviate
2 from those statutes. The statutes specifically provides the
3 Commission with the authority to change the tariffs of
4 electric corporations. That is exactly what WST, Inc. is
5 requesting. And furthermore, pursuant to the rules
6 promulgated by the Commission as is known, it's specifically
7 exempts buildings that were constructed prior to June 1,
8 1981, from installing a separate electric meter for each
9 residential or commercial unit.

10 That rule goes on to provide that any person
11 or entity affected by this rule may file an application with
12 the Commission seeking a variance from all or parts of this
13 rule, and for good cause shown, variances may be granted as
14 follows. It talks about variance committees being formed.
15 It then goes on to state that the Commission, in its
16 discretion, may approve tariffs filed by an electric
17 corporation, which are more restrictive of master metering
18 than the provisions of this rule.

19 Article 5 of KCP&L's general rules and
20 regulations, which are contained on Public Service Commission
21 of Missouri NO. 2, Second Revised Sheet No. 1.18, and 1.19, 9
22 and 1.20, and 1.21 were -- the applicable sections were filed
23 with the Commission on January 19th, 1981. As I indicated
24 before, Article 6, subsection 6.03, which specifically
25 distinguishes buildings that were constructed after June 1,

1 1981, was filed some 13 years later.

2 That filing is consistent with 4 CSR
3 240-20.050. It's not more restrictive, but what it is is
4 more restrictive than the tariff that had already been filed
5 by KCP&L under Article 5. In addition to the statutory
6 authority that the Commission has to grant the variance, and
7 the authority under the rule to grant a variance, the
8 Commission has, in the past, granted variances in cases very
9 identical to the case involved with Wall Street Tower
10 project.

11 That was made very clear in Case No.
12 EE-2003-0199, where the Commission, in fact, granted a
13 variance to KCP&L's general rules and regulations applying to
14 electric service, Section 5.03(b). Furthermore, it has also
15 granted variances in case numbers -- I'll read them by
16 number -- EE-2001-663, EE-2003-0365, EE-2004-0092,
17 EE-2003-0199 previously discussed, EE-2003-0282. Those are
18 the cases that I'm aware of that this Commission has granted
19 variances on.

20 In Mr. Watkins' testimony, his opinion as to
21 why his committee that he sits on recommended the approval of
22 the variance to the Section 5.03(b) is because that case
23 involved an apartment building, and he believes that that can
24 be distinguished from a condominium building. But nowhere in
25 the Commission's rules does it provide for such distinction,

1 nowhere in the statute does it provide for such a
2 distinction, and as a result, this Commission can grant a
3 variance regardless of whether it's an apartment building or
4 a condominium project.

5 Additionally, in Deaconess Manor Association,
6 doing business as Orchard House versus Public Service
7 Commission of the State of Missouri, cite for this case is
8 994 S.W. 2d 602, the Western District of Missouri stated
9 this: Presumably -- this is on Page 610. Presumably,
10 Orchard House contends that the Commission's Order upholding
11 Union Electric's charges from 1989 to 1995 violated the
12 statute by allowing the company to collect a residential
13 service fee contrary to its rate schedule, which required the
14 buildings to be constructed and served prior to June 1, 1981,
15 and should have obtained a waiver of its residential tariff
16 provision.

17 Should have obtained a waiver of its
18 residential tariff provision. That case was determined by
19 Missouri Court of Appeals, June 22nd, 1999. Furthermore,
20 under the Kansas City Power & Light general rules and
21 regulations, 5.03(b) states that redistribution shall mean
22 the furnishing of electric service by the customer,
23 subsection two, to separate premises occupied by another
24 person, whether or not such premises are owned, leased, or
25 controlled by the customer without making a specific or

1 separate charge for the electric service so furnished.

2 With respect to any multiple occupancy
3 premises, the company will not supply electric service to the
4 owner, lessee, or operator thereof as the customer of the
5 company, and permit redistribution by such customer to his
6 office or residential tenants thereof -- therein, except for
7 those premises being supplied such service on the effective
8 date of this schedule. This schedule was filed January 19th,
9 1981, and the premises were being supplied on that date with
10 electric service by Kansas City Power & Light. That
11 provision would exclude Wall Street Tours' project from this
12 redistribution prohibition, in the alternative, if the
13 argument is disagreed with by the Commission on the 6.03
14 issue.

15 The argument has been raised by Staff, and I
16 want to respond by indicating that they have concerns that
17 the Wall Street Tower Condominiums Association, Inc., which
18 is comprised of the unit owners of the building, nobody else,
19 The very people who are receiving electricity from Kansas
20 City Power & Light are members of the association. The
21 association consists of the unit owners.

22 Staff has, without citing its authority, said
23 the association may then be a utility company that is not
24 regulated by the Commission. WST disagrees. Pursuant to the
25 Revised Statutes of Missouri's Section 386.020, which is the

1 statutory authority for the regulation of electric companies,
2 subsection 15 provides that an electrical corporation
3 includes every corporation, company, association, joint stock
4 company or association, partnership, and person that are
5 lessees, trustees, or receivers appointed by any court
6 whatsoever, other than a railroad, light rail, or street
7 railroad corporation generating electricity solely for
8 railroad, light rail, or street railroad purposes, or for the
9 use of its tenants and not for sale to others, owning,
10 operating, controlling, or managing any electric plant,
11 except where electricity is generated or distributed by the
12 district solely on or through private property for railroad,
13 light rail, or street railroad purposes, or for its own use,
14 or the use of its tenants, and not for sale to others.

15 The association is using this for their own
16 use. There have been cases that were recently brought to my
17 attention by Staff regarding where the Commission and the
18 judicial system found that certain entities were public
19 utilities, and electrical companies or gas companies
20 effectively to be the purpose of which is to be regulated
21 under this statute. And it referred to a case in Dansiger
22 [ph. sp.] versus the Public Service Commission where a
23 brewery sold the excess generation capacity to between 20 and
24 30 businesses, ten residences, and the town of Weston.

25 That is an entity that is selling

1 electricity, or any other source of energy, to third parties,
2 to other people. The association is not doing that. The
3 association is comprised of the unit owners who are receiving
4 the electricity. You can't -- the Commission cannot look at
5 the association as this separate body, and the unit owners as
6 a third party.

7 The unit owners, as I've said repeatedly, and
8 will be organized under the declaration, and as the
9 association is organized within the Secretary of State, are
10 the association. There is no resale here. There has not
11 been a case cited that suggests otherwise. There's not been
12 any interpretation of resale, whether in KCP&L's tariffs or
13 in statute by Staff supporting that argument. They just
14 called it a resale.

15 That is not the intent, and that is not the --
16 that cannot be an interpretation of RSMo 386.020. There's no
17 doubt that this Commission has the authority to grant the
18 variance before it today, if it's necessary. As indicated in
19 this closing argument, it's very possible and plausible that
20 the variance is not even necessary. The very reason that we
21 are here today is -- WST is here today is in response to the
22 letter from KCP&L, and rather than ignore the issue and make
23 a legal determination on our own, it's advisable for us to
24 put the arguments in front of the Commission and let the
25 Commission decide. But by virtue of the fact that we are

1 here asking for a variance does not automatically conclude
2 that we believe a variance is necessary. We've asked for the
3 necessary variances to the applicable tariffs.

4 Staff raises the Supreme Court case from 1926,
5 suggesting that the Commission does not have the authority to
6 grant variances, when in fact, the statute provides them with
7 the authority. In that case, in that Supreme Court case, it
8 was with respect to a charge that is imposed upon a purchaser
9 of gas energy, and waiving that charge because the Commission
10 felt that that charge was unreasonable. Supreme Court said
11 that, in that situation, Commission can't do that.

12 Well, nearly 80 years later, we're bound by
13 the statute and the statutes that are in effect today, and
14 those statutes provide you with the authority. The rules
15 provide you with the authority, and as I've said repeatedly,
16 the authority may not even be an issue and it may be moot
17 because the variance is not even necessary.

18 In conclusion, WST, Inc. is here before you
19 today to obtain the authorization to master meter its project
20 as opposed to an individual electric metering system, whether
21 that authorization comes from the Commission by virtue of a
22 variance to KCP&L's rules and regulations, or a variance to
23 the Commission's rules, or by a determination by the
24 Commission that Kansas City Power & Light's Article 5 doesn't
25 even apply to this project. Regardless of how the Commission

1 gets there, the request is to obtain the authorization to
2 proceed with the master metering system that is presently in
3 place at 1101 Walnut Street.

4 I thank you for your time.

5 JUDGE WOODRUFF: Thank you, sir. All right.
6 We'll move over to Staff then.

7 MR. WILLIAMS: May it please the Commission.
8 Staff's position is basically unchanged from what it was
9 earlier, before evidence was taken. It's Staff's position
10 that 4 CSR 240-20.050 dealing with master metering is
11 inapplicable because this building was constructed before
12 June 1 of 1981; therefore, that rule has no bearing on what
13 the Commission does here.

14 Staff does believe that KCP&L's tariff,
15 Section 5, which addresses individual metering to separate
16 premises, does apply and would prohibit the master metering
17 of this facility absent waiver. As the Staff indicated in a
18 prior filing, it believes that State, ex rel, St. Louis
19 County Gas Company versus Public Service Commission of
20 Missouri, which is 286 S.W. 84, 315, Missouri 312, copy of
21 which has previously been provided to the Commission, stands
22 for the proposition that generally the Commission does not
23 have authority to grant variances from tariffs that have been
24 approved by the Commission.

25 And the Staff's concern is that if a tariff

1 were -- a variance was granted in this case, it would be
2 violative of the law, and create an unduly preferential
3 treatment for WST. Staff disagrees with WST's
4 characterization that it's asking for a modification of
5 KCP&L's tariff. What it sought is, hey, the tariff applies
6 to everybody else, but not us. And that's the way I would
7 characterize what WST has requested.

8 Staff has also provided some materials from a
9 prior case involving Trigent Energy Corporation, where the
10 Commission chose to disclaim jurisdiction over a chilled
11 water system. It's not that Staff's advocating this
12 proposition, but it is possible that the Commission could
13 determine that while providing utility services, WST would
14 not be regulated by the Commission, and it could sell
15 services to the condominium owners without being subject to
16 the Commission's jurisdiction. That would require that the
17 Commission make such a determination.

18 If that, in fact, were the case, then WST
19 would have to make arrangements in order to supply the power
20 that it was going to then sell to the condominium owners.
21 And the reason for providing that position is to inform the
22 Commission not to advocate where, in fact, Staff's opposed to
23 doing so, and thinks it would be a bad rep for the Commission
24 to follow. Certainly it if it were to be a route that was
25 chosen, it would need to be very restrictive in what

1 circumstances the Commission would disclaim jurisdiction.

2 I'd also like to respond to WST's reference to
3 Deaconess Manor Association. In that case, the dispute is
4 over what tariff rates a customer should have been paying
5 under. Variances are mentioned in the decision, but they
6 were not a point of decision for the court. The Staff thinks
7 that the best way for this to be resolved would be for a
8 tariff change, if something can be done that would leave --
9 leave it so that KCP&L was providing -- ultimately providing
10 the service to the individual condominium owners.

11 JUDGE WOODRUFF: Thank you, Mr. Williams. For
12 KCP&L.

13 MR. BLANC: Because Kansas City Power & Light
14 is not advocating a position with respect to whether or not
15 the variance should be granted or not granted, I think I can
16 summarize our legal positions briefly.

17 We believe, as they were described today, that
18 the usage monitoring and billing practices of WST would
19 constitute either a resale or redistribution of power. I
20 guess the distinction there would depend on whether or not
21 the Commission deemed there were a separate or specific
22 charge being applied. But in either event, we believe it to
23 be either a resale or redistribution of power. And that
24 being the case, KCP&L feels as though it cannot provide that
25 service without some form of authority, such as the variance

1 requested here to provide that service.

2 We agree with WST that the Commission does
3 have authority to grant variances to tariffs. The statute
4 quoted by WST, we would agree with that reading that the
5 Commission does have the statutory authority within its
6 discretion to grant variances to tariff provisions. We would
7 ask, if the Commission went down the -- if the Commission
8 ultimately decided to grant the variance and permit master
9 metering, we would request a couple of clarifications.

10 First, we would suggest that we not be put in
11 the role of enforcing that the rates charged by WST to its
12 customers are just and reasonable in the Commission's
13 discretion -- or in the Commission's determination. We would
14 suggest that data be given to the Commission staff as opposed
15 to us, as I believe was suggested today, and that it would be
16 more appropriate for the Commission to determine whether the
17 rates being paid by the customers are appropriate as opposed
18 to us being put in that role.

19 Also, we would seek the clarification that it
20 is our opinion that if we were to serve a master meter
21 building, that it would be pursuant to our commercial rate
22 schedule with the applicable terms and conditions of service
23 that apply to that, most notably the discontinuing of service
24 provisions, and we would ask for a clarification that that
25 was the appropriate rate schedule.

1 And finally, because we don't anticipate this
2 being an isolated incident, we would seek Commission's
3 guidance of how to treat developers that came to us in the
4 future. There are a number of development projects that are
5 ongoing or being contemplated in the KC metro area that
6 involve a pre-1981 building that's being rehabbed for
7 condominium use, and we want to know if we should just
8 continue to defer those to the Commission -- or refer those
9 to the Commission rather, or if we have some policy guidance
10 from the Commission of how to treat those projects.

11 Thank you very much.

12 JUDGE WOODRUFF: Thank you, sir. I have a
13 couple of questions for you that were brought up in your
14 closing statement here. It's my understanding that KCP&L's
15 position would be that if this variance is granted, that the
16 condominium owners association would be that commercial
17 client.

18 MR. BLANC: Correct.

19 JUDGE WOODRUFF: KCP&L?

20 MR. BLANC: Correct, your Honor.

21 CHAIRMAN DAVIS: Is that your preference?

22 MR. BLANC: If it's master metered, I think
23 that's what we need to do, that it's a commercial customer in
24 that instance, and it would be pursuant to our commercial
25 rate schedule. So assuming master metering is permitted, our

1 preference would be the commercial rate schedule.

2 JUDGE WOODRUFF: Is commercial rates higher
3 than residential rates?

4 MR. BLANC: I believe the demand charges are
5 higher, but the usage charges are less.

6 MR. RUSH: Overall, their charge will be less
7 per -- it's according to how you measure, but per kilowatt
8 hour, it would probably be less.

9 JUDGE WOODRUFF: Okay. Do you know which
10 particular tariffs would need to be varied from?

11 MR. RUSH: Whatever the applicable -- we don't
12 know what their usage would be on the residential -- on the
13 total aggregate of all these residences, so we would have to
14 determine, you know, whatever the appropriate commercial rate
15 would be.

16 JUDGE WOODRUFF: Okay. I was talking about
17 the tariffs we've been talking about today, about the
18 multiple occupant, individual metering for separate premises
19 tariffs. Do you know which particular sections?

20 MR. RUSH: If we had individual metering, it
21 would be the residential space heating rate, I believe,
22 because it would still be only electric; is that correct?

23 MR. WILLIAMS: Tim, I think he's asking which
24 of your tariff provisions would they have to vary to.

25 JUDGE WOODRUFF: Yes.

1 MR. RUSH: Okay.

2 JUDGE WOODRUFF: It's more a question for your
3 attorney.

4 MR. BLANC: Undoubtedly, Section 5.3, which
5 otherwise prohibits resale or redistribution, and likely
6 Section 5.01, which deals with individual metering, and I
7 believe the other one that was discussed today is 5.07, which
8 pertains to renovation. As it's written, that appears to
9 apply to apartment buildings, and most of the other -- or all
10 of the other tariff provisions refer to the generic multiple
11 occupancy premises, but 5.07 refers specifically to apartment
12 buildings. So based upon the language of that provision, I
13 would say that that one wouldn't apply here.

14 JUDGE WOODRUFF: You say it would or would
15 not?

16 MR. BLANC: Would not. Sorry.

17 JUDGE WOODRUFF: Okay. Thank you. Chairman
18 Davis was able to join us during the process of the closing
19 statements here. As you're probably aware, we have another
20 hearing going on next door. I'm going to give him an
21 opportunity to ask any questions that he may have of the
22 attorneys or of the witnesses.

23 Just to fill him in on what's happened, we've
24 had testimony from -- from James Watkins for the Staff, from
25 Brian Fredock for WST, and from Tim Rush for KCP&L. I'm

1 going to ask that the transcript be expedited so we have it
2 tomorrow. With that understanding, do you have any
3 questions, sir?

4 CHAIRMAN DAVIS: Isn't everything we do
5 expedited?

6 JUDGE WOODRUFF: It seems to be these last few
7 months anyway.

8 CHAIRMAN DAVIS: Okay. KCP&L, your position
9 is that you have no position; is that correct?

10 MR. BLANC: We believe it is a policy
11 determination best made by the Commission, whether or not to
12 permit master metering for this building. We think that we
13 can't provide master metering service under the terms of our
14 tariff, but defer to the Commission's policy-making authority
15 to determine that issue.

16 CHAIRMAN DAVIS: Okay.

17 MR. BLANC: We're not trying to be cute or
18 difficult, it's just that we don't think we're in the right
19 position to make that determination.

20 CHAIRMAN DAVIS: Okay. So you're throwing it
21 all up to us?

22 MR. BLANC: Yes, sir.

23 CHAIRMAN DAVIS: Okay. So hypothetically
24 speaking, if we did say we wanted to grant the master
25 metering request, you'd want to charge the commercial rate;

1 is that correct?

2 MR. BLANC: Right, because we would view the
3 customer to be the homeowner's association --

4 CHAIRMAN DAVIS: Right.

5 MR. BLANC: -- which is a corporate entity.

6 CHAIRMAN DAVIS: All right. And demand charge
7 would be less, but the actual usage -- or no, the demand
8 charge would be more, but the actual usage charges per
9 kilowatt hour would be less; is that correct?

10 MR. BLANC: Correct.

11 CHAIRMAN DAVIS: And you're saying that --
12 your expert is saying that that is a wash, correct? Or might
13 even be an actual benefit to the ratepayers?

14 MR. BLANC: My understanding is it will be --
15 they will end up paying less than they would under a strict
16 residential rate.

17 CHAIRMAN DAVIS: Okay. And then if -- if this
18 Commission decided that it did not have jurisdiction over
19 Wall Street properties or -- I'm sorry, your name escapes me
20 at the present moment -- how would you then proceed?

21 MR. BLANC: I'm sorry, I'm not sure I
22 understand the question, sir.

23 CHAIRMAN DAVIS: Well, if we -- if we -- if
24 this -- if we hand down a decision that said we're -- we're
25 not asserting jurisdiction in this matter, then what? Would

1 you not serve Wall Street, or would you serve Wall Street
2 or ...

3 MR. BLANC: We would be faced with the
4 position, then, of not serving a customer -- or serving a
5 customer in a manner that we believe to be in violation of
6 our tariff, and given that provision -- or given that --

7 CHAIRMAN DAVIS: Okay. So you believe -- and
8 you believe that we have the authority to modify this tariff?

9 MR. BLANC: Yeah, Commission undoubtedly has
10 the authority to modify tariffs or grant a variance.

11 CHAIRMAN DAVIS: Or grant a variance?

12 MR. BLANC: Both, yes.

13 CHAIRMAN DAVIS: Okay. And normally --
14 normally in these master metering cases, the utility itself
15 normally makes an application to the Commission. Why did
16 KCP&L not do that in this case?

17 MR. BLANC: Looking back, there are kind of
18 two categories of circumstances we've done that, and they're
19 both provided for in our tariff. The first is the company
20 believes it would be technically infeasible to separately
21 meter each of the units that's provided for in our tariff.
22 And that's one instance we do it.

23 CHAIRMAN DAVIS: So you -- so you believe --
24 you don't believe it's technically infeasible to individually
25 meter every apartment, it just costs a lot more money; is

1 that correct?

2 MR. BLANC: Correct. And then the second --

3 CHAIRMAN DAVIS: How much more money?

4 MR. BLANC: There was testimony today --

5 MR. FREDOCK: About a million dollars.

6 MR. BLANC: -- approaching a million dollars
7 of cost to the developer to go the individual metering route,
8 as opposed to their proposed master metering route.

9 CHAIRMAN DAVIS: Okay.

10 MR. BLANC: And then the second category, when
11 we've done that, are the listed exceptions to the
12 redistribution prohibition in our tariff, and that's for a
13 hospital, retirement communities, dormitories, places that --
14 that we determined earlier on don't qualify for
15 redistribution -- or don't -- don't constitute
16 redistribution.

17 CHAIRMAN DAVIS: Moving a bunch of people in
18 on the plaza doesn't qualify?

19 MR. BLANC: That falls into the first category
20 that at the time we found out about it, it was technically
21 infeasible. Point taken.

22 CHAIRMAN DAVIS: All right. Now, what
23 other -- you wanted clarification on your ability to shut off
24 the entire association for nonpayment; is that correct?

25 MR. BLANC: Correct, and we believe if the

1 Commission clarifies that the commercial rate applies in that
2 the association was the customer, that would address that
3 issue, that there are terms and conditions of service that go
4 along with our commercial rates, and in that instance, if the
5 homeowner's association didn't pay the bill, we would notify
6 the homeowner's association, and if they didn't cure, we
7 would discontinue service.

8 CHAIRMAN DAVIS: Okay. All right. Shawn, I'm
9 sorry, I can't remember your last name.

10 MR. STEWART: Stewart.

11 CHAIRMAN DAVIS: Mr. Stewart. Okay. If -- if
12 we were to proceed as counsel for KCP&L has suggested, how
13 does -- I mean, we granted a variance, if we gave them the
14 commercial rate, and they would be free to shut off the
15 homeowner's association for nonpayment of, which I'm assuming
16 the owner of the building is the homeowner's association
17 right now; is that correct?

18 MR. STEWART: That's correct.

19 CHAIRMAN DAVIS: Okay. And these units are
20 scheduled for closing on the 19th?

21 MR. STEWART: That's correct.

22 CHAIRMAN DAVIS: Correct.

23 JUDGE WOODRUFF: The first one is.

24 CHAIRMAN DAVIS: The first -- the first unit
25 is. I guess -- I'm trying to think about how to phrase these

1 questions here. I guess my first question would be, you
2 know, would you think your client would be amenable to us
3 putting some, you know, expressed notice into --
4 hypothetically speaking, if we were to approve this order,
5 that I think this Commission would be very concerned about
6 homeowners and future homeowners -- future members of this
7 condo association having adequate notice of how their
8 electric bill is being paid, as well as the fact that even if
9 they paid their own bills, that their service could still be
10 disconnected if enough customers didn't pay, or if the
11 building became, you know, more vacant than not or something
12 of that. You know, have you thought about that at all?

13 MR. STEWART: Yeah, we would have -- WST, Inc.
14 would have no objection to including additional provisions in
15 the declaration requiring that the unit owners be entitled to
16 notice from KCP&L with respect to any electrical issues.
17 This issue is no different to the unit owners on other
18 issues -- other matters that will require one payment by the
19 association with respect to maintenance, with respect to the
20 billing of the usage of water.

21 CHAIRMAN DAVIS: Uh-huh.

22 MR. STEWART: No difference. And the -- the
23 unit owners -- the prospective unit owners have acquiesced to
24 that fact, and understand that this is different than owning
25 a single-family residence. They have an association with

1 their fellow unit owners. And that same hypothetical could
2 apply with respect to the water bill, if the association,
3 which consists of the unit owners, decides not to pay the
4 water bill.

5 There are a lot of provisions and mechanisms
6 in the declaration that provide unit owners with the
7 opportunity to call for a meeting of the unit owners, and
8 call for the board to act on any matter that affects that
9 unit owner directly or indirectly. And that, in and of
10 itself, would provide an internal mechanism to bring that
11 issue to a head.

12 And obviously, the association has the ability
13 to seek the recovery of the payments that are due, the
14 association from the unit owner for attorney's fees, for
15 interest, and to -- and to place and file a lien upon that
16 property and foreclose on that lien in the event that they
17 decide not to pay their -- their bill, and so it works both
18 ways. The association is protected and the unit owners are
19 protected.

20 So in the event that there are unit owners
21 that, for whatever reason, don't pay their -- if they don't
22 pay their bill, or if the association doesn't pay the bill,
23 the unit owners have the ability to get that issue at a
24 table, and we could put a place of provision that indicates
25 that the association must pay their invoice on a monthly

1 basis.

2 CHAIRMAN DAVIS: Okay. All right. Now,
3 assuming -- and I'm assuming that PURPA applies in this case,
4 how would you respond to the -- how do you respond to the
5 argument, and if I missed this already, I'm sorry. How do
6 you respond to the argument that master metering is a
7 disincentive to conservation, and therefore, your application
8 should be rejected?

9 MR. STEWART: Because, as Mr. Fredock
10 discussed at length, WST, Inc. has proposed, and will, in the
11 event that this Commission authorizes the master metering
12 concept with KCP&L, install individual meters at its own
13 expense that specifically monitors and records data from the
14 use of the individual unit, therefore, which was suggested by
15 Mr. Fredock and was later suggested by Mr. Watkins, advances
16 the goals of PURPA in electric conservation.

17 CHAIRMAN DAVIS: Okay. So if we approve it,
18 the building owners shall install meters, but these meters
19 aren't in compliance with KCP&L's individual metering,
20 correct -- or individual metering?

21 MR. STEWART: Correct.

22 CHAIRMAN DAVIS: Is it the way the building's
23 wired, they won't be able to shut off one unit It's either
24 shut the whole thing off or not, but yet --

25 MR. STEWART: With the --

1 CHAIRMAN DAVIS: -- each meter and each
2 apartment, you'll be able to track the electricity usage for
3 that space? Is that --

4 MR. STEWART: If I -- if I speak out of turn,
5 let me know, but I believe that the association will have the
6 ability to shut off the power of each individual unit owner's
7 electricity in the event that they don't pay for that
8 electrical power. And so it's not a case where you just
9 terminate the power altogether. The association has the
10 ability to terminate the power on a unit-by-unit basis.

11 CHAIRMAN DAVIS: Doesn't that statement,
12 though, lend credence to the theory that you are not
13 necessarily reselling, but redistributing power? Maybe
14 reselling, I don't know, depending on what the definitions
15 are.

16 MR. STEWART: Well, you continue -- you refer
17 to -- to "we". It's the association. You're talking about
18 unit owners here. You're talking about the very people who
19 are receiving the power. I know it's -- I know we're the --
20 I know WST, Inc. is the applicant here.

21 CHAIRMAN DAVIS: Right.

22 MR. STEWART: And so there's the tendency for
23 people to think WST, Inc. is going to be the entity that's
24 passing along some bills to unit owners.

25 CHAIRMAN DAVIS: Right.

1 MR. STEWART: That's not the case. The unit
2 owners are the association. The association is monitoring
3 their use and invoicing those unit owners.

4 CHAIRMAN DAVIS: And I guess -- so you're sort
5 of making the analogy, then, that the homeowner's association
6 would function, you know, more like, I guess, a municipal
7 utility would, in that it would be able to disconnect members
8 and things like that?

9 MR. STEWART: Correct. Well, I say correct.
10 I don't know what you mean by "functioning like a municipal
11 entity", but ...

12 CHAIRMAN DAVIS: Performing certain, I guess,
13 governmental functions or -- all right. Mr. Williams.

14 MR. WILLIAMS: Staff's concern with the
15 situation that the parties are proposing here, I mean, we
16 agree with Mr. --

17 CHAIRMAN DAVIS: Let me go back to you, Shawn.
18 Would the building association actually, you know -- someone
19 go physically disconnect someone's electricity, or would you
20 call KCP&L and say we want you to shut someone's electricity
21 off to this particular area of our building.

22 MR. STEWART: Depends on whether KCP&L is
23 agreeable to that. But as it's been stated before, they
24 don't have a position on the matter, so they may have.

25 CHAIRMAN DAVIS: Well, I'm going to ask them.

1 MR. STEWART: And I do --

2 CHAIRMAN DAVIS: I've got to ask them --

3 MR. STEWART: They have several policy
4 concerns.

5 CHAIRMAN DAVIS: -- because it is a safety
6 issue, and we need to vent these issues out. I don't want
7 anybody getting electrocuted, or people just arbitrarily
8 getting angry at someone else in their building and shutting
9 off someone else's power.

10 MR. STEWART: Well, the question has to be
11 asked, what happens on projects where there's master --
12 existing projects where you have master metering, and then --

13 CHAIRMAN DAVIS: Are you aware of any more
14 master metering projects like this in the Kansas City area?

15 MR. STEWART: I'm not.

16 CHAIRMAN DAVIS: Okay. Is anybody else here?
17 Okay.

18 MR. WILLIAMS: Not yet.

19 CHAIRMAN DAVIS: Not yet? All right. KCP&L,
20 do you have a response to that about disconnecting unit's
21 electricity, about who should be -- who should be responsible
22 for that?

23 MR. BLANC: Sure. I guess our position would
24 be that it depends on who owns the equipment at issue. We
25 own up to the master meter, and the master meter, assuming

1 that the building is master metered. And so it would be with
2 our authority, under certain circumstances, provided we
3 follow the provisions of our tariff, to cut services at that
4 master meter, but I don't think there's any authority we have
5 in our tariff or otherwise that would permit us to go in --

6 CHAIRMAN DAVIS: To go past the master meter
7 and individual?

8 MR. BLANC: -- to go into what they own.

9 CHAIRMAN DAVIS: Okay. Mr. Watkins, I see you
10 shaking your head back there. Do you have a response to
11 this?

12 MR. WATKINS: I think they're correct. I'm
13 sorry, I shouldn't have made any expressions, but your
14 concerns about the safety and them saying we're not going to
15 do it, I just --

16 MR. FREDOCK: The -- the -- the meters and
17 switches that Mr. Stewart was referring to are in an enclosed
18 closet that only the maintenance personnel and the actual
19 administrators of the homeowner's association will be allowed
20 in. They're not going to have -- the individual homeowners
21 are -- will not be allowed free access into those areas.

22 CHAIRMAN DAVIS: Right.

23 MR. FREDOCK: And as far as a danger, or
24 danger of shock or electrocution, it's basically just
25 throwing a breaker. It's a main disconnect. Throw the

1 breaker, put a lock out on it, and that unit is shut down.

2 CHAIRMAN DAVIS: All right. Back to KCP&L.

3 Okay. PURPA and all this master metering came into effect in
4 approximately 1981. Do you have people operating
5 commercially, you know, on one meter, like apartment
6 buildings or anything like that, who have been in existence
7 prior to 1981 that are -- that are still operating out there?

8 MR. RUSH: Yes, we do.

9 CHAIRMAN DAVIS: And how does that work?

10 MR. RUSH: Well, there's several ways that it
11 works. Basically, we deal with a landlord, and a situation
12 we recently had, like, for example, a trailer park that had a
13 lot of wiring issues, is we went through a process of
14 actually notifying each one of the tenants of the problems.
15 I mean, we had the fire marshal say you need to close this
16 place down, you need to shut them off, and yet we were trying
17 to struggle between, you know, putting people out on the
18 street and getting the landlord to fix his wiring, and
19 getting the landlord to pay his bill.

20 And so we struggled through that process.
21 There's some hoops that have to be gone through. When we
22 shut tenant -- shut -- we really don't shut many places where
23 there's a landlord that has a number of tenants. We have had
24 that happen. We typically notify each one of the tenants by
25 putting a sticker on the door that says your electricity will

1 be shut off on such and such a time, and then we shut that
2 service off.

3 The landlord, you know, then has the pressure
4 to pay the bill or not get his rent. That's typically what
5 happens. So it's somewhat of a rare situation, but it has
6 occurred.

7 CHAIRMAN DAVIS: Okay. All right. Back to
8 you, Mr. Williams. So you're just saying, reject all this
9 nonsense, don't let these people move in on the 19th? Is
10 that what you're telling me?

11 MR. WILLIAMS: We're telling you we don't
12 think a variance is the route to go.

13 CHAIRMAN DAVIS: Okay. So what route are you
14 suggesting?

15 MR. WILLIAMS: Well, it's a route that the
16 parties haven't been able to agree to yet.

17 CHAIRMAN DAVIS: I understand that, but I'm
18 asking you, you know, this is your chance. You've only got
19 one of your five fact-finders here, but this is your chance
20 to persuade me, Mr. Williams. So what would you have us --
21 what would you have the Commission do in this case?

22 MR. WILLIAMS: Well, in order to get any
23 relief to the applicant, it's the Staff's view that it would
24 require a change in the tariff, and it should be to a class
25 of similarly situated customers, not just for a particular

1 individual customer. And we would prefer --

2 CHAIRMAN DAVIS: Okay. So let's stop there
3 for a minute. What does that mean?

4 MR. WILLIAMS: It would mean that KCP&L would
5 have to file a tariff and ask the Commission to approve it.
6 And the tariff would be in such a form that it would --

7 CHAIRMAN DAVIS: -- treat all customers -- all
8 similarly situated customers equally?

9 MR. WILLIAMS: Right, and would accommodate
10 what needs to be done in order to get power to this
11 particular facility. I mean, our preference would be that
12 the end users are the ones that's getting billed by KCP&L.

13 CHAIRMAN DAVIS: Right.

14 MR. WILLIAMS: Even if there's master metering
15 up to a point where later the owner of the facility is
16 controlling the lines and monitoring the usage.

17 CHAIRMAN DAVIS: And even though KCP&L doesn't
18 have a position in this, they're opposed to your ideas?

19 MR. WILLIAMS: Something like that.

20 CHAIRMAN DAVIS: Is that a fair assessment?
21 Is that a fair assessment, KCP&L?

22 MR. BLANC: I guess our assessment is we don't
23 know and don't have time to determine whether we could use
24 their monitoring system as a basis for billing power.
25 Mr. Rush gave testimony that it would take approximately 90

1 days just to study the feasibility of doing something like
2 that. He mentioned when we adopted our last meter reading
3 technology, it took several years to study that, and we're
4 not proposing that we take that here.

5 We're talking about one building in the Kansas
6 City area. But point being, with our obligation to serve, we
7 would have to be very comfortable with the technology before
8 we adopted it and sent out our bills based on its output.

9 CHAIRMAN DAVIS: Okay.

10 MR. RUSH: I think one of the things --

11 CHAIRMAN DAVIS: And you'll be coming back to
12 see us in February, won't you, Mr. Giles.

13 MR. RUSH: We will.

14 CHAIRMAN DAVIS: Rush.

15 MR. RUSH: That's all right.

16 CHAIRMAN DAVIS: I'm sorry. Normally it's
17 Mr. Giles who's here. I mean, one of the things that we're
18 concerned about is we're taking over the responsibility, if
19 this were to occur, of representing that those meters are
20 accurate, and we are billing what we're to be billing, and
21 then that we have control to manage that. So there are some
22 significant points we need to evaluate in order to do that.
23 And so I don't think time allows us to do that.

24 CHAIRMAN DAVIS: And I understand. I mean,
25 Wall Street has people moving in a week from -- or people

1 signing the papers a week from today here, so obviously,
2 that -- but ...

3 MR. RUSH: And it does go against our tariffs,
4 so we need to figure out how to bill and address that issue.

5 CHAIRMAN DAVIS: Right.

6 MR. WILLIAMS: Commissioner, the Commission
7 has approved pilot programs on tariffs in the past.

8 CHAIRMAN DAVIS: So what would KCP&L think
9 about if we made this a pilot program?

10 MR. RUSH: We've made our suggestion of how
11 that might be handled as a pilot, and I think that would be a
12 wonderful way to do it.

13 CHAIRMAN DAVIS: And refresh for my
14 recollection what was your pilot suggestion?

15 MR. RUSH: My pilot suggestion is if you allow
16 them to master meter it, and you allow the tenants to measure
17 whatever that may monitor their own individual usage, that
18 they could bill in some proportionment to that usage, and
19 that they would then provide a report to the Staff on a
20 regular -- the Staff of the Commission on a regular basis --

21 CHAIRMAN DAVIS: On a regular basis?

22 MR. RUSH: -- to show what actions are taking
23 place. And that -- that would simply say that there is some
24 monitoring process and ownerance [ph. sp.] is not put on
25 KCP&L to situations that we don't have control over.

1 CHAIRMAN DAVIS: Right.

2 MR. RUSH: And that was our suggestion.

3 CHAIRMAN DAVIS: And let me ask you this,
4 Mr. Rush: Do you have usage figures for -- I mean, could you
5 provide this Commission -- I don't want you to do a lot of
6 work, but what a -- what this building's electricity
7 consumption was when it was in prior use? Of course it may
8 have been some other type of business or entity or something
9 like that, or what a comparable, you know, residential unit
10 would be so if this were a pilot program -- I guess I'm
11 trying to figure out, you know, would -- how do we develop a
12 baseline?

13 MR. RUSH: Well, I think the first thing I was
14 thinking is that we could, you know, even within the Staff,
15 they could say, okay, here's what's being used, and be
16 measuring that each time. We do have figures that we could
17 provide that would be kind of typical of, like, that size of
18 a residence or something. And they have that both nationally
19 and we would have it locally.

20 But I think the ability to be sure, you know,
21 someone's consumption over time would provide that
22 information you're looking for, that can be done out of their
23 own monitoring device. That's what WST is going to be doing.
24 So the homeowner's association would be having it. What I
25 was perceiving in the long-term is that this is something

1 that they would have to -- WST, the association, would have
2 to address, you know, in their association meetings.

3 It's not a situation where -- KCP&L's biggest
4 concern is ten years from now. We're still expected to bill
5 this, if that were the case, if the technology has changed
6 and this monitoring equipment is no longer the same, and I
7 mean we would have to be keeping up with whatever technology
8 some other entity was directing. And that is a big concern
9 of ours.

10 CHAIRMAN DAVIS: Right. Okay.

11 MR. RUSH: But if WST had that responsibility
12 on themselves, and they were simply reporting it to the
13 Commission, then you would be aware of the activities of what
14 was going on with that entity. That was -- that was
15 basically our proposal.

16 CHAIRMAN DAVIS: All right. Now, let me ask
17 you this: I know that the first closing is scheduled for the
18 19th; is that correct?

19 MR. STEWART: Right.

20 CHAIRMAN DAVIS: Do you have all the units
21 sold in the building?

22 MR. STEWART: I do not believe so. I believe
23 there's 10 to 15 percent.

24 MR. FREDOCK: There's just a few left.

25 CHAIRMAN DAVIS: There's just a few left? So

1 I guess my question is, once the homeowners -- once all the
2 units are sold and closed on, you know, is WST just going to
3 go away and say that's it, bye-bye homeowners? The answer is
4 yes.

5 JUDGE WOODRUFF: Clarify at that point it
6 would be the homeowner's association that would be providing
7 the services for WST.

8 MR. STEWART: The way that the declaration is
9 structured, the WST, Inc. will be a member of the association
10 so long as it owns units. And I don't know that it's -- I
11 don't know that the association desires for us to meddle in
12 their affairs.

13 CHAIRMAN DAVIS: Right.

14 MR. STEWART: And so it's the -- but the
15 organization will be in place to --

16 CHAIRMAN DAVIS: Right.

17 MR. STEWART: -- govern this system.

18 CHAIRMAN DAVIS: Right. Well, I am a little
19 bit concerned here, also, about the fact that you have a
20 homeowner's association -- a new homeowner's association, and
21 if they have to come back and appear before this Commission,
22 you know, are they going to be, you know, sophisticated
23 enough to -- are they going to have the financial solvency to
24 be able to afford counsel to represent themselves before this
25 Commission, I guess is the question?

1 MR. STEWART: At the time of -- of the closing
2 of the units, the unit owners are required to deposit two
3 months' worth, in addition to the month that they are
4 acquiring the unit. Two months' worth of a deposit.

5 CHAIRMAN DAVIS: Of fees, or ...

6 MR. STEWART: On their homeowner's association
7 dues, so there's going to be substantial amount of excess
8 deposits.

9 CHAIRMAN DAVIS: How much are those dues?

10 MR. STEWART: They're based upon the budget,
11 so effectively at this point, they're \$.28 a square foot.

12 CHAIRMAN DAVIS: \$.28 a square foot?

13 MR. STEWART: Per unit.

14 CHAIRMAN DAVIS: So what's the average-sized
15 unit?

16 MR. STEWART: Oh, probably 1,200 to 1,400
17 square feet.

18 CHAIRMAN DAVIS: 1,200 to 1,400 square feet.

19 MR. STEWART: So you're looking at 300 bucks,
20 or I don't have my calculator.

21 MR. RUSH: \$420 a month.

22 MR. STEWART: So you're looking at \$840 a unit
23 that is going to be deposited with the association.

24 CHAIRMAN DAVIS: Okay.

25 MR. STEWART: Times a hundred -- at this

1 point, 147.

2 MR. FREDOCK: Roughly about \$4,500 a month.

3 MR. STEWART: The total reserves --

4 CHAIRMAN DAVIS: Okay. And then what's the
5 average sale price on the units that have been sold so far,
6 or just give me some ballpark examples of what the range is
7 for.

8 MR. WILLIAMS: They indicated the unit that's
9 closing -- plan to close October 19th is something like
10 \$475,000.

11 CHAIRMAN DAVIS: I'm sorry? 475,000?

12 MR. WILLIAMS: And I don't recall the range
13 you gave for all.

14 MR. FREDOCK: Roughly the average throughout
15 the building is \$300,000.

16 CHAIRMAN DAVIS: Okay. So could we infer from
17 that, then, that if they have \$300,000 to afford one of these
18 units, then we could expect at least a modest degree of
19 sophistication on the part of the purchasers?

20 MR. FREDOCK: I know that they're not going to
21 be running extension cords from one unit to the other, yes.
22 I can pretty much assure you that.

23 MR. STEWART: And if I could also mention, the
24 budget does provide for an annual allocation for attorney's
25 fees and that amount will --

1 CHAIRMAN DAVIS: Has Wall Street ever set up a
2 homeowner's association before, condo association, whatever?

3 MR. STEWART: WST, Inc. has not.

4 CHAIRMAN DAVIS: WST has not. Have you,
5 counselor?

6 MR. STEWART: I've been involved on others at
7 other firms, yes.

8 CHAIRMAN DAVIS: Okay.

9 MR. WILLIAMS: Commissioner, do you have any
10 interest on Staff's view of a pilot program?

11 CHAIRMAN DAVIS: Oh, Mr. Williams, I am
12 waiting to hear -- I am waiting to hear what you and
13 Mr. Watkins have to say about the pilot program.

14 MR. WILLIAMS: Well, as we indicated, or as
15 Staff has indicated, our preference would be that KCP&L is
16 providing service to the condominium owners, so what we would
17 suggest for a pilot program would be KCP&L look at a
18 customer-owned metering device in order to utilize
19 information in order to bill those customers.

20 CHAIRMAN DAVIS: A customer-owned metering
21 device?

22 MR. WILLIAMS: Well, non-KCP&L-owned, let's
23 put it that way.

24 CHAIRMAN DAVIS: I'm sure -- I can see the
25 expression on his face. He's excited about this project.

1 MR. WILLIAMS: And a pilot project could be
2 done to see how that works, the accuracy of the meters, and
3 just how -- how it would work.

4 CHAIRMAN DAVIS: He's not raising his hand.
5 Wait, he's raised his hand.

6 MR. RUSH: The only concern I would have about
7 the pilot in the sense of what you talked about is that
8 typically identifies a time frame that it will have a
9 conclusion to it, and this will not have a conclusion. This
10 will be -- go on forever. If it was so elected or determined
11 that this is not workable, that the technology of a
12 customer-owned metering device needs to be modified or
13 changed or whatever --

14 CHAIRMAN DAVIS: Right.

15 MR. RUSH: -- down the road, that would have
16 some possible problems.

17 CHAIRMAN DAVIS: Right.

18 MR. RUSH: And it will not be able to reverse
19 it.

20 CHAIRMAN DAVIS: Right. You're stuck for all
21 perpetuity.

22 MR. RUSH: Why I made the suggestion that I
23 made is we do have instances in our system where there is
24 master metering going on pre-1981.

25 CHAIRMAN DAVIS: Uh-huh.

1 MR. RUSH: And I understand they are for
2 apartments, but that happens. We do have, and there are
3 instances where there have been master metering for oh, I
4 think the St. Louis one was talking about worry-free type
5 homes where the utilities were included with whatever was
6 being paid.

7 CHAIRMAN DAVIS: Right. Come here, pay your
8 \$10,000 a month, and don't worry about anything, we will take
9 care of it all.

10 MR. RUSH: But it was not put on the utility
11 to manage billing or anything for those places.

12 CHAIRMAN DAVIS: Right.

13 MR. RUSH: I am just very nervous about
14 customer-owned metering, and then having this go on for
15 long-term. That's kind of where I am at.

16 CHAIRMAN DAVIS: Right.

17 MR. RUSH: Now, if it were a short-term with
18 some knowledge of the ability to change, that would be a very
19 different story.

20 CHAIRMAN DAVIS: Okay.

21 JUDGE WOODRUFF: Anything else?

22 CHAIRMAN DAVIS: I think I've about exhausted
23 my supply of questions here, but I guess you can give them
24 all one final -- one final shot to get one last word in the
25 record here.

1 JUDGE WOODRUFF: All right. Does anyone want
2 to add anything else for the record before we adjourn? All
3 right. With that, then, we are adjourned. Thank you.

4 WHEREUPON, the recorded portion of the hearing
5 was concluded.

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