

In the Matter of:

PRUDENCE REVIEW OF COSTS SUBJECT TO THE COMMISSION -APPROVED FUEL ADJUSTMENT

EO-2019-0067, EO-2019-0068, & ER-2019-0199, VOL. I

August 27, 2019



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

August 27, 2019

Jefferson City, Missouri

Volume 1

In The Matter Of The Eighth Prudence)
Review Of Costs Subject To The) File No.
Commission-Approved Fuel Adjustment) EO-2019-0067
Clause of KCP&L Greater Missouri)
Operations Company)

In The Matter Of The Second Prudence)
Review of Costs Subject To The) File No.
Commission-Approved Fuel Adjustment) EO-2019-0068
Clause Of Kansas City Power And)
Light Company)

In The Matter Of The Application Of)
KCP&L Greater Missouri Operations) File No.
Company Containing Its Semi-Annual) ER-2019-0199
Fuel Adjustment Clause True-Up)

PAUL T. GRAHAM, Presiding
REGULATORY LAW JUDGE

RYAN A. SILVEY, Chairman
DANIEL Y. HALL,
SCOTT T. RUPP,
COMMISSIONERS

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P R O C E E D I N G S

1
2 JUDGE GRAHAM: This is an evidentiary hearing
3 in EO-2019-0067. We're also receiving evidence on
4 EO-2019-0068 and ER-2019-0199. It's August the 27th.
5 We're going to do three cases on a common record here:
6 In the Matter of -- The first one that I named off by
7 case number or file number is In the Matter of the
8 Eighth Prudence Review of Costs Subject to the
9 Commission-Approved Fuel Adjustment Clause of KCP&L
10 Greater Missouri Operations Company. Second file is In
11 the Matter of the Second Prudence Review of Costs
12 Subject to the Commission-Approved Fuel Adjustment
13 Clause of Kansas City Power and Light Company. And the
14 third file is In the Matter of the Application of KCP&L
15 Greater Missouri Operations Company Containing Its
16 Semi-Annual Fuel Adjustment Clause True-Up.

17 My name is Paul Graham. I'm the Regulatory
18 Law Judge presiding over this hearing. Could we have
19 the parties' attorneys enter their appearance at this
20 time commencing with KCPL GMO?

21 MR. STEINER: Yes, Judge. Let the record
22 reflect appearing for KCPL and for GMO, Joshua Harden,
23 Jim Fischer and Roger Steiner. Our contact information
24 has been provided to the court reporter.

25 JUDGE GRAHAM: All right. Thank you very

1 much. And an entry of appearance for the Commission
2 staff, please?

3 MR. KEEVIL: Yes, Judge. Appearing on behalf
4 of the staff of the Missouri Public Service Commission,
5 Ms. Lexi Klaus, Mr. Travis Pringle, and I am Jeff
6 Keevil. Our address is Governor Office Building, Suite
7 800, 200 Madison Street, P.O. Box 360, Jeff City,
8 Missouri 65102.

9 JUDGE GRAHAM: Okay. Thank you very much. I
10 have a note here that I better take a look at my own.
11 We need to make sure we silence our phones. I covered
12 that matter.

13 Now, before we went on the matter we discussed
14 briefly the marking of exhibits. I believe that the
15 Company KCPL GMO is going to use numbers 1 through 99,
16 OPC is going to use numbers 100 through 199, staff will
17 use 200 through 299. I'll come back to that in a minute
18 when we talk about how we're going to handle
19 confidential information. Prior to --

20 MR. CLIZER: Your Honor?

21 JUDGE GRAHAM: Sir.

22 MR. CLIZER: Sorry. I haven't given an entry
23 of appearance just for the sake of the record.

24 JUDGE GRAHAM: Well, we're just moving -- I
25 see you down in my outline but I thought I'd skip you.

1 Go ahead. You're going to be outspoken, I'm sure, so go
2 ahead and let us know who you are.

3 MR. CLIZER: Appearing on behalf of the Office
4 of Public Counsel, John Clizer, and I have provided my
5 contact information with the court reporter.

6 JUDGE GRAHAM: Thank you very much for your
7 patience with me this morning so soon.

8 I received some inquiry, or an inquiry, prior
9 to this hearing some a week or so ago about whether you
10 could give mini opening statements, an opening statement
11 with respect to each of the three issues. And I see the
12 wisdom of that or why you'd want to do that.

13 We did respond, though, that the Commission
14 would like to have a general opening statement from each
15 of the parties and then if you wish to make another
16 smaller or shorter mini opening statement prior to the
17 time that we address each issue that will be welcomed
18 too.

19 I would assume if we do both that in the
20 general opening statement your remarks might conclude
21 with whatever it is specific that you would want to say
22 about Issue No. 1 at that point. Then when we get to
23 Issues 2 and 3 if you want to make another opening
24 statement that will be fine.

25 I may actually, as we get to those issues,

1 read those out into the record for the benefit of
2 anybody who's watching so that they can kind of track
3 the outline of what we're doing here. Any questions?

4 MR. STEINER: Judge, thank you. We are going
5 to do a general opening. That's going to be the brief
6 one. Then we're going to give more specific information
7 before each issue.

8 JUDGE GRAHAM: That's fine.

9 MR. STEINER: We will have a separate mini
10 opening before Issue 1.

11 JUDGE GRAHAM: That's fine. I'm not going to,
12 of course, tell you how to do your opening. I simply
13 wanted to respond to that inquiry.

14 As another preliminary matter, as you probably
15 noticed in the last few days, within the last week, the
16 Commission has issued some orders and notices with
17 respect to the production of staff witnesses. As a
18 preliminary matter -- First of all, is there anything
19 that any party wishes to say to the Commission on that
20 matter at this point? Objections or anything like that?
21 I'll give you that opportunity. Hearing none, the way
22 we will handle that is when we get to those staff's
23 witnesses, we will bring them up as staff wishes and
24 then because they have not prefiled or anything we will
25 let the Commission or the Commissioners make inquiries

1 at that point as they may wish to do and then tender
2 those witnesses to the parties for cross and then the
3 Commissioners if they have any recross that will happen
4 then. And then if the staff at that point, since these
5 are staff witnesses, wishes on the basis of what's
6 happened to redirect them, we'll treat them as though,
7 of course, they are staff witnesses and at that point
8 the staff will redirect those witnesses.

9 MR. KEEVIL: Judge, question if I could. You
10 said you're going to start with questions from the
11 Commission, which I think is proper, and then go to the
12 cross questions; but normally, as you know, in
13 Commission proceedings cross at that time is limited to
14 topics, questions that were raised from the bench. Is
15 that your intent here as well?

16 JUDGE GRAHAM: That's my intent here; but
17 given that we don't have any prefiled testimony, I will
18 certainly -- the bench will certainly entertain the
19 possibility on shall we say a case-by-case basis of
20 questions that might exceed the scope of what we hear
21 from the Commission here.

22 The presumption will be that the questions
23 will be limited to matters that were brought up by the
24 Commission. We will begin with that presumption. But
25 because we don't have any prefiled testimony from these

1 witnesses, I think that we are going to have to be ready
2 to accord some latitude on cross. So got the
3 presumption with the possibility of latitude.

4 Before we went on the record, the question of
5 how to handle confidential evidence was briefly gone
6 into within the context of the discussion of exhibits.
7 If you have exhibits, written exhibits or other written
8 matters that are confidential, let's say hypothetically
9 it's Exhibit 99, we'll ask for a 99-P for public and a
10 99-C for confidential.

11 If we are dealing with testimony, live
12 testimony from the witness stand that is going -- If the
13 lawyer knows or the party knows that an area is about to
14 be inquired into that's confidential or if that just
15 comes up in the hearing, I will leave it to you to flag
16 me, flag the bench on this --

17 COMMISSIONER HALL: Judge --

18 JUDGE GRAHAM: Sir?

19 COMMISSIONER HALL: -- is your microphone on?

20 JUDGE GRAHAM: The green light is on, but I
21 don't hear my -- Thank you. I thought the green light
22 was on. I hope I don't have to start over. That one
23 was on. Thanks, Commissioner. Just flag us from your
24 chair there if there's something that's going to happen
25 confidential from the bench.

1 All right. I am ready to start. Let me look
2 at notes that are coming in here. Okay. We are going
3 to -- If there's nothing else preliminary, is there
4 anything else in the nature of a preliminary matter?
5 Let's proceed with opening statements from KCPL GMO.

6 MR. STEINER: Good morning. As I indicated
7 earlier, we're going to provide mini openings to give
8 you more details before each issue. I'm going to
9 address the issues at a high level at this time.

10 There are three issues in this case. First is
11 the renewable energy credit issue. Our position that
12 it's prudent for KCPL not to unbundle and sell the
13 environmental attributes of the renewable energy credits
14 we generate in excess of the minimum required by
15 Missouri's renewable energy standard. By keeping the
16 environmental attributes of the renewable energy bundled
17 with the power sold to the customers facilitates the
18 goals of KCPL's customers to reduce greenhouse gas
19 emissions, corresponds to the desires of our customers
20 for increased renewables.

21 The RES standard only requires 10 percent of
22 KCPL's current generation come from renewable resources.
23 The company obviously wants to be able to properly
24 suggest that about 25 percent of its retail load is
25 being generated from renewable sources. If the staff's

1 position is upheld, it would severely limit KCPL's
2 representations to its customers regarding how much of
3 the energy is from renewable energy sources.

4 This is true because under staff's position
5 KCPL would have to sell off anything above the 10
6 percent minimum required by the RES standard. We don't
7 think that makes good public policy sense. We would
8 urge the Commission not to adopt this requirement or
9 make the prudence disallowance being suggested by staff
10 and public counsel.

11 Second issue is auxiliary power. This is
12 public counsel's allegation that GMO has improperly
13 allocated the costs associated with auxiliary power
14 needed to run the steam plant at GMO's Lake Road
15 facility. The staff conducted an audit in this case.
16 Staff found no indication GMO imprudently included steam
17 auxiliary power costs in the FAC. The company agrees
18 with staff that there's no imprudence in the way GMO
19 allocates fuel costs. The company has followed the
20 Commission's authorized allocation methodology.

21 Final issue involves the Missouri wind farms.
22 Public counsel has alleged that it was imprudent for
23 KCPL and GMO to enter into the Osborn and Rock Creek
24 purchase power agreements. The company evaluated these
25 projects on the basis of what would lower the company's

1 revenue requirements. And in eight out of nine
2 scenarios the company's revenue requirements were
3 projected to be lower by entering into the PPAs.

4 In addition to lowering the company's revenue
5 requirements, there were economic development benefits
6 that accrued to the areas where the wind farms are being
7 built. There were additional jobs. There was money for
8 road improvements, for schools, for emergency services.
9 Not included in those benefits are the benefits to
10 landowners. They got paid for having their land being
11 used.

12 The evidence will demonstrate that company's
13 decisions to enter into the Osborn and Rock Creek wind
14 farm PPAs was prudent and reasonable since they were
15 projected to lower revenue requirements for customers
16 over the life of the PPA. Those PPAs also helped
17 address a future need to comply with the Clean Power
18 Plan. Those PPAs provided economic development benefits
19 to Missouri counties.

20 We believe public counsel's analysis is based
21 on a hindsight review, doesn't meet the Commission's
22 prudence standard and should be rejected by the
23 Commission.

24 Thank you for your attention. We look forward
25 to your questions throughout the day.

1 JUDGE GRAHAM: All right. Thank you very
2 much. We'll proceed to the -- Are there any questions
3 from the Commission for the opening statement?

4 COMMISSIONER HALL: No, I'll save them. I'll
5 save them for the mini.

6 JUDGE GRAHAM: Chairman?

7 CHAIRMAN SILVEY: I'll save them.

8 COMMISSIONER HALL: Actually I have one
9 question and I'll be asking counsel for each party and
10 this is somewhat unrelated to the issues to be litigated
11 today but that concerns self scheduling which is an
12 issue, the drum of which I've been beating for quite
13 some time now. That was not an issue in this case,
14 correct?

15 MR. STEINER: That's correct.

16 COMMISSIONER HALL: And it was not an issue
17 because no party raised it with regards to alleged
18 imprudence by the company; is that correct?

19 MR. STEINER: I believe that's correct, Your
20 Honor. There was nothing in staff's report about that
21 and no other party raised it, yes.

22 COMMISSIONER HALL: I'll simply say and I may
23 not -- I will not be here at the next FAC prudence
24 review, but I would certainly suggest that the company
25 and all of the parties in each FAC prudence review going

1 forward take a very careful look at the self scheduling
2 practices of the company. That's all I have on that.
3 Thank you.

4 JUDGE GRAHAM: Thank you very much, counsel.
5 Staff's opening statement?

6 MR. KEEVIL: One nice thing about sitting
7 close to the podium I don't have too far to limp. May
8 it please the Commission.

9 JUDGE GRAHAM: You know, sir, if you need to
10 sit.

11 MR. KEEVIL: No, I'm fine. Thanks. This case
12 involves three overarching issues which I will summarize
13 as follows: Number one. Was it imprudent or a tariff
14 violation for KCP&L to allow 722,628 RECs, or renewable
15 energy credits, to simply expire without even attempting
16 to sell them and generate revenue which would offset
17 fuel costs charged to customers through the fuel
18 adjustment clause or FAC.

19 Issue two. Has GMO properly allocated costs
20 associated with auxiliary power between its electric
21 operations and steam operations at the Lake Road plant.

22 And number three. Was it prudent for KCPL and
23 GMO to have entered into the Rock Creek and Osborn wind
24 PPAs.

25 The second two of those three issues were

1 raised by the Office of the Public Counsel and are
2 primarily issues between the companies and OPC. I will
3 therefore focus on the first issue and touch only
4 briefly on the second two.

5 Regarding Issue 1, staff recommends the
6 Commission order an adjustment in the amount of \$357,308
7 as a result of KCPL's imprudent management of its RECs
8 during this FAC review period.

9 Pursuant to KCPL's FAC tariff, its customers
10 are to receive the benefit of revenues from the sale of
11 RECs which are not needed for compliance with the
12 renewable energy standard requirement through KCPL's
13 FAC, or fuel adjustment clause, as an offset to the fuel
14 cost. However, during the FAC prudence review period
15 applicable to Case No. EO-2019-0068, KCPL failed to take
16 any action to generate revenues from, as I said earlier,
17 722,628 RECs which it did not need to satisfy its
18 renewable energy standard requirement and simply allowed
19 those RECs to expire to the detriment of its customers.
20 Not only did KCPL fail to sell those RECs, it did not
21 even attempt to sell the RECs.

22 So what is the prudence standard? In State ex
23 rel. Associated Natural Gas Company vs. Public Service
24 Commission, the Missouri Court of Appeals Western
25 District quoted provingly from the Commission's 1985

1 Callaway Nuclear decision as follows:

2 The PSC noted that this test of prudence
3 should not be based upon hindsight but upon a
4 reasonableness standard. The company's conduct should
5 be judged by asking whether the conduct was reasonable
6 at the time under all the circumstances considering that
7 the company had to solve its problem prospectively
8 rather than in reliance on hindsight. In effect, our
9 responsibility is to determine how reasonable people
10 would have performed the tasks that confronted the
11 company.

12 The Court also found in the Associated Natural
13 Gas case that in order to make a prudence adjustment a
14 regulatory agency must also find that the imprudence
15 resulted in harm to the ratepayers. In the present
16 case, there's no dispute that KCPL did not even try to
17 sell the RECs at issue. Instead KCPL attempts to excuse
18 its failure to try to sell the RECs by pointing to
19 several alleged justifications none of which withstand
20 scrutiny.

21 In addition, it is interesting to note that
22 KCPL witness Linda Nunn on page 7 of her surrebuttal
23 testimony states that KCPL's FAC tariff was based on
24 GMO's FAC tariff. What Ms. Nunn fails to mention is
25 that in the Commission's Report and Order in Case No.

1 ER-2012-0175 issued January of 2013, the Commission
2 found on page 63 that RECs are a measure of compliance
3 with laws promoting the use of renewable energy. When
4 purchasing power, the REC does not cost extra. If GMO
5 has more RECs than it needs to satisfy the requirements
6 of law (excess RECs) it is prudent practice to sell
7 them.

8 The Commission went on to find that staff's
9 proposal, which in that case was that the proceeds from
10 the sale of RECs pass through the FAC like a fuel price
11 decrease, supported safe and adequate service at just
12 and reasonable rates. So the Commission ordered that
13 the excess REC revenue pass through the fuel adjustment
14 clause.

15 Now, in the present case, KCPL had more RECs
16 than it needed to satisfy the requirements of the
17 renewable energy standard law, yet it did not sell them
18 and as I've stated did not even attempt to sell them.
19 KCPL's action, or more correctly inaction, was clearly
20 imprudent and resulted in harm to its ratepayers and the
21 Commission should order a disallowance of \$357,308.

22 Now, regarding Issue 2, the allocation of
23 costs associated with auxiliary power between electric
24 and steam operations at the Lake Road plant. As
25 reflected in staff's prudence review report for GMO,

1 staff found no evidence that GMO imprudently included
2 auxiliary power -- auxiliary power costs in its FAC
3 during the review period. In GMO's last rate case,
4 ER-2018-0146, the Stipulation and Agreement filed on
5 September 19, 2018, which was approved by the
6 Commission, provided that GMO will use the allocation
7 numbers used in staff's model filed in Case No.
8 ER-2016-0156, which was the previous rate case. These
9 allocation numbers shall be used by GMO in its FAC, QCA
10 and surveillance reporting. GMO agrees to work with
11 staff, OPC and MECG to develop new steam allocation
12 procedures prior to GMO's next electric general rate
13 case.

14 Based on the approved stipulation in that
15 case, GMO agreed to continue doing what it had been
16 doing with respect to the allocation of auxiliary power.
17 And this case is not the proper forum to be changing
18 allocation procedures, especially in light of the
19 parties' agreement in the stipulation to develop new
20 steam allocation procedures prior to GMO's next electric
21 rate case.

22 Finally, regarding Issue 3, whether it was
23 prudent for KCPL and GMO to have entered into the Rock
24 Creek and Osborn wind PPAs. Staff does not recommend a
25 disallowance related to these contracts. These are both

1 long-term PPAs and the performance of these contracts
2 should be viewed on a long-term basis, not just from the
3 results during this review period.

4 Furthermore, as I stated previously, the test
5 of prudence should not be based on hindsight but should
6 be judged by asking whether the conduct of the companies
7 was reasonable at the time under all the circumstances.

8 Based on this prudence standard, staff cannot
9 recommend a disallowance. Staff's witness on Issue 1
10 regarding KCPL's failure to sell RECs is Ms. Kory
11 Boustead. Originally staff had not planned to present
12 witnesses on Issues 2 or 3, but pursuant to the
13 Commission's orders from last Friday and yesterday we
14 have Ms. Karen Lyons, Ms. Brooke Mastrogiannis and
15 Mr. Charles Poston here to answer Commission questions
16 on Issue 2 and I am told Mr. Matt Young would be
17 available if absolutely necessary by phone.

18 With that said, I'll conclude and attempt to
19 answer any questions you might have. Thank you.

20 JUDGE GRAHAM: Chairman, do you have any
21 questions of counsel?

22 CHAIRMAN SILVEY: No.

23 JUDGE GRAHAM: Commissioner Hall, do you?

24 COMMISSIONER HALL: Continuing on the self
25 scheduling issue just for a moment, my understanding is

1 that staff did not look at the company's self scheduling
2 practices with regards to prudence review during these
3 time periods; is that correct?

4 MR. KEEVIL: We certainly didn't raise an
5 issue. I don't know whether they looked at it or not.
6 I'm not aware of them looking at it, but I know that no
7 issue was raised in the report regarding it.

8 COMMISSIONER HALL: And my understanding based
9 on staff's report in the self scheduling docket that
10 going forward staff will be including that in its
11 prudence review process?

12 MR. KEEVIL: That's my understanding, too,
13 Commissioner. In fact, I don't remember whether it's
14 filed or whether it was just a draft but I've seen a
15 report in another company's FAC prudence review case
16 here within the last week or two and there is a section
17 on self scheduling in that one.

18 COMMISSIONER HALL: Okay. Thank you. I'll
19 reserve the remainder of my questions for the mini
20 openings. Thank you.

21 JUDGE GRAHAM: Commissioner Rupp, do you have
22 any questions for counsel?

23 COMMISSIONER HALL: Not today.

24 JUDGE GRAHAM: Thank you very much, sir. I
25 will not forget OPC. Office of Public Counsel may give

1 his opening statement.

2 Be patient with me on this. You're going to
3 use your computer over there?

4 MR. CLIZER: Yes.

5 JUDGE GRAHAM: Do you want to check your
6 monitor? Is that what you expected to see?

7 MR. CLIZER: It is.

8 JUDGE GRAHAM: All right. Thank you.
9 Counsel, are you handing us what we will see on the
10 monitor?

11 MR. CLIZER: Yes. Sorry. One moment. I'll
12 hand them out. I've distributed a paper copy of the
13 power point that I'll be going through for my opening.

14 JUDGE GRAHAM: You're providing other counsel
15 with all this?

16 MR. CLIZER: Correct.

17 JUDGE GRAHAM: You may proceed.

18 MR. CLIZER: All right. May it please the
19 Commission. John Clizer appearing on behalf of the
20 Office of Public Counsel. As you've already heard, we
21 have three issues here before this Commission today.

22 The first is KCPL's failure to take advantage
23 of the renewable energy credit or RECs. The second is
24 determining what the proper allocation of auxiliary fuel
25 power costs -- or I'm sorry, power fuel costs I should

1 say are at the GMO Lake Road facility. And the third is
2 KCPL and GMO's imprudent decision to enter into the Rock
3 Creek and Osborn wind purchase power agreements or PPAs.

4 Before I get to that, however, I'm just going
5 to really quick cover what the standard of a prudence
6 review is. Utility does start off with a presumption of
7 prudence. However, that presumption can be lost when
8 serious doubts as to the prudence of the company's
9 decisions is raised at which point it becomes the
10 company's burden to prove the prudence of those
11 decisions. And then as a reminder, the important
12 question here is what would a reasonable person do if
13 confronted by the same problem as the company while
14 knowing what the company knew at that time.

15 So with that in mind, let's move on to the
16 issues. For the first issue, the basic overview. The
17 basic problem is quite simple. KCPL allowed their RECs
18 to expire depriving its customers of revenue. They
19 basically just left money sitting on the table. And the
20 solution to this problem is simply to impute the revenue
21 that KCPL would have made had they sold the RECs. The
22 dollar value of this issue is about \$325,000.

23 Now right off the bat you can see that there
24 really is no presumption of prudence here. They've
25 literally just left money sitting on the table. That's

1 not something that any reasonable person would do. So
2 right off the bat you can see this shouldn't be given
3 any kind of presumption.

4 Therefore, KCPL has raised five arguments for
5 why they consider their action to have been prudent.
6 When I say "KCPL," I mean specifically to the testimony
7 of KCPL witness Jeff Martin. The first argument that he
8 raises concerns historical considerations. Basically
9 KCPL points to the fact that this Commission has
10 approved other renewable programs in the past. Well,
11 this is kind of a red herring because those other
12 renewable programs just show that there's a better way
13 to provide renewables to KCPL customers than just
14 allowing your RECs to expire.

15 The second argument that KCPL points to is the
16 Energy Buyers' Principles. Now, again, this doesn't
17 really do what KCPL suggests it does. In fact, the
18 Corporate Energy Buyers' Principles don't really suggest
19 allowing RECs to expire as a way to meet the principles.
20 That's because the principles are focused on the
21 production of new generation. They want to see new
22 developments. They're against what is sometimes
23 referred to as greenwashing which is basically companies
24 attempting to appear green while not actually taking
25 green steps to achieve those goals.

1 The third argument that KCPL raises is they
2 point to Kansas City's -- the City of Kansas City's
3 emission reduction program. Again, a red herring.
4 These RECs or allowing these RECs to expire didn't
5 result in any reduction in emissions. And KCPL or
6 rather the City of Kansas City never pointed to these
7 RECs as a basis for them meeting their emission
8 reduction program.

9 The fourth arguments. KCPL points to several
10 surveys conducted by its customer advisory panel, but
11 again this doesn't actually support their position
12 because those customers were never asked whether or not
13 they wanted to see RECs allowed to expire. However,
14 customers were asked in other surveys what they do want
15 and the resounding answer was more affordable rates
16 which is something KCPL could have at least helped to
17 achieve or tried to achieve had they sold these RECs for
18 proper revenue.

19 The final argument KCPL raises is just to say
20 that customers can afford the increase. Well, if
21 customers didn't cause the increase they shouldn't have
22 to pay for it. That's basic cost causation principles.
23 The OPC's primary witness on this issue is Dr. Geoff
24 Marke. He has written extensive testimony over this
25 issue, potentially maybe a little too much, but I invite

1 you to ask any questions you might have of Dr. Marke.
2 He is an excellent witness who really knows what's going
3 on here.

4 The second issue is the proper allocation of
5 auxiliary fuel costs at the Lake Road facility. Again,
6 a basic overview. The problem here is simple again.
7 GMO's electric customers are paying the fuel costs to
8 keep the Lake Road steam generating plant operational,
9 and they shouldn't because steam customers shouldn't be
10 paying or rather electric customers shouldn't be paying
11 for the steam operations. The solution to this problem
12 is for GMO to allocate the costs of fuel used for steam
13 auxiliary power out of the ANEC, and I will explain
14 exactly what I mean by that in just a minute. The final
15 dollar value of this problem however is close to about
16 500,000.

17 So in my opinion, there's kind of two steps to
18 understanding this issue. The first is a simple step
19 understanding what auxiliary power is. So to that end,
20 this is the Lake Road facility and it produces both
21 electricity and steam for industrial use and both the
22 steam and electricity require a certain amount of fuel
23 to be produced. However, there's also a certain amount
24 of fuel that needs to be burned just to keep the plant
25 itself operational. It's this small amount of fuel,

1 what we call auxiliary power fuel, that we're concerned
2 about in this case, who's paying for this fuel.

3 The second step is understanding how the FAC
4 works, and to understand this you really need to get two
5 numbers. The first is called the net base energy cost
6 or NBEC. That number is set during the rate cases and
7 it's based on historical averages for how much the
8 company spent for fuel. It's basically their prediction
9 for how much fuel is going to cost moving forward.

10 The other number is the actual net energy cost or ANEC,
11 which is how much was actually spent on fuel. And as
12 you can see, because you have a prediction of what was
13 spent and an actual amount for what was spent, the
14 difference is what the company is allowed to collect
15 through the FAC. The trick to this case is
16 understanding how these two numbers work in conjunction
17 with the Lake Road facility.

18 The NBEC for this case only includes the
19 actual electric operations. Now, we know this because
20 when the NBEC was calculated during the last rate case
21 prior to this review period, the Commission staff only
22 modeled electric operations at the Lake Road facility.
23 I should say that the OPC is fine with that. That's not
24 the problem here. The issue to understand is just that
25 the NBEC only includes fuel burns for electricity and

1 auxiliary power to keep the electric plant operational.

2 However, the ANEC includes all fuel that was
3 burned at the plant. And because it's a separation
4 between these two things, you have a problem. The good
5 news is that the amount of fuel that was burned to
6 produce just steam, that's already being accounted for.
7 That's already being removed. What isn't being removed
8 and what isn't being accounted for is the amount of fuel
9 that's being burned to keep the steam operations going.
10 This is the auxiliary power fuel for steam operations
11 and that is what the OPC is concerned about.

12 So as I just said, because the steam auxiliary
13 fuel costs are included in the ANEC but not in the NBEC,
14 GMO's electric customers end up paying those costs
15 through the FAC. Again, the solution is to remove the
16 steam auxiliary fuel costs from the ANEC. Relatively
17 simple.

18 GMO's response to this problem is to try and
19 claim that a representative amount of steam auxiliary
20 fuel costs are already accounted for using existing
21 allocation factors applied during the last general rate
22 case. But that's not true. The allocation factors that
23 are being applied in the last general rate case are
24 based -- or rather the allocation factor in particular
25 that GMO points to is based off of payroll costs, not

1 auxiliary fuel costs, and is being applied to non-fuel
2 accounts. And because your allocation factor doesn't
3 involve auxiliary fuel and isn't being applied to fuel
4 accounts, it doesn't account for auxiliary fuel costs.

5 To kind of show you what I mean I'm going to
6 walk through the allocation factor. It gets a little
7 complicated. I won't spend too much time on it. The
8 allocation factor itself, as you can hardly see up
9 there, it's about 92 percent electric, 7 percent steam.
10 That factor is the multiplication of two other numbers.
11 It's a demand capacity factor for the old Missouri power
12 systems and an electric allocation of O&M expenses.

13 The capacity factor is basically coincident
14 peak for retail customers over total load. It has
15 nothing to do with auxiliary power while the allocation
16 of O&M expense is literally just the amount of payroll
17 charged to the electric production at Lake Road's
18 facility over total payroll charged to O&M for the
19 company.

20 What's important to take note here of is that
21 there is no auxiliary power costs included in this
22 allocation factor. Nothing in here has to do with
23 auxiliary power. And GMO's own witnesses readily admit
24 that it's not being applied to fuel accounts. They're
25 applied to non-fuel accounts.

1 So that leads us again to the conclusion an
2 allocation factor based on payroll numbers applied to
3 non-fuel accounts doesn't capture a representative
4 amount of the cost of fuel used to produce steam
5 auxiliary power at the Lake Road facility.

6 And to drive this point home we invite this
7 Commission to ask the company three important questions.
8 They're very simple questions. The first, what is the
9 purported amount in this review period. If you look at
10 the surrebuttal testimony of Linda Nunn, you will see
11 that it is replete with a claim that these costs are
12 included in a representative amount already being
13 allocated. Well, what is that amount? That should be a
14 relatively simple thing to answer.

15 The second question, how did you calculate it?
16 And the third, how would you change the allocation
17 factor to remove that representative amount? The OPC
18 does not believe that these questions can be answered
19 because no representative amount exists. And because no
20 representative amount exists, electric customers are
21 paying for steam operations which is not acceptable.

22 Moving on to the third issue. Again, a basic
23 overview. We believe that it was imprudent for KCPL and
24 GMO to have entered into the Rock Creek and Osborn
25 purchase power agreements, or PPAs, and we are simply

1 asking that the losses incurred for those two PPAs be
2 disallowed. The dollar values assigned to this issue
3 are about nine and a half million for KCPL and ten and a
4 half million for GMO.

5 Now, the first thing you should understand is
6 that there's actually eight PPAs involved in this review
7 period, and all eight of those PPAs were entered into
8 according to the company for economic reasons. They
9 were entered into because their predictions show that
10 they were going to make money. Unfortunately all eight
11 ended up losing money. In fact, if you take note of the
12 combined utility total, you'll see that KCPL GMO has
13 lost \$104 million on these eight PPAs. For the total
14 company, that's -- if you look at just Missouri, it's
15 about 73 million. However, despite having lost over \$73
16 million over these eight PPAs in this short 18-month
17 review period, the OPC is only concerned with these two,
18 which, of course, raises the question why.

19 Well, to understand why you need to consider
20 what KCPL and GMO knew at the time they entered into
21 these PPAs. And to understand that you need to look at
22 the prices for PPAs that they had been entering into.
23 So what you see right here is a graph that shows what
24 the price was for PPAs that KCPL and GMO entered into
25 compared to the date they were entered into.

1 You can see that the first PPA that KCPL and
2 GMO entered into shows up relatively high on that graph.
3 The second, a little lower. The third, lower still.
4 Four, five and six, all lower still. If I throw a trend
5 line on here, you can quickly see that the price for
6 PPAs was rapidly declining. That means at the time that
7 Rock Creek and Osborn were entered into, and I should
8 point out that these two PPAs were the last two that
9 were entered into, KCPL knew two important things. They
10 knew, one, that the price of PPAs was going down and,
11 two, that their prior six PPAs were already losing
12 money.

13 Now, knowing those two things, what do you
14 expect KCPL and GMO paid for Rock Creek and Osborn?
15 Well, it might surprise you to learn that Rock Creek
16 shows up here and Osborn higher still. This is the
17 basis for why the OPC claims that these two were
18 imprudent because KCPL and GMO paid more for these two
19 than their prior PPAs even though they knew their prior
20 PPAs were losing money and that the price of PPAs was
21 declining.

22 And I want to point out that this imprudence
23 exists regardless of the fact that GMO has suggested
24 these PPAs were supposed to make money. It doesn't
25 matter, because they should have been able to get

1 cheaper wind. That is the imprudence.

2 And to really drive that point home, I'm going
3 to throw up another point. That last point is a new PPA
4 that was entered into by the companies. It was entered
5 into outside of this review period so it's not one of
6 the eight that we're considering. As you can see, it
7 shows up even lower and is consistent with the general
8 trend line for PPA prices that was developed. This
9 establishes quite clearly that PPA prices were
10 continuing to decline and yet KCPL GMO spent more than
11 they should for Rock Creek and Osborn. But that's not
12 the only problem. There's another problem.

13 The first six PPAs that you see up there all
14 resulted from what are called requests for proposals.
15 The company went out, solicited bids to see who was
16 going to have the cheapest winds and picked their wind
17 accordingly. Rock Creek and Osborn are the only two
18 PPAs where the company did not engage in a request for
19 proposal. They did not perform the basic due diligence
20 necessary to ensure they were getting the cheapest wind
21 available. And the result is obvious. They paid more
22 than they should have.

23 So again, we are providing two reasons for
24 imprudence in this case. First -- thank you -- KCPL and
25 GMO entered into Rock Creek and Osborn at a time when

1 they knew prices were going down yet paid more than
2 their previous PPAs. Second, they didn't undertake to
3 perform a request for proposal or otherwise perform the
4 basic due diligence necessary to ensure that they were
5 getting the cheapest winds.

6 I again emphasize this is true and this is
7 imprudent regardless of whether or not their predictions
8 showed they were going to make money. They still should
9 have and could have gotten cheaper winds.

10 Now, the OPC is recommending that you disallow
11 the total losses for these two PPAs, and you can see
12 those numbers up there right now. However, the OPC
13 recognized that this Commission might find it was
14 prudent to enter into these PPAs, just not at the prices
15 that they were entered into. To that end we have come
16 up with a determination of what losses would have been
17 incurred had they entered into PPAs on the trend line
18 that we've shown. Those are the numbers you're seeing
19 now.

20 Taking the difference between those numbers,
21 you can see what losses could have been avoided had KCPL
22 and GMO done the basic due diligence and entered into
23 PPAs consistent with the other six. The total losses
24 for those, or sorry, the total disallowance for that
25 difference is approximately seven and a half million and

1 eight million.

2 So while the OPC again recommends complete
3 disallowance of the losses, we are also at least
4 offering these numbers should the Commission find this
5 to be a better solution.

6 I'm going to wrap up on this third issue just
7 by discussing what I think are the long lasting effects
8 of imprudence in this case because it's an important
9 thing to consider. These PPAs are fixed price, right.
10 That means that the lower fuel and energy costs go the
11 larger the losses from these PPAs become.

12 The effect of this is to mean that as KCPL and
13 GMO's FAC -- sorry. As fuel costs go down, their FAC
14 continues to go up. We've kind of inverted or rather
15 lost the primary benefit of an FAC. Normally an FAC
16 works so that if the fuel prices go up the company gets
17 the difference, but if fuel prices go down the customers
18 get the difference and the customers benefit.

19 KCPL GMO have put themselves in a situation
20 where no matter what happens customers will be harmed.
21 If fuel prices rise, then their FAC will capture that
22 difference. If fuel prices fall, then the losses on
23 these PPAs are exaggerated and customers still end up
24 paying more money.

25 It also has a second important factor. It

1 means that more renewables coming out of the market will
2 end up driving the losses they pay for the FAC even
3 higher. More renewables means cheaper energy. Cheaper
4 energy means the difference between the fixed price
5 they're paying for these PPAs and what they could be
6 paying increases which drives up losses.

7 These are ridiculous outcomes, and they could
8 have been avoided or at the very least mitigated if KCMO
9 and GMO had done their due diligence. So in summation,
10 the OPC is requesting a roughly three hundred thousand,
11 three hundred and a quarter thousand disallowance for
12 KCPL's failure to generate revenues from the unused
13 RECs, for just leaving money lying on the table. We're
14 also requesting a nearly 500,000 disallowance for the
15 failure to allocate steam auxiliary fuel costs correctly
16 at the Lake Road facility. That is the amount that was
17 included in the ANEC that should be removed in order to
18 account for auxiliary fuel costs. And of course, we
19 want the company to correct this moving forward.

20 And finally, we're requesting nine and a half
21 million roughly and ten and a half million disallowances
22 for the Rock Creek and Osborn wind farm PPAs. And then
23 just the final notes, we're also requesting interest at
24 the electric utility short-term borrowing rate for all
25 of these amounts.

1 One last thing I should say. The second and
2 third issue that we have our witness is primarily Lena
3 Mantle. She was instrumental in developing the FAC
4 rules. She knows her stuff incredibly well and is an
5 excellent resource. I invite you to ask any questions
6 that you might have on these issues of her. Are there
7 any questions of me?

8 JUDGE GRAHAM: Mr. Chairman?

9 CHAIRMAN SILVEY: Thank you. On the last
10 issue here going back to slide 19.

11 MR. CLIZER: Yes.

12 CHAIRMAN SILVEY: So you give us eight total
13 PPAs, Rock Creek, Osborn and then six others that are
14 cheaper?

15 MR. CLIZER: Yes.

16 CHAIRMAN SILVEY: Were those six others
17 Missouri generation or were they generated somewhere
18 else?

19 MR. CLIZER: The six previous ones were
20 generated in Kansas. However, again, KCPL and GMO have
21 taken the position that these were all entered into,
22 every one of them, for economic reasons. If you're
23 entering these for economic reasons, then you should be
24 going with the cheapest wind available. I will also
25 point out that all of these costs, according to the

1 understanding we received from replies, included
2 transmission costs. So transmission isn't a factor
3 here.

4 CHAIRMAN SILVEY: So at the time that these
5 PPAs were entered into, was it a possible or reasonable
6 expectation that the implementation of the Clean Power
7 Plan at that time would require in-state generation?

8 MR. CLIZER: It was not reasonable for KCPL
9 GMO to think that the implementation to Clean Power Plan
10 would have required them to get these PPAs. Let me go
11 into that actually. That's a good question. There's a
12 couple of things I want to discuss there.

13 CHAIRMAN SILVEY: My question was not about
14 those PPAs. My question was about in-state generation
15 specifically.

16 MR. CLIZER: It's hard to say that was
17 reasonable. The Clean Power Plan, according to the
18 testimony of Mr. Crawford himself, was a requirement
19 that states as a whole reduce CO2 emissions. Okay. So
20 first of all, it's unclear whether or not KCPL
21 individually would have had to have done anything
22 because the state would have had to have taken into
23 consideration both KCPL, Ameren, Empire, any other
24 regulated utility, plus all the municipals, plus all the
25 co-ops, plus anybody else who was generating CO2

1 emissions within the state and find a way to reduce all
2 of those emissions.

3 Second, it's not clear what the best way to
4 reduce emissions is. If one of the utilities was long
5 in production, they could have just shut down CO2
6 emitting plants without building anything new and still
7 have met the requirements of the Clean Power Plan. In
8 fact, it's questionable whether or not the shutting down
9 of the Sibley generating facility in GMO's territory
10 could have met, probably not the entire requirements but
11 whatever requirements were hoisted on KCPL GMO
12 individually. So it's really, really difficult to say
13 that the Clean Power Plan would have required in-state
14 generation or any generation for that matter. You could
15 have easily accomplished the goals of the Clean Power
16 Plan just by shutting down existing generation. Well, I
17 say that. It's probably a better question to ask
18 Dr. Marke for specifics because I can't give you hard
19 numbers off the top of my head.

20 CHAIRMAN SILVEY: Okay. Thank you.

21 JUDGE GRAHAM: Commissioner Hall?

22 COMMISSIONER HALL: Good morning. My
23 understanding is that OPC did not do a self scheduling
24 analysis with connection to the prudence of the
25 company's energy costs during these time periods; is

1 that correct?

2 MR. CLIZER: I do not believe that we looked
3 at self scheduling with regard to this FAC prudence
4 review. We are in the midst of investigating that area
5 on a larger spectrum. We've met with individuals who
6 have done research on that area. We are conducting our
7 own research. Of course, we are participating in the, I
8 believe it's now four workshops or more. I can't
9 remember how many workshops were opened to deal with
10 this particular issue. But due to time constraints, we
11 weren't able to actually consider that issue with regard
12 to this prudence review. Of course, it's certainly
13 something we would be looking for in future prudence
14 review cases.

15 COMMISSIONER HALL: I applaud that inquiry.
16 Thank you.

17 JUDGE GRAHAM: Commissioner?

18 COMMISSIONER RUPP: Yes, thank you. First
19 off, great presentation.

20 MR. CLIZER: Thank you.

21 COMMISSIONER RUPP: I know it's very hard to
22 take a complex issue, especially in power point and walk
23 through so kudos to whoever put that together. That was
24 very easily explained and well thought out. You have a
25 talent. Those things are hard.

1 My only question I had was in your opinion why
2 did the company not do an RFP for the two wind farms?

3 MR. CLIZER: This is included in the testimony
4 of Mr. Crawford, but essentially the company had signed
5 a contract with a Missouri based wind farm called Mill
6 Creek before they entered into Rock Creek and Osborn.
7 However, the Mill Creek wind farm fell through. At the
8 time the producer of the Mill Creek, the company
9 responsible for it came -- well, not at the time -- they
10 came back to them and said hey, we have this other
11 project, it's going to cost a lot more, and the company
12 just said sure and went with it. Why they didn't
13 perform an RFP I have a hard time saying. I think that
14 they were just kind of offered something and they just
15 took it basically.

16 COMMISSIONER RUPP: Thank you.

17 JUDGE GRAHAM: Thank you very much.

18 MR. CLIZER: Thank you.

19 JUDGE GRAHAM: Now, just so the record is
20 clear, the handout that you gave us is not an exhibit.

21 MR. CLIZER: I am not offering it unless one
22 of the parties believe it needs to be in which case I
23 would offer it only as demonstrative.

24 JUDGE GRAHAM: Any comments from anyone? All
25 right. The record is going to show that it is not being

1 received into the record as evidence. As demonstrative,
2 well, it has no evidential value so I'll conclude my
3 remarks on that that way. It's ten o'clock. I guess we
4 should go ahead and perhaps proceed to the first
5 witness, KCPL's first witness.

6 Counsel, you can go ahead and be seated if you
7 wish. I've taken you off line there if you want to go
8 up and retrieve your flash drive or you can do that
9 later. I think the procedural order indicates we're
10 going to begin with the company's witness with respect
11 to Issue No. 1. Is that going to be Jeff Martin?

12 MR. HARDEN: Yes, it will be.

13 JUDGE GRAHAM: All right.

14 MR. CLIZER: Your Honor, if I may.

15 JUDGE GRAHAM: Yes.

16 MR. CLIZER: I was unsure whether or not we
17 had successfully gotten all the premarked exhibits done.
18 I didn't know if you wanted to take a short break to
19 just ensure that all of our premarked exhibits of the
20 various parties had been taken care of just so we're not
21 scrambling to mark exhibits.

22 JUDGE GRAHAM: Well, it sounds to me like if I
23 don't do something now then there may be a scramble. So
24 why don't we go ahead and take about two or three or
25 five minutes to do that. And so we'll go into a very

1 short intermission to take care of those exhibits. I
2 thought we had taken care of those. It sounds like
3 there may be a question.

4 (Off the record.)

5 JUDGE GRAHAM: We are back on the record.
6 We're going to have a mini opening from the company, I
7 believe, on Issue 1?

8 MR. HARDEN: Yes.

9 JUDGE GRAHAM: You may proceed.

10 MR. HARDEN: Thank you very much. May it
11 please the Commission. Joshua Harden on behalf of
12 Kansas City Power & Light and GMO. Staff and the Office
13 of Public Counsel have asserted that KCP&L acted
14 imprudently and/or in violation of its FAC tariff. This
15 assertion is based on KCP&L's decision to not sell the
16 environmental attributes which are reflected in the
17 renewable energy certificates of the renewable energy
18 that it generated or purchased in excess of Missouri's
19 renewable energy standard.

20 The company disagrees and believes that the
21 evidence shows that it maintained the appropriate option
22 with regards to the environmental attributes of this
23 power and appropriately balanced the customers' desires
24 for those environmental attributes and the affordability
25 of their energy. It is very important to note a

1 renewable energy certificate is measured by renewable
2 energy generated, but it represents the inherent value
3 is in the environmental attributes of that power.

4 The fact that that power was produced without
5 CO2 or other greenhouse gas emissions or pollutants,
6 that is the inherent value that is represented within
7 the REC. Those RECs can either stay, those
8 environmental attributes can either stay with the power
9 that's bundled or they can be separated from the power
10 and sold. What is an absolute fact is one cannot claim
11 that they have used clean energy if the REC associated
12 with that power is sold to another customer or another
13 entity.

14 The analogy that I heard several times that
15 what KCP&L did was the equivalent of leaving money on
16 the table indicates respectfully a total
17 misunderstanding of what the inherent value of renewable
18 energy certificate is to suggest that basically it has
19 no inherent value at all. It's like poker chips on a
20 table that you simply left there for somebody else to
21 pick up. That analogy is not accurate and there is
22 inherent value in the REC.

23 Given the cost decreases of renewable energy
24 and the technological advances now and in the future,
25 staff's recommendation and the Office of Public Counsel,

1 if adopted by this Commission, truly does represent a
2 new and major policy declaration on renewable energy by
3 this Commission.

4 The policy advocated for by staff and the
5 Office of Public Counsel would effectively turn the
6 Missouri renewable energy standard into a cap on the
7 amount of clean energy that KCP&L customers could
8 receive. KCP&L does not support this position. We do
9 not believe that the Missouri renewable energy standard
10 was passed by Missouri citizens as a means or a
11 mechanism to limit the amount of clean energy that
12 customers can receive.

13 Now, it is not KCP&L's position that there
14 could never be a situation in which selling RECs would
15 be advisable. If the price of RECs were to reach a
16 certain point and KCP&L's renewable energy generation
17 were to hit a certain level, then it may be advisable
18 for the company to sell all or some of the RECs
19 remaining after RES compliance.

20 But as company witness Jeff Martin will
21 explain, this is a business decision that requires
22 considerations of customer desires and expectations
23 regarding clean energy and the financial impact to
24 customers of selling or not selling the RECs. Further,
25 whether to keep the environmental attributes bundled

1 with the energy or not, that does affect the
2 representations that the company can make to our
3 customers regarding clean energy.

4 So the analysis of whether to bundle or
5 unbundle would need much more than a mere projection of
6 gross revenues from the sale of RECs. As Mr. Martin
7 will further explain, KCP&L customers are not one
8 dimensional. They desire, in fact, both clean energy
9 and affordable energy. This issue requires balancing of
10 these consumer desires and honestly is not well suited
11 for a regulatory mandate. In this case the potential
12 revenues of selling the RECs are not justified in light
13 of our customers' expectations and desires regarding
14 clean energy.

15 Finally, this is the first time that KCP&L has
16 been confronted with a position that it acted
17 imprudently or in violation of its tariff because of its
18 choice to keep the environmental attributes bundled with
19 the power. If the Commission were to adopt what we
20 respectfully believe to be a very flawed policy and take
21 the decision out of the hands of KCP&L's management,
22 we'd ask that it do so on a prospective basis and not
23 retroactively punish the company for giving its
24 customers the environmental attributes of the renewable
25 energy that they desire. We urge the Commission to

1 reject staff's proposed disallowance.

2 I'd also like to note that there is an
3 argument in some of the testimony arguing or suggesting
4 that selling the RECs is required under KCP&L's FAC
5 tariff. We disagree with this position. While without
6 question the FAC tariff certainly requires that the sale
7 of any RECs flow through the FAC, there's no requirement
8 in the FAC that those RECs, in fact, be sold.

9 I appreciate your time and thoughtful
10 consideration on this issue and I'm open to any
11 questions that you may have.

12 JUDGE GRAHAM: Chairman Silvey?

13 CHAIRMAN SILVEY: Thank you. On that last
14 point. So you were referring to the tariff?

15 MR. HARDEN: Right.

16 CHAIRMAN SILVEY: Are there any statutory or
17 regulatory requirements concerning the FAC that would
18 deal with the sale of unused RECs?

19 MR. HARDEN: There's no statutory or
20 regulatory requirements that they be sold.

21 CHAIRMAN SILVEY: But there is a disagreement
22 in this case over whether the tariff directed them to be
23 sold?

24 MR. HARDEN: Yes, I believe that there's a
25 legal disagreement as to the language of the tariff does

1 that tariff mandate that the company sell those and our
2 position is that it does not. Now, if we did, I do
3 think that the tariff requires a flow through to the
4 FAC. Those are two separate interpretations.

5 CHAIRMAN SILVEY: Okay. Thank you.

6 JUDGE GRAHAM: Commissioner Hall?

7 COMMISSIONER HALL: Good morning. I believe
8 you indicated a moment ago that it's your position that
9 this is a case of first impression in Missouri?

10 MR. HARDEN: I believe so or at least for
11 KCP&L. I believe that it's -- I don't know of any
12 Commission decision directly on point.

13 COMMISSIONER HALL: Are you aware of any
14 Commission decisions in other jurisdictions on this
15 issue?

16 MR. HARDEN: I'm not, I'm not. I can tell you
17 to a certain extent for whatever it's worth is that in a
18 sense this was an issue that did come up in Missouri
19 around the time the RES rules were passed. Of course,
20 there was the big fight at the time over whether or not
21 the company could comply be it nothing but the purchase
22 of RECs versus what was referred to as geographic
23 sourcing at the time. And the Commission, forgetting
24 that very litigious situation, but the Commission at the
25 time did rule in favor of geographic sourcing which was

1 sort of its way to split the baby in terms of unbundling
2 or keeping the environmental attributes bundled with the
3 power for Missouri citizens.

4 COMMISSIONER HALL: To what extent have these
5 RECs expired? Couldn't they still be sold?

6 MR. HARDEN: Well, let me -- The specific RECs
7 at issue I'm honestly not sure if they have expired. I
8 don't think that they have. I think that they're
9 sitting in an R subaccount which could be sold and
10 that's where KCP&L has kept them.

11 COMMISSIONER HALL: So couldn't you also make
12 the argument that this issue is not ripe; that if they
13 could still be sold, then there's not imprudence for
14 failure to sell them?

15 MR. HARDEN: That's a very good point, and I
16 do believe that you could. And the reason why you could
17 is because if they obviously are not retired, then KCP&L
18 would have the ability to sell them and it wouldn't
19 become an issue until they were retired and KCP&L
20 couldn't. And that's why the way the company would like
21 the Commission to view its actions here is in
22 maintaining an option on the RECs, which is really what
23 we've done because we have not retired them.

24 COMMISSIONER HALL: So they may have expired
25 under Missouri law but not expired for purposes of being

1 able to sell them?

2 MR. HARDEN: Right, right, and I really want
3 to make sure that could be technically wrong for these.
4 If they are, I'm sure somebody is going to correct me.
5 That's my understanding.

6 COMMISSIONER HALL: Does the company take
7 issue with the monetization that staff and OPC have done
8 with regards to these expired or non-retired RECs?

9 MR. HARDEN: I don't think that the company
10 takes an exception other than to note that that was a
11 snapshot in time and that that may or may not reflect
12 the price and market for RECs today.

13 COMMISSIONER HALL: And so does the company
14 take the position, and I gather it does based on your
15 opening, that if the Commission were to determine that
16 it was necessary to sell unused RECs that that is an
17 issue that should be determined when the FAC is
18 established in a rate case?

19 MR. HARDEN: I don't know that we have taken
20 that specific -- I mean, I would need to consult with
21 other folks to know if we are taking that specific
22 position that it should be basically revisited at a
23 general rate case to determine that. I just don't know
24 if we have a position on that.

25 COMMISSIONER HALL: You made the point that if

1 the Commission were to determine that it should do it
2 prospectively and the only way that we could do that
3 prospectively that would have any legal impact would be
4 in the FAC in a rate case. It wouldn't matter if this
5 Commission were to rule that the company should have
6 done it but we're not going to find it imprudent now
7 because that's not going to have any legal impact going
8 forward.

9 MR. HARDEN: I understand your point now.
10 Yes, it is. If that was the policy that this Commission
11 wanted to adopt that it should do so in a general rate
12 case.

13 COMMISSIONER HALL: Do you present any
14 evidence, and I'm sorry that I can't answer my own
15 question, any evidence with regards to how Wall Street
16 evaluates companies and their carbon risk?

17 MR. HARDEN: I don't believe that we do.

18 COMMISSIONER HALL: Do you have -- What
19 witness do you have that would be most equipped to
20 address questions related to that issue?

21 MR. HARDEN: Jeffrey Martin.

22 COMMISSIONER HALL: All right. Thank you.

23 JUDGE GRAHAM: Commissioner Rupp?

24 COMMISSIONER RUPP: Yes, thank you. Good
25 morning.

1 MR. HARDEN: Good morning.

2 COMMISSIONER RUPP: So help me see if I'm
3 framing this correctly is that the company believes that
4 there's a perceived value in keeping the RECs so that
5 they can say they are producing more renewable energy
6 above the 10 percent minimum that they have to, and you
7 believe that that perceived value was worth more than
8 the two cent credit on every person's bill by selling
9 them?

10 MR. HARDEN: That is correct.

11 COMMISSIONER RUPP: Okay. Thank you.

12 JUDGE GRAHAM: Further questions? All right.
13 Why don't we proceed to your first witness. We are at
14 10:30. Does the court reporter need any kind of a
15 break? Counsel? Well, court reporter?

16 THE COURT REPORTER: I'm okay.

17 JUDGE GRAHAM: Counsel?

18 MR. CLIZER: I'm just unfamiliar with this
19 many openings. Were all parties going to be giving a
20 mini opening or is it each mini opening prior to their
21 -- I see it's prior to their witnesses?

22 JUDGE GRAHAM: Well, to be logical here, I
23 guess if there are any other mini, this is the
24 appropriate time before we take the first witness.
25 Well, I guess the alternative would be to have your mini

1 opening before your own witness but let's not do it that
2 way. Let's take care of them now and get on with the
3 testimony all in a bundle.

4 The next opening would be from the staff on
5 this, I believe. Does staff have a mini opening on this
6 issue, Issue No. 1?

7 MR. KEEVIL: Judge, I did not plan to do a
8 separate mini opening beyond what I addressed in my
9 overall opening, but I would point out that as I
10 mentioned in my original opening that back in a 2013
11 order in a GMO case the Commission specifically stated
12 that if GMO has more RECs than it needs to satisfy the
13 requirements of law, which was the RES, it is prudent
14 practice to sell them. That's a direct quote from the
15 Commission's order in that 2012-2013 case. So this has
16 been addressed before at least in some manner and the
17 Commission found that it was prudent to sell excess RECs
18 if a company had RECs beyond those necessary to comply
19 with the RES. I just wanted to point that out. But I
20 did not, like I said, did not plan to make a separate
21 mini opening. I would take questions if the
22 Commissioners have any questions specific for staff on
23 this.

24 JUDGE GRAHAM: Chairman, do you have a
25 question specific to this issue for staff?

1 CHAIRMAN SILVEY: No.

2 JUDGE GRAHAM: Commissioner Hall?

3 COMMISSIONER HALL: Yes. How do you respond
4 to the company's argument that I think has some
5 legitimacy that staff's position on this issue and OPC's
6 position on this issue would essentially make the RES
7 cap or the RES amount to cap?

8 MR. KEEVIL: Well, if you look at Mr. Martin's
9 testimony, he's talking about -- frankly it doesn't make
10 a lot of sense to me because they're using RECs that
11 were generated in the 2013-2014 time period, they're
12 good for three years.

13 COMMISSIONER HALL: Good for three years under
14 state law?

15 MR. KEEVIL: Yes. They expired then in 2017
16 roughly. And somehow or another KCPL seems to be
17 claiming that they can use these RECs which are
18 associated with energy generated three years earlier to
19 claim that they have generated more renewable energy in
20 the year that they've expired, which frankly I just
21 don't understand because they were generated -- if
22 they're going to claim the benefit or whatever of having
23 the excess, it seems to me it should have been done the
24 year they were generated and actually represent energy
25 that was produced rather than --

1 COMMISSIONER HALL: I don't understand that
2 answer. It seems like what you're saying is that if
3 there is an unused REC it needs to be sold?

4 MR. KEEVIL: Before it expires.

5 COMMISSIONER HALL: Well, I mean, before,
6 after, during, whatever, but you're saying it needs to
7 be sold. And what I don't understand is then and
8 everything above the 10 percent needs to be sold,
9 correct?

10 MR. KEEVIL: Well, I'm sorry, could you
11 repeat?

12 COMMISSIONER HALL: Isn't it staff's position
13 that everything above the 10 percent needs to be sold?

14 MR. KEEVIL: I don't think we addressed that
15 directly, but that would probably be correct but I don't
16 see how that would -- that does not stop them from
17 actually generating above the 10 percent or creating
18 renewable energy above the 10 percent. They can still
19 create all the renewable energy they want. It's just
20 that the REC associated with that would be if they don't
21 need it for compliance, then they would need to sell it
22 before it expires.

23 COMMISSIONER HALL: So then what you're taking
24 issue with is the company's position that if it
25 unbundles and sells the REC, then it can't take credit

1 with customers or with Wall Street or with other third
2 parties that do evaluations of clean energy, it can't
3 take credit for that?

4 MR. KEEVIL: Yeah, it depends -- now they're
5 -- the way you're saying to take credit. Depends on how
6 they word it, yes. It wouldn't have a REC associated
7 with it. It's certainly still renewable energy that
8 we've talked about.

9 COMMISSIONER HALL: I understand that
10 position, and what I'll be asking witnesses about is
11 what the company's counsel said that it was a fact that
12 the company cannot take credit for that energy being
13 clean if it unbundles and sells. I'll be asking
14 witnesses about that. Thank you.

15 JUDGE GRAHAM: Office of Public Counsel?

16 MR. CLIZER: I also had not necessarily
17 prepared a short opening for this issue coming right off
18 of the general opening, and most of the things I would
19 say I think have actually already been addressed. I
20 would just point out kind of that KCPL can absolutely
21 continue developing renewable energy. They can continue
22 both through the actual development projects and to
23 purchase of power, for example, as long as it's prudent.
24 And there's good reason to suspect they might try and do
25 that.

1 For example, the Empire Electric Company just
2 was in here on a grounds for a large renewable project
3 based on economic reasons. The only thing that the
4 failure to sell the RECs or the sale of RECs would do is
5 again prevent them from claiming to their customers,
6 their captive customers, that they are including those
7 renewables and if they are very interested, if they
8 really want to be able to claim those renewables, then
9 the company should just buy the RECs itself.

10 Are there any questions?

11 JUDGE GRAHAM: Mr. Chairman? Commissioner
12 Hall?

13 COMMISSIONER HALL: Maybe just one. Do you
14 believe that the company could still sell these RECs?

15 MR. CLIZER: I'm going to actually ask you to
16 ask that question of Ms. Mantle just because I'm not
17 comfortable answering that. I'm not sure I have the
18 perfect answer myself. I don't want to get something
19 wrong.

20 COMMISSIONER HALL: Well, so then let me frame
21 it this way. Assuming that those RECs could still be
22 sold, is this issue ripe for our determination?

23 MR. CLIZER: In that case I would say yes, I
24 believe it is still ripe because my understanding is
25 that the RECs would lose considerable value after the

1 statutory expiration of their -- after the three years
2 that they are set by statute.

3 COMMISSIONER HALL: And that would be an issue
4 that Ms. Mantle could address?

5 MR. CLIZER: I believe so.

6 COMMISSIONER HALL: Thank you.

7 MR. CLIZER: Or Dr. Marke, either/or.

8 JUDGE GRAHAM: Are we ready to proceed with
9 testimony?

10 MR. HARDEN: Yes. Thank you. The company
11 calls witness Jeffrey Martin.

12 JUDGE GRAHAM: Mr. Martin, would you state
13 your full name and then I'll administer the oath.

14 THE WITNESS: Yes. Jeff Martin, J-e-f-f
15 M-a-r-t-i-n.

16 (Witness sworn.)

17 JUDGE GRAHAM: He's your witness, sir.

18 MR. HARDEN: Thank you, sir.

19 JEFF MARTIN, being sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. HARDEN:

21 Q. Mr. Martin, will you state your full name for
22 the record, please?

23 A. Yes. Jeff Martin, J-e-f-f M-a-r-t-i-n.

24 Q. Thank you. And for whom are you employed?

25 A. I am employed by Westar Energy. I'm speaking

1 on behalf of Kansas City Power & Light which is part of
2 the Evergy companies.

3 Q. What is the position that you hold with them?

4 A. I'm the Vice President of Customer and
5 Community Operations.

6 Q. Thank you. And are you the same Mr. Martin
7 that had prepared and filed both direct testimony in
8 this case as well as surrebuttal testimony?

9 A. I am.

10 Q. And as you sit here today, are there any
11 changes in your testimony or is it as true and accurate
12 as when it was produced?

13 A. No changes.

14 MR. HARDEN: With that, Your Honor, I'd like
15 to offer what I believe has been marked as Exhibit 1 and
16 Exhibit 2 into evidence.

17 JUDGE GRAHAM: Okay. Exhibit 1 will be --
18 what shall we name that?

19 MR. HARDEN: That is the direct testimony.

20 JUDGE GRAHAM: And the other is the
21 surrebuttal?

22 MR. HARDEN: Surrebuttal.

23 JUDGE GRAHAM: Are there any objections?
24 Hearing none, the Exhibits 1 and 2 are received into
25 evidence.

1 (COMPANY EXHIBITS 1 AND 2 WERE RECEIVED INTO
2 EVIDENCE AND MADE A PART OF THIS RECORD.)

3 JUDGE GRAHAM: You may proceed.

4 MR. HARDEN: Thank you. With that, I will
5 tender the witness for cross-examination.

6 JUDGE GRAHAM: My schedule shows that the
7 first counsel to cross this witness will be the Office
8 of Public Counsel. You may proceed.

9 MR. CLIZER: Thank you, Your Honor. The
10 Office of Public Counsel has no cross-examination for
11 this witness.

12 JUDGE GRAHAM: No cross from OPC. Does staff
13 have any cross-examination for this witness?

14 MR. KEEVIL: No questions at this time, Your
15 Honor.

16 JUDGE GRAHAM: Chairman Silvey, do you have
17 any questions for this witness for Mr. Martin?

18 CHAIRMAN SILVEY: I do. Thank you.

19 QUESTIONS BY CHAIRMAN SILVEY:

20 Q. Thank you, Mr. Martin. On your direct
21 testimony page 8, line 22 through page 9, lines 1 and 2
22 you say staff's disallowance also fails to consider the
23 cost of internal administrative work, accounting, tax,
24 et cetera, that would be required to manage REC sales
25 which would further reduce the net benefits to

1 customers. Would these duties be carried out by
2 existing KCP&L employees?

3 A. That's a possibility they could.

4 Q. If not them, who?

5 A. We would have to do an evaluation to
6 understand the time it's going to take for this effort,
7 understand the staffing that we have today and then look
8 at is it going to require additional staff or possibly a
9 third party to come in and help us administer this.

10 Q. Okay. So then would payroll costs and other
11 associated costs with REC sales be included in a rate
12 case revenue requirement?

13 A. It would be in the future, yes.

14 Q. Okay. On direct testimony page 9, lines 10
15 and 12 -- 10 through 12, please explain what you mean
16 when you say had we sold these RECs, then the amount of
17 renewable power delivered to our customers would have
18 been less because we cannot double count sold RECs as
19 delivered energy to our customers.

20 A. That's correct. It's important to understand
21 that the REC is the -- it's the tracking of the power
22 that was generated by a renewable source. So what
23 happens is if you sell that REC, that part of it, the
24 environmental attribute of that power that was generated
25 is no longer there and so we can't claim to our

1 customers that that was renewable power delivered to
2 them. That environmental attribute is the key part of
3 the REC.

4 CHAIRMAN SILVEY: Okay. No further questions
5 at this time.

6 JUDGE GRAHAM: Commissioner Hall?

7 COMMISSIONER HALL: Good morning.

8 THE WITNESS: Good morning.

9 QUESTIONS BY COMMISSIONER HALL:

10 Q. On page 5, you note that -- On page 5 of your
11 direct testimony, you note that the City of Kansas City
12 announced that it cut greenhouse gas emissions by 40
13 percent below year 2000 levels. My question is to what
14 extent is that related to whether or not KCP&L sells its
15 RECs?

16 A. I think others have taken issue with the
17 statements that I made here. I would say that further
18 analysis would have to be done to understand the impact
19 of that. I think it's undeniable that by selling them
20 renewable power through prices that they pay contributed
21 to this. But I think a further analysis would have to
22 be done to understand if we did sell these RECs what
23 impact that would have towards their renewable goals.

24 Q. Again, you're assuming some kind of
25 mathematical or engineering certainty with regard to the

1 sale of RECs and claims of reduction in greenhouse gas
2 emissions. That's what I'm trying to understand more
3 are those connections that you are assuming.

4 A. Yeah. You know, when we look at, and we have
5 conversations with the City of Kansas City, Missouri all
6 the time, they're one of our largest customers. So when
7 we have those conversations, we explain the amount of
8 power that we're producing from renewable sources and
9 how much they're consuming of that. So we believe that
10 that was in their equation. However, I can't confirm
11 that.

12 Q. You indicate that KCPL has not sold RECs
13 before; is that correct?

14 A. That is correct. If I may, I believe and I'm
15 not aware of any time that the Commission has required
16 us to sell RECs. This was a new issue that was brought
17 to our attention during this FAC proceeding. So in the
18 past, no, we have not sold them and to our knowledge it
19 was never required of us to sell those. It was always
20 optional.

21 Q. If the company were to sell RECs, would you be
22 involved in that process?

23 A. Me personally, no. That would be handled by
24 other departments.

25 Q. Would you be involved in the decision-making

1 process to sell RECs?

2 A. I would be in that process, yes.

3 Q. Has that issue ever been debated internally?

4 A. Not to my knowledge.

5 Q. Okay. Are you aware of any Wall Street
6 process by which it evaluates utilities, electric
7 utilities based on their carbon risk?

8 A. Yes, sir.

9 Q. Could you explain that process to me?

10 A. Yes. I'm certainly not the expert but I do
11 have general knowledge of it. It's a program called
12 ESG. It's -- and I know it's Environmental Social
13 Governance I believe is the ESG. I can verify that
14 later if required. But basically it looks at the carbon
15 footprint of the company. We were involved with Edison
16 Electric Institute of putting together a format, a
17 template, to be able to take the information that we
18 have, put it in the format and then present that and
19 actually report it to Wall Street to our investors
20 through that ESG process.

21 Q. And that involves the amount of renewable
22 energy generated by a utility?

23 A. Yes, sir, it does.

24 Q. And it's your understanding at least that
25 whenever there are RECs sold, that would come off the

1 top of those percentages or those energy outputs?

2 A. I am not familiar with how the RECs are
3 evaluated as part of that process. Mr. Burton Crawford
4 may have more information on that on the technical
5 aspects of it. I just know the overall kind of general
6 pieces of it and it is dealing with carbon reduction. I
7 would assume that those RECs are part of that, but I
8 cannot confirm that.

9 Q. Has KCP&L or GMO ever sold RECs to a customer?

10 A. Not that I am aware of. Just to be clear, I
11 came from the Westar Energy side. I've only been with
12 the company for a little over a year. So some of that
13 -- Based on my testimony, I am not aware of any time
14 that we have sold to an individual customer those RECs.

15 Q. Does, and I should know this, but does KCP&L
16 or GMO have a green tariff?

17 A. They do now.

18 Q. They do now. That was put in place when?

19 A. Part of it was just recently -- there was some
20 direct renewable aspects of it that were put together in
21 the case, the general rate review case that was just
22 before this Commission. I believe that was around
23 December or January of 2018 or 2019, so just very new,
24 beyond when these renewable pieces were actually
25 generated.

1 Q. So going forward, if there was a customer that
2 wanted to claim to the public or to its customers
3 specifically that it was using a certain amount of
4 renewable energy, it could do that through the green
5 tariff program?

6 A. That's correct. I think it's also -- You
7 know, when we look at our customers, they're very
8 diverse. Not just by a residential, commercial,
9 industrial class but how they value the energy that's
10 delivered to them. Affordable, clean, reliable are all
11 aspects of that. So you know, if we can say that 25
12 percent of our power that we deliver to you right now as
13 a customer is renewable, that in itself may take care of
14 your corporate goal that you have for your company.
15 There will be other options for those that want more
16 than that and those reflect to the green tariffs that
17 you are speaking of.

18 I think it was -- I appreciate the Commission
19 being able to approve those products because I think,
20 hopefully you understand too that we do have diverse
21 customers and they all want something a little bit
22 differently. By providing those different products, we
23 can satisfy the needs of the individual customers that
24 we serve.

25 Q. And you can satisfy them much more directly

1 and -- much more directly through a green tariff than
2 you could through simply not retiring RECs going
3 forward?

4 A. That is certainly correct for some customers.

5 COMMISSIONER HALL: All right. I have no
6 further questions. Thank you.

7 JUDGE GRAHAM: Commissioner Rupp?

8 COMMISSIONER RUPP: Yes, thank you.

9 QUESTIONS BY COMMISSIONER RUPP:

10 Q. So in your opinion does the ability to, you
11 say you're generating 25 percent renewable energy, allow
12 you to attract more capital to your company?

13 A. I believe so. When we look at the customers
14 that are looking to invest in our territory or either by
15 increasing what they already have or by relocating or
16 locating to Missouri or Kansas under the Energy
17 territories, that is certainly an aspect that they look
18 at. They look at the cost of the power, they look at
19 the renewable aspects of the power, they look at the
20 reliability of the power. So there's a lot of different
21 things that they're looking at. I believe that there's
22 some economic development benefits into producing and
23 delivering and keeping that renewable environmental
24 aspect of power.

25 Q. And you believe that value is greater than --

1 You believe that that provides a value to your customers
2 greater than the two cent bill credit by selling the
3 RECs?

4 A. I do. And I think that if we were required to
5 sell above the RES standard that I think some are
6 speaking to, other parties are talking to, I think that
7 our customers would look at that as a product that was
8 less valuable since it didn't have that renewable
9 component. So I believe that where it doesn't sound
10 like it's a material amount that we're talking about
11 here in some aspects, I think that they would look at it
12 as an inferior product if we were required to sell the
13 RECs.

14 COMMISSIONER RUPP: Thank you.

15 JUDGE GRAHAM: Chairman, I believe you've got
16 some questions.

17 CHAIRMAN SILVEY: Thank you, Judge. Just a
18 quick follow up.

19 QUESTIONS BY CHAIRMAN SILVEY:

20 Q. The question I asked your counsel at the
21 opening regarding the disagreement over the
22 interpretation of the tariff, the company's position is
23 the tariff does not require you to sell those RECs?

24 A. That's correct.

25 Q. I don't know if we have the tariff here, but

1 can you articulate for me what in the tariff leads you
2 to that position?

3 A. Yes. And if I may can I look at my
4 surrebuttal?

5 Q. Please.

6 A. It's actually in here.

7 Q. Sure.

8 A. On my surrebuttal, page 3, line 7 through 9,
9 if I can just read, while KCP&L's rider FAC certainly
10 contemplates and allows for revenues from the sale of
11 RECs being included into the FAC calculation, it does
12 not mandate or require the sale of all RECs. That's my
13 position. That's our read of the rider. So we believe
14 that certainly while it was contemplated it is not a
15 requirement that we sell those RECs. We have to do the
16 balance of understanding our customers' desires, the
17 affordability of it, the cleanness of it and then
18 determine if we need to sell those RECs or not but not
19 mandatory.

20 Q. Okay. And then as a brief follow up to
21 Commissioner Rupp's question, your position is that
22 having those RECs makes the company more attractive to
23 capital?

24 A. Yes.

25 Q. Was the company having trouble attracting

1 capital?

2 A. I think if you look at the economic
3 development world right now, and actually I have
4 responsibilities for that in Evergy, we certainly
5 believe and if you look at some of the Corporate
6 Renewable Buyers' Principles Guide, there are several
7 companies that understand this. They're very
8 knowledgeable of this world, of the REC world of
9 understanding it, and they have all corporate goals that
10 we believe that having that amount of renewable power is
11 attractive to those companies. We've seen some recent
12 examples of that where we have individuals that are
13 looking at this territory, and unfortunately I cannot
14 get into details because I'm under NDA and it's not been
15 announced yet but we do have a lot of customers that are
16 looking at it and they understand and value the
17 renewable component that we bring and we deliver to our
18 customers.

19 CHAIRMAN SILVEY: Okay. Thank you. Thank
20 you, Judge.

21 JUDGE GRAHAM: Commissioner Hall, do you have
22 any further questions?

23 COMMISSIONER HALL: No, thank you.

24 JUDGE GRAHAM: All right. We'll go to
25 recross. Does OPC have any recross?

1 MR. CLIZER: No, Your Honor. Thank you.

2 JUDGE GRAHAM: Does staff have any recross?

3 MR. KEEVIL: Very briefly, Judge.

4 RECROSS-EXAMINATION BY MR. KEEVIL:

5 Q. Mr. Martin, one of the commissioners, possibly
6 Chairman Silvey, was asking you about your testimony,
7 direct testimony on page 9 where you're talking about
8 the representations KCPL could or could not have made if
9 it sold the RECs as to how much of its generation was
10 from renewable sources. First of all, I guess my first
11 question is who or what organization or authority
12 indicated or has indicated to you that you cannot say
13 that if there is no REC then you can't say that power is
14 from renewable sources?

15 A. That's actually covered in that Renewable
16 Corporate Buyers' Principles Guide which is an exhibit
17 in my testimony. It goes into what's called double
18 counting and that's an aspect that they are looking to
19 not have as part of their portfolio or looking at a
20 utility to come and locate on their property. It's my
21 testimony that when you generate that power and you get
22 that renewable energy credit as part of that bundling of
23 that environmental attribute, if we were to sell these,
24 then I could no longer claim that that was a generated
25 power from a renewable source.

1 Q. That's based on the Corporate Buyers'
2 Principles document?

3 A. That's correct. That is one of the tenets of
4 what they're looking for in delivered power.

5 Q. Just to be clear, the Corporate Buyers'
6 Principles were developed by a group of large utility
7 customers basically; is that correct?

8 A. That's correct. Several are located in Kansas
9 and/or Missouri.

10 Q. Now, there haven't always been RECs. We had
11 wind power before we had RECs, correct?

12 A. I think that's true. We had some pilot wind
13 projects that we did and it was not -- the renewable
14 energy credits were not a part of that until it was put
15 into the state statutes to be able to determine that and
16 have that track.

17 Q. So if there was no REC associated with that
18 wind power, does that mean that wind power was not
19 renewable energy?

20 A. That's correct. Under what the corporations
21 believe, you have to have that renewable energy credit
22 to claim that it was delivered by a renewable source.
23 It is the method in which they track and audit.

24 Q. You mean generated by renewable?

25 A. Yes.

1 Q. But doesn't it sound a little funny to you to
2 say that because there is no REC this wind power is not
3 renewable energy?

4 A. That's certainly the world we live in. If you
5 look at something like a FERC Form 1 where it shows how
6 much generation was delivered under different sources,
7 you could say -- right here you said this much was
8 delivered by a renewable aspect, but what the RECs do is
9 they deliver a mechanism in which you can track and
10 audit how much was delivered by a renewable source and
11 that is that bundling portion that we're talking about.
12 If a company were to go back and say three years ago you
13 told me 25 percent was delivered per your RECs, the
14 amount of RECs that you have and now you sold those,
15 prove to me that that was generated with a renewable
16 source. At that point I can't. That is the track and
17 audit perspective of a renewable energy credit.

18 Q. You could prove that the REC itself had been
19 sold, could you not?

20 A. We certainly can do that, yes.

21 Q. When you were talking about FERC Form 1s and
22 the different power generation that it asks for, does it
23 consider renewable energy resources as defined by the
24 Corporate Energy Buyers' Principles?

25 A. No. I think when you look at the different

1 states and how they determine a renewable source, FERC
2 Form 1 is separate from that.

3 MR. KEEVIL: Nothing further, Judge. Thank
4 you.

5 JUDGE GRAHAM: Thank you. Any redirect from
6 the company at this point?

7 MR. HARDEN: Not at this time. No, thank you.

8 JUDGE GRAHAM: I believe that concludes the
9 company's witnesses on Issue 1?

10 MR. HARDEN: That's correct.

11 JUDGE GRAHAM: It's eleven o'clock. So why
12 don't we go ahead and proceed to the staff's witness on
13 Exhibit 1. Can we do that?

14 MR. KEEVIL: Staff would call Ms. Kory
15 Boustead.

16 MR. STEINER: Your Honor, Mr. Martin is
17 finished with his testimony, would ask that he could be
18 excused if he needs to leave before the hearing is over.

19 JUDGE GRAHAM: Is everyone in accord with
20 that? He's excused.

21 (Witness excused.)

22 JUDGE GRAHAM: Ms. Boustead, if you'd state
23 your full name, I'll then administer the oath.

24 THE WITNESS: Kory J. Boustead.

25 (Witness sworn.)

1 JUDGE GRAHAM: Be seated. Counsel, she's your
2 witness.

3 MR. KEEVIL: Thank you, Your Honor.

4 KORY BOUSTEAD, being sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. KEEVIL:

6 Q. Okay. The Judge already had you state your
7 name. Ms. Boustead, by whom are you employed and in
8 what capacity?

9 A. I'm employed by the Missouri Public Service
10 Commission as a Rate and Tariff Examiner II.

11 Q. Did you cause to be prepared for this case
12 what has been previously marked as Exhibit 200-C and
13 200-P which is the Rebuttal Testimony of Kory J.
14 Boustead?

15 A. Yes.

16 Q. Do you have any additions or corrections you
17 need to make to your rebuttal testimony, Exhibit 200?

18 A. Yes, I have a minor correction on there.

19 Q. All right. Go ahead and make that, please.

20 A. It's to Schedule KJB-R-2, I believe page 104.
21 The date for when I received my bachelor's degree is
22 incorrect. It should be December of 1998, not 2008.

23 Q. All right. Any other correction?

24 A. No.

25 Q. Did you also cause to be prepared

1 Cross-Rebuttal Testimony which has been premarked as
2 Exhibit 201?

3 A. Yes.

4 Q. Do you have any corrections or additions you
5 need to make to that exhibit?

6 A. No.

7 Q. If I were to ask you the questions contained
8 in Exhibits 200 and 201, would your answers be the same
9 today as contained therein?

10 A. Yes.

11 Q. Are those answers true and correct to the best
12 of your information, knowledge and belief?

13 A. Yes.

14 MR. KEEVIL: Judge, I would offer Exhibits
15 200-C, 200-P and 201.

16 JUDGE GRAHAM: So there's no 201-C and 201-P;
17 that's just 201?

18 MR. KEEVIL: Yes, it's just the public
19 version, Judge.

20 JUDGE GRAHAM: All right. Are there any
21 objections? Hearing none, those exhibits are deemed
22 admitted to the record.

23 (STAFF'S EXHIBITS 200-C, 200-P AND 201 WERE
24 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

25 MR. KEEVIL: Thank you, Judge. I would tender

1 the witness for cross.

2 JUDGE GRAHAM: I believe that OPC has the
3 honor of starting cross with this witness.

4 MR. CLIZER: Thank you. The OPC has no cross.

5 JUDGE GRAHAM: Does the company have any
6 cross?

7 MR. HARDEN: Yes, thank you. Good morning,
8 Ms. Boustead. How are you?

9 THE WITNESS: I'm good. Good morning.

10 MR. HARDEN: Did I get the name right? I'm
11 horrible on pronunciation. Boustead?

12 THE WITNESS: It's Boustead. That's okay.

13 CROSS-EXAMINATION BY MR. HARDEN:

14 Q. Do you agree that the RECs represent the
15 environmental attributes of renewable energy?

16 A. Yes.

17 Q. Would you agree that the environmental
18 attributes mean the environmental benefits of energy
19 generated without CO2 or other greenhouse gases,
20 pollutants?

21 A. I don't know.

22 Q. Would you agree that the environmental
23 attributes of renewable energy do have some value to
24 some KCP&L customers?

25 A. Yes.

1 Q. Would you agree that KCP&L customers could not
2 claim the environmental attributes of their power if the
3 RECs associated with that power were sold to another
4 party?

5 A. I don't know based on how you've worded it.

6 Q. You want me to --

7 A. If you could clarify.

8 Q. Sure. Let me try again. So could a KCP&L
9 customer claim that they have received the environmental
10 attributes of power that they purchase from KCP&L if the
11 RECs associated with that renewable energy were sold to
12 another party?

13 A. As I understand, I don't believe that -- that
14 actually is something they can do either way without
15 being involved in a program.

16 Q. Okay. Along the same lines, if KCP&L sold all
17 of its RECs and then simultaneously told the customers
18 that they were receiving renewable energy, the
19 environmental attributes of renewable energy, would you
20 consider that double accounting?

21 A. I don't know.

22 Q. The Missouri RES provides for a mandate for
23 the amount of renewable energy that investor-owned
24 utilities must generate or purchase to serve their load;
25 is that correct?

1 A. Yes.

2 Q. Under the Missouri RES, the RECs associated
3 with renewable energy generated for RES compliance,
4 those are retired; is that right?

5 A. Yes. They're retired when they're used to
6 meet the RES compliance.

7 Q. Okay. So would you agree that KCP&L customers
8 will receive the environmental attributes of the
9 renewable energy generated for RES compliance?

10 A. Some of them, yes.

11 Q. Do you have a position or do you agree with
12 the company that staff's position functionally turns the
13 Missouri RES into a cap on the environmental attributes
14 that customers can receive?

15 A. No.

16 Q. Okay. Just to kind of go back to the basics
17 here. So staff's position is that any RECs that are
18 generated in excess of RES compliance should be sold; is
19 that correct?

20 A. Yes.

21 Q. Is it also staff's position that to not sell
22 the RECs in excess of RES compliance that that's
23 imprudent, right?

24 A. To not attempt, yes.

25 Q. Okay. And that it's also a violation of the

1 FAC tariff?

2 A. Yes.

3 Q. So somewhat by implication is it staff's
4 position that whether to sell the RECs or to not sell
5 the RECs that that should not be a management decision
6 by the company?

7 A. No.

8 Q. It should not be a management decision by the
9 company?

10 A. That's not staff's position.

11 Q. So staff's position is that it could be a
12 management decision?

13 A. Staff's position is that the company made the
14 decision to not make any attempt to sell the RECs
15 whether it be by management or anyone else.

16 Q. I apologize. I don't know if you have it with
17 you. If not, I think I've got a copy of the -- it's the
18 staff's, the staff report, the Eighth Prudence Report?

19 A. Yes, I have it. I have my portion of it.

20 Q. Okay. And I think that this is on your
21 portion. On page 24 of staff's report, that Eighth FAC
22 Prudence Report, starting on line 23 and then going
23 through 25, you go into some detail regarding GMO's
24 holding of RECs generated by the St. Joe landfill gas
25 facility and the RECs bundled with purchase power

1 through two PPAs; is that correct?

2 A. That's not my testimony.

3 MR. KEEVIL: What page were you looking at,
4 Mr. Harden?

5 THE WITNESS: That goes into --

6 MR. HARDEN: Page 24.

7 THE WITNESS: I believe that's Lisa
8 Wildhaber's testimony.

9 MR. KEEVIL: Are you referring to the GMO
10 report?

11 MR. HARDEN: Yes, the GMO report.

12 MR. KEEVIL: Okay. That's a different report
13 than the KCPL report.

14 MR. HARDEN: Well, right.

15 THE WITNESS: But I don't believe -- That's
16 not my testimony in that either.

17 BY MR. HARDEN:

18 Q. Well, in that analysis that I'm referring to,
19 are you aware that staff cites some concerns expressed
20 by Mr. Gene Eubanks in the last GMO rate case regarding
21 GMO's retention, or we'll call it bundling, of RECs
22 beyond RES compliance for GMO?

23 A. I am not. I didn't look into that past what
24 my scope of the prudence review was.

25 Q. Okay. Well, in that case the staff provides

1 they found no evidence of imprudence by GMO for keeping
2 the RECs bundled. And I was wondering if you could
3 explain the different treatment between KCP&L and this
4 here versus staff's position in the GMO case?

5 A. As I was only involved in this portion of the
6 prudence review, we did not say that they were imprudent
7 because they didn't sell them specifically. Basically
8 just because they made no attempt. They didn't go price
9 them or make any attempt at all and they've actually
10 numerous instances state that, you know, they were not
11 going to sell them --

12 Q. In this case?

13 A. -- is why we have stated they're imprudent.
14 Without looking, I've not looked at the other one, but
15 my understanding is at one point in time GMO did sell
16 RECs, and so without being involved in that case my
17 understanding would be that because they had made an
18 attempt to sell them that might be why the position is
19 different.

20 Q. Okay. I just want to make sure that I clarify
21 that and I understand. So your position, staff's
22 position in this case is not necessarily based upon
23 KCP&L's failure to actually get the RECs sold but is
24 that from staff's perspective there was little to no
25 attempt; is that staff's position?

1 A. Yes, that's what's in my testimony, yes.

2 Q. Would you agree with me generally that staff's
3 recommendation in this case would constitute a very
4 significant and important policy decision by the
5 Commission?

6 A. No.

7 Q. Would you agree with me that this is the first
8 time that KCP&L has been confronted with the position
9 that it should sell all of the RECs in excess of RES
10 compliance?

11 A. I'm sorry. Could you clarify that?

12 Q. Sure. Whether or not you agree that this is
13 the first time that KCP&L has been confronted with the
14 position, with staff's position, that it should sell all
15 of the RECs that it holds in excess of Missouri's RES
16 compliance?

17 A. No. Well, it's the first time they've expired
18 since it's gone through the FAC. It's the first time it
19 had an opportunity to be presented.

20 Q. Okay. So it is the first time?

21 A. Yes.

22 Q. By virtue of the reality of how the FAC
23 functions?

24 A. As far as the first time, yes, to mention it.

25 MR. HARDEN: Thank you. I have no further

1 questions.

2 JUDGE GRAHAM: Thank you. Chairman Silvey?

3 CHAIRMAN SILVEY: Thank you.

4 QUESTIONS BY CHAIRMAN SILVEY:

5 Q. Did staff recommend disallowing the unsold REC
6 credits in its Eighth Prudence Review Report?

7 A. For GMO?

8 Q. Yes.

9 A. No.

10 Q. What does GMO's tariff say about how unused
11 RECs are to be treated?

12 A. GMO didn't have any that had expired. Their
13 tariff is worded the same as KCPL's I believe without
14 having it in front of me. So they -- I'm sorry.

15 Q. Okay. Let me -- We have a disagreement here
16 over whether the RECs are required to be sold or not?

17 A. Can I clarify something?

18 Q. Please.

19 A. In my report, as far as my testimony goes, I
20 didn't put staff recommended they be required to sell
21 them. We just recommended the disallowance because they
22 made no attempt to sell them. I'm not sure where that
23 is in there.

24 Q. Staff's position is that the tariff does not
25 require them to be sold but the tariff requires some

1 attempt to sell them?

2 A. Staff's position is due to the wording that's
3 in the tariff regarding the revenues if they're sold for
4 the renewable energy credits that it's in the tariff it
5 was already implied that they should be sold because the
6 wording is there what to do with it if they have
7 revenues, not whether or not if they sell them.

8 Q. So because there is contemplation of what
9 happens in the event they're sold, staff is making the
10 leap that that is a de facto requirement that they be
11 sold?

12 A. Staff or I have not in any of my testimony
13 specifically stated that it should be mandated or
14 required. It was simply we are recommending a
15 disallowance because they made no attempt as far as
16 pricing if they maybe were looking into selling them or
17 having them priced in the market is where that's coming
18 from. If they have an opportunity to sell them, they
19 could do that but they didn't.

20 Q. So what would an attempt be? Like what would
21 meet the requirements of making an attempt?

22 A. As far as requirements, I don't believe
23 there's any requirements specifically laid out but other
24 companies have --

25 Q. But you're testifying that staff is saying

1 they should have made an attempt.

2 A. Right.

3 Q. So what steps would fulfill that -- What steps
4 would make it an attempt?

5 A. Having a broker price the RECs in the market.
6 Other Missouri companies have done that or also sold
7 RECs.

8 Q. Okay. But the tariff sheet does not require
9 the sale of unused RECs?

10 A. There's no language that requires that.

11 Q. Your position is there's no language that
12 requires that?

13 A. No.

14 CHAIRMAN SILVEY: Okay. Thank you. Oh, I'm
15 sorry. One further.

16 BY CHAIRMAN SILVEY:

17 Q. How long do the RECs last?

18 A. Three years for Missouri RES compliance.

19 Q. How long for federal law?

20 A. I'm sorry. I'm not familiar with that. I was
21 just doing the prudence review for Missouri.

22 CHAIRMAN SILVEY: Okay. Thank you.

23 JUDGE GRAHAM: Commissioner Hall?

24 COMMISSIONER HALL: Good morning.

25 THE WITNESS: Good morning.

1 QUESTIONS BY COMMISSIONER HALL:

2 Q. So it's staff's position that the tariff does
3 not require sale of the RECs but it requires an attempt
4 to sell the RECs?

5 A. It doesn't have any wording as far as
6 requiring, but it's staff's position that due to other
7 Missouri companies selling them and then also pricing
8 them and then choosing to not sell them that they have
9 the opportunity and they should be able to do that or
10 should at least make the attempt or show that they've
11 made an attempt.

12 Q. Is it staff's position that the tariff
13 mandates that effort?

14 A. The staff has not stated mandate or required,
15 just that they were in violation of the tariff based on
16 the revenues flowing back through if they were to sell
17 them. So the tariff does not specifically have mandate
18 or require in it.

19 Q. So where does the requirement come from if
20 it's not from the tariff?

21 A. Staff -- well, my testimony has not
22 specifically stated that they were -- that we asked them
23 to be required to do that.

24 Q. No, but your testimony is that an attempt was
25 required?

1 A. That they made no attempt.

2 Q. And they should have made an attempt?

3 A. Right.

4 Q. What I'm trying to figure out is where does
5 that required attempt come from? Is it from the tariff?

6 A. It's not in the tariff. We're basing it off
7 that other companies have been able to sell them and
8 then also price them.

9 Q. Okay. If the company had made an attempt,
10 whatever that entails, to sell these RECs, do you have
11 any reason to believe that they would not have been
12 successful or do you believe there's some question as to
13 whether or not they would have been able to sell them?

14 A. I believe they would be successful if they --
15 based on what other companies have done in Missouri.

16 Q. So it's staff's position that had they made
17 the attempt they would have been able to consummate a
18 sale?

19 A. During that review period, there was the
20 information of the pricing for it. I'm not familiar if
21 there was an actual buyer during that time because they
22 did not make the attempt. I don't have that data.

23 Q. So you don't really know the extent to which
24 customers were harmed by the company's failure to
25 attempt to sell the RECs?

1 A. We have pricing from another company.

2 Q. But don't you see that you have to make the
3 assumption that the sale could have been consummated or
4 would have been consummated or otherwise there's not --
5 you can't determine what the harm is to customers?

6 A. I can do that for other companies, just not
7 with KCP&L because they made no attempt.

8 Q. You can't do it with the facts of the case
9 before us?

10 A. I'm sorry? No, because the company made no
11 attempts. I don't have data by KCP&L to show that.

12 Q. So you're speculating as to the harm to
13 customers from the company's failure to attempt to sell
14 the RECs?

15 A. Based off of other companies that have sold
16 RECs during that.

17 Q. The answer to my question is yes?

18 A. Yes.

19 Q. So these RECs have expired under Missouri law;
20 is that correct?

21 A. For Missouri RES compliance, yes.

22 Q. Is there anything that prevents the company
23 from selling them today?

24 A. They can still sell them as long as they're
25 not retired.

1 Q. So arguably tomorrow the company could sell
2 these RECs and 95 percent of the proceeds from those
3 sales would flow back to customers, correct?

4 A. Staff believes it would be 100 percent that
5 would flow back to customers but there would be revenues
6 that would flow back to customers. That's in our
7 testimony.

8 Q. Okay. So then why is this issue ripe for
9 resolution today if the company could still sell the
10 RECs?

11 A. Well, because we're taking a look during -- if
12 they were prudent at that time. That's what this is
13 for. I'm not looking at today. So basically we're
14 looking at did the decision the company made, the
15 conscious decision that they made to not make any
16 attempt at all, not do anything with them except move
17 them into the expired subaccount for the tracking
18 system, was that a prudent decision. We decided that it
19 was not.

20 Q. And that makes sense from a factual
21 perspective. And I guess the lawyers can make arguments
22 later about whether or not the fact that the RECs could
23 be sold later outside of the period under review here
24 whether that has any impact on whether the issue is ripe
25 or not. There was an assertion made I believe by

1 counsel for OPC that if the RECs were to be sold today
2 their value would be less than had they been sold during
3 the period at issue. Can you comment on that?

4 A. Honestly I don't have a very good -- just
5 other than looking at it from the prudence review, I'm
6 not familiar with the market.

7 Q. You don't know if the price is less today than
8 it was during the time period at issue in this case?

9 A. Not at this time. We've not priced that.

10 Q. What is the Corporate Renewable Energy Buyers'
11 Principles?

12 A. I'm only familiar with it just from what's
13 been in testimony, because I don't work on the RES
14 compliance at all. I'm just doing the prudence review
15 portion of it. Based on what Jeff Martin has put in,
16 it's a group of large companies for the utilities.

17 Q. In your rebuttal testimony you take the
18 position that the only way to prevent double counting of
19 those RECs would be for the company to retire unused
20 RECs?

21 A. Yes.

22 Q. Can you explain that to me?

23 A. I believe it's retired or actually because for
24 the Missouri RES compliance they can't be sold once
25 they're retired. So you would not be double counting

1 because you didn't -- you couldn't sell them so they
2 couldn't be claimed by two parties.

3 Q. The two parties being?

4 A. Well, the company that generated them and then
5 whoever you sold them to if that was the case.

6 COMMISSIONER HALL: I have no further
7 questions. Thank you.

8 JUDGE GRAHAM: Thank you. I have got just one
9 or two.

10 QUESTIONS BY JUDGE GRAHAM:

11 Q. It's your understanding the company gave no
12 consideration to selling the RECs?

13 A. Yes. The company showed no information as to
14 that.

15 Q. Does prudence require that at least
16 consideration be given?

17 A. Required? I don't know if it requires. At
18 least that they've made the conscious decision to not do
19 anything with them. Based on how we do for the standard
20 of prudence, a reasonable individual may not have made
21 that decision at that time.

22 Q. Does part of your prudence review consider
23 whether customers have been harmed by the decision?

24 A. Yes.

25 Q. If the RECs can still be sold, can you say

1 with any kind of reasonable certainty that the customers
2 have been harmed?

3 A. I can say they've been harmed during the
4 period that we reviewed for the prudence review.

5 Q. Which means that the customer must sell them
6 within that period of time to avoid imprudence?

7 A. As far as, yes, for this aspect.

8 Q. Which, of course, could produce an absolutely
9 artificial result with respect to whether the sale was a
10 prudent sale or not. It's artificial in the sense that
11 it's constrained by a time period and not constrained by
12 any kind of economic factors. Am I correct?

13 A. I'm just looking at it from the time frame, in
14 essence, of the prudence review.

15 JUDGE GRAHAM: On the basis of my questions,
16 does any Commissioner, Commissioner Silvey, do you have
17 any further questions or any other questions regardless
18 of mine?

19 CHAIRMAN SILVEY: No.

20 JUDGE GRAHAM: Commissioner Hall?

21 COMMISSIONER HALL: No questions.

22 JUDGE GRAHAM: We're back to recross from OPC.
23 Any?

24 MR. CLIZER: No, thank you, Your Honor.

25 JUDGE GRAHAM: Any recross from the company,

1 from KCPL GMO?

2 MR. HARDEN: No, thank you, Your Honor.

3 JUDGE GRAHAM: Any redirect from staff?

4 MR. KEEVIL: Just briefly, Judge.

5 REDIRECT EXAMINATION BY MR. KEEVIL:

6 Q. Ms. Boustead, I believe it was questions from
7 Commissioner Hall you were talking about looking or when
8 you determined the price at which staff has priced out
9 the RECs in this case. I believe you said there was no
10 KCPL specific price because they didn't take any action
11 to sell the RECs; is that correct?

12 A. Correct.

13 Q. But correct me if I'm wrong, there is a market
14 based price that staff used in its development of the
15 recommendation?

16 A. Yes.

17 Q. And that is based on an average of what?

18 A. It's based on an average of pricing where
19 another Missouri company had had a broker price the RECs
20 if they were to sell RECs during the time frame of the
21 prudence review.

22 Q. So it's based on average of market prices
23 during the FAC prudence review period at issue in this
24 case?

25 A. Correct.

1 Q. Chairman Silvey was asking about GMO's tariff
2 and I believe you said that GMO did not have any RECs
3 expire during the review period applicable to GMO; is
4 that correct?

5 A. Correct.

6 Q. Is that why staff did not make a
7 recommendation in the GMO case similar to the
8 recommendation made in the KCPL case?

9 A. Yes.

10 Q. Now, you've received a combination of
11 questions from Mr. Harden and the commissioners all
12 regarding -- some regarding the tariff issue and some
13 regarding the prudence issue, but those issues are
14 separate, are they not?

15 A. Yes.

16 Q. So the Commission could find a violation of
17 either -- could find either that KCPL was imprudent or
18 could find that KCPL violated its tariff; is that
19 correct?

20 A. Yes.

21 Q. Is the tariff issue connected to the -- I
22 shouldn't say. Strike that. Is the tariff connected to
23 the prudence issue by virtue of the fact that the tariff
24 requires KCPL to flow back the revenues through the FAC
25 tariff?

1 A. Yes.

2 MR. KEEVIL: I think that's all I have, Judge.

3 JUDGE GRAHAM: Thank you. I believe that
4 concludes this witness. May she be excused since that
5 question came up with the last witness? I'm asking
6 counsel. Can we let her go?

7 MR. KEEVIL: As far as I know, yes.

8 (Witness excused.)

9 JUDGE GRAHAM: It's 11:30. We don't want to
10 break early but I don't want to overdo the court
11 reporter. If there's a need for any kind of a break,
12 please let me know.

13 THE COURT REPORTER: How about just a couple
14 minutes?

15 JUDGE GRAHAM: Okay. We'll take a couple of
16 minutes.

17 (Off the record.)

18 JUDGE GRAHAM: Okay. We are back on the
19 record. We are going to start out with OPC's first
20 witness, Office of Public Counsel. Are you Geoff Marke?

21 THE WITNESS: I am.

22 JUDGE GRAHAM: Did I pronounce your last name
23 correctly?

24 THE WITNESS: It's Marke.

25 JUDGE GRAHAM: It's Marke. All right, Mr.

1 Marke. I'll administer the oath and we will go.

2 (Witness sworn.)

3 JUDGE GRAHAM: It's your witness.

4 MR. CLIZER: Thank you.

5 GEOFF MARKE, Ph.D., being sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. CLIZER:

7 Q. Dr. Marke, could you please just state and
8 spell your last name for the record?

9 A. Marke, M-a-r-k-e.

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

11 A. Missouri Office of Public Counsel, Chief
12 Economist.

13 Q. Did you cause to be prepared rebuttal
14 testimony for this hearing today?

15 A. Yes.

16 Q. Are there any additions or corrections you
17 would like to make to that rebuttal testimony at this
18 time?

19 A. No.

20 Q. If I were to ask you the same questions that
21 were asked in that rebuttal testimony, would you give
22 the same answers today?

23 A. Yes.

24 Q. Are those answers true and correct to the best
25 of your knowledge and belief?

1 A. Yes.

2 MR. CLIZER: Your Honor, at this time I would
3 move to introduce the rebuttal testimony of Dr. Geoff
4 Marke which will be OPC Exhibits 100-P for public and
5 100-C for confidential.

6 JUDGE GRAHAM: All right. Do I hear any
7 objections? The record will reflect that Exhibits 100-P
8 and 100-C are received into evidence.

9 (OPC EXHIBITS 100-P AND 100-C WERE RECEIVED
10 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

11 MR. CLIZER: Thank you, Your Honor. At this
12 time I would tender the witness for cross-examination.

13 JUDGE GRAHAM: And I believe staff goes first
14 on this.

15 MR. KEEVIL: Thank you, Judge. Very briefly.
16 CROSS-EXAMINATION BY MR. KEEVIL:

17 Q. Dr. Marke, there's been a lot of, I don't mean
18 a lot, but there's been discussion throughout this
19 hearing so far about whether the expired RECs can be
20 sold. Have you been in the hearing room while the
21 questions about those -- those questions have been
22 addressed?

23 A. Yes, I have.

24 Q. What's your understanding on that issue?

25 A. So expiration of the RECs, I mean, there's a

1 market here. It's a lot like milk. Those RECs become
2 less valuable over time. The ability to sell the RECs
3 are hindered the longer that they're out there is the
4 long and short of it. There is an expiration date. I
5 want to say it's five years for a renewable energy
6 credit. For Missouri law it's three years. If you were
7 going to sell the RECs for compliance purposes, through
8 a utility it's going to vary between states. If you
9 were going to sell the RECs directly to a company for
10 their attribution, that obviously would be different
11 too.

12 Q. The five-year figure you referred to, is that
13 a federal expiration?

14 A. I believe so. I would probably need to double
15 check that. That's based off of a Google search while
16 Ms. Boustead was up on the stand.

17 MR. KEEVIL: Okay. Thank you. Nothing
18 further.

19 JUDGE GRAHAM: All right. Thank you. I
20 believe we have the company next.

21 MR. HARDEN: Thank you, Your Honor. Good
22 morning, Dr. Marke.

23 THE WITNESS: Good morning.

24 CROSS-EXAMINATION BY MR. HARDEN:

25 Q. In your testimony you referred to customers

1 that value the environmental attributes of renewable
2 energies as the cost causers in this circumstance; is
3 that correct?

4 A. That's correct.

5 Q. In this case the costs you were referring to
6 is not the environmental or social costs of fossil fuel
7 generation; is that correct?

8 A. Yes.

9 Q. The cost you were referring to is the
10 difference between the cost of renewable energy
11 generation versus fossil fuel generation; is that also
12 correct?

13 A. That's correct.

14 Q. So it's your position that customers who don't
15 care necessarily about the environmental attributes of
16 their energy do not benefit in any way from the
17 environmental attributes of renewable energy?

18 A. I'm going to walk back that question.

19 Q. Do you want me to restate?

20 A. Sure. Let's restate it first.

21 Q. So is your position that customers who don't
22 care or care less about the environmental attributes of
23 their energy that they do not benefit from the
24 environmental attributes of renewable energy?

25 A. It is our position that that is true within

1 the context or framework of a REC. That's an important
2 distinction. I can go on if you'd like.

3 Q. That's okay. If the cost of a renewable
4 energy were to go below that of fossil fuel generation,
5 would you advocate that those savings be isolated to
6 KCP&L customers that value the environmental attributes
7 of renewable energy?

8 A. Can you repeat the first part of that question
9 again?

10 Q. If the cost of renewable energy were to go
11 below that of fossil fuel generation, would you advocate
12 that those savings from the renewable energy be isolated
13 to KCP&L customers that value the environmental
14 attributes of renewable energy?

15 A. No.

16 Q. On page 6 -- I apologize. I don't have -- I'm
17 assuming it's your rebuttal. Page 6, line 10 and 11,
18 you write customers want to claim they are in part
19 responsible for the development of new renewable energy
20 supplied. Would you agree that in addition to being
21 responsible for renewable energy development some
22 customers also want to claim responsibility for using
23 energy with the environmental attributes of that power?

24 A. I haven't seen any. I wouldn't say that. I
25 would not take that position.

1 Q. You would not take the position that there are
2 customers who -- Let me make sure that I understand my
3 own question. That you would not take the position that
4 there are customers who want to claim responsibility for
5 using energy with the environmental attributes of
6 renewable energy?

7 A. I think historically there have been a small
8 subset of customers that have been willing to
9 voluntarily elect to purchase renewable energy credits
10 for those purposes. I do not believe there is a group
11 of customers that have been identified by the company in
12 this case or in any context that have elected to as the
13 basis of their position to cite the non-sale of RECs
14 moving forward.

15 Q. Okay. Do you disagree with the idea that some
16 companies want to locate and operate in areas that have
17 a larger portion of their total energy portfolio
18 composed of renewable energy resources?

19 A. I think companies look for a variety of
20 reasons where they cite locations. There are customers
21 that value renewable energies that have taken corporate
22 sustainability pledges to move forward with that and
23 there are a variety of ways that they can meet those
24 pledges.

25 Q. Correct me if I'm wrong. I just want to get a

1 little clarification. So you do agree that there are
2 some companies that want to locate and operate in areas
3 that have a larger portion of the total energy portfolio
4 coming from renewable energy?

5 A. I don't know of any company that would cite
6 their location purely based off of the fossil fuel
7 footprint of the utility.

8 Q. You use the word purely there.

9 A. Right.

10 Q. Would there be companies -- Would you agree
11 that there are companies that perhaps not entirely but
12 would credit part of their location and operation due to
13 the energy resource mix of the location they're
14 operating in and locating at?

15 A. I don't know.

16 Q. You go into some detail in your testimony.
17 It's page 10 and 11 regarding KCP&L's assertion that it
18 helped the City of Kansas City achieve its emission
19 goals. In that section you provide that it is akin to
20 claiming that the City of Kansas City municipal
21 operations are in part responsible for the KC Royals
22 winning the World Series in 2015. I just want to give
23 you an opportunity to clarify that analogy if you wish.
24 Is it your position that KCP&L's impact on the city's
25 emission levels is to the same amount and degree that

1 the City of Kansas City's municipal operations
2 attributed to the Royals winning the World Series?

3 A. It is. When I looked at the Schedule JM-1
4 submitted by Company Witness Martin, there's a press
5 release given by the city on -- the citation is
6 greenabilitymagazine.com. It's a press release written
7 the city. At no point through that press release is the
8 non-sale of renewable energy credits from power purchase
9 agreements cited as the reason or the rationale for the
10 municipal part of Kansas City to be able to claim a 40
11 percent reduction in fossil fuels. I stand by that.

12 Q. So is it your position that if KCP&L had sold
13 the RECs remaining after RES compliance that that would
14 not in any way affect the claimed emission reductions of
15 the City of Kansas City at all?

16 A. Three points on that. One, yes, absolutely.

17 Q. So it would have had?

18 A. They would not have been able to. It would
19 have no effect.

20 Q. It would have no effect?

21 A. That's right. The second part being I think
22 entities can and have claimed what they want to claim.
23 I know for a fact they're environmentalists that take
24 issue when utilities claim nuclear as a renewable
25 attribute. That's something that Kansas City, KCPL does

1 in terms of their overall fossil fuel mix as part of
2 getting greener. You can claim that. That's fine.
3 There's nothing wrong with that. Other parties might
4 take an issue with that.

5 To the third point, whether or not -- now I've
6 lost count. Whether or not the City of Kansas City in
7 any -- please restate the question. I'm sorry.

8 Q. No, that's okay. Is it your position that if
9 KCP&L had sold all of the RECs, right, pursuant to this
10 policy that you guys are going for that that would have
11 had no effect whatsoever on the claimed emission
12 reductions of one of KCP&L's largest customers, the City
13 of Kansas City?

14 A. I stand by that. I think you can make a
15 reasonable argument, too, that the fact that the company
16 didn't sell those RECs ultimately, albeit a small
17 percent, puts them at a disadvantage of procuring future
18 renewables moving forward. The fact that they didn't
19 sell the RECs or sold the RECs in this manner doesn't
20 mean that they're less renewables that were produced as
21 a result of this action. This is a managerial
22 transaction that's being lost in the vocabulary of
23 renewables at the end of the day or lack thereof.

24 Q. Let's go back to actually the prior witness.
25 You would agree with me that the RECs have an inherent

1 value in terms of the environmental attributes that they
2 represent. Would you agree with that?

3 A. A REC is a legal tool that has been created to
4 go ahead and produce those attributes that you claim.

5 Q. Is it a legal tool or a financial tool?

6 A. I think you could say both. Give you an
7 example. Our statute allows you to go ahead and adhere
8 to get these RECs to go ahead and meet that legal
9 requirement.

10 Q. Let me ask you, and again this may be a little
11 bit repetitive.

12 A. Sure.

13 Q. Would you agree that a REC is measured by the
14 renewable energy that is generated but it represents the
15 environmental attribute of that renewable energy?

16 A. That's what it's designed to do.

17 Q. Okay. On page 16, line 4 and 5 of your
18 testimony, you write KCP&L management erred in its
19 discretion and management of rate case -- I'm sorry --
20 of ratepayer dollars by not realizing revenues from the
21 sale of its RECs. It's as simple as that, end quote.
22 Is your position that KCP&L's management failed in its
23 discretion or management control of RECs or that KCP&L
24 management should have no discretion or managerial
25 control over when to unbundle and sell the environmental

1 attributes of its renewable power?

2 A. That's a great question.

3 Q. Thank you.

4 A. Two parts I guess because it was a two-part
5 question. To the first part, did they err in not
6 selling the RECs? We believe they did. I think that's
7 probably more confirmed today sitting here listening to
8 the testimony of Mr. Martin. We're talking about a
9 managerial action that's happened in the past. I
10 haven't seen any witness put forward, and even under Mr.
11 Martin's testimony, he essentially said that he wasn't
12 employed under KCPL at this time, he's a member of
13 Westar staff that's come in to testify on this.

14 I haven't seen any action one way or the other
15 from the KCPL management or lack thereof. If I'm a
16 betting man, it's looking an awful lot like they just
17 forgot to sell the RECs. To the second part whether or
18 not somehow OPC or staff is stepping in line and saying
19 that we're forcing managerial decisions, I would
20 disagree. At the end of the day if KCPL values
21 renewable energy credits, there's nothing preventing
22 KCPL management or shareholders from buying renewable
23 energy credits.

24 That's the same thing that Target does. It's
25 the same thing that Walmart does or any other entity.

1 There's nothing preventing that.

2 Q. There's nothing preventing it, but I really
3 want to be clear on what OPC's position is in terms of
4 whether or not you are asking the Commission that this
5 should be outside the realm of a business judgment
6 management decision or this is a management decision
7 which we believe that that decision was imprudent.
8 Those are two different things. One is a legal
9 requirement. The other is we just think that you made
10 the wrong decision here.

11 A. We don't think the management made a decision
12 here. We think it's an imprudent managerial decision at
13 the end of the day.

14 Q. The company should not be per se by law
15 required to sell the RECs?

16 A. So this is a question moving forward
17 hypothetically if we moving forward whether or not the
18 company should be required?

19 Q. No. Is that your position in this case?

20 A. Our position in this case was that it was an
21 imprudent managerial decision not to sell the RECs or
22 attempt to sell the RECs.

23 Q. Okay. By virtue that it should be required?

24 A. As a prudent managerial decision. Again, as
25 just what a reasonable person would do, and this goes

1 back to earlier opening statement, we feel at the end of
2 the day the lack of action left money on the table that
3 I think a reasonable person would say that's dollars
4 that would have lowered -- gone into lower rates and if
5 the company wanted to either at lower rates or move
6 towards even purchase more renewables in the future. At
7 the end of the day it's not doing that and that's a
8 shame.

9 MR. HARDEN: I have no further questions.

10 JUDGE GRAHAM: All right. Commissioner Hall?

11 COMMISSIONER HALL: Thank you. Good morning.

12 THE WITNESS: Good morning.

13 QUESTIONS BY COMMISSIONER HALL:

14 Q. So if I understand your testimony in response
15 to questions from staff counsel, you believe that RECs
16 do lose value according to their vintage?

17 A. Yes.

18 Q. And you base that upon what?

19 A. I don't put a lot -- My understanding with the
20 REC market and what I've seen with the market numbers is
21 that the RECs are generally very cheap right now. Over
22 time --

23 Q. RECs that have been generated today or RECs
24 that have been generated two, three, four years ago?

25 A. Both.

1 Q. Okay. So it's not necessarily the time
2 between generation and sale; it's the sale right -- it's
3 the date of sale that is causing the differentiation in
4 price?

5 A. Commissioner, I point you again to this
6 Corporate Principles that every party has sort of
7 pointed to as a good example of what is valued in terms
8 of renewables and renewable credits for that matter.

9 Q. What I'm trying to understand though is you
10 made a pretty strong assertion, and I want to make clear
11 it's based upon your analysis of the market?

12 A. Yes.

13 Q. Okay. And so then my question is, does it
14 have anything to do with the time duration between
15 generation and sale or is it just a function of supply
16 and demand right now compared to two, three, four years
17 ago?

18 A. Both.

19 Q. Both. Please explain.

20 A. To the latter question, that's an easy one.
21 It is supply and demand. There's just more renewables
22 out there that's going to drop the price overall.
23 There's less people at the end of the day that are
24 looking to buy these. To the first part, my
25 understanding, and I would agree with this too, is that

1 if you're valuing renewables, you're looking for
2 additionality. You're looking for new renewables moving
3 forward. All right.

4 Q. If you're a buyer?

5 A. Yes. With the sole exception of if you're
6 just meeting something for renew energy standard
7 requirement. If that was the case and it's not the
8 case, we would have been advocating that everybody just
9 buy RECs instead of building to own. That would be the
10 cheapest way to meet it. But that's not what we're
11 valuing. We're valuing the actual power, the generation
12 and all the externalities that are created out of it,
13 positive externalities.

14 Q. Okay. Do you agree with staff's position that
15 there's nothing in the FAC statute or tariff which
16 require an actual sale but there is a required attempt
17 to sell the RECs?

18 A. I'm not familiar with that rationale from
19 staff.

20 Q. Were you in the hearing room?

21 A. I was in the room. I heard.

22 Q. You're as familiar as I am.

23 A. Right. I would agree with staff that -- I
24 would put this it's staff auditing, it's staff
25 management, staff auditing looking at the FAC. What

1 they're looking at is what a reasonable managerial
2 decision would be with the knowledge that you have. And
3 under that framework, I agree that they should have
4 looked at it.

5 Q. So the imprudence was not the failure to
6 consummate a sale. The imprudence was the failure to
7 attempt the sale?

8 A. I think ultimately.

9 Q. And that question really only has significance
10 if there's a disconnection between an attempt to sell
11 and an actual sale. That's where I was going next.

12 A. Okay.

13 Q. If the company had attempted to sell these
14 RECs, do you have any reason to believe that they would
15 not have been able to sell them?

16 A. No.

17 Q. So if they had attempted to sell, they could
18 have sold them?

19 A. Yes.

20 Q. Based upon whatever the market price was?

21 A. Yes. And at a higher price than today.

22 Q. Well, it's OPC's position that the harm to
23 customers is that harm that's set forth in staff's
24 report which was the market price at the time?

25 A. Yes.

1 Q. Okay. Are you aware of the extent to which
2 Wall Street evaluates electric utilities based upon
3 their carbon risk?

4 A. Yes.

5 Q. Could you explain that to me?

6 A. Mr. Martin referred to the ESG. It's becoming
7 increasingly more of a risk factor considered not just
8 for utilities but for all companies in dealing with
9 uncertainties around pending legislation, political
10 uncertainty and environmental uncertainty.

11 Q. In short, does it essentially mean that the
12 more renewables that an electric utility has the lower
13 the carbon risk and the less the risk to potential
14 investors?

15 A. Yes, I would say the big difference here is
16 that this is -- The issue at hand is not about more
17 renewables being on. The renewables are on. That wind
18 farm is built. Whether or not you sold the REC or not
19 really has nothing to do with whether or not there were
20 less emissions.

21 Q. You're jumping to my next question which is
22 based on your understanding, would Wall Street view an
23 electric utility differently if it retired a REC versus
24 sold a REC?

25 A. No.

1 Q. What do you base that on?

2 A. The risk factor under that ESG is no different
3 for KCPL whether they retire this REC or not, the fact
4 that they've got fossil fuel, that they've got
5 liabilities associated with coal ash ponds and
6 everything else still remains the same. Having more
7 RECs out there doesn't change that -- or the sale or
8 non-sale of RECs doesn't change that.

9 Q. Is there a document that you could point to
10 that would help us understand that issue better? Is
11 there an ESG primer? Is there something that would,
12 because there's clearly a difference of opinion here
13 between OPC and the company and that seems to me to be
14 something that should be knowable.

15 A. I did cite to two sources in my testimony, if
16 that gives you some comfort. It's Walmart and Google.
17 That's on page 8 and 9. No, they're not speaking
18 specifically to the ESG. What both of those
19 corporations are essentially saying is that the
20 purchases should be additional. This means that should
21 actually create more renewable power. This is beyond
22 business as usual. What the sale or non-sale of RECs
23 essentially is if somebody is going to claim that,
24 somebody -- what Walmart and Google is saying is that's
25 greenwashing. You're just buying an attribute that's

1 been out there. There's nothing better for having gone
2 out there. That renewable is producing energy.

3 So when ESG is talking about this, when IPCC,
4 when any white paper that comes out that's talking about
5 the risk inherent out there or what people can do,
6 they're talking prospectively about moving more.
7 They're not talking in the past tense as far as some
8 financial tool just to create a brand new market. It's
9 not RECs at the end of the day. The RECs isn't going to
10 change your ESG or your corporate profile. There's no
11 inherent reduction in risk as a result of that.

12 The fact that you've got large corporations
13 suggesting that you should move away from that and
14 towards building and putting on new renewables is the
15 emphasis.

16 Q. I don't understand why that argument doesn't
17 support the company's position.

18 A. The company is not doing anything more.

19 Q. What the company is doing is it's not selling
20 the RECs. So if there is either a corporate or a
21 societal preference towards more renewables, that
22 facilitates it. And if to the extent that RECs are sold
23 in lieu of constructing new renewables, I would imagine
24 that Wall Street and the environmentalists would look
25 favorably upon it.

1 A. It's an artificial construct. That's why.
2 The RECs aren't creating anything.

3 Q. Okay. I think we have completed that. In
4 terms of trying to understand the harm to customers, the
5 alleged harm to customers from the company's failure to
6 sell the RECs, that's something I should address to Ms.
7 Mantle; is that correct?

8 A. You can, absolutely.

9 Q. More appropriately than you?

10 A. Sure, yes.

11 COMMISSIONER HALL: Thank you.

12 JUDGE GRAHAM: I have a couple of questions,
13 please.

14 QUESTIONS BY JUDGE GRAHAM:

15 Q. I understand we're here to review a decision
16 that the company made?

17 A. Yes.

18 Q. And its prudence. What decision did the
19 company make that was imprudent?

20 A. Not selling or attempting to sell the RECs.

21 Q. I'm getting a little confused here. From some
22 witnesses or somehow I'm gathering that the contention
23 is that the company was imprudent for not even
24 considering a sale which is something in my mind at
25 least different from attempting a sale. Is it OPC's

1 position that the company from what you've seen did not
2 even consider the question of whether to sell these
3 RECs?

4 A. Your Honor, I don't think the company
5 remembered to try to sell the RECs.

6 Q. That's your surmise I gather from earlier
7 testimony, but do I gather from that answer that from
8 everything you've seen that causes you to arrive at that
9 conclusion that you have not seen anything that makes
10 you think they even considered it?

11 A. Yes, Your Honor.

12 Q. And is it your position that at least prudence
13 requires consideration of the question? If you've got
14 an option to do something and you don't even consider
15 the option, is that ipso facto imprudent in your mind?

16 A. I mean, we've seen similar action from other
17 utilities on this issue where they're selling the excess
18 RECs. We've got other utility customer instruments that
19 would allow the ability to do this, whether it's a green
20 tariff or pure power. Literally any other option is
21 better than what the company did which was nothing.

22 Q. Well, let's go at this then from a different
23 direction. The supposition is they did consider it.

24 A. Okay.

25 Q. And they made a decision. Is the question

1 here whether or not the company made the wrong decision
2 in your mind or is the question here that you've
3 considered whether the company failed to consider all
4 available relevant information before it made its
5 decision? Did it fail to consider information that it
6 should have considered before it decided whatever it was
7 it decided to do?

8 A. Yes.

9 Q. What did it fail to look at that was available
10 to it not now but available to it at the time the
11 decision was made? What did it fail to do?

12 A. To look for a market to sell the RECs.

13 Q. Well, that implies that there was information
14 available about a market.

15 A. Yes, sir.

16 Q. Have you looked at that?

17 A. I have.

18 Q. And is it your conclusion based upon your
19 analysis of that actual information, numerical
20 information, for that market that the decision -- Well,
21 is that what the company failed to even look at?

22 A. Yes, Your Honor.

23 Q. Okay. And it was that failure to even look at
24 it that was imprudent? You understand that there's a
25 question here about whether or not we can review the

1 decision for prudence as opposed to reviewing the
2 information that the company had before it when it made
3 the decision and deciding that the company's action was
4 imprudent in the sense that the company didn't look at
5 available information before it made its decision. Do
6 you follow the distinction I'm making?

7 A. I do follow the distinction.

8 Q. Tell me what OPC's position is now with
9 respect to what it was the company did in terms of using
10 information that was imprudent.

11 A. I'm going to attempt to answer.

12 Q. Yes, sir, please.

13 A. There was a market out there. It's publicly
14 available. The company did not sell or attempt to sell
15 the renewable energy credit. Now, whether or not the
16 company considered information that was out there or
17 not, I don't believe I'm in a position under oath right
18 now to go ahead and say one way or the other what the
19 company's belief on that is. I would probably defer --
20 I would defer to my legal counsel in a brief.

21 JUDGE GRAHAM: Commissioner Hall, do you have
22 any follow up questions?

23 COMMISSIONER HALL: I do not.

24 JUDGE GRAHAM: Any recross from staff?

25 MR. KEEVIL: None, Your Honor.

1 JUDGE GRAHAM: Any recross from the company?

2 MR. HARDEN: Just very, very shortly.

3 RECROSS-EXAMINATION BY MR. HARDEN:

4 Q. If KCP&L were to sell their RECs to let's say
5 Oklahoma Gas & Electric under the ESG banner, okay,
6 which one of those utilities would get to claim the
7 environmental attributes for that power?

8 A. Under the ESG banner, neither.

9 Q. Neither?

10 A. Right. There's no risk reduction in this
11 artificial transaction. There's no less wind being
12 produced as a result of this transaction.

13 Q. Right. Well, let's start what about outside
14 of the ESG?

15 A. Well, I mean, outside of like a Walmart?

16 Q. Well, I'm just saying as a general
17 proposition, who would get to lay claim to the
18 environmental attributes? Would it be KCP&L or Oklahoma
19 Gas & Energy if we sold the RECs?

20 A. Under the REC construct if you sold it to
21 Oklahoma Gas & Electric, they would be able to claim it.

22 Q. Okay. Let's go to actually I liked where you
23 were going before let's say to Walmart or Google.

24 A. Okay.

25 Q. So under the ESG bnner there, would they be

1 able to claim the environmental attributes of renewable
2 energy within their territory if the RECs associated
3 with those were sold under the ESG construct?

4 A. Walmart and Google is not holding their hat on
5 their corporate social responsibility on the action or
6 inaction of whatever utility happens to be providing
7 service to them at that point. I think that's what's
8 lost in this whole dialogue. Google and Walmart based
9 off of evidence that's been supplied in this testimony
10 is taking responsibility for Google and Walmart's
11 actions. So whether or not -- By the way, these are
12 entities that are operating in virtually every utility
13 across the nation.

14 Q. Just one last thing. I appreciate your
15 clarification. So your testimony today is not that the
16 company failed any consideration of RECs and whether or
17 not you sold them. I believe that that's what you told
18 the judge. Is that your position?

19 A. I believe my, and the court reporter can
20 correct me if I'm wrong or if we need to read it back,
21 but I thought my position was again to defer it back to
22 my counsel's brief.

23 MR. HARDEN: Okay. I appreciate it.

24 JUDGE GRAHAM: All right. Any redirect from
25 OPC?

1 MR. CLIZER: Briefly, Your Honor.

2 REDIRECT EXAMINATION BY MR. CLIZER:

3 Q. Early on you were asked a couple questions by
4 the company, one of which was there was a discussion on
5 the idea of what companies wants, what companies look to
6 when they decide where they're going to operate. What
7 have you seen in the evidence you've reviewed as to what
8 companies look to with regard to meeting renewable
9 standards or meeting renewable compliances?

10 A. For companies that value that, I would point
11 again to the same document everybody has been pointing
12 to which is the Corporate Renewable Energy Buyers's
13 Principles which stress additionality and buying
14 additional renewables that would otherwise not take
15 place as a result of their actions for those
16 environmental components. As we're clearly all well
17 aware of, there are many reasons why companies locate in
18 places that they are not least of which is just the cost
19 of energy, and not adhering to this, not selling these
20 RECs, which is something that again these Corporate
21 Renewable Energy Principles members adhere to is
22 effectively just increasing their overall electric bill
23 and not adhering to those principles. Those are two
24 things that are actually actively working against them
25 from locating in in this case KCPL or GMO's service

1 territory.

2 Q. Thank you. There was also a discussion on
3 cost causers. You were asked a question, and I'm
4 paraphrasing here to an extent, something to the extent
5 that customers who don't care about renewables have
6 received no benefit from the non-sale of RECs or
7 something to that mind. Are you familiar with what I'm
8 talking about? You gave an answer that was within the
9 distinction of a REC. Is that -- do you recall?

10 A. Yes.

11 Q. And you had offered to provide further
12 explanation as to that. Would you care to do so?

13 A. City of Kansas City would be a good one,
14 municipal city of Kansas City. If the issue was over
15 RECs and just valuing renewable energy credits, City of
16 Kansas City wouldn't have been entering into that green
17 tariff that they're planning on entering into. We
18 wouldn't have a need to go ahead and offer these other
19 tools that the Commission has already approved and we
20 were a party to. Literally everything that Mr. Martin
21 posits in the opening of his testimony, which is a
22 catalog of other renewable programs by other utilities,
23 is a better option and more attractive both to the
24 customer and to the non-participant than what was done
25 here which was nothing.

1 MR. CLIZER: All right. Thank you. That was
2 my only questions.

3 JUDGE GRAHAM: Okay. Sound off here for a
4 minute. I think we'll take a lunch now. Shall we say
5 be back here at 1:20 to resume? I've got 12:20 now. I
6 guess we could say 1:30. Why don't we be back here at
7 1:30 to pick up with the next witness.

8 MR. KEEVIL: Was his testimony marked and
9 received?

10 JUDGE GRAHAM: Yes.

11 MR. KEEVIL: It was received?

12 JUDGE GRAHAM: I show it received.

13 MR. KEEVIL: What number was it, Judge?

14 JUDGE GRAHAM: It was 100-P and 100-C.

15 MR. KEEVIL: Thank you.

16 MR. CLIZER: Your Honor, have we gone off the
17 record?

18 JUDGE GRAHAM: Yes, I'm about to take us off
19 camera here. We are off the record and I've got all my
20 sound stuff off, I believe.

21 (The noon recess was taken.)

22 JUDGE GRAHAM: We are back on the record. And
23 I believe we are -- make sure I've got everything on
24 here. I believe we are ready for OPC's, Office of
25 Public Counsel's, next witness, Lena Mantle. Do you

1 want to tell me your name and then I'll give you the
2 oath. Are you Lena M. Mantle?

3 THE WITNESS: Yes, I am.

4 (Witness sworn.)

5 JUDGE GRAHAM: You may proceed.

6 MR. CLIZER: Thank you, Judge.

7 LENA MANTLE, being sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. CLIZER:

9 Q. I know you just said your name, but can you go
10 ahead and spell your last name for the court reporter?

11 A. My last name is Mantle, M-a-n-t-l-e.

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

14 A. I'm employed by the Office of the Public
15 Counsel as a Senior Analyst.

16 Q. Did you cause to be prepared for this
17 testimony rebuttal testimony -- I'm sorry. Did you
18 cause to be prepared for this hearing rebuttal
19 testimony?

20 A. Yes.

21 Q. Thank you. Did you also cause to be prepared
22 a supplement to your rebuttal testimony?

23 A. Yes, I did.

24 Q. And in very brief terms, what was the purpose
25 of that supplement?

1 A. I received information from the staff
2 regarding the value or how many RECs had been retired
3 and who actually owned those RECs. So I corrected the
4 amount for -- the prudence amount for the RECs in my
5 supplemental rebuttal.

6 Q. All right. And notwithstanding that
7 supplemental rebuttal, are there any other corrections
8 or additions you need to make to your rebuttal
9 testimony?

10 A. I have one correction I need to make.

11 Q. All right. Please elaborate.

12 A. Page 5 of my rebuttal testimony, there's a
13 table at the top that says 95 percent of Missouri
14 jurisdictional in the row that is labeled wind PPAs and
15 the far right column with the heading of GMO the number
16 should be \$10,601,259. And that also changes the total
17 for GMO to be \$11,070,668.

18 MR. STEINER: Could you go over that one more
19 time, the page?

20 THE WITNESS: The page is page 5. The table
21 at the top under GMO wind PPAs, the correct amount is
22 \$10,601,259. The total then is changed to \$11,070,668.
23 That is my only correction.

24 BY MR. CLIZER:

25 Q. Thank you. If I were to ask you the same

1 questions I had previously asked you or rather that were
2 asked you in that testimony, would your answers be the
3 same?

4 A. Yes.

5 Q. Is that true for both the rebuttal and the
6 supplemental rebuttal?

7 A. Yes, it is.

8 Q. And are the answers that you gave in both
9 rebuttal and supplemental rebuttal true and correct to
10 the best of your knowledge and belief?

11 A. Yes.

12 MR. CLIZER: All right. At this time, Your
13 Honor, I would move to introduce the rebuttal testimony
14 of Lena Mantle which has been premarked as 101-C for
15 confidential and 101-P for public as well as the
16 supplement to the rebuttal testimony of Lena Mantle
17 which has been marked as 102.

18 JUDGE GRAHAM: All right. Any objection?
19 Hearing no objections, Exhibits -- I'm sorry. Is it 101
20 --

21 MR. CLIZER: Yes.

22 JUDGE GRAHAM: 101-C and 101-P and 102 are
23 admitted into evidence.

24 (OPC'S EXHIBITS 101-C, 101-P AND 102 WERE
25 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

1 MR. CLIZER: Thank you, Your Honor. Tender
2 this witness for cross-examination.

3 JUDGE GRAHAM: I believe we are going to
4 commence with staff here.

5 MR. KEEVIL: Judge, just a point of
6 clarification. Ms. Mantle testifies I think on all
7 three issues. I'm assuming that she's up here right now
8 on the Issue No. 1.

9 JUDGE GRAHAM: That is correct.

10 MR. KEEVIL: I have no questions on Issue No.
11 1.

12 JUDGE GRAHAM: No questions on Issue 1. Does
13 KCPL GMO have any questions for cross for Ms. Mantle?

14 MR. HARDEN: Yes, just two very short
15 questions. Afternoon, Ms. Mantle.

16 THE WITNESS: Good afternoon.

17 CROSS-EXAMINATION BY MR. HARDEN:

18 Q. Do you know whether or not GMO holds unexpired
19 RECs as of this prudence review period?

20 A. From the information that staff provided me in
21 their work papers, GMO did not have RECs that expired.
22 They do have some unexpired RECs, yes.

23 Q. Thanks. And you would agree that with the
24 selling of the RECs that there is some fee associated
25 with transferring the RECs?

1 A. Yes.

2 MR. HARDEN: That's all I have. Thank you.

3 JUDGE GRAHAM: All right. Chairman Silvey, do
4 you have any questions?

5 CHAIRMAN SILVEY: No.

6 JUDGE GRAHAM: Commissioner Hall, do you have
7 any questions?

8 COMMISSIONER HALL: Yes. Could I get a copy
9 of Mantle Supplemental Rebuttal? I don't have that.

10 MR. STEINER: Is it okay if I give him one?

11 COMMISSIONER HALL: Thank you.

12 QUESTIONS BY COMMISSIONER HALL:

13 Q. So is this the only testimony, the only
14 prefiled testimony, your only prefiled testimony on this
15 issue is the supplemental?

16 A. No. There's also my rebuttal. Dr. Marke
17 provided the policy and I'm the one that calculated the
18 amount.

19 Q. In your rebuttal testimony?

20 A. Yes.

21 Q. Where is that in your rebuttal testimony?

22 A. The amount would be in the tables that are on
23 page 4 and then a number with the 95 percent in Missouri
24 jurisdiction is on the top of page 5.

25 Q. Okay.

1 A. And this is for KCPL, yes. And actually the
2 number was corrected with my supplemental rebuttal.

3 Q. And can you explain how you arrived at the
4 number that correlates to the imprudence on this
5 particular issue?

6 A. Early on, after staff filed its report, I did
7 ask staff for work papers for how they got the amount
8 for the REC imprudence amount that they were
9 recommending. And that was based off of a different
10 company's, the RECs that they had sold in this time
11 period, and I looked at that for reasonableness, did
12 what they do make sense. That was a spreadsheet that
13 had the value of RECs over the 18 months and the prices
14 varied and there was some prices that were much higher
15 and staff had used the average and I thought that was a
16 reasonable methodology for the RECs not knowing when
17 these could have been sold. If they'd been sold early
18 on, they would have been given a higher amount. Later
19 on the value was lower. So I used the average REC value
20 that staff did.

21 Q. You did not take into account the possibility
22 of selling the RECs at a later date?

23 A. No, I did not. That was -- this was the
24 prudence period and that was the value over that time
25 period. So that was the time over which -- and some of

1 them would have expired early in the time period and
2 some later. This was over an 18-month time period. It
3 wasn't like they all expired at the end of the 18
4 months. I did also in my calculation do an adjustment
5 for KCPL's calculation of how much it would have cost
6 them to sell that, sell those RECs, and in deference to
7 the staff I applied the 95 percent believing that
8 customers should not get more than they would have
9 received had that revenue flowed through the FAC.

10 Q. Are you aware of this issue ever being brought
11 to the Commission before?

12 A. No, and there's never been, you know, KCPL has
13 only had an FAC for a short amount of period. GMO, they
14 didn't at the time. Early in their FAC they didn't have
15 a lot of excess RECs. We would talk about these in each
16 rate case about revenues from RECs. Empire has sold.
17 They've always included revenues from their selling
18 RECs, excess RECs in their FAC. That's always flowed
19 back through. So whether there were RECs to sell was
20 completely dependent upon the utility and how much
21 renewables they had, energy they generated.

22 Q. This is first time as far as you know that OPC
23 or staff has ever made a claim that a utility should
24 have sold RECs in an FAC prudency review?

25 A. That is correct.

1 Q. And is it your testimony that the reason why
2 OPC is in this instance is because of the amount of the
3 RECs that are unsold compared to other cases where they
4 were not as many?

5 A. I don't know that there's been any that
6 expired in other cases, but I do know that this is
7 revenues that the customers could receive through the
8 FAC.

9 Q. As in any case where there is an FAC and there
10 are unsold RECs. I'm trying to understand if the reason
11 why OPC brought this issue forward or why it agrees with
12 staff on bringing the issue forward is because of the
13 amount of RECs at issue here compared to other instances
14 when there are not as many RECs?

15 A. That is not the case. I believe OPC,
16 regardless of the amount, this is the prudent decision
17 to give those --

18 Q. In other words --

19 A. The amount does not make a difference.

20 Q. In other words, you don't know why staff
21 brought it forward but staff brought it forward and you
22 jumped on board?

23 A. Correct.

24 Q. And you would be making the same argument if
25 there were -- if there was a \$20,000 impact to customers

1 or a \$380,000 impact as there is in this case?

2 A. Correct.

3 Q. So do you think that it is ever appropriate
4 for a utility to not sell unused RECs?

5 A. No, I do not. I think it's always the prudent
6 thing to do is to provide as much revenue to offset the
7 cost of renewables to the customers. The customers had
8 to pay for these PPAs. They should get the revenues
9 back from the RECs that are not needed to meet the RES
10 standards.

11 Q. And the RES standard is the only principle
12 upon which a utility should utilize renewable energy?

13 A. If renewable energy is a least cost source and
14 their customers need that energy, then --

15 Q. What if their customers want that energy?

16 A. If they can show that 100 percent of the
17 customers want that energy, then 100 percent of the
18 customers should pay for it. If the large industrial
19 corporate customers value these RECs or the City of
20 Kansas City, then they should pay for the RECs, not all
21 of the customers.

22 COMMISSIONER HALL: Okay. Thank you.

23 JUDGE GRAHAM: Commissioner Rupp?

24 COMMISSIONER RUPP: Good afternoon.

25 THE WITNESS: Good afternoon.

1 QUESTIONS BY COMMISSIONER RUPP:

2 Q. Just following up on Commissioner Hall's
3 question, do you believe the utility should produce
4 renewable energy if it's not the least cost?

5 A. No, I do not. I believe they should use the
6 least cost resources to meet their customers' needs.
7 That's my personal belief.

8 COMMISSIONER RUPP: Great. Thank you.

9 JUDGE GRAHAM: Any follow up, Chairman Silvey?

10 CHAIRMAN SILVEY: No.

11 JUDGE GRAHAM: All right. We'll go to recross
12 starting with staff.

13 RECROSS-EXAMINATION BY MR. KEEVIL:

14 Q. Ms. Mantle, are you familiar with the
15 Commission's decision in the KCPL and GMO rate cases
16 from 2013 ER-2012-0174 and 0175?

17 A. I believe I had read that prior to this
18 morning, but I had forgotten that that was in that rate
19 case.

20 Q. In response to a question from Commissioner
21 Hall, I believe you said something about the customers
22 are the ones who pay for something so they should get
23 the benefit of the RECs. Is that correct? Could you
24 explain that?

25 A. The customers are having to pay for energy

1 from these PPAs. They are having to pay often at prices
2 much higher than the market price for these PPAs and
3 part of -- when RECs were first conceived, oh, it's been
4 a long time ago, the reason that they were created was
5 to help pay for renewable energy. It was more expensive
6 to generate. If somebody else wanted to help pay for
7 that, that's what a REC was. So a Walmart could help
8 subsidize a wind farm and that's what that was.

9 Now we have REC revenues that can offset the
10 cost of those PPAs and that are many, many times greater
11 than -- or that are at many times greater than the
12 market value. So that can help bring down the cost of
13 that PPA through selling the RECs.

14 Q. If I were to represent to you that the
15 following statement is from the Commission's Report and
16 Order in that case I just quoted, let me ask you if you
17 would agree with this finding by the Commission. It
18 says because GMO customers paid the money that generated
19 the REC, if GMO sells the REC, it sells something that
20 the customer has bought. Would you agree with that?

21 A. Yes.

22 Q. And for that reason that money should be
23 flowed back to the customers in your opinion as an
24 offset to the fuel cost?

25 A. Yes.

1 MR. KEEVIL: Nothing further. Thank you.

2 JUDGE GRAHAM: Recross from the company?

3 MR. HARDEN: We have no further questions.

4 JUDGE GRAHAM: Any redirect?

5 MR. CLIZER: No, thank you.

6 JUDGE GRAHAM: I believe that concludes our
7 business with Issue No. 1. And following our earlier
8 protocol, are we going to have further opening
9 statements now with respect to Issue No. 2 before we
10 proceed?

11 MR. FISCHER: Yes, Judge.

12 JUDGE GRAHAM: The company will go first.

13 MR. FISCHER: Thank you. You may proceed.

14 May it please the Commission. Good afternoon.
15 The auxiliary power issue involves the public counsel's
16 allegation that GMO has improperly allocated the cost
17 associated with auxiliary power needed to run the steam
18 plant at GMO's Lake Road plant. The staff has conducted
19 an audit in this case and as explained in the staff's
20 position statement on page 2 staff found no indication
21 that GMO imprudently included steam auxiliary power
22 costs in the FAC during the review period. We certainly
23 agree with the staff auditors that there's no basis for
24 a prudence adjustment in this case related to the
25 allocation of costs between the electric and steam

1 operations.

2 But let me briefly give you a little bit of
3 background on the issue. In 1994, St. Joseph Light &
4 Power had agreed to utilize a direct assignment method
5 for allocating the costs between the electric and the
6 steam operations until the Commission ordered the
7 company to use a different allocation method, and then
8 later in 2005 in a steam case, HR-2005-0450, and this
9 was after the acquisition of St. Joseph Light & Power by
10 Aquila, Aquila agreed to continue to use that direct
11 assignment allocation methodology until another
12 approach, and I'll just quote, was presented and
13 approved or agreed among parties in a general rate
14 proceeding.

15 GMO followed that commitment until the year
16 2009. In 2009, GMO had electric and steam rate cases
17 where GMO proposed to change its direct assignment
18 method to what's called a seven-factor allocation
19 formula. No party, including the public counsel,
20 disputed the use of that seven-factor allocation
21 methodology that was being proposed by GMO.

22 The 2009 rate case resulted in a global
23 settlement which included public counsel as a signatory
24 and was unopposed by any other party. The Commission
25 approved that settlement. Now, GMO has used that same

1 seven-factor allocation methodology in every GMO rate
2 case since 2009. The same allocation methodology was
3 used to allocate electric and steam costs in the
4 subsequent electric cases in 2010, 2012, 2016 and then
5 most recently in 2018.

6 GMO's seven-factor allocation method we think
7 is appropriate. Using this method, electric customers'
8 rates are adjusted to cover a variety of costs,
9 including auxiliary power, which are used to produce
10 steam service at the Lake Road plant. Approximately
11 \$3.4 million of costs were allocated to the steam
12 business in the true-up filing in GMO's most recent rate
13 case and that GMO's last steam management report, which
14 I'm told is a mini surveillance report used for the
15 steam operation, that included a \$3.4 million of
16 allocated costs as well.

17 Now, given this history, the Commission should
18 reject public counsel's contention that GMO was bound to
19 use the previous direct assignment method that went back
20 to 1994. The Commission should also reject public
21 counsel's attempt to reopen six past prudence review
22 periods which are now closed to make a retroactive
23 prudence adjustment related to this issue.

24 The public counsel's proposed adjustment goes
25 beyond the time period of the audit in this case. The

1 current audit period it covers I think December 2016
2 through May of 2018. It would be inappropriate to go
3 back to previous audit periods. Those audit periods the
4 Commission's reviewed the prudence issues and approved
5 the FAC rates for those previous periods and those cases
6 are now closed.

7 Now, I would agree with one thing that
8 Mr. Keevil said in his main opening. Rate cases are the
9 appropriate time to deal with allocation issues rather
10 than FAC prudence review cases. In rate cases, if
11 changes in the allocations are occurring, then those
12 costs can be reallocated to other services rather than
13 disallowed as being proposed by the public counsel in
14 this case.

15 Finally, I'd note that the Commission has
16 already ordered GMO to work with staff and public
17 counsel to review its allocation procedures before GMO's
18 next rate case. If anything needs to be improved in
19 this allocation process, it should be done
20 collaboratively as we discuss these issues. That's all
21 I have. I'd be happy to answer your questions.

22 JUDGE GRAHAM: Chairman Silvey, do you have
23 questions for counsel?

24 CHAIRMAN SILVEY: I do have one quick
25 question. The FAC statute, 386.266, does it allow for

1 the recovery of any fuel costs related to steam
2 auxiliary power?

3 MR. FISCHER: No. That's an electric statute.
4 It would allow for recovery of costs related to the
5 electric system, and we would allege or we would
6 certainly take the position that our allocation method
7 only has electric costs going through that FAC. The
8 auxiliary power costs are being taken care of by our
9 seven-factor allocation method.

10 CHAIRMAN SILVEY: Okay. Thank you.

11 JUDGE GRAHAM: Commissioner Hall, do you have
12 any questions for counsel?

13 COMMISSIONER HALL: So I'm looking at the
14 non-unanimous partial stipulation and agreement from the
15 2018 case.

16 MR. FISCHER: The last case? Uh-huh.

17 COMMISSIONER HALL: Yeah. That was -- I don't
18 have the order approving it but the stipulation is
19 September 19, 2018. And one of the provisions in there
20 says that GMO agrees to work with staff, OPC, MECG to
21 develop new steam allocation procedures prior to GMO's
22 next electric general rate case. Have those
23 conversations taken place?

24 MR. FISCHER: They have not gone too far, but
25 there have been some discussions of issues related. We

1 had a tour of the plant and understand that there was
2 some discussions as part of that.

3 COMMISSIONER HALL: The first sentence of that
4 provision says that GMO will use the allocation numbers
5 used in staff's model. Is numbers the same thing as
6 methodology?

7 MR. FISCHER: I would as a lawyer suggest that
8 those are inputs. The methodology would be something
9 different. But maybe Linda Nunn, our witness, may be
10 more familiar with.

11 COMMISSIONER HALL: Is that relevant, I mean,
12 if there's an agreement to use numbers but there's not
13 an agreement as to a methodology and then the Commission
14 approves this stipulation, has the Commission actually
15 indicated what is the appropriate methodology?

16 MR. FISCHER: The Commission approved the
17 methodology change in 2009 and then that was
18 incorporated in each of the five rate cases since then.
19 The 2018 case is the last one and we're agreeing to
20 basically review that allocation methodology.

21 COMMISSIONER HALL: Okay. So the time period
22 at issue from staff's -- excuse me, from the company's
23 position is not governed by this stipulation, it's
24 governed by the prior stipulation or is it governed by
25 this stipulation?

1 MR. FISCHER: No, I think what I'm trying to
2 say is the agreements of past predecessor companies to
3 use a direct assignment method, that changed in 2009
4 when all the parties started using the seven-factor
5 method and has consistently used that ever since that
6 time.

7 COMMISSIONER HALL: I understand. What's the
8 time period from the company's position at issue here?

9 MR. FISCHER: What's the prudence period?

10 COMMISSIONER HALL: Yes.

11 MR. FISCHER: I believe I indicated it was
12 December 2016 through May of 2018. That's the prudence
13 period that was reviewed in the audit if that's what
14 your question is.

15 COMMISSIONER HALL: Okay. And maybe that's an
16 irrelevant question because this is --

17 MR. FISCHER: We really don't think that 2018
18 stip has much to do with this issue except for the fact
19 that we agreed that we would review the allocation
20 method going forward. What really got the company off
21 the hook if you want to say that in using that direct
22 assignment was when we changed it, we proposed it in the
23 2009 case and it was accepted and then we've been using
24 it ever since without opposition.

25 COMMISSIONER HALL: Going back to the 2016

1 stipulation on this issue, it sets forth the allocation
2 factors to be used, correct, and those allocation
3 factors are based on the seven-factor methodology?

4 MR. FISCHER: I believe that's correct, yes.

5 COMMISSIONER HALL: So it would be the
6 company's position that it complied with the stipulation
7 as to the appropriate methodology to use and as long as
8 it's using that methodology it has been prudent?

9 MR. FISCHER: Certainly, certainly. You know,
10 prudence, I don't think anybody is contesting that
11 auxiliary power is something we need and we need to do
12 that, there's no prudence issue there. I think what
13 public counsel is really suggesting is that there should
14 be a different allocation method. That's a rate case
15 issue. That's not a prudence issue.

16 COMMISSIONER HALL: Thank you.

17 MR. FISCHER: Thank you.

18 JUDGE GRAHAM: All right. Then we will go I
19 believe to staff's opening statement on this issue,
20 Issue No. 2.

21 MS. KLAUS: May it please the Commission.
22 Good afternoon, Mr. Chairman, Commissioners, Judge. My
23 name is Alexandra Klaus. I'm here on behalf of staff
24 regarding the question of the auxiliary power
25 allocations between electric operations and steam

1 operations at GMO's Lake Road plant. The issue was
2 raised by the Office of Public Counsel in File Nos.
3 ER-2019-0198 and 0199.

4 In staff's report of the Eighth Prudence
5 Review of Costs Related to the Fuel Adjustment Clause
6 for the Electric Operations of GMO in this file
7 EO-2019-0067, staff found no indication that GMO
8 imprudently included steam auxiliary power costs in the
9 FAC during the review period.

10 Some hopefully quick background about where
11 this dispute arose and how it's made its way before you
12 today might be helpful. In ER-2018-0400, GMO's
13 semi-annual filing before ER-2019-0199, GMO included in
14 the 22nd accumulation period a reduction to total fuel
15 expense of about \$230,000 relating to Lake Road
16 auxiliary power. This allocation was initiated in
17 January 2018 as a reduction in total fuel expense
18 charged to electric retail customers through the FAC.

19 The entry of this \$230,000 was recorded in May
20 2018 for the allocation of auxiliary power costs that
21 were incurred for the period beginning January 2018
22 through May 2018. The company explains that this entry
23 was done because GMO updated its electric steam
24 allocation procedures manual to allocate a portion of
25 the Lake Road generating station auxiliary power for

1 production of industrial steam to GMO's steam customers.
2 Interestingly enough in ER-2018-0400, OPC raised the
3 possible issue of whether GMO could even make such a
4 modification to the allocation of auxiliary power
5 between steam and electric operations. However, because
6 OPC didn't object or ask for a hearing, the Commission
7 took no action at that time on OPC's comment in that
8 docket but stated that it may address it in what was
9 then GMO's currently pending rate case ER-2018-0146.

10 As pointed out in GMO witness Linda Nunn's
11 direct testimony for this case, in ER-2018-0146 GMO did
12 propose a more detailed allocation methodology that is
13 similar to that involving direct assignment of auxiliary
14 power costs similar to EO-94-36. However, staff did
15 object and the electric steam allocations issue was
16 resolved through a stipulation and agreement by GMO's
17 continued use of the allocators developed by staff in
18 the immediately preceding general rate case
19 ER-2016-0156. As such, GMO states that in August 2018
20 it reversed the entry in which it had utilized the
21 updated allocation procedures manual because the company
22 had agreed to continue using allocation factors and the
23 allocation of steam auxiliary power was appropriately
24 handled through the use of general allocators used in
25 setting base rates.

1 Stated differently. As a result of
2 negotiations in a rate case, negotiations to which OPC
3 took part, the company agreed to continue what it had
4 been doing with respect to the allocation of auxiliary
5 power and that entry had been reconciled. Additionally,
6 and in terms of opportunities for the future, as a part
7 of that stipulation and agreement in ER-2018-0146, the
8 parties agreed that GMO will work with staff, will work
9 with OPC and will work with MECG to develop new steam
10 allocation procedures prior to GMO's next electric
11 general rate case.

12 As previously stated, staff found no
13 indication that GMO imprudently included steam auxiliary
14 power costs in the FAC during the review period. Here
15 today and available for Commission questions are Brooke
16 Mastrogiannis, Charles Poston and Karen Lyons. We
17 appreciate you taking the time to consider this matter.
18 Thank you and I'll do my best to answer any questions
19 that you may have.

20 JUDGE GRAHAM: Chairman? Commissioner Hall?

21 COMMISSIONER HALL: Yes. So looking at the
22 2016 stip which says the signatories agree the Lake Road
23 electric steam allocation factors will be set at the
24 values listed in the following table. To the extent
25 that the company followed that agreement, there cannot

1 be any imprudence, correct, from staff's position?

2 MS. KLAUS: From staff's position, yes.

3 COMMISSIONER HALL: And do you agree that if
4 the company were to use a different allocation method
5 than what is set forth in the 2016 stip, which was
6 approved by the Commission, then to the extent that it
7 increased costs to electricity ratepayers there would be
8 imprudence?

9 MS. KLAUS: May I ask you to repeat that one
10 more time?

11 COMMISSIONER HALL: I'll try. Do you agree
12 that to the extent that the company did not comply with
13 the allocation factors set forth in the 2016 stip and
14 such noncompliance increased costs for electricity
15 ratepayers there would be imprudence?

16 MS. KLAUS: So if the company had not used the
17 allocators and had there been an increase, there would
18 be a monetary detriment to the customers. So there it
19 would be a different thing that staff would have been
20 looking at.

21 COMMISSIONER HALL: I understand. But would
22 that equal imprudence?

23 MS. KLAUS: Not necessarily, no. In staff's
24 prudence report, I believe there's a statement that says
25 that there is some sort of monetary aspect to the

1 imprudence. So there would, as you said, there have to
2 be the increase.

3 COMMISSIONER HALL: So it would have to be a
4 material increase?

5 MS. KLAUS: Material increase, yes.

6 COMMISSIONER HALL: From your perspective, do
7 you think that it is OPC's position that the company has
8 deviated from the 2016 stip allocation factors?

9 MS. KLAUS: So I read the testimony as OPC
10 advocating for the 1995 procedure. I don't know that
11 there was recognition of these agreements in that
12 testimony, but I believe Ms. Mantle might be able to
13 answer those questions.

14 COMMISSIONER HALL: Okay. Thank you.

15 MS. KLAUS: Thank you.

16 JUDGE GRAHAM: We'll have an opening on this
17 Issue No. 2 from OPC if OPC wishes to address it.

18 MR. CLIZER: Thank you.

19 JUDGE GRAHAM: Proceed.

20 MR. CLIZER: May it please the Commission.
21 You've heard a lot of stuff about allocation factors.
22 Specifically, you know, you were just discussing the
23 2016 allocation factors. The important thing to
24 understand here is those allocation factors do not
25 affect and do not address auxiliary power fuel at all.

1 That is the OPC's point. The allocation factors that
2 were agreed to are fine. They don't address this issue
3 at all.

4 In large part, that's the entirety of our
5 argument really. I mean, we are just saying that they
6 need to allocate fuel costs to begin with. They haven't
7 been doing anything. They haven't been taking care of
8 them as part of these allocation factors. Let me say
9 really quick. The company talked about seven allocation
10 factors. It's a bit of a red herring. In reality
11 there's one allocation factor we have to worry about
12 here and we can prove that because we have the data
13 responses from the company who say it's one allocation
14 factor we're concerned about and that one allocation
15 factor is based on payroll numbers and it's applied to
16 non-fuel accounts. An allocation factor based on
17 payroll numbers and applied to non-fuel accounts does
18 not affect auxiliary power fuel costs. It's that
19 simple. There is no allocation factor for auxiliary
20 power fuel costs.

21 Are there any questions?

22 JUDGE GRAHAM: Chairman?

23 CHAIRMAN SILVEY: No.

24 JUDGE GRAHAM: Commissioner Hall?

25 COMMISSIONER HALL: Yeah. Okay. So looking

1 at your page 9 of your opening statement, do you have
2 that in front of you?

3 MR. CLIZER: I'm afraid I don't have the whole
4 thing.

5 COMMISSIONER HALL: You may not need it. If
6 you need it, then we can take a second. Are you
7 essentially saying that the steam allocations that are
8 set forth in these various steps only relate to the left
9 side of the diagram and the right side of the diagram
10 and that there's nothing related to the issue that
11 you're raising on this?

12 MR. CLIZER: Kind of. There are a lot of
13 costs.

14 COMMISSIONER HALL: I'm trying real hard to
15 understand your position.

16 MR. CLIZER: I understand and I appreciate
17 that. There are a lot of costs involved at the Lake
18 Road facility, not just fuel. What you're seeing on
19 page 9 is the fuel costs. You have to take into
20 consideration, for example, payroll costs. For example,
21 the cost to hire people to move fuel around, to keep the
22 plant running, all of that. The allocation factors you
23 see in that table in that stipulation were allocating
24 those non-fuel costs. In fact, the specific allocation
25 factor that GMO is relying on to show that there's a

1 representative amount of fuel is directly applied to the
2 non-fuel O&M costs and we are okay with those non-fuel
3 O&M costs being allocated in this method. All we're
4 saying is the allocation factor being applied to
5 non-fuel accounts does not capture allocation of fuel.

6 COMMISSIONER HALL: So looking at the 2016
7 stip and the table, there's nothing there in your view
8 that reflects auxiliary power?

9 MR. CLIZER: Correct. I will say
10 specifically, and we will get into this more in the
11 actual testimonial section, GMO is relying on a
12 particular allocation factor there and it's the one, I
13 believe I'm doing this from memory, but the farthest
14 left column should 3,13 and it should be demand O&M
15 factor. That is the factor that they claim captures a
16 representative amount of fuel costs, and all that we're
17 saying is it doesn't.

18 COMMISSIONER HALL: And is that because fuel
19 is not part of O&M?

20 MR. CLIZER: Well, it's not being applied to
21 fuel costs. That's in the testimony of Linda Nunn
22 herself. She says this factor it is not applied to fuel
23 costs.

24 COMMISSIONER HALL: And is this the -- okay.

25 MR. CLIZER: Again, as I said in my larger

1 opening, if they're going to claim that a representative
2 amount is taken care of when setting base rates using
3 this allocation factor, ask them how much that is. Ask
4 them how much they came up -- Like how did they come up
5 with that number? Ask them what they would change about
6 that allocation factor if they weren't going to do it
7 this way.

8 COMMISSIONER HALL: Okay. Thank you.

9 MR. CLIZER: Thank you.

10 JUDGE GRAHAM: All right. I believe we're
11 ready to proceed with the testimony on this Issue No. 2
12 and we're going to proceed first with company's witness
13 Linda Nunn; is that right?

14 MR. FISCHER: Yes, Judge. We'd call Linda
15 Nunn to the stand.

16 JUDGE GRAHAM: Ms. Nunn, I like to -- there's
17 some question I like to have the record express who is
18 being sworn in when I swear them in. That's why I ask
19 you your name first.

20 THE WITNESS: Linda Nunn.

21 (Witness sworn.)

22 JUDGE GRAHAM: You can ask her her name again
23 if you wish.

24 MR. FISCHER: I'll do that, Judge.

25 LINDA NUNN, being sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. FISCHER:

2 Q. Please state your name and address.

3 A. My name is Linda Nunn, N-u-n-n, and my address
4 is 1200 Main, Kansas City, Missouri 64105.

5 Q. Are you the same Linda Nunn that caused to be
6 filed in this case direct testimony which has been
7 marked as Exhibit 3 and surrebuttal testimony which has
8 been marked as Exhibit 4?

9 A. I am.

10 Q. Do you have any corrections or changes you
11 need to make to that testimony?

12 A. I have one small change. On my direct
13 testimony on page 7, line 6, the date should say May 31,
14 2018.

15 Q. Transpose some digits?

16 A. I just transposed the numbers.

17 Q. Anything else?

18 A. That's all I have.

19 Q. If I were to ask you the questions contained
20 in those two exhibits today, would your answers be the
21 same?

22 A. They would.

23 Q. And are they true and accurate to the best of
24 your knowledge and belief?

25 A. They are.

1 MR. FISCHER: Judge, with that I would move
2 for the admission of Exhibit 3 and 4 and tender the
3 witness for cross-examination.

4 JUDGE GRAHAM: Any objection? Hearing no
5 objection, the record will reflect those exhibits
6 numbered 3 and 4 are received.

7 (COMPANY'S EXHIBITS 3 AND 4 WERE RECEIVED INTO
8 EVIDENCE AND MADE A PART OF THIS RECORD.)

9 JUDGE GRAHAM: Staff may proceed with
10 cross-examination.

11 MS. KLAUS: No questions. Thank you.

12 JUDGE GRAHAM: Does OPC, does the Office of
13 Public Counsel have any cross-examination?

14 MR. CLIZER: Yes, Your Honor.

15 JUDGE GRAHAM: Go ahead.

16 CROSS-EXAMINATION BY MR. CLIZER:

17 Q. All right. Just to start off, if you could
18 turn to page 6 of your surrebuttal. You there?

19 A. Not quite yet. Yes.

20 Q. All right. You mentioned this several times
21 in surrebuttal. Just to be clear and for the record,
22 KCPL -- GMO's position is that a representative amount
23 of costs have been allocated to the steam customers to
24 cover auxiliary power among other applicable O&M costs.
25 That's on lines 4 through 6. That's still your

1 position, correct?

2 A. Yes.

3 Q. GMO is claiming that they have captured a
4 representative amount of auxiliary fuel costs through
5 the use of these allocation factors?

6 A. Yes.

7 Q. Okay. And you would also agree that that
8 allocation factors are not being applied to -- slow
9 down. You would agree that those allocation factors are
10 being applied to non-fuel accounts, correct?

11 A. As they have been since they were established
12 in 2009.

13 MR. CLIZER: All right. Your Honor, would you
14 prefer I request to mark an exhibit before I distribute
15 or does that matter to you?

16 JUDGE GRAHAM: Let's go ahead. Is this not a
17 numbered exhibit yet?

18 MR. CLIZER: It is not prefiled, no.

19 JUDGE GRAHAM: You're going to give it a
20 number though?

21 MR. CLIZER: Okay.

22 JUDGE GRAHAM: I'm asking you you're going to
23 give it a number?

24 MR. CLIZER: I intend to offer it as an
25 exhibit, yes.

1 JUDGE GRAHAM: Why don't we go ahead and start
2 to refer to it by number right now. You can go ahead
3 and distribute and have everybody write the number on
4 it.

5 MR. CLIZER: This will be 103.

6 MR. FISCHER: Judge, did you say 103?

7 JUDGE GRAHAM: I didn't say.

8 MR. CLIZER: I did. Based on our previous
9 numbering, it should be 103.

10 MR. FISCHER: Thank you.

11 BY MR. CLIZER:

12 Q. All right. The document that I've just handed
13 to you is a response that KCPL provided to a staff
14 question in this case that asked essentially how the
15 auxiliary power is being accounted for. Would you agree
16 with that?

17 A. Yes.

18 Q. I have included the attachments that was
19 provided, steam auxiliary power doc.

20 A. Right.

21 Q. You would agree that that is the attachment?

22 A. Yes.

23 Q. Okay. And you would agree that on the second
24 page of this document near the bottom there's a number
25 of bulleted points?

1 A. Yes.

2 Q. The second of which says that the allocation
3 3,13 demand/O&M was the allocator used to move a portion
4 of the non-fuel steam production costs out of electric
5 revenue?

6 A. Correct.

7 Q. And that this is the allocation factor being
8 used in this case to account for auxiliary fuel costs?

9 A. That's correct.

10 MR. CLIZER: Okay. I'm going to go ahead and
11 offer Exhibit 103.

12 JUDGE GRAHAM: What was the name that you gave
13 to that exhibit?

14 MR. CLIZER: Let's go with Data Request 0062.

15 JUDGE GRAHAM: Any objections to Exhibit 103?
16 It's been offered. I hear no objections. It's
17 received.

18 (OPC'S EXHIBIT 103 WAS RECEIVED INTO EVIDENCE
19 AND MADE A PART OF THIS RECORD.)

20 BY MR. CLIZER:

21 Q. So we've established at this point that it is
22 the specific allocation factor, and I'm not sure what
23 the best way to refer to this is, so I'm just going to
24 keep referring to it as 3,13 demand/O&M that is being
25 used or being claimed rather by GMO to account for

1 auxiliary fuel. Would you agree with that?

2 A. That's correct.

3 Q. Okay. The document which has just been handed
4 out and which I would ask that the Court refer to as
5 OPC's Exhibit 104, we'll call it Data Request 8012.
6 This is a data request that the OPC issued to KCPL that
7 asked for how that demand O&M allocation factor was
8 developed in the last four or five, I think last six
9 rate cases. Would you agree with that?

10 A. Could you repeat the question, please? I was
11 reading it.

12 Q. Absolutely, sure. This document, again, OPC
13 Exhibit 104, this is a data response provided by KCPL to
14 a data request made by the OPC that detailed how that
15 demand O&M factor was calculated?

16 A. Correct.

17 Q. I've attached a selection of the tabs in two
18 of the Excel files that were attached to this. I have
19 the complete Excel files if it becomes necessary.
20 However, there were quite a few tabs. So I wanted to
21 attach just the pertinent ones. Would you agree that
22 these tabs show how the demand O&M allocation factor was
23 calculated for the 2016 and 2012 rate cases?

24 A. I do. One thing that's important to notice is
25 you talk about it being a payroll allocator at the

1 bottom of the page.

2 Q. Hold on. We'll get to that in a second. Let
3 me walk through it first. The demand O&M factor is a
4 multiplication of the number 3 and number 13 allocation
5 factors; you would agree with that?

6 A. The number 3 pertains to the NPS municipals,
7 yes, and the 13 is the O&M for steam.

8 Q. The actual demand O&M factor are the multiple
9 of those two?

10 A. That is correct.

11 Q. And the number 13 is the result of a payroll
12 percentage for O&M allocation -- rather 13 is described
13 as electric after steam allocation of O&M costs.

14 A. I don't -- where are you seeing that?

15 Q. It would be the second page of the document
16 provided to you.

17 A. On the summary?

18 Q. Yes.

19 A. So 3,13 is demand O&M?

20 Q. Yes. And 13 itself is electric after steam
21 allocation O&M.

22 A. Yes.

23 Q. And you would agree with me that the next two
24 pages detail how that number was calculated?

25 A. Yes.

1 Q. And that number was calculated by applying or
2 rather calculated based primarily off of payroll
3 numbers; you would agree with that?

4 A. The payroll I wouldn't completely agree with
5 that, no. The payroll that's identified to go to the
6 steam payroll, if you look at the bottom across
7 calculation there, the 24.60 percent, it's called a
8 plant utilization factor but the fact that we use the
9 factors from the 2016 case, they actually use the factor
10 from the 2012 case and that's a fuel usage factor that's
11 applied to payroll to give a representative amount of
12 costs that need to be allocated. It's not a direct
13 assignment of costs. It's an allocation of costs.

14 Q. That's fine. But you would agree that the
15 primary cost driver in this allocation factor is payroll
16 costs?

17 A. I would say that fuel is the driver of the
18 allocation of the payroll that's then the driver of the
19 O&M allocated.

20 Q. All right. And I'm not sure if it's necessary
21 at this point but you would agree that the last two
22 pages that was just the same thing but for 2012 just for
23 the sake of the record?

24 A. It says 2010. So that was probably for the
25 2012 case?

1 Q. Yes.

2 A. Correct, you're right.

3 Q. Sorry. One last thing. You would agree with
4 me that 3 is based on demand capacity, so being a
5 capacity factor?

6 A. It has nothing to do with steam, but yes.

7 Q. Okay. I think I'm going to leave off. I'm
8 sorry. I know that was kind of painful. I just needed
9 to get some stuff into the record for the sake of citing
10 to it. You have claimed, as we've already established,
11 that a representative amount of auxiliary fuel costs are
12 accounted for through the allocation factors applied
13 when base rates are set?

14 A. Correct.

15 Q. What is that representative amount for this
16 review period?

17 A. If I had a direct assignment allocation
18 methodology, I would be able to specifically point to
19 that cost. We don't have a direct assignment allocation
20 methodology. We have an overall general allocation
21 methodology that we've used and that's been -- that was
22 negotiated by each of the parties and approved by the
23 Commission since 2009.

24 Q. So is it correct to say that you can't
25 determine what that representative amount is for this

1 case?

2 A. For specifically just auxiliary power, no.
3 Overall it was 3.4 million.

4 Q. It was 3.4 million for overall O&M?

5 A. Of O&M costs, uh-huh.

6 Q. But you cannot say how much of that relates to
7 auxiliary fuel costs?

8 A. I can't because it's not a direct assignment
9 of cost.

10 Q. And you can't calculate how much that was
11 either?

12 A. You can't do that for any of the cost
13 allocations for any other kind of cost.

14 Q. So your belief is it's included in O&M but you
15 just don't know how much?

16 A. Correct. That's how allocations work.

17 MR. CLIZER: Thank you. I have no further
18 cross. I did say I had no further cross.

19 JUDGE GRAHAM: Counsel, you did not offer that
20 exhibit.

21 MR. CLIZER: Oh, I apologize.

22 JUDGE GRAHAM: 104. Don't apologize. I just
23 wanted to know what your wish was.

24 MR. CLIZER: I will go ahead and offer 104.

25 JUDGE GRAHAM: I don't think you offered it.

1 MR. KEEVIL: No objection.

2 JUDGE GRAHAM: It is admitted. 104 is
3 admitted.

4 (OPC'S EXHIBIT 104 WAS RECEIVED INTO EVIDENCE
5 AND MADE A PART OF THIS RECORD.)

6 JUDGE GRAHAM: All right. We are ready for
7 Commissioner Hall. Do you have any questions for this
8 witness?

9 COMMISSIONER HALL: Just a few.

10 QUESTIONS BY COMMISSIONER HALL:

11 Q. So the 2016 stip had an allocation factor of
12 92.419 for electric and 7.581 for steam in the O&M
13 category?

14 A. Correct.

15 Q. And it's the company's position that auxiliary
16 power costs are subsumed within that line item, correct?

17 A. Yes, sir.

18 Q. And that is the allocation method that was
19 used in the 2016 and 2018 rate case to set rates,
20 correct?

21 A. It was. Every case from 2009 forward.

22 Q. And you can't -- And the company cannot
23 specifically identify how auxiliary power was allocated
24 because it's subsumed into O&M?

25 A. Yes.

1 Q. Would it be possible to determine what the
2 auxiliary power costs were?

3 A. You would have to come up with a way of
4 valuing those costs that were different than the
5 allocation method we used.

6 Q. Putting aside how they're allocated, simply
7 knowing the total amount of auxiliary power costs, is
8 that a known number?

9 A. It's not. You would have to have some way to
10 value the kilowatt hours that are used to produce the
11 power, and we don't have any agreed to methodology to do
12 that.

13 Q. So you don't know what your costs were for
14 that item and I guess I don't understand why.

15 A. Well, because we don't identify those costs
16 individually. They're just a part of like you said
17 before part of the rest of the costs that are allocated
18 between the two jurisdictions.

19 Q. Isn't O&M -- don't you have a series of line
20 items that equal O&M?

21 A. Yes.

22 Q. And one of those line items is not auxiliary
23 power?

24 A. No.

25 Q. What are some of those line items?

1 A. There is -- I would need to look at the FERC
2 chart of accounts. They're all steam production O&M
3 costs. So the costs to run the plant and to maintain
4 the plant. Specific 500, 501, I don't have all of the
5 -- I don't have those memorized.

6 Q. Okay. So it's a series of line items, and
7 auxiliary power would be part of a series of them?

8 A. That is how the company interprets the
9 allocation methodology, yes.

10 Q. So auxiliary power costs increasing or
11 decreasing would not necessarily have an effect on
12 changes to the FAC?

13 A. It would be unclear because it's an allocation
14 how much of that is -- how different it is within the
15 base rates. So it could increase or decrease.

16 Q. So there were changes to this line 3,13 demand
17 O&M that would have an impact on the FAC but you don't
18 know the extent to which changes in auxiliary power
19 would have caused such changes?

20 A. Would you say that again, please?

21 Q. That seems to be a trend here. There could be
22 increases or decreases in this particular line 3,13 O&M
23 that could have corresponding changes to the FAC?

24 A. It would not impact the FAC.

25 Q. Why is that?

1 A. Because the FAC is calculated based on direct
2 assignment of costs in a rate case.

3 Q. Right. No, I'm not talking about the -- I'm
4 not talking about the tariffed FAC. I'm talking about
5 the fuel costs that flow through it. So I'm wondering
6 if the O&M -- if changes to O&M could have an impact on
7 changes to the FAC?

8 A. That portion is all handled in base rates.

9 COMMISSIONER HALL: Okay. I have no further
10 questions.

11 JUDGE GRAHAM: Commissioner Rupp?

12 COMMISSIONER RUPP: None. Thank you.

13 JUDGE GRAHAM: Okay. Recross from staff?

14 MS. KLAUS: No questions. Thank you, Judge.

15 JUDGE GRAHAM: Recross from OPC?

16 MR. CLIZER: Yes.

17 JUDGE GRAHAM: Go ahead.

18 RE-CROSS-EXAMINATION BY MR. CLIZER:

19 Q. Commissioner Hall just asked you about the
20 line items that were included in the O&M account to
21 which that demand O&M allocation factor was applied to.
22 Do you recall that?

23 A. Yes.

24 Q. Are any of those line items fuel costs?

25 A. No, we've established that.

1 Q. You would agree that the production of
2 auxiliary power requires the expenditure of fuel?

3 A. It does.

4 Q. So there is a fuel cost to producing auxiliary
5 power?

6 A. And how I handle that in a rate case is by
7 allocating other costs. It's an allocation.

8 Q. I just want a yes or no. Is there a fuel cost
9 to production of auxiliary power?

10 A. Yes.

11 MR. CLIZER: Thank you. I have no further
12 recross.

13 JUDGE GRAHAM: Okay. Redirect by KCPL?

14 MR. FISCHER: Yes, briefly.

15 JUDGE GRAHAM: I thought you might let her
16 finish that last answer.

17 REDIRECT EXAMINATION BY MR. FISCHER:

18 Q. Why don't we start there. Would you like to
19 finish that last answer you were cut off? How is it
20 handled in a rate case?

21 A. In a rate case, there are a certain number of
22 costs that are allocated to cover both the fuel and
23 non-fuel O&M costs associated with producing all power
24 which includes auxiliary power.

25 Q. Is that how you've been doing it since 2009?

1 A. Yes.

2 Q. At one point you were asked some questions on
3 cross and you said that well, that's just not how
4 allocations work. Would you explain to the Commission
5 the difference at a high level between the allocation
6 method versus that direct assignment method that had
7 been used back in '94?

8 A. Yes. In the direct assignment method, you
9 would take each individual cost or a number of them, you
10 could do a combination of direct and indirect and
11 general, but you would take individual costs and you
12 would determine okay, how much of this individual cost
13 goes over to this jurisdiction versus this jurisdiction.
14 In the indirect method, you use some sort of cost
15 causation to allocate those costs which is what we've
16 done when we've said okay, the primary cost in there to
17 produce that electricity is in the O&M area arena is
18 payroll and then how did we get to that payroll cost to
19 be allocated to steam, we said well, how much fuel is
20 used to produce the electricity for the two and that
21 split was how we got to the payroll piece that belonged
22 to steam versus the total payroll that's at GMO. So
23 it's a cost causation distribution of costs and then
24 there's a general allocate where you just would pick
25 kind of a general, sometimes I guess I would think of

1 maybe a utility mass formula might be considered a
2 general allocator that you just do everything else based
3 on this one allocation method -- or one allocation
4 factor.

5 Q. Commissioner Hall asked you a question about
6 the 2016 stip and I believe you indicated that something
7 over 7-1/2 percent had been allocated to steam under
8 that method; is that correct?

9 A. Yes.

10 Q. Would that be equivalent to the 3.4 million
11 that was referenced in my opening?

12 A. That would be for the current case.

13 Q. For the current case?

14 A. I think it's a slightly different allocation
15 number itself because we did update the demand side and
16 that kind of thing. Yes, that's the same number.

17 Q. Okay. And I believe you indicated that there
18 is no auxiliary power a line item. Could you elaborate
19 on that? Is there an account called auxiliary power
20 that you can just allocate?

21 A. No, there's not an account called auxiliary
22 power.

23 Q. And why is that true?

24 A. The FERC chart of accounts doesn't set out an
25 individual account for auxiliary power.

1 Q. Now, if you were changing one of these
2 allocation methods in a rate case, would it be
3 reallocated to other accounts -- or other services,
4 excuse me?

5 A. Could you say that again? I didn't quite
6 follow that.

7 Q. I'll just withdraw that. I'll deal with --

8 A. Okay.

9 Q. At one point you were cut off whenever you
10 were trying to go to the bottom of the page to explain
11 why that payroll allocator wasn't used properly.

12 A. It is actually a payroll allocator, but the
13 payroll allocation is based on a fuel usage and that's
14 what I was explaining just a minute ago about how it's
15 driven by pieces. One piece goes to the next and then
16 that's used. Fuel usage drove the payroll which drove
17 the overall allocation.

18 Q. Okay. As I understand, the company has been
19 ordered to discuss the allocation issues with public
20 counsel, staff and MCEG before the next rate case.
21 There was a question I think to counsel this morning or
22 this afternoon about whether those conversations had
23 begun. Can you tell us anything about that?

24 A. We've started analyzing and we've started
25 talking with the plant. The reason that there even

1 needs to be a change in allocation methodology is
2 because there's been some changes in the operations at
3 the plant. Our primary electric producer at Lake Road
4 no longer burns coal. So when one of the major drivers
5 of your allocations are coal usage, then it leads you to
6 not have a proper allocation because we still produce
7 electricity at the plant. So we've started discussions
8 with the plant and trying to look at how the operations
9 work now and so we've started that discussion. We've
10 had a tour of the plant with members of staff. And so
11 we're in the early stages of trying to move that
12 forward.

13 Q. And the company, is it willing to discuss that
14 with public counsel as well?

15 A. Absolutely, once we get our arms around it,
16 yes.

17 MR. FISCHER: I have no other questions.
18 Thank you, Judge.

19 JUDGE GRAHAM: Thank you. That concludes with
20 that witness.

21 Friends, what we're going to do now, we're up
22 to the point in the proceeding where we've got some
23 staff witnesses that the Commission identified in just
24 the last few days and so we're going to take a short
25 recess here to enable staff to do whatever it is staff

1 thinks that it needs to do during a recess here. I will
2 say that, of course, we don't have reports on file from
3 these individuals. Ordinarily, of course, we'd start
4 with direct by staff where we would tender the witness
5 along with those reports. We don't have those here.
6 They're here because the Commissioner wishes to query
7 them. But after the break here, I'm going to be
8 inclined to allow staff attorney to actually direct
9 these witnesses if counsel wishes before we start cross,
10 direct these witnesses if in his discretion or their
11 discretion counsel wishes to do that in light of
12 everything they've heard in the hearing today. I want
13 to give you that latitude because we've, you know,
14 ordered you in the last couple days to make these
15 witnesses available. With that, we're going to go off
16 the record. Do you want to say something on the record?

17 MR. CLIZER: I have just a quick question.
18 With regard to your order about allowing staff to direct
19 its witnesses, will opposing parties be permitted to
20 cross?

21 JUDGE GRAHAM: We're going to go through the
22 regular litany at that point. It's just that I don't
23 want to deprive them of direct examination simply
24 because they don't have a report. I think they ought to
25 get the first crack at their own witness.

1 MR. CLIZER: Absolutely. I just wanted to get
2 clarification.

3 (Off the record.)

4 JUDGE GRAHAM: We're back on the record.
5 We're ready for staff's witnesses. I'm advised now that
6 after we've invited several that Mr. Poston, is that how
7 you say his name. Again, counsel, I'm going to give you
8 latitude. I'm speaking to you, Mr. Keevil. You've
9 brought these witnesses in without the benefit of
10 reports, and so forth. So if in your discretion you
11 want to put up some of these other ones on the basis of
12 what you've heard today, that certainly is your call,
13 but I'm advised now that we have some questions, the
14 Commission has some questions for Charles Poston. Do
15 you want to start with him?

16 MR. CLIZER: Your Honor, I'm sorry. I had one
17 sort of kind of preliminary matter actually unrelated to
18 that. It occurred to me sitting here that we've had
19 several discussions regarding the stipulation and
20 agreement that was signed in the case ER-2016-0156,
21 including a few questions from the bench. I was just
22 going to suggest potentially that the Commission might
23 want to take judicial notice or administrative notice of
24 that stipulation just because there have been questions
25 related to it. I'm just going to throw that out there

1 for your consideration.

2 JUDGE GRAHAM: Before you forgot it?

3 MR. CLIZER: Exactly.

4 JUDGE GRAHAM: That's fine. That's fine. I
5 helped you on Exhibit 104 and you're helping me on that
6 one. Are there any objections to officially noticing
7 that file and would you state the file number?

8 MR. STEINER: Your Honor, notice of the entire
9 file I would object. I believe that stipulation was
10 approved in an order and that order can be cited without
11 taking notice in the briefs. So I'm not sure what
12 counsel is asking for is necessary.

13 JUDGE GRAHAM: Here's what we're going to do
14 then. Would you recite that file number again, please?

15 MR. CLIZER: ER-2016-0156. If that's opposing
16 counsel's position, I'm fine with that.

17 JUDGE GRAHAM: So you're withdrawing your
18 request to officially notice it?

19 MR. CLIZER: I was only asking for official
20 notice of the stipulation and agreement. If there's no
21 problem with citing to the order adopting that
22 stipulation and agreement without taking administrative
23 notice, then there's no need.

24 JUDGE GRAHAM: Here's what I'm going to do.
25 I'm not going to let you withdraw your request to take

1 official notice. I'm going to note the objection and
2 take the whole issue under advisement with the file
3 because there may be good and sufficient reasons that I
4 haven't thought of that will guide the ruling on that.
5 Because the matter has come up several times, we may
6 need to take official notice of it or not but we're
7 going to defer that decision. So you may even be asked
8 to brief or you may want to brief that in your brief
9 later. So that's where we're going to leave that
10 question.

11 Mr. Keevil, do you want to put up Mr. Poston
12 at this point?

13 MR. KEEVIL: Judge, I apologize. I've lost
14 track of the cast as they ran around the room. Let me
15 ask for clarification. Are you saying that the
16 Commission no longer has questions for the other
17 witnesses that were summoned to be here so we're only
18 looking at Mr. Poston or what?

19 JUDGE GRAHAM: Humor me a minute here and let
20 me look at my computer, see where we are. Let me
21 respond to IT real fast here. There seems to be an
22 audio issue.

23 I'm going to leave it this way, Mr. Keevil.
24 For the moment let's not release the other witnesses,
25 but at this point it appears to me literally at this

1 moment that I'm only going to need Mr. Poston.

2 MR. KEEVIL: Okay.

3 JUDGE GRAHAM: Subject to staying tuned in.

4 MR. KEEVIL: Okay. With that then, yes, we'd
5 call Charles Poston to the witness stand.

6 JUDGE GRAHAM: Mr. Poston, would you state
7 your full name and then I'll administer the oath?

8 THE WITNESS: Charles Poston.

9 (Witness sworn.)

10 JUDGE GRAHAM: You may be seated. Mr. Keevil,
11 do you want to do some direct examination with Mr.
12 Poston?

13 MR. KEEVIL: No, Judge. There's no direct
14 case that we wish to make. We're just presenting
15 Mr. Poston at the Commission's behest.

16 JUDGE GRAHAM: That's fine. I'm therefore
17 going to depart here from the order that we follow in
18 the other witnesses ordinarily. I'm not going to expose
19 this gentleman to cross-examination without any direct
20 examination for the benefit. I'm going to have some
21 questions that have been related to me, but before
22 asking those do either of the Commissioners have any
23 questions for the witness?

24 COMMISSIONER HALL: No questions, thank you.

25 COMMISSIONER RUPP: No.

1 CHARLES POSTON, being sworn, testified as follows:

2 QUESTIONS BY JUDGE GRAHAM:

3 Q. Now, is it Dr. or is it Mr. Poston?

4 A. Mr.

5 Q. Mr. Poston. I think we do need to make a
6 record since Mr. Keevil didn't as to who you are.
7 Everyone knows that but we ought to do it in this case.
8 So whom are you employed by, sir?

9 A. Missouri Public Service Commission.

10 Q. Okay. And what is your position here with the
11 Missouri Public Service Commission?

12 A. I'm a Utility Regulatory Engineer.

13 Q. And briefly can you tell us what you do in
14 that capacity on an ordinary everyday basis?

15 A. I primarily deal with electric cases, although
16 I also help out with natural gas related issues. One of
17 my primary tasks is filing testimony in rate cases or
18 complaints as they come to me.

19 Q. And you were an engineer?

20 A. That is correct.

21 Q. You're a degreed engineer?

22 A. I am.

23 Q. Where did you get your degree, sir?

24 A. University of Missouri-Columbia.

25 Q. Okay. What year was that?

1 A. I graduated in 2006 with a bachelor's degree
2 in civil engineering, and I graduated in 2008 with a
3 degree in nuclear engineering.

4 Q. Okay. Now, in your capacity as an engineer
5 working for the Missouri Public Service Commission, do
6 you have occasion to work on the rate side of issues
7 with the setting, calculations, so forth, any issue
8 having to do with rates? Do you do that?

9 A. I don't perform rate design per se, but I do
10 provide inputs that factor into other people's work.

11 Q. I ask you that question, of course, because
12 your background is in civil and nuclear engineering and
13 I just didn't know. I'm sure everybody in the room
14 knows but me. I didn't know what the relationship was
15 between your background, your training, your academic
16 training on the one hand and the services that you
17 perform for the Missouri Public Service Commission here.
18 Do you function as an engineer on the technical side on
19 the scientific side?

20 A. I do.

21 Q. Okay. But you also work over on -- You don't
22 work in rate design but your work does bleed over into
23 rate?

24 A. Correct, yes.

25 Q. All right. Kind of bringing this thing home

1 here, are you familiar with the methodology that the
2 Commission has approved in the past for the allocation
3 of auxiliary fuel costs for the companies that are
4 before us today, GMO and KCPL? Are you familiar with
5 that methodology of allocation?

6 A. As I understand it, there is no allocation
7 methods specific to auxiliary power.

8 Q. Okay. So you have a familiarity sufficient to
9 tell me that you are not aware of a methodology per se
10 for allocation?

11 A. That is not one that is currently in use.

12 Q. An allocation is a term of art for you. It
13 has a specific meaning I take it because of the way
14 you've answered my question?

15 A. Yes.

16 Q. Okay. Well, tell me what allocation means.
17 What would I expect to see if I saw auxiliary fuel costs
18 allocated? What kind of methodology would I expect to
19 see if that was happening?

20 A. Are you asking hypothetically?

21 Q. Yes, I am.

22 A. In relation to the Lake Road plant or in
23 general?

24 Q. In general.

25 A. In general.

1 Q. I take that back. In relationship to this
2 plant, to a steam production plant. Let's try to get as
3 specific as we can and still have you be able to answer
4 the question.

5 A. The Lake Road plant is a unique facility that
6 I have ever dealt with, because it produces both
7 industrial steam and electricity. That makes any issue
8 of allocating costs or assigning costs difficult.

9 Q. Okay. May I interrupt you. Just enough to
10 clarify for the record that you are familiar
11 professionally here with the Lake Road project?

12 A. Yes.

13 Q. So your answers are based on your own
14 experience with the Lake Road process?

15 A. Yes.

16 Q. Go ahead and continue then.

17 A. At the Lake Road facility, there are pieces of
18 equipment, systems, that function to support only the
19 electric generation facilities. There are pieces of
20 equipment and systems that serve to support only the
21 steam generation facilities, the industrial steam for
22 industrial steam sales, and then there are facilities
23 that are shared between the two that are common systems.
24 Based upon what I have seen in my experience with the
25 Lake Road plant, an allocation can take several forms.

1 One would be an allocation that has been described by
2 Linda Nunn where it is simply a number applied to costs
3 to expenses based on some factor. It could be derived
4 many different ways, but the money would be split
5 between electric and steam based on a number derived
6 from usage or hours of use, fuel burned, hours of labor
7 spent during a shift, things like that.

8 The other method would be what has been
9 described previously more similar to what was done in
10 EO-94-36 and the procedure that's no longer in use in
11 which there would be direct assignment of costs and
12 allocations. There were methods in place where it would
13 recognize the idea that there are some costs which
14 benefit electric customers only, costs that benefit
15 industrial steam customers only. Those would be
16 allocated 100 percent to those customers.

17 And then there would be potentially a set of
18 costs related to systems or services that benefit both.
19 And then that common set of expenses would then have to
20 be allocated based upon again usage or labor or some
21 other factor.

22 Q. Mr. Poston, I think you and I had an
23 understanding at the beginning of this question and
24 answer and I want to make sure that by the time we got
25 to the end of it we shared the same supposition.

1 The answer you gave me was an answer to a hypothetical
2 question; is that right?

3 A. Yes.

4 Q. It was not?

5 A. I used in my examples ways that you could
6 allocate at the Lake Road plant.

7 Q. At the Lake Road. But were any of those
8 adopted, those methodologies? If you don't like that
9 term, use the term that you are comfortable with.

10 A. Both of those methods have been at use at the
11 Lake Road plant at different times.

12 Q. Okay. Are you familiar with the approach,
13 shall I call it approach, that has been followed
14 recently and that it is your understanding was followed
15 during the period under review here from December 1,
16 2016 to May 31, 2018? Are you familiar and able to tell
17 us how this was done in that time period?

18 A. To an extent, yes.

19 Q. Could you go ahead and describe it generally?

20 A. Prior to the 2016 case, which was my first
21 encounter with the Lake Road facility in a professional
22 aspect, there were a set of allocations I believe that
23 were referred to as the seven factors by the company.
24 And there were a number of different factors based on
25 different plant characteristics. Fuel usage was one of

1 the ones I looked at in previous electric rate cases
2 looking at how much fuel was burned for the benefit of
3 industrial steam customers versus fuel that was burned
4 for electric customers. That was one of the factors.

5 There were also factors based upon steam usage
6 during times of peak steam use and who in those times of
7 peak steam use were the cost causers. Was it the
8 industrial steam demand that was driving the peak use or
9 was it the electric generation that was driving those
10 peaks? Those factors came under review in the 2016 case
11 because the company proposed changes to how those
12 factors were calculated, and that change -- those
13 changes were prompted by primarily the conversion of
14 Unit 4 at Lake Road plant from burning coal to burning
15 natural gas as the primary fuel.

16 And that change dramatically reduced the
17 amount of coal that was burned for the purposes of
18 generating electricity. Once that change was made, the
19 factors that were based upon coal burn were no longer
20 operating as they were originally designed to operate.
21 So the company proposed a new method for that particular
22 allocation.

23 Q. So if I may interrupt you. What you're
24 talking about is a method for allocating those costs,
25 fuel costs that became what shall we say obsolete or

1 irrelevant because of a change with respect to coal?

2 A. Off the top of my head, the seven factors,
3 those factors didn't -- that wasn't necessarily just for
4 allocating fuel. That fuel factor might have then
5 become an input for a second factor. You would have
6 nested allocation factors where one would have been
7 driven by another.

8 Q. Okay. Well, at the end of the day so to speak
9 back then, was some kind of an agreement reached or to
10 your knowledge an order issued, some kind of an accord
11 between the company and the Public Service Commission
12 where a methodology was so to speak blessed going
13 forward for the prudence review time period that we are
14 here on today, December 1, 2016 to May 31, 2018? Did
15 something happen back there that established, and I know
16 you don't like to call it a methodology, but whatever it
17 is you want to call it, was something settled upon and
18 blessed by the Commission with an order or something
19 that you understand the company has followed since with
20 respect to the allocation of these costs related to the
21 production of steam?

22 A. Yes.

23 Q. Okay. What was it that was --

24 A. What came out of the 2016 --

25 Q. Yes. What came out of it?

1 A. -- case was a set of numbers. The way I
2 interpret what came out of that case was we didn't agree
3 on a method. We agreed on values to be used as the
4 allocators.

5 Q. Now, are those dollar amounts?

6 A. Percentages.

7 Q. That's what I was going to ask. Those are
8 percentages. All right. So what would the percentage
9 -- help me with the formula since I've got you. What
10 are we going to apply the percentages to?

11 A. Now you're starting to get outside of my realm
12 of expertise.

13 Q. But those percentages would be applied to
14 certain kinds of expenses?

15 A. Yes.

16 Q. And at the end of the day when those
17 percentages that were agreed upon and established are
18 applied, expenses, help me with this, fuel expenses that
19 have, what did you call it, been nested -- Is that the
20 expression you used?

21 A. I did use that term, yes.

22 Q. -- in other expenses will get allocated to
23 customers on the basis of their usage of I heard you
24 talking about commercial uses, and so forth. What are
25 we going to do with those percentages?

1 A. Prior to the agreement coming out of the 2016
2 case, it's my understanding that these factors, these
3 allocations were actively calculated and updated. And
4 the agreement in the 2016 case was to not update them,
5 not use the methods that had been used previously but to
6 instead simply accept the percentages as numbers.

7 Q. Thank you for the correction because I caught
8 that. So we didn't bless a methodology but we did
9 settle upon some percentages that we were going to go
10 forward with into this review period that's before us
11 today?

12 A. I believe that is correct.

13 Q. But allocation is the wrong word? I'm asking
14 you.

15 A. I don't believe so.

16 Q. It is not the wrong word. We are allocating
17 expenses either directly or indirectly?

18 A. Yes.

19 Q. Including the costs that are accountable for
20 the production of steam?

21 A. Could you please clarify?

22 Q. The question I have before me that I need to
23 ask is can you explain what allocation accounts for
24 steam?

25 A. Again, the Lake Road plant is -- I have a

1 presentation that I would offer up that actually the
2 company created for us in 2016 during that general rate
3 case that I would be happy to provide. However, it has
4 been marked by the company as highly confidential. That
5 presentation contains lots of good information and
6 diagrams showing how the Lake Road plant is configured
7 and the interdependencies between the steam system that
8 serves both the industrial steam customers and the
9 electric customers.

10 Q. I know you cannot get into that, but am I
11 understanding you to say that there is an allocation
12 that accounts for steam?

13 A. The generation of steam -- So at the Lake Road
14 plant, steam is produced in boilers. There are many
15 different boilers at the Lake Road plant. Those boilers
16 are connected to steam headers which then provide steam
17 to industrial steam customers and can provide steam to
18 electric customers. To produce that steam you need to
19 -- there are expenses for maintenance of those boilers.
20 There are expenses for the auxiliary power to move water
21 and fuel around to fuel those boilers. There are
22 expenses for the personnel that operate them. There are
23 many different costs associated with producing steam.
24 And so I'm not sure exactly how to answer your question.

25 Q. Well, can you tell me what is your own

1 understanding of where the steam auxiliary fuel power is
2 captured in an allocation? Can you answer that?

3 A. Currently there is no line number or account
4 that I could point at to show where it is captured.

5 Q. Is it nested anywhere?

6 A. We're getting again outside my range of
7 knowledge. Once we start getting into accounts, I start
8 -- things get a little fuzzy for me.

9 Q. All right. That's fair. And do you have an
10 opinion on whether the methodology or whatever you wish
11 to call it, whether GMO's methodology of allocation or
12 whatever it is you're comfortable with, should it be
13 accepted as appropriate?

14 A. I think that the method that is currently in
15 use and that was in use following the 2016 electric rate
16 case was deemed to be appropriate once it was agreed to
17 by parties and approved by the Commission.

18 Q. Okay. Do you believe that it's prudent, that
19 methodology?

20 A. I think by definition it has -- If the company
21 follows what they have been directed to do, then yes.

22 JUDGE GRAHAM: I have no further questions for
23 the witness. Now I think where we'll go, does the
24 Commission have any questions at this point?

25 COMMISSIONER RUPP: Not at this time.

1 JUDGE GRAHAM: I'm going to proceed then to
2 cross and start with the company at this point. Does
3 the company have any cross?

4 MR. FISCHER: Just briefly, Judge.

5 CROSS-EXAMINATION BY MR. FISCHER:

6 Q. Mr. Poston, I understand you're mostly the
7 engineer that was involved in this issue, correct?

8 A. Yes.

9 Q. And there were other staff members, Brooke
10 might have been involved in some of the allocation cost
11 accounting type questions; is that right?

12 A. Yes.

13 Q. Okay. In the staff's report of the Eighth
14 Prudence Review, I believe staff came to the conclusion
15 that staff found no indication that GMO imprudently
16 included steam auxiliary power costs in the FAC during
17 the review period. Is that your understanding?

18 A. Yes.

19 Q. Then I think public counsel filed some
20 rebuttal testimony after that that suggested they had a
21 different opinion?

22 A. Yes.

23 Q. And did staff continue to look at this issue
24 in the meantime?

25 A. Yes.

1 Q. Did you come to any different conclusion after
2 you read the public counsel's testimony that there was
3 any imprudence in the allocation of costs to the steam
4 system?

5 A. No.

6 Q. And were you in the room this morning when you
7 heard -- Were you in the room or did you hear the
8 opening statement of the public counsel?

9 A. I did.

10 Q. And you've heard the cross-examination of,
11 well, of Ms. Nunn?

12 A. Yes.

13 Q. Based on anything you've heard this morning,
14 has staff changed its opinion about whether there was
15 any imprudence in the allocation by the company of those
16 steam factors?

17 A. No.

18 MR. FISCHER: Okay. That's all I have, Judge.

19 JUDGE GRAHAM: Okay. Does the Office of
20 Public Counsel have some cross?

21 MR. CLIZER: Yes, Your Honor.

22 JUDGE GRAHAM: Go ahead.

23 MR. CLIZER: Good afternoon.

24 THE WITNESS: Good afternoon.

25 CROSS-EXAMINATION BY MR. CLIZER:

1 Q. I'm going to ask you a series of very simple
2 questions trying to get to some of the issues that you
3 just discussed with the judge. First of all, you would
4 agree with me that there's a certain amount of power
5 that's necessary just to maintain operations at the Lake
6 Road facility?

7 A. That's correct.

8 Q. And I'm going to use the term auxiliary power.
9 Would you agree with that term?

10 A. That's fair.

11 Q. Fair enough. Okay. And there's a certain
12 amount of fuel that has to be consumed in order to
13 provide this auxiliary power, correct?

14 A. Well, at the Lake Road site, I would say, I
15 mean, indirectly, yes. However, when the electric
16 facilities at the Lake Road site are not running, they
17 are not consuming any fuel for the generation of
18 electricity. So whatever power would be needed to
19 supply those auxiliaries, that would be coming from the
20 grid. So someone somewhere is providing that power but
21 it's not necessarily being generated on site at the Lake
22 Road plant.

23 Q. Always. There are some instances where
24 auxiliary power is being generated at Lake Road --
25 actually you know what. I withdraw the question. It's

1 not important.

2 If I were to posit to you that fuel costs for
3 auxiliary power were recorded in a fuel cost account,
4 all right, I'll posit that to you, does it make some
5 more sense to apply an allocation factor -- does it make
6 more sense when trying to allocate those costs to apply
7 an allocation factor to a fuel account or a non-fuel
8 account?

9 A. There are multiple ways to perform
10 allocations, and it has been the decision up to this
11 point to accept the more general allocation in, you
12 know, 1994, in EO-94-36 they went with a more direct
13 allocation. Both have been used. I think both have
14 been used successfully.

15 MR. CLIZER: Thank you. That's all.

16 JUDGE GRAHAM: Okay. Ordinarily we would
17 finish I think here with redirect from staff. Do you
18 have any redirect for the witness?

19 MS. KLAUS: No redirect, Judge. Thank you.

20 JUDGE GRAHAM: Okay. I'm going to excuse this
21 witness and excuse the other witnesses that staff has
22 kindly produced for us today.

23 MR. KEEVIL: Does that also include the one we
24 have on standby in Kansas City via phone?

25 JUDGE GRAHAM: Yes, sir.

1 MR. KEEVIL: Thank you. Just wanted to make
2 sure.

3 JUDGE GRAHAM: That's a fair question. Thank
4 you very much, Mr. Keevil.

5 (Witnesses excused.)

6 JUDGE GRAHAM: So I believe that the next
7 witness that we have scheduled is the Office of Public
8 Counsel's witness on Issue No. 2, Lena Mantle. Ms.
9 Mantle, you may consider yourself still under oath.
10 You've testified earlier today, haven't you?

11 THE WITNESS: Yes.

12 JUDGE GRAHAM: I thought I remembered you.
13 And again we'll proceed with direct by OPC.
14 LENA MANTLE, having previously been sworn, testified as
15 follows:

16 MR. CLIZER: Your Honor, because we have
17 already submitted into evidence the rebuttal and
18 supplemental rebuttal of Ms. Mantle, I have no further
19 direct and tender the witness for cross-examination.

20 JUDGE GRAHAM: Just help me on that. Which
21 exhibits were those again?

22 MR. CLIZER: Those were 101-C and 101-P for
23 the confidential and public versions of the rebuttal
24 testimony respectively and 102 for the supplemental
25 rebuttal.

1 JUDGE GRAHAM: Thanks very much, counsel. Ms.
2 Mantle has been tendered for cross-examination and we'll
3 start with staff.

4 MS. KLAUS: No questions. Thank you.

5 JUDGE GRAHAM: Does KCPL GMO have some
6 cross-examination?

7 MR. FISCHER: Yes, just a few, Your Honor.
8 Good afternoon, Ms. Mantle.

9 CROSS-EXAMINATION BY MR. FISCHER:

10 Q. I want to try to cut some of my questions
11 short. Let me ask you a few questions right up front
12 about your background. You've been with Public Counsel
13 for about five years; is that right?

14 A. Yes.

15 Q. And before that you were at staff for quite a
16 number of years going back to before there was a fuel
17 adjustment clause; is that right?

18 A. Yes.

19 Q. Okay. And is this the first case you've filed
20 testimony on an issue related to the cost of auxiliary
21 power for GMO's steam operations at the Lake Road
22 generating facility?

23 A. I believe so.

24 Q. Is it correct that to your knowledge staff or
25 public counsel have never previously alleged GMO was

1 including the cost of electricity for auxiliary power in
2 GMO's electric rates for all those years that GMO has
3 had a fuel adjustment clause going back to 2008?

4 A. Going back to 2008, the rate cases, I was
5 manager over the group that did the fuel modeling and it
6 was my understanding and it's still my understanding
7 that when the electric cases -- when it was electric
8 only, it was modeled, the allocation was done through
9 modeling.

10 Q. My question to you is, to your knowledge has
11 there ever been an issue raised by public counsel or
12 staff that suggested that the cost of electricity for
13 auxiliary power was included in GMO's electric rates?

14 A. No, because it had been allocated in rate
15 cases through the fuel model.

16 Q. Okay. Great. I'd like to refer you to your
17 rebuttal testimony on page 7 at lines 18 through 24.
18 There you indicate that on January 13, 1995, the parties
19 to the St. Joseph Light & Power case, Case No. EO-94-36
20 filed a Stipulation and Agreement which included the
21 allocations procedure manual; is that right?

22 A. Yes.

23 Q. And I believe you attached that manual from
24 that '94 case in your Schedule LMM-R-4; is that right?

25 A. Yes.

1 Q. Now, on page 8 of your rebuttal testimony at
2 line 15, you state that the allocations manual from
3 EO-94-36 case states the auxiliary power will be priced
4 using the average system energy cost and then you have
5 dollars per megawatt hour in parentheses for each month
6 which includes all Lake Road plant and Iatan generation
7 costs, fuel handling expenses and all purchased power
8 expenses; is that right?

9 A. Yes.

10 Q. Now, that case would have occurred before GMO
11 had a fuel adjustment clause; is that right?

12 A. Definitely.

13 Q. And according to your testimony on page 7 at
14 lines 19 through 22, you state that manual contained a
15 procedure for allocating auxiliary power of the Lake
16 Road facility between steam and electric operations that
17 takes into account the thermal efficiencies of the
18 plants and the amount of steam and electricity generated
19 by the plant; is that right?

20 A. Yes.

21 Q. Now, would you agree with me that that
22 allocation manual for that case was a direct assignment
23 method or approach for allocating the costs between
24 electric and steam allocations?

25 A. For auxiliary power there are other accounts,

1 other type of costs that were allocated based on
2 allocation factors.

3 Q. That manual, though, it addressed more than
4 auxiliary power. It addressed all the costs out there,
5 right, and it was a direct assignment approach?

6 A. Not all of them were a direct assignment. I
7 believe some were allocated according to some allocation
8 factors.

9 Q. Okay. Would you agree with me, though, that
10 that manual basically isn't a direct assignment manual
11 type approach; it includes allocations but that would be
12 the overall perspective of that manual?

13 A. I'm not for sure what you're -- I can't agree
14 with that because I don't understand exactly what you're
15 asking.

16 Q. Okay. That's fair. Based on your years of
17 experience around these allocation issues, wouldn't you
18 agree that there can be different methods of allocating
19 costs?

20 A. Yes.

21 Q. And do you agree that there's no perfect
22 method for allocating costs between services?

23 A. There's some that are better than others. No
24 perfect.

25 Q. That's fair too. Many of the rate design

1 disputes in rate cases involve differences of opinion
2 about how to allocate costs between various services; is
3 that right?

4 A. When allocating between classes, are you
5 talking about class cost of service?

6 Q. Yes.

7 A. That's correct.

8 Q. And those are often reviewed in rate cases,
9 correct?

10 A. They are reviewed by the parties. They don't
11 always go before the Commission.

12 Q. Sometimes the Commission is asked to review
13 those too, right?

14 A. Not very often.

15 Q. That's probably a good thing, right?

16 A. I'm not going to comment on that one.

17 Q. Typically in rate cases if the Commission
18 adopts one allocation method that reduces the cost of
19 any given service, then some other class of service or
20 services perhaps picks up the difference. Is that the
21 way it usually works?

22 A. It's usually allocation of a pie. The pie
23 does not get bigger or smaller. It's just the slices,
24 yes, sir.

25 Q. So in other words, if the Commission adopts an

1 allocation method in a rate case that reduces the costs
2 of one class, say the residential class, then other
3 classes of service would have an increase in the
4 allocated costs to make up the difference?

5 A. When you're talking about class cost of
6 service, yes.

7 Q. And there's not a disallowance of costs but
8 there's a reallocation of costs among services; is that
9 right?

10 A. When you're talking about allocation -- In a
11 class cost of service, when you're talking between
12 jurisdictions that doesn't always happen.

13 Q. Sometimes there's a crack between the
14 jurisdictions, is that what you're saying?

15 A. Yes, sir.

16 Q. Okay. In those situations in a rate case
17 where we're talking about allocating among classes, the
18 Commission is not reviewing the prudence of the costs
19 but just the allocation of costs among the services; is
20 that typically what happens?

21 A. They review both. They review both the size
22 of the pie and then how to split it up in a rate case.

23 Q. When we're looking at just the rate design
24 issue on what allocation factor ought to be applied to,
25 say, residential service, they're looking at reviewing;

1 they're not looking at what the prudence of those costs
2 are. They're just looking at how that cost should be
3 allocated?

4 A. In the class cost of service itself, yes,
5 that's correct.

6 Q. And if the Commission adopts an allocation
7 method that is different from the company's proposed
8 allocation method in a rate case, then the company's
9 shareholders are not required to absorb the difference,
10 are they?

11 A. Not the class cost of service.

12 Q. Other classes of service would absorb the
13 difference in those cost allocations; is that right?

14 A. That's correct.

15 Q. Now, is this the first time that you've raised
16 an allocation issue in an FAC prudence review case?

17 A. Yes.

18 Q. You don't suggest in your testimony that it's
19 imprudent for GMO to spend money on auxiliary power for
20 steam operations, do you?

21 A. No. It's imprudent to ask the electric
22 customers to pay for steam auxiliary power.

23 Q. You disagree with the allocation method being
24 used to allocate costs between electric and steam
25 services; is that right?

1 A. No, that is not correct.

2 Q. Have you read the testimony of Linda Nunn?

3 A. Yes, I have.

4 Q. In her testimony she says that in Case No.
5 ER-2009-0090 and the companion steam case the company
6 proposed to allocate its costs both rate base and cost
7 of service for the L&P jurisdiction what used to be
8 called St. Joseph Light & Power between its electric and
9 industrial steam businesses using a seven-allocation
10 factor method. Do you recall that?

11 A. I recall that being in her testimony, yes.

12 Q. And there was a footnote, footnote 3, where
13 she cited the direct testimony of Ronald Klote in those
14 cases. Do you remember that?

15 A. Yes, but there's also testimony from Tim
16 Nelson in those cases regarding the allocation factors.

17 Q. Did you happen to review the testimony of
18 Mr. Klote in those cases?

19 A. I know I read his testimony in the steam case
20 the, HR I think 2009-0092.

21 MR. FISCHER: Okay. Judge, I'd like to have a
22 couple documents marked as exhibits.

23 JUDGE GRAHAM: Okay.

24 MR. FISCHER: And I think that would be No. 7
25 and No. 8. Let's have the -- she mentioned the steam

1 case. Let's mark the steam case testimony of Ron Klote
2 as 7.

3 JUDGE GRAHAM: How do you spell the last name?

4 MR. FISCHER: K-l-o-t-e.

5 JUDGE GRAHAM: That's No. 7?

6 MR. FISCHER: Yes. That would be the direct
7 testimony of Ronald A. Klote in HR-2009-0092 dated
8 September 5, 2008. The other one is ER-2009-0090. Same
9 date, September 5, 2008.

10 MR. KEEVIL: Is that in the electric case,
11 Jim?

12 MR. FISCHER: Yes, that's the electric case,
13 ER-2009-0090.

14 JUDGE GRAHAM: That's Exhibit 8?

15 MR. FISCHER: Yes.

16 BY MR. FISCHER:

17 Q. Ms. Mantle, do you have copies of those now?

18 A. Yes, I do.

19 Q. I'd like to refer you to the steam case I
20 guess to start with on page 4. Mr. Klote identifies
21 allocation factors for allocating the costs of service
22 between electric operations and steam operations, is
23 that right, beginning on the bottom of page 4, line 19
24 through 21 there?

25 A. It says to separate the company's rate base

1 and cost of service between electric and steam products.

2 Q. Okay. And does that discuss what we've been
3 calling the seven-factor allocation method in the next
4 couple pages?

5 A. There are seven factors that are described
6 there.

7 Q. Okay. And let's turn also to the Exhibit 8,
8 the electric testimony. I'd ask you to turn to page 5.
9 Does that also describe the allocation factors to
10 separate L&P rate base and cost of service between
11 electric and steam products?

12 A. It looks to be the same without being able to
13 compare every word, but it does have seven different
14 points.

15 Q. Okay. Now, this seven-factor method is a
16 different method from the direct assignment method that
17 was previously described and used in Case EO-94-36,
18 wouldn't you agree?

19 A. For these -- As I said previously, Tim Nelson
20 in the steam case did have an allocation of auxiliary
21 power. This would be other costs other than the
22 auxiliary power.

23 Q. It's a different method, though, than what was
24 described in the 94 case, the seven factors that are
25 included in Mr. Klote's discussion here?

1 A. I can't say exactly. That 94 case was a thick
2 binder and this is just seven points spread on two
3 pages. So it appears to be different, but what was in
4 the 94 case was very detailed and this is very general.

5 Q. Okay.

6 A. So I cannot really make that determination.

7 Q. But you think it could be the same?

8 A. I don't know whether it is or not. I'm not
9 going to get here on the stand and say how it compares.

10 Q. You were the manager of the energy unit in
11 2009 when Case No. ER-2009-0090 was processed; is that
12 right?

13 A. That is correct.

14 Q. And do you recall that was a settled case?

15 A. I do not recall whether it was settled. I'll
16 take your word for it.

17 Q. Let me ask you not to take my word for it.
18 I'll show you, I think, the order approving the
19 non-unanimous stipulation and agreements and authorizing
20 tariff filing in that case.

21 A. Yes.

22 Q. Does that indicate on the front page that this
23 order approves the non-unanimous stipulation and
24 agreement executed by KCPL Greater Missouri Operations
25 Company, the staff of the Missouri Public Service

1 Commission, the Office of Public Counsel, the Department
2 of Natural Resources and Dogwood Energy LLC to resolve
3 all issues in this case which it was described as a
4 global agreement?

5 A. With the exception of pension cost, yes, sir.

6 Q. And then I believe it also indicates that
7 there was another agreement on pensions. Does it appear
8 to you that this was a settled case?

9 A. Yes.

10 Q. It would appear that public counsel was a
11 signatory to it?

12 A. Yes.

13 Q. And would you also agree that this order
14 approved that stipulation and agreement?

15 A. I'm sorry?

16 Q. You would agree that this order approves the
17 stipulation and agreement?

18 A. Yes.

19 Q. At the bottom of page 9 of this order it
20 states the Commission further notes that no party has
21 objected to the proposed annual revenue requirement or
22 to any component of any calculations, allocations,
23 negotiations or compromise resulting in the proposed
24 annual revenue requirement as set forth in the global
25 agreement; is that right?

1 A. That is what it says.

2 Q. And would you happen to remember that the
3 steam case was also settled?

4 A. I do not remember that.

5 Q. Okay. Ms. Nunn states in her direct testimony
6 that the allocation of costs between the steam and
7 electric systems is now accomplished by the use of a
8 seven-factor allocation procedure. Is that your
9 understanding of her testimony?

10 A. That is my understanding.

11 Q. She also testifies on page 3 of her
12 surrebuttal that the allocation method used by GMO has
13 been used to develop rates approved by the Commission
14 for the past five electric cases as well as GMO's last
15 industrial steam rate case. Is that your understanding
16 too of what she testified about?

17 A. Yes.

18 Q. Do you have any evidence that would dispute
19 her statement that GMO has used the seven-factor
20 allocation method in the last five electric rate cases
21 and GMO's last industrial steam rate case?

22 A. No.

23 Q. Did you file any testimony in any of those
24 past five GMO rate cases that challenged the use of the
25 seven-factor allocation method?

1 A. No.

2 Q. And you're not aware of anyone on your staff
3 during those years that filed testimony in any GMO rate
4 case or fuel adjustment prudence review case that
5 suggested the use of the seven-factor allocation method
6 was improper; is that right?

7 A. That's a lot of cases.

8 Q. You don't --

9 A. No, I do not.

10 Q. Okay. Now, doesn't your recommendation in
11 this case recommend adjustments that go back to previous
12 FAC review periods before the Eighth Prudence Review
13 period?

14 A. Yes.

15 Q. Have you -- Do you happen to have the staff's
16 Eighth Prudence Review Report with you?

17 A. Not here on the stand, no, sir.

18 MR. FISCHER: Judge, may I approach for just a
19 minute?

20 JUDGE GRAHAM: Surely.

21 BY MR. FISCHER:

22 Q. I'd like to show you page 2 of the staff's
23 report which lists all the previous completed GMO FAC
24 prudence reviews. Would you confirm to me that they go
25 back to June 1, 2007 through November 30, 2016?

1 A. Yes.

2 Q. And those are seven different prudence
3 reviews?

4 A. Yes.

5 Q. Would you agree with me that the Commission
6 reviewed prudence issues in those unless they were
7 settled cases?

8 A. That the Commission reviewed the prudence?

9 Q. Or at least the parties did?

10 A. The staff did.

11 Q. Staff did?

12 A. Yes.

13 Q. Would you agree with me that those cases are
14 now closed?

15 A. Yes.

16 Q. And the rates that were approved by the
17 Commission -- there were FAC rates that were approved by
18 the Commission in those cases?

19 A. Not in the prudence cases, sir.

20 Q. In the true-ups and related?

21 A. In the fuel adjustment clause rate change
22 cases, yes.

23 Q. Okay. Correct.

24 A. Those are interim rates subject to change.

25 Q. And let's see. There would have been final

1 orders in those cases; is that right?

2 A. I'm not for sure. Those cases were closed.
3 I'm not for sure exactly what the order that closed them
4 said.

5 Q. That's fine. That's fine. Now, if the
6 Commission adopts your position in this case, is it
7 correct that GMO's shareholders would have to absorb the
8 difference between your proposed allocation method and
9 the allocation method used by the company?

10 A. I'm not for sure what goes into the quarterly
11 cost adjustment for the steam customers. So I'm not
12 sure. Most likely.

13 Q. Okay. If the Commission adopted your
14 proposal, steam customers would not get a rate increase
15 as a part of this case to cover your proposed reduction
16 to electric customers; is that right?

17 A. It's my understanding steam -- this would not
18 affect steam customers' rates at all in this case it
19 cannot be affected.

20 Q. That is different from what would happen in a
21 rate case if the Commission adopted a different
22 allocation method for the various services, correct?

23 A. For it to impact both the steam and electric,
24 there would have to be a steam and electric case opened.
25 That's one of the reasons in the last few cases that the

1 allocation factors have not changed because there was no
2 steam case opened at the same time in which the steam
3 customers would either absorb extra cost or get the
4 benefits of changes to allocation factors in the
5 electric case.

6 Q. And staff made no disallowances of costs
7 associated with auxiliary power in their audit report;
8 is that right?

9 A. That is correct.

10 Q. Now, Ms. Mantle, on page 3 of Ms. Nunn's
11 testimony or surrebuttal she states that additionally in
12 its last electric rate case GMO agreed to work with
13 staff, OPC and MECG to develop new steam allocation
14 procedures prior to GMO's next electric rate case; is
15 that your understanding?

16 A. I don't have that testimony in front of me.
17 Yes, I can remember that being in there.

18 Q. Is it your understanding that that did come
19 out of an order from the Commission?

20 A. It was either an order of an agreement that
21 accepted an agreement.

22 Q. Is OPC willing to discuss cost allocations
23 between electric and steam service with GMO
24 representatives as ordered by the Commission?

25 A. Definitely.

1 Q. Would you expect that revised allocation
2 procedures if they were agreed to between staff, GMO,
3 OPC and MECG would be implemented in a GMO rate case?

4 A. In a future GMO rate case, yes.

5 MR. FISCHER: I would offer then, Judge,
6 Exhibits 7 and 8, and that's all the questions I have.

7 JUDGE GRAHAM: Okay. Exhibits 7 and 8 have
8 been offered. Any objections?

9 MR. CLIZER: No, Your Honor.

10 JUDGE GRAHAM: They're received.

11 (COMPANY'S EXHIBITS 7 AND 8 WERE RECEIVED INTO
12 EVIDENCE AND MADE A PART OF THIS RECORD.)

13 JUDGE GRAHAM: Commissioner Rupp, do you have
14 any questions?

15 COMMISSIONER RUPP: No, I'm good. Thank you.

16 JUDGE GRAHAM: I have no questions and there
17 being some cross but nothing from the commissioners, is
18 there any redirect?

19 MR. CLIZER: Yes, Your Honor.

20 JUDGE GRAHAM: Go ahead.

21 MR. CLIZER: Thank you.

22 REDIRECT EXAMINATION BY MR. CLIZER:

23 Q. The attorney for company just talked to you
24 about the idea of the impact or rather that OPC might be
25 able to work with company to resolve this issue in a

1 future rate case. Do you recall that?

2 A. Yes.

3 Q. Would that cure the problem that the OPC is
4 attempting to correct in this case?

5 A. No.

6 Q. Why is that?

7 A. Because this is looking at a prudence period.
8 This is looking at for GMO December of 2016 through May
9 of 2018; that anything that would be agreed to in the
10 future would only be affected going forward from that
11 date.

12 Q. You were handed a copy of what's titled order
13 approving non-unanimous stipulation and agreement and
14 authorizing tariff filings for Case No. ER-2009-0090?

15 A. Yes.

16 Q. I do not believe it was made an exhibit, but
17 do you still have a copy of that?

18 A. Yes, I do.

19 Q. Could you turn to page 14. Could you read the
20 paragraph at the top of that page beginning the
21 Commission emphasizes?

22 A. The Commission emphasizes that its decision in
23 this matter is specific to the facts of this case.
24 Evidentiary rulings, Findings of Fact and Conclusions of
25 Law are all determined on a case-by-case basis.

1 Consequently, consistent with the Commission's statutory
2 authority, this decision does not serve as binding
3 precedent for any future determinations by the
4 Commission.

5 MR. CLIZER: Thank you. You were also handed
6 two exhibits which have just been admitted, 7 and 8, and
7 I apologize I missed which one was steam and which one
8 was electric. Could someone remind me?

9 MR. FISCHER: Steam was 7.

10 MR. CLIZER: Thank you.

11 BY MR. CLIZER:

12 Q. So starting with 7, you were asked to examine
13 the allocation factors laid out in pages 4 through 5?

14 A. Yes.

15 Q. Did any of these allocation factors appear to
16 relate to auxiliary power or rather the fuel consumed to
17 produce auxiliary power at the Lake Road facility?

18 A. There's no mention of auxiliary power in, I
19 know in the steam because I did a word search on this
20 document prior to this hearing on this document to see
21 if auxiliary steam was even mentioned -- or auxiliary
22 power is even mentioned in his testimony and it's not in
23 here anywhere.

24 Q. Have you done the same with regard to the
25 electric testimony?

1 A. No, I did not.

2 Q. All right. Can you give me a brief review of
3 those same seven factors as they appear in the electric
4 testimony, those that would be on pages 5 through 6,
5 lines 8 on page 5 through 7 on page 6? Could you just
6 briefly read through those and tell me if you see
7 auxiliary power show up in any of those allocation
8 factors?

9 A. I do not see auxiliary power mentioned in any
10 of these factors.

11 Q. Turning to a specific factor No. 6, and I
12 believe this is consistent on both although you can
13 verify that for yourself, can you please describe what
14 allocation factor No. 6 is?

15 A. They call it here both of them are electric
16 after steam operation and maintenance allocation factor.

17 Q. And what do they say regarding that?

18 A. This is the ratio of allocated payroll
19 applicable to steam business to the total generation
20 payroll charged to O&M.

21 Q. Thank you.

22 A. The allocated payroll applicable to steam
23 business is calculated using ratio of the previous three
24 years of steam coal burn to total Lake Road coal burn
25 applied against total Lake Road payroll charged to O&M.

1 Q. Thank you. You already addressed this to some
2 extent, but you mentioned that Tim Nelson also filed
3 testimony in at least the steam case. Can you give a
4 brief description as to the purpose of that testimony as
5 it relates to your answer to the previous question?

6 A. Tim Nelson was an employee of Aquila who ran
7 the fuel production cost model for Aquila in this case
8 and several cases. I believe he has also did the
9 previous 2005 case. And as a part of his testimony he
10 describes how the auxiliary power was allocated between
11 the electric and the steam operations through his
12 modeling process. Actually it wasn't in the model
13 itself. It was in a separate spreadsheet outside of the
14 model. But Tim Nelson specifically mentioned in his
15 testimony the allocation of cost for auxiliary power in
16 the HR-2009 I think it's 0092 case.

17 MR. CLIZER: Thank you. I have no further
18 questions.

19 JUDGE GRAHAM: That concludes that witness.
20 (Witness excused.)

21 JUDGE GRAHAM: I think we're going to push on
22 unless somebody has an emergency.

23 MR. STEINER: I need a very small comfort
24 break.

25 JUDGE GRAHAM: Let's take a five-minute break.

1 Is that okay? As per before, we'll take opening
2 statements on No. 3.

3 MR. STEINER: That's correct.

4 JUDGE GRAHAM: And we have two witnesses, as I
5 understand it.

6 MR. STEINER: That's correct.

7 JUDGE GRAHAM: All right. Let's take a
8 five-minute break and be back here at ten after.

9 (Off the record.)

10 JUDGE GRAHAM: We are back on the record and
11 we are ready to proceed with presentations on Issue 3
12 with opening statements starting with company's opening
13 statement on Issue 3.

14 MR. STEINER: Thank you. Good afternoon. OPC
15 is using a hindsight analysis to remove KCPL and GMO's
16 prudently incurred wind PPA costs from the FAC. It
17 claims that since Southwest Power Pool revenues from the
18 Osborn and Rock Creek Missouri wind farms are lower than
19 the costs paid to wind farm developers, the projects are
20 uneconomic and imprudent. But the Commission's prudence
21 standard requires a review of the actions of the utility
22 at the time the decisions were made.

23 I want to go back in time for a moment to set
24 the stage for the company's decision to acquire the wind
25 resources. The EPA proposed the Clean Power Plan in

1 June of 2014. The Clean Power Plan required each state
2 reduce CO2 output beginning in 2020 and reach final
3 targets in 2030. Back at that time this rule created
4 shock waves in the electric utility industry and shock
5 waves among its regulators as the EPA was taking the new
6 approach of regulating the level of CO2 at the state
7 level.

8 There was nothing like it before and as
9 initially proposed the rule required each state to
10 determine how it meets CO2 targets set by the EPA. One
11 of the ways the state could meet CO2 targets was to
12 count existing and future renewable energy production in
13 that state towards the targets set by EPA for that
14 state. This was true even if some or all of that
15 renewable energy was used to serve customers in another
16 state.

17 This Commission recognized that the Clean
18 Power Plan had significant ramifications for Missouri
19 electric utilities and their customers. In July of 2014
20 in EW-2012-2014, the Commission set forth a list of
21 questions for Missouri electric utilities to address.

22 One of those workshop questions was the EPA's
23 proposed rule established the state goals by creating
24 renewable energy generation in the state where it was
25 generated. The Commission then wanted comments on how

1 credit for renewables could be traded across state
2 lines. So back in July of 2014, there was a really big
3 important issue for KCPL to address since it had
4 invested early in wind generation and PPAs with wind
5 farms to serve Missouri customers but that generation
6 was located on the plains of Kansas, an ideal place to
7 site a wind farm.

8 In its August 2014 comments, KCPL informed the
9 Commission it had concerns that the EPA's state
10 implementation plans would not allow current and future
11 wind resources in Kansas to meet Missouri goals. KCPL
12 and GMO told the Commission they would likely need to
13 add significant wind resources in Missouri resulting in
14 higher costs for Missouri customers. KCPL told the
15 Kansas Corporation Commission the same thing.

16 KCPL and GMO are not alone in their concern.
17 Other utilities made the same point. Empire and the
18 Missouri co-ops were concerned about the uncertainty of
19 how wind in one state would be treated in another. Now,
20 maybe the EPA would have worked out the trading of
21 credits between states but at the time, this time 2014,
22 the company did not know how or if this problem would be
23 solved.

24 The process of finalizing the Clean Power Plan
25 was uncertain and lengthy. It involved appeals on many

1 levels, appeals at the EPA, appeals at the court and
2 there were many players. You had utilities, you had
3 states, utility commissions, consumer groups,
4 environmental groups. They were all seeking, they were
5 all vying to influence the final version of the rule.
6 In short, there was much uncertainty about which plan
7 Kansas and Missouri would adopt and if those plans were
8 compatible with each other. KCPL and GMO were facing an
9 uncertain Clean Power Plan which included a risk that
10 Missouri state goals could not be met with Kansas wind
11 generation.

12 KCPL and GMO also knew the proposed penalties
13 for noncompliance were significant. Penalties for
14 violation of the Clean Power Plan would have been up to
15 37,000 per day of noncompliance.

16 KCPL and GMO did know that they could meet the
17 Clean Power Plan's Missouri state goals through one or
18 more Missouri based wind PPAs. For the record, the
19 Clean Power Plan is not currently in effect. It is
20 currently stayed.

21 Now, on top of the Clean Power Plan
22 uncertainty, the federal production tax credit, the PTC,
23 that credit for wind farms expired at this time. KCPL
24 and GMO knew without the PTC the price for Missouri wind
25 would only get higher. GMO and KCPL also knew that both

1 Rock Creek and Osborn wind farms qualified for the PTC.
2 KCPL and GMO had issued a request for proposal, an RFP,
3 for Missouri wind generation in 2013. The Osborn and
4 Rock Creek wind PPAs were executed in the spring of 2015
5 and they were a direct result of this RFP.

6 KCPL and GMO secured 20-year PPAs that not
7 only solved the Clean Power Plan issue but also resulted
8 in a projected revenue reduction over 20 years and those
9 farms also faced very low transmission risk as they were
10 located near the company's service territory.

11 OPC's adjustment would punish KCPL and GMO for
12 their decision made in 2015 by looking only at how the
13 company is being compensated by SPP in today's market
14 and ignoring the many issues and uncertainties that the
15 company faced in 2014 and 2015. This is the ultimate in
16 hindsight regulation, punishing the utility for planning
17 for a significant contingency that has not yet occurred.

18 Burton Crawford is the company's witness on
19 this issue. He's been deeply involved in all company
20 resource acquisitions for the past 15 years. He's
21 available for your questions. Please ask him questions.
22 He can inform the company as to the issues the company
23 was trying to solve in the 2014-15 time frame, can
24 further explain -- he can further explain why the
25 decision the company made was prudent. That's it.

1 JUDGE GRAHAM: Commissioner Rupp?

2 COMMISSIONER RUPP: What was the reason you
3 didn't do an RFP for these two?

4 MR. STEINER: We did an RFP in 2013, and the
5 entities that responded to the RFP then their wind farms
6 for one reason or the other didn't pan out and they were
7 able to give us basically a continuation of that RFP
8 through those developers.

9 COMMISSIONER RUPP: So the two projects that
10 were built matched the response you got and the criteria
11 why you went with those that submitted proposals through
12 the RFP?

13 MR. STEINER: I believe that's correct.
14 Mr. Crawford is very familiar with that.

15 COMMISSIONER RUPP: Thank you.

16 JUDGE GRAHAM: We'll have staff's opening
17 statement. I don't know that you have one.

18 MR. PRINGLE: We have a mini opening.

19 JUDGE GRAHAM: Okay.

20 MR. PRINGLE: May it please the Commission.

21 JUDGE GRAHAM: Go ahead.

22 MR. PRINGLE: Good afternoon, Judge Graham,
23 Commissioner Rupp. My name is Travis Pringle and I
24 represent the staff of the Missouri Public Service
25 Commission, and I am before you today to discuss staff's

1 position regarding the purchase power agreements that
2 KCPL and GMO entered into for wind energy produced at
3 the Osborn Wind Energy Center and Rock Creek wind farm.
4 It is staff's recommendation that costs arising from
5 both projects be allowed to flow through the FAC. As
6 noted earlier by Staff Counsel Jeff Keevil, when
7 conducting a prudency review staff follows the prudency
8 standard that was outlined in State ex rel. Associated
9 Natural Gas Company vs. Public Service Commission of the
10 State of Missouri.

11 In its decision, the Court stated that to
12 disallow a utility's recovery of costs from its
13 ratepayers based on imprudence the Commission must
14 determine the detrimental impact of that imprudence on
15 the utility's ratepayers. Further, the Court also noted
16 and supported the Commission's own definition of
17 prudence which was based not upon hindsight but rather a
18 reasonableness standard. And I quote from a decision
19 the company's conduct should be judged by asking whether
20 the conduct was reasonable at the time under all the
21 circumstances considering that the company had to solve
22 its problem prospectively rather than reliance on
23 hindsight. In effect, our responsibility is to
24 determine how reasonable people would have performed the
25 tasks that confronted the company, end quote.

1 This approach was employed by staff in its
2 prudence review of both Osborn and Rock Creek. Staff
3 reviewed the terms of the contract and verified that the
4 correct costs were being paid and flowing through the
5 FAC. Staff concluded that both projects were creating a
6 significant amount of additional cost compared to the
7 revenue received.

8 However, both are long-term PPAs with 20-year
9 terms, warranty performance reviews that should not be
10 based simply from the results of this review period. In
11 addition, there have been several instances where the
12 issues that have been raised by OPC over these PPAs
13 could have been brought up in the past, including the
14 previous general rate case for the companies. However,
15 they were not.

16 And the proposed disallowance at this point by
17 OPC staff views as a review based in hindsight not
18 applying the reasonableness standard that staff employs.
19 It is because of this hindsight focus the Public Service
20 Commission has taken with their prudence review that
21 staff is not recommending a disallowance. Staff has not
22 filed any testimony on this issue. Our conclusion has
23 not changed since the filing of our prudence review
24 report in February. With that said, I'm happy to take
25 any questions you may have.

1 JUDGE GRAHAM: No questions from the bench.
2 Thank you very much.

3 MR. PRINGLE: Thank you.

4 JUDGE GRAHAM: Office of Public Counsel,
5 opening statement, on Issue 3?

6 MR. CLIZER: Thank you, Your Honor. If it
7 would please the Commission. Let me start off by
8 addressing this hindsight thing because that's
9 completely wrong. The OPC is not conducting a hindsight
10 review. The OPC is concerned with what KCPL and GMO
11 knew at the time it entered into these two PPAs. What
12 they knew at that time was the price of PPAs were going
13 down and their other PPAs were already losing money.

14 A person who has already lost money on an
15 investment does not go back and make -- throw more money
16 at that same investment. That's not a reasonable
17 person. Let me provide you a simple analogy to kind of
18 show you where I'm going with this. Imagine for a
19 moment you have a couple living here in Jefferson City.
20 They have currently have a lawn care service taking care
21 of their lawn. They decide they want to buy a riding
22 lawn mower. They think that's going to be cheaper.
23 Right? Well, the couple know that there's a lawn mower
24 on sale at Menard's and they decide that's the one we
25 probably want to go for. One day the husband comes home

1 and the wife says hey, I bought a riding lawn mower.
2 The husband goes did you get the one that was on sale at
3 Menard's? She says no. A traveling salesman came to
4 our door and offered me a different one. It was more
5 expensive. The husband goes why did you buy a more
6 expensive lawn mower when you could have got a cheaper
7 one? And the wife says you don't understand. By not
8 having to pay the lawn care service, we're going to save
9 money. The husband goes that's not the point here. The
10 point is you should have bought a cheaper lawn mower.
11 And that's the OPC's point. At the time that KCPL and
12 GMO entered into these contracts they should have known
13 they could have gotten cheaper winds, because they had
14 gotten cheaper winds.

15 I want to move on to discussing the CPP
16 because that's the other piece of this puzzle here.
17 KCPL and GMO are attempting to say that the CPP made it
18 necessary that they entered into these PPAs. That's
19 absolutely not true either. First of all, let's just
20 get the fact CPP was only ever proposed. It was never
21 actually put into effect. Also, the original proposed
22 rule would have allowed power, renewable energy power
23 from other states to be traded across state lines. The
24 EPA was only ever soliciting comments regarding whether
25 or not to change that.

1 More importantly, however, there were a lot of
2 different ways that you could meet the requirements of
3 the CPP, and KCPL and GMO have offered absolutely no
4 analysis to show that entering into these two wind farm
5 PPAs was the cheapest or best way that they could have
6 actually achieved whatever requirements might have been
7 put in effect if the CPP had actually been passed.

8 In fact, as KCPL and GMO itself pointed out,
9 the Clean Power Plan was subject to multiple appeals and
10 was potentially going to be contested in the upcoming
11 election. There was incredible uncertainty about
12 whether or not this effect rule would have any effect at
13 all. So the idea that the reasonable person or
14 reasonable thing to do would be to immediately run out
15 and buy wind makes no sense. If you're not sure whether
16 or not the rule is going to go into effect, then why
17 would you immediately run out and start purchasing wind,
18 especially at 20-year contracts especially if the price
19 of wind is going down.

20 If the price of wind is going down and you're
21 not sure if you need it, you should wait. That's what a
22 reasonable person would do. Commissioner Rupp, you had
23 asked a question regarding the inclusion of why there
24 was no RFP issued for these cases. The response you got
25 was that there was an RFP issued in 2013. Well, the

1 2013 RFP provided a Missouri wind farm called Mill
2 Creek. Mill Creek was considerably cheaper than Rock
3 Creek although both were produced by Tradewind Energy.
4 They were not the same thing and the Rock Creek did not
5 flow from the RFP issued in 2013 that was two years
6 earlier. It was brought about because the person who
7 put on the original wind project had that wind project
8 fell through and they just threw this one up as an
9 alternative offer. If this had been, you know, a sale,
10 it would be called a bait and switch. The other PPA,
11 Osborn, completely unrelated to the 2013 RFP.

12 Finally, one last thing. Staff has suggested
13 that we could have raised this at other times. Again, I
14 disagree. This is the first chance we've had where
15 we've had actual harm related to these RFPs -- I'm
16 sorry, these PPAs available during a prudence review for
17 us to raise this issue. With that I'll ask if there are
18 any questions from the bench.

19 JUDGE GRAHAM: Questions?

20 COMMISSIONER RUPP: Not at this time.

21 JUDGE GRAHAM: No questions from the bench.
22 So let us proceed. I believe the first witness is the
23 company's witness Burton Crawford.

24 MR. STEINER: That's right.

25 JUDGE GRAHAM: If you'll state your full name,

1 Mr. Crawford, I will administer the oath.

2 THE WITNESS: Burton Crawford.

3 (Witness sworn.)

4 JUDGE GRAHAM: Your witness.

5 MR. STEINER: Thank you.

6 BURTON CRAWFORD, being sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. STEINER:

8 Q. Mr. Crawford, where do you work?

9 A. KCP&L.

10 Q. What's your title?

11 A. Director of Energy Resource Management.

12 Q. Did you cause to be filed in this case direct
13 testimony which has been premarked as Exhibit 5 and
14 surrebuttal testimony which has been premarked as
15 Exhibit 6-P and 6-C?

16 A. I did.

17 Q. Do you have any changes to that testimony?

18 A. I do not.

19 Q. If I were to ask you the questions contained
20 in that testimony today, would your answers be the same
21 as those on the printed page?

22 A. They would.

23 MR. STEINER: Your Honor, at this time I would
24 offer Exhibit 5, Burton Crawford direct, and Exhibit 6,
25 Burton Crawford surrebuttal both the C and the P

1 versions and I ask that they be admitted into evidence.

2 JUDGE GRAHAM: Okay. Exhibits 5, 6-P and 6-C
3 have been offered. Any objection?

4 MR. CLIZER: No, Your Honor.

5 JUDGE GRAHAM: Hearing none, they are
6 admitted.

7 (COMPANY EXHIBITS 5, 6-C AND 6-P WERE RECEIVED
8 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

9 MR. STEINER: Thank you. Tender the witness
10 for cross.

11 JUDGE GRAHAM: And I believe we're starting
12 with staff.

13 MR. PRINGLE: No questions.

14 JUDGE GRAHAM: No questions from staff. Are
15 there questions from OPC?

16 MR. CLIZER: We have no questions at this
17 time.

18 JUDGE GRAHAM: Okay. Commissioner Rupp, do
19 you have any questions?

20 COMMISSIONER RUPP: Yeah.

21 JUDGE GRAHAM: I do not. So we don't have any
22 cross.

23 COMMISSIONER RUPP: I have a question.

24 JUDGE GRAHAM: Oh, you do. I'm sorry. I
25 didn't understand you.

1 COMMISSIONER RUPP: I usually don't.

2 QUESTIONS BY COMMISSIONER RUPP:

3 Q. Help me understand the confusion that seems to
4 be there over the RFP. OPC just made the comment just a
5 few minutes ago that the first one was a bait and switch
6 and the second one had no bearing on the original 2013
7 RFP. Do you agree with that statement? If not, why,
8 and help me understand why that is a true statement or
9 why it is not a true statement.

10 A. Yes, I do have a different perspective on
11 that. We had issued an RFP in I believe it was the
12 middle of 2013 for wind. We were starting to see
13 indications that there might be projects out there.
14 From time to time developers come to us with offers and
15 so we issued an RFP. We got many offers for projects
16 from several different developers. We evaluated those
17 and determined that there were a couple of projects that
18 we liked. We thought they would be beneficial for
19 customers and determined the PPAs, one was Waverly wind
20 farm which is in Kansas and the other one was Mill Creek
21 which was located in Missouri. Yet this was the first
22 time we had seen offers for Missouri wind that looked
23 like they made sense for retail customers. Prior to
24 that the wind was more economic in Kansas than it was in
25 Missouri.

1 We entered into those PPAs and as the project
2 developed on the Missouri side, Mill Creek, they ran
3 into some environmental concerns and I also think they
4 ran into some kind of maybe a tax issue with the county
5 as well. So they basically put the project on hold.

6 What they did then is they partnered up with
7 another wind developer to offer us an alternative to
8 that particular project and came to us with a price that
9 was within the range of what the Mill Creek contract
10 was. Mill Creek was structured a little bit different
11 in the contract kind of had a floor price in it. It
12 also had an adder of up to roughly another \$5 because
13 they didn't have all their interconnection information,
14 transmission information put together. So we had agreed
15 to a not to exceed price. And Mill Creek project, the
16 alternative Mill Creek which was Rock Creek, actually
17 came in within that range from what we had previously
18 evaluated for Mill Creek.

19 But also at that same time, because we do have
20 contacts with wind developers, NextEra had approached us
21 and said hey, we know you're looking for Missouri wind,
22 we now have a project here that we can offer you. It
23 was priced a little bit higher than the alternative to
24 Mill Creek, but we're talking, you know, fractions of a
25 cent. It was a fairly small difference. And given the

1 challenges with wind projects, just because you sign up
2 for them doesn't mean it's a done deal until they
3 actually get built and in service. Sometimes they run
4 into problems and they get canceled. Given our desire
5 to have Missouri based renewable energy, we went ahead
6 and started negotiating for both of those contracts and
7 were able to then successfully actually negotiate those
8 -- enter into those agreements.

9 Q. So if the project, the one you went with, the
10 alternative project that -- Mill Creek fell through.
11 The alternative project Rock Creek that went forward,
12 was that part of any of the RFPs you had received prior
13 to choosing Mill Creek?

14 A. Actually both Rock Creek and Osborn were
15 projects that we received offers on. I think Osborn we
16 had offers going back to five years ago. So the offer
17 that we actually ended up striking on was about half of
18 the cost of the offers from five years ago. Rock Creek,
19 I think the first time we saw that project was four
20 years prior to entering into the deal and like Osborn it
21 was also a pretty high price.

22 Q. These were projects that you had seen before
23 that they had responded to your RFP?

24 A. Yes. And we had rejected them because they
25 were too high priced at the time.

1 Q. At the time. Okay. So it was -- okay. That
2 helps. So the heart of this whole thing is you wanted
3 Missouri wind, Missouri wind is not as good as the great
4 Texas wind or great Kansas wind and you knew you would
5 be paying a premium to have it inside the state based
6 off the location and what you were going to earn?

7 A. We did.

8 Q. And so the difference in price is the
9 geographic location of the two and you felt at that time
10 regardless if CPP was involved or not that you wanted
11 Missouri wind?

12 A. We did. And given the IRP process in the
13 projections on market prices, that's what we used from
14 our 2014 IRP to evaluate the projects. It looked like
15 in most cases that over the life of the contracts that
16 they would actually reduce revenue requirements.
17 Whether that happens or not over 20 years, we don't
18 know. We certainly had one of the nine scenarios that
19 we evaluated but that wasn't the case. But we showed
20 that on average for the first three years of the project
21 that the pricing that we would be paying would be more
22 than the market price of power.

23 Q. And have you ever -- Have your customers, do
24 they differentiate between Kansas wind and Missouri
25 wind?

1 A. Our customers? I don't know that I can really
2 speak for all of our customers.

3 Q. You get requests you want renewable -- your
4 customers want renewable energy. We know they make
5 those requests of you and they want that for whatever
6 their personal reasons. Do any of them approach you and
7 want Missouri generated renewable energy?

8 A. I do not recall a specific customer coming to
9 us and saying I want it located in Missouri. There's
10 certainly been discussions about we want it delivered to
11 KCPL but not specifically that it be physically in
12 Missouri or Kansas.

13 COMMISSIONER RUPP: Thank you. I think that's
14 all.

15 JUDGE GRAHAM: Thank you. Now, is there
16 recross from staff based on those questions from the
17 bench?

18 MR. PRINGLE: No questions.

19 JUDGE GRAHAM: Office of Public Counsel, is
20 there recross?

21 MR. CLIZER: No, Your Honor.

22 JUDGE GRAHAM: Is there redirect based on the
23 questions from the bench?

24 MR. STEINER: Briefly, Your Honor.

25 REDIRECT EXAMINATION BY MR. STEINER:

1 Q. Mr. Crawford, do you recall a question from
2 Commissioner Rupp about why did you want Missouri wind?

3 A. I do.

4 Q. Was diversification of the company's portfolio
5 a reason to want Missouri wind?

6 A. Yes. It's certainly something that's
7 discussed. I wouldn't say it was a primary reason, but
8 our wind had up to that point been located in Kansas and
9 the thinking is if you've got some in Kansas and some in
10 Missouri that you might have a better chance of the wind
11 actually blowing in one or the other locations.

12 Q. You were also asked by Commissioner Rupp if
13 your customers differentiate between Missouri and Kansas
14 wind. Do you recall that line of questioning?

15 A. I do.

16 Q. Do you know if specific counties have
17 requested that KCPL invest in Missouri wind or if it
18 wasn't the counties, has the Department of Energy ever
19 suggested it would be a good idea to invest in Missouri
20 wind?

21 A. I don't know that a county has ever come to us
22 and said hey, please build a wind farm here, and
23 Division of Energy based on my knowledge of them I would
24 imagine they would be interested in Missouri resources
25 but I can't speak for them.

1 MR. STEINER: Thank you. That's all I have.

2 JUDGE GRAHAM: All right. Thank you very
3 much. You may step down.

4 (Witness excused.)

5 JUDGE GRAHAM: I believe we are now ready for
6 the final witness of the day. We'll get to see Ms.
7 Mantle one more time, OPC's witness, and you are still
8 under oath.

9 THE WITNESS: Yes, sir.

10 JUDGE GRAHAM: Office of Public Counsel, you
11 may proceed.

12 LENA MANTLE, having previously been sworn, testified as
13 follows:

14 MR. CLIZER: As before because Ms. Mantle's
15 rebuttal and supplemental rebuttal have already been
16 entered into testimony, I will tender this witness for
17 cross-examination.

18 JUDGE GRAHAM: Be patient with me since I'll
19 be reading this transcript for the second time would you
20 repeat the exhibit numbers for me of that testimony?

21 MR. CLIZER: Sure. Her rebuttal testimony is
22 101-P and 101-C for public and confidential respectively
23 and the supplemental rebuttal is 102.

24 JUDGE GRAHAM: Thank you. You're tendering
25 her now for cross?

1 MR. CLIZER: That is correct.

2 JUDGE GRAHAM: Okay. Staff, do you have cross
3 for this witness?

4 MR. PRINGLE: No cross.

5 JUDGE GRAHAM: Company, KCPL GMO?

6 MR. STEINER: Thank you. Good evening.

7 THE WITNESS: Good evening.

8 CROSS-EXAMINATION BY MR. STEINER:

9 Q. Let's go to page 27 of your rebuttal, line 11.
10 You say that KCPL believed the revenue that these PPAs
11 would generate from the SPP market would be greater than
12 the cost. Do you see that?

13 A. Yes.

14 Q. What time period did KCPL say the revenues
15 would be greater than the cost?

16 A. This was -- they were looking at a 20-year, if
17 that's your question.

18 Q. Yes. 20 years, correct?

19 A. The analysis was done with the 20-year
20 forecasted market prices, yes.

21 Q. Now, a PPA can be uneconomic in the early
22 years and economic in the later years; is that correct?

23 A. That is correct.

24 Q. Let's go to page 35. On line 5 to 6 you claim
25 the existence of the production tax credit makes take or

1 pay wind contracts more expensive. Do you see that?

2 A. Which line was that again? I'm sorry.

3 Q. Line 5 through 6. You know what?

4 A. Yes.

5 Q. I think I'll just skip that line of
6 questioning. Getting late. Would you agree with me
7 that Kansas wind farm prices are generally lower than
8 Missouri wind farms?

9 A. Because the wind is better in Kansas, yes.

10 Q. So you would prefer that the company use
11 Kansas wind exclusively to serve its customers?

12 A. If Kansas wind is the economic least cost
13 choice to serve its customers.

14 Q. Would you agree with me that a utility should
15 consider other factors besides price when evaluating an
16 RFP?

17 A. Yes. The amount of wind available could be
18 one of them.

19 Q. But there could be other factors as well?

20 A. Sure. There's a lot of factors that should be
21 considered.

22 Q. Great. Would you agree with me that the Rock
23 Creek and Osborn PPAs provide wind energy at a fixed
24 price for 20 years?

25 A. Yes.

1 Q. And would you agree that there are advantages
2 to a fixed price contract?

3 A. There could be advantages. There's
4 disadvantages also.

5 Q. One possible advantage of this say hedge
6 against future CO2 restrictions, would you agree with
7 that?

8 A. In the realm of all possibilities, yeah, but
9 we don't have any idea what the CO2 restrictions may
10 look like. It's one possible out of millions of
11 possible avenues for CO2 restriction.

12 Q. Great. Another advantage to these PPAs is
13 they produce clean, emission free energy; is that
14 correct?

15 A. They do produce clean energy, yes.

16 Q. Would you agree that the PPAs add capacity
17 value?

18 A. Not their total capacity but a percentage of
19 their capacity as PPA only allows a percentage of it to
20 be considered capacity.

21 Q. Right. So does your recommended disallowance
22 reflect any of these advantages that you just mentioned?

23 A. The capacity -- KCPL and GMO do not need
24 capacity now or in the next few years. So that's -- and
25 there could be cheaper ways to meet the capacity

1 requirements. So yes, it takes that one into
2 consideration. The fact that these are not needed to
3 meet customer load I take that into consideration. So
4 yeah, it's clean energy. But if the customers -- it may
5 not be going to KCPL and GMO customers. So there's
6 disadvantages and there's advantages. And yes, I
7 weighed many different things.

8 MR. STEINER: Okay. I need to mark an
9 exhibit. I think this would be 9, Your Honor.

10 BY MR. STEINER:

11 Q. Have you had a chance to look at what I've
12 marked as Exhibit 9, Ms. Mantle?

13 A. I did receive this in an e-mail. I have not
14 read it to be honest with you.

15 Q. Take your time.

16 A. I do believe we received this within the last
17 week. This is the first chance.

18 Q. I've handed you Exhibit 9 and that is a Data
19 Request Question 8022 that you asked of the company; is
20 that correct?

21 A. After it filed its surrebuttal testimony, yes.

22 Q. Okay. This is the response or at least part
23 of the response you received; is that correct?

24 A. It is part of the response. It doesn't have
25 the attachments, yes.

1 MR. STEINER: At this time I'd like to offer
2 Exhibit 9 into the record.

3 JUDGE GRAHAM: What did we call that? Can we
4 have a name for it?

5 MR. STEINER: Let's call it DR 8022.

6 JUDGE GRAHAM: Thank you. Any objections?

7 MR. CLIZER: Yes, Your Honor.

8 JUDGE GRAHAM: Go ahead. State your
9 objection.

10 MR. CLIZER: This is basically just an attempt
11 for KCPL to shoot more additional testimony into this
12 case. This is information that they provided to a
13 request that we asked -- a request that we asked.
14 Sorry. Not a response of a request they issued to us.
15 They're just wanting to shoe horn their own testimony
16 into the case.

17 MR. STEINER: May I respond?

18 JUDGE GRAHAM: Yes, please.

19 MR. STEINER: I don't believe that is a proper
20 objection. It's already been identified as the witness
21 as her question and the company's response to her
22 question. So it is entirely relevant to the proceeding.
23 I've had the witness identify it and it should be
24 admitted.

25 JUDGE GRAHAM: Just to clarify, this document

1 represents a question that was asked of this witness?

2 MR. STEINER: No.

3 JUDGE GRAHAM: Please tell me again.

4 MR. STEINER: If you look at the top, it says
5 response to Mantle, Lena interrogatories.

6 JUDGE GRAHAM: Whose response?

7 MR. STEINER: Kansas City Power & Light
8 Company's response.

9 JUDGE GRAHAM: I'm going to take that
10 objection under advisement. Okay.

11 MR. STEINER: Does that mean, Your Honor, that
12 I can cite this in the brief?

13 JUDGE GRAHAM: That's a good question too.
14 Let's review that. This is the company's testimony.

15 MR. STEINER: It's the company's response to
16 Ms. Mantle's question that she asked us. She's
17 identified it as such. She says it's their response she
18 received.

19 MR. CLIZER: Your Honor, if I may.

20 JUDGE GRAHAM: Yes.

21 MR. CLIZER: The Commission rules require all
22 testimony to be filed in prefiled formats. If they
23 wanted to include this information, they could have done
24 so either through their direct or surrebuttal testimony.
25 Springing this testimony on us at the very last minute

1 is --

2 MR. STEINER: It wasn't sprung on the last
3 minute. It was responded to their question.

4 JUDGE GRAHAM: I'm going to overrule the
5 objection. The Exhibit No. 9 is admitted for whatever
6 value it has.

7 MR. STEINER: Thank you.

8 (COMPANY EXHIBIT 9 WAS RECEIVED INTO EVIDENCE
9 AND MADE A PART OF THIS RECORD.)

10 MR. STEINER: I have another exhibit to mark.
11 BY MR. STEINER:

12 Q. Ms. Mantle, you've been handed what's been
13 marked Exhibit 10. This is a question that the company
14 asked you KCPL-2 DR. Do you recognize it?

15 A. Yes, I do.

16 Q. Do you recognize the response as your
17 response?

18 A. Yes.

19 MR. STEINER: Your Honor, I would like to
20 offer Exhibit 10 into the record.

21 JUDGE GRAHAM: Objections?

22 MR. CLIZER: No.

23 JUDGE GRAHAM: Any objections?

24 MR. CLIZER: No.

25 JUDGE GRAHAM: No objections, it is admitted.

1 (COMPANY EXHIBIT 10 WAS RECEIVED INTO EVIDENCE
2 AND MADE A PART OF THIS RECORD.)

3 MR. STEINER: I have one more, Your Honor.
4 Please bear with me.

5 JUDGE GRAHAM: This is going to be 11?

6 MR. STEINER: That's correct. KCPL DR 3 to
7 OPC.

8 BY MR. STEINER:

9 Q. Ms. Mantle, do you recognize what's been
10 marked as Exhibit 11 as KCPL DR 3 to you?

11 A. Yes.

12 Q. And do you recognize that that is the response
13 you gave to that data request?

14 A. Yes.

15 MR. STEINER: Your Honor, I'd like to offer
16 Exhibit 11 into evidence.

17 JUDGE GRAHAM: Any objections? No objections,
18 it's admitted. 11 is admitted.

19 (COMPANY EXHIBIT 11 WAS RECEIVED INTO EVIDENCE
20 AND MADE A PART OF THIS RECORD.)

21 MR. STEINER: Thank you, Your Honor. That's
22 all I have.

23 JUDGE GRAHAM: And that concludes cross.
24 Commissioner Rupp, do you have any questions for this
25 witness?

1 COMMISSIONER RUPP: No, I do not.

2 JUDGE GRAHAM: This time I got it right. I
3 think I understood you, Commissioner. So there being no
4 questions from the Commissioners, we'll go back to
5 whether there's some redirect.

6 MR. CLIZER: Yes, Your Honor.

7 REDIRECT EXAMINATION BY MR. CLIZER:

8 Q. Ms. Mantle, the attorney for company asked you
9 several questions regarding the advantages of PPAs.
10 Mentioned, for example, fixed price, clean emissions,
11 capacity value. Just to be very clear, are we opposed
12 to all wind PPAs or just the two that we've identified
13 in this case?

14 A. Just the two that we've identified in this
15 case.

16 Q. Why are we opposed to just those two?

17 A. They were not entered into as a result of an
18 RFP. We do not know if they're the most economic or
19 not. KCPL and GMO are claiming that they entered into
20 these not for emissions. Their only testimony in direct
21 and surrebuttal was a passing mention of the CPP but
22 they've always said their reason to enter into these is
23 economic conditions. And to that end they did not enter
24 into an RFP to make sure they could get the most
25 economic wind PPAs for their customers.

1 Q. Thank you. You were also asked a question
2 about whether or not PPAs may start off uneconomic but
3 become economic later on. Based on all the data that
4 you observed regarding the two PPAs, do you believe that
5 it's likely that they will become economic in the
6 future?

7 A. It is likely they will remain economic all 20
8 years.

9 Q. Economic or uneconomic?

10 A. Uneconomic. Excuse me. It's likely they will
11 be uneconomic all 20 years.

12 Q. And you're basing that off of what -- never
13 mind.

14 MR. CLIZER: I have no further questions.

15 JUDGE GRAHAM: All right. I believe that
16 concludes the testimony of this witness and the
17 testimony of witnesses in this case.

18 (Witness excused.)

19 JUDGE GRAHAM: So let's wrap this up. I've
20 monitored all the exhibits and I believe that every
21 exhibit that has been discussed on the witness stand has
22 been accepted into evidence. So if your notes reflect
23 something else and I need to do something with an
24 exhibit, let me know. If there are any late filed
25 exhibits, I think that they should be filed by August

1 30, and the reason I say that is that's when I show that
2 the expedited transcript is due to be filed. So any
3 late exhibits coming in by August 30.

4 If there are objections to those on the basis
5 of anything at all, then those objections I'll expect to
6 be seen. We'll look for initial briefs, all other
7 things being equal, on September 16 and reply briefs on
8 September 27.

9 MR. STEINER: Your Honor, could I interrupt
10 for a second?

11 JUDGE GRAHAM: Surely.

12 MR. STEINER: I inquired of counsel and I
13 believe everyone is amenable to a little bit more time
14 for both the initial and the reply brief due to the kind
15 of press of business that some of us are facing. So we
16 would get a week extension of the date for each of
17 those, if that would be acceptable.

18 JUDGE GRAHAM: Yeah, I'm very inclined to do
19 that for the reasons that you've stated. I do want to
20 look at the timeline that's involved in this case and
21 compare that to when we will be scheduling agenda and
22 all of the mechanics and the calendar that's involved
23 here at the Commission that I've got to take into
24 consideration. But all things being equal in that
25 regard we'll go ahead. How much extra time do you want?

1 A week?

2 Mr. STEINER: Add one week to each due date.

3 JUDGE GRAHAM: Okay. I haven't ruled on that
4 yet, but I'm giving you the heads up that I will be
5 inclined to let you do that. I just want to check
6 things out, do a little due diligence at this end. Any
7 other matters before we adjourn?

8 MR. CLIZER: As of right now, the due dates
9 remain the same, September 16. What was the date for
10 reply?

11 JUDGE GRAHAM: You'll see something from me
12 momentarily. It won't matter until you get the
13 transcript anyway, will it? You haven't written
14 anything yet, have you?

15 MR. STEINER: One other item, Judge. You
16 mentioned late filed exhibits. I don't remember the
17 Commission asking for any late filed exhibits. So I was
18 just wondering.

19 JUDGE GRAHAM: It's purely hypothetical. It's
20 what if something occurs to you. I don't believe that
21 we have.

22 All right. If there's nothing else, we're
23 going to adjourn. Thank you very much all of you.

24 (Off the record.)

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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Beverly Jean Bentch

Beverly Jean Bentch, RPR, CCR No. 640

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