

1 CHRIS GILES,
2 being first duly sworn to testify the truth, the whole
3 truth, and nothing but the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RIGGINS:

6 JUDGE PRIDGIN: Thank you very much, sir. If
7 you would, please have a seat. And I believe counsel have
8 agreed to dispense with the normal foundational questions
9 if you would just stand cross-examination; is that
10 correct?

11 MR. RIGGINS: Your Honor, I do have -- or
12 Mr. Giles does have a correction or two to make to his
13 testimony. And as soon as we do that, I'll tender him for
14 cross.

15 JUDGE PRIDGIN: Mr. Riggins, thank you.

16 Q (By Mr. Riggins) Mr. Giles, do you have any
17 corrections to your testimony that you'd like to make?

18 A Yes, I do. Page 10 of my direct testimony, line
19 3, the question that ends with the year 2007. 2007 should
20 actually be 2008. And, likewise, on the answer on line 5,
21 2007 should reflect 2008.

22 Q Any other corrections to your testimony?

23 A No.

24 MR. RIGGINS: With that, your Honor, I will
25 tender Mr. Giles for cross-examination regarding an

1 overview of the case and overview of issues.

2 JUDGE PRIDGIN: All right. Mr. Riggins, thank
3 you. And hopefully try to speed things up a little bit,
4 Mr. Thompson, will you have cross of this witness? Or
5 will you have -- Staff has cross on this issue?

6 MR. THOMPSON: Probably.

7 JUDGE PRIDGIN: And Mr. Mills?

8 MR. MILLS: I don't have any questions for this
9 witness on the general case overview.

10 JUDGE PRIDGIN: Okay. Any other counsel have
11 questions for Mr. Giles on the overview of the case?

12 MR. CONRAD: Might have just one or two very
13 short ones.

14 JUDGE PRIDGIN: Any if there are none others,
15 Mr. Conrad? I'm sorry. When you're ready, sir.

16 MR. CONRAD: Oh, sure.

17 CROSS-EXAMINATION

18 BY MR. CONRAD:

19 Q Mr. Giles, you are occasionally in a position of
20 paying your own public utility bill, am I correct?

21 A Well, actually, my wife pays the bill. But I --
22 I -- I know we have a bill.

23 Q Is one of those bills from KCPL ,or do you live
24 in some other service territory?

25 A I actually reside in Independence, Missouri, and

1 am served by Independence Power & Light.

2 Q So you might not really, then, know what the
3 customers of KCPL pay their bills with?

4 A I'm -- I'm -- I don't know.

5 Q Would you agree with me that they pay their
6 bills with money?

7 A I would assume they pay with some form of check,
8 credit card, cash.

9 Q Now, do you know if they get a -- a bill,
10 Mr. Giles, that says, Pay this in one particular type of
11 legal tender and this portion in another type?

12 A No, I don't believe they are required --

13 Q Your experience in Independence, do you maintain
14 different checking accounts to pay portions of
15 Independence Power & Light's bills?

16 A No.

17 Q Just pay out of one checking account?

18 A That's true.

19 Q Would you suppose that might generally be true
20 for the customers in the KCPL service territory?

21 A I would expect so.

22 Q And when they pay a bill, they don't mark that
23 as being something other than cash going out of their
24 account or an adjustment to their -- their checking
25 account?

1 A I assume so.

2 Q As far as you know, all -- all dollars, it all
3 comes in to you, you being KCPL?

4 A I assume that's the case. Yes.

5 MR. CONRAD: Thank you. That's all.

6 JUDGE PRIDGIN: Mr. Conrad, thank you. Any
7 other questions from counsel for Staff? Mr. Thompson, any
8 cross?

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q Mr. Giles, is it your testimony that Kansas City
12 Power & Light with respect to the positions it's taking in
13 this case is following the decision the Commission made in
14 the 0314 case last year?

15 A I don't know that I can say that on every issue,
16 no.

17 Q For example, on the issue of incentive
18 compensation, as far as you know, is Kansas City Power &
19 Light following the Commission's order in the previous
20 case?

21 A I'm not sure.

22 Q What about severance costs?

23 A I'm not sure.

24 Q What about the cost of removal income tax issue?
25 Was that an issue in the prior case, to your knowledge?

1 A I don't recall whether that was an issue or not.

2 MR. THOMPSON: No further questions. Thank you,
3 your Honor.

4 JUDGE PRIDGIN: Mr. Thompson, thank you. Let me
5 see if we have any questions from the Bench.
6 Mr. Chairman, any questions?

7 CROSS-EXAMINATION

8 BY CHAIRMAN DAVIS:

9 Q Mr. Giles, have you read KCP&L's position
10 statement?

11 A Yes, I have.

12 Q Okay. Do you -- do you have a copy of it in
13 front of you?

14 A I do not. Now I do.

15 Q Okay. Can you please explain for me, in your
16 own words, the cost of removal issue referenced on page 3
17 of the position statement?

18 A I'm -- I'm reading it.

19 Q That's fine. You'll notice the first full
20 paragraph, it's the -- it would be Issue No. 8, the cost
21 of removal income tax issue.

22 A Basically, my understanding of this issue is
23 it's an accounting issue related to whether the cost of
24 removal should be flowed through or normalized, and the --
25 the heart of the issue is that a change at this point in

1 time would require KCPL to write off a substantial
2 portion.

3 Q Did that issue come up in the last case?

4 A Not that I'm aware of. But I -- I could be
5 mistaken. I'm not aware of it.

6 Q You were involved in the last rate case, were
7 you not?

8 A I was. I was. But I don't recall this
9 particular issue.

10 Q Okay. Now, KCP&L is seeking a change in
11 accounting treatment on its Wolfe Creek reviewing outage
12 costs, correct?

13 A That's correct.

14 Q Was that an issue in the last case?

15 A I don't believe it was.

16 Q Do you have an opinion as to why it was not an
17 issue in the 2006 case but is an issue now?

18 A I believe the accounting change was actually
19 made in 2006, hadn't actually occurred in 2005, which was
20 the test year in the prior case. So I think it wasn't an
21 -- an issue at that point.

22 Q Okay. Can you briefly summarize why you think
23 your -- why the KCP&L accounting method is preferable to
24 the traditional treatment that KCP&L and Staff have agreed
25 to on previous occasions?

1 A I think we made the change due to a financial
2 accounting standards board ruling. So we used to be on a
3 accrual basis where we would accrue for the expense of the
4 outage. And the FS -- the Financial Accounting Standards
5 board caused us and all other utilities to change that to
6 a -- a -- sort of an accrual basis, a pay after the fact
7 basis.

8 So it became a timing difference. And when we
9 made that change, there was a certain amount of funds that
10 were booked to -- and I don't remember the particular
11 account. But, essentially, it -- it could give the
12 appearance that customers were being charged twice.

13 And it's our position that that's not the case,
14 that customers have always paid for a full 12-month outage
15 during this entire period.

16 Q Does KCP&L follow all of the Financial
17 Accounting Standard board policies?

18 A Yes. Except in cases where there is a -- there
19 is some sort of a regulatory agreement or plan to do
20 otherwise for regulatory purposes.

21 Q Okay. Do you have an opinion as to whether the
22 PSC staff's change of position on the cost of removal
23 income tax issue is related to KCP&L changing its position
24 on the Wolfe Creek refueling outages?

25 A I -- I don't know that there's a link there.

1 I'm -- I'm not sure.

2 Q Okay. With regard to the KCP&L talent
3 assessment program, there were 119 employees who left the
4 company as a result of that program. How many more
5 employees were designated as, quote, not keeping pace and
6 then subsequently, I guess, closed the gap?

7 A I do not know the -- the answer. Lora Cheatum,
8 who is going to be a witness further on in the
9 proceeding --

10 Q Okay.

11 A -- can probably tell you.

12 Q Okay. Well, she'll know, and she can answer
13 that, hopefully, when she gets here. Okay. \$8.96 million
14 roughly divided by 119 employees is an average of
15 approximately \$75,000 per employee. Is that correct?

16 A Sounds about right.

17 Q Was there some sort of formula for apportioning
18 those severance packages?

19 A Yes. I -- I can't tell you what the formula
20 was, but, yes, there was.

21 Q Okay.

22 A Again, Lora Cheatum can --

23 Q Okay. So she can provide that when she
24 testifies?

25 A Right.

1 Q Okay. Thank you. With regard to just the --
2 the terminations that weren't related to the talent
3 assessment program, do you know how many terminations
4 there -- and severance packages -- I know what the amount
5 of the severance packages was in total. Do you know how
6 many employees were terminated and received severance
7 packages that weren't part of the Talent assessment
8 program?

9 A I don't know that. It's -- it's a fairly small
10 number, but I don't know what it is.

11 Q And so you don't know what the reasons for any
12 of those terminations were either, then, do you?

13 A No.

14 Q Okay. With regard to lobbying expenses in
15 Washington D.C., KCP&L has an employee there full-time to
16 basically monitor federal activities and to -- to lobby,
17 correct?

18 A That's correct.

19 Q And you're telling me that that person only
20 spends 15 percent of their time lobbying?

21 A I'm not sure where you're getting the 15
22 percent.

23 Q I thought I read that. I thought KCP&L was
24 seeking approximately 85 percent of that person's salary
25 and that you weren't seeking the 15 percent for -- for

1 lobbying. If that's not correct, then -- then please
2 correct me.

3 A Yes. You're -- you're correct. That's what the
4 position statement indicates.

5 Q Okay. Can you briefly summarize what the
6 difference is between KCL -- KCP&L's position on bad debt
7 expense is using the -- I guess the September 30th, 2007,
8 number versus -- is Staff using the December 30, '06,
9 number?

10 A Evidently, this -- this relates to whether bad
11 debt expense should be reflective of the most current
12 conditions or the current period.

13 Our position is that we should use the period 12
14 months into September 30th, '07, where Staff is using the
15 12 months into December 31, 2006. And I think this is a
16 difference that largely relates to just how current of
17 information we can get into the rates.

18 Q And KCP -- has KCP&L changed their methods for
19 collecting bad debt expense in the last nine months?

20 A No. Not to my knowledge.

21 Q And -- and you're qualified to speak on that
22 issue?

23 A I'm not sure who our witness is on bad debt.
24 But you can -- you should probably ask him or her. But to
25 my knowledge, we've not changed any of our processes.

1 Q Okay. Mr. Giles, if you don't mind, I'm just --
2 I've only got a few more questions, but I'm just going to
3 go ahead and get all my questions for you out of the way
4 here at this -- at this time.

5 Mr. Giles, who is Rusty Smith?

6 A Rusty Smith is manager of our wholesale trading
7 function.

8 Q Okay.

9 A Largely, off-system sales.

10 Q Okay. Does he work for you?

11 A No. He works -- actually works for Ty Kobioshi
12 (ph.).

13 Q Okay. Did you review his responses to Staff
14 data requests in this case before they went out?

15 A Some of them, I did. I -- I typically review
16 data responses that my staff refer to me, but I don't
17 review all of them.

18 Q Do you recall whether or not you reviewed Staff
19 Data Request No. 206 that was delivered electronically to
20 KCP&L on or about June 6, 2007?

21 A I don't know.

22 Q Okay. Have you read Mr. Traxler's testimony?

23 A Yes.

24 Q Okay. Do you have a copy of Mr. Traxler's
25 rebuttal testimony filed on August 29th of 2007?

1 A I don't have it with me. Okay. Now I do.

2 Q Okay. Do you want to look in the back there, I
3 believe, towards the back of Mr. Traxler's testimony,
4 there is an appendix -- and I don't have the -- the
5 reference number up in front of me, but there should be a
6 markation of Staff Data Request No. 206 and KCP&L's
7 response.

8 A Yes. I have that.

9 Q Are you familiar enough to go ahead and talk
10 about that, or would you like a moment to review it?

11 A If you'd just give me a moment to look over the
12 schedules, I think I could talk about it.

13 Q Okay.

14 A Okay. I -- I've looked through it.

15 Q Okay. Now, Mr. Giles, I realize that this is
16 highly -- this information is marked highly confidential.
17 I'm not going to ask you about any of the numbers
18 specifically contained therein.

19 So, hopefully, we won't have to go into closed
20 session. But I'm trusting that Mr. Riggins and
21 Mr. Fischer, if they sense that -- that I'm straying too
22 far, will -- will at least stop me before and we can go
23 into closed session if they feel it's appropriate.

24 So the data requests, which would be marked
25 Schedule SMT1-1 on June 7th, it was -- it was -- that

1 information was requested on June 7th, correct, rough --

2 A I believe on the heading it says Data Response
3 is June 27th.

4 Q Okay. It's KCP&L's response dated June 27th.
5 Do you know whether or not KCP&L ever updated this
6 response to the staff?

7 A I believe we have updated it, but I can't -- I
8 can't say for sure.

9 Q Okay. If -- if KCP&L has updated that response,
10 can -- can you furnish this Commission with a copy of --
11 of what that was?

12 A Yes.

13 Q Okay. Now, Mr. Traxler, I believe, filed his --
14 if you go to the front page there of this -- of
15 Mr. Traxler's rebuttal testimony, up at the top, it says,
16 Date Testimony Prepared, August 30th, 2007; is that
17 correct?

18 A That's correct.

19 Q Okay. And you filed your -- was it your
20 rebuttal or surrebuttal testimony on or about August 29th,
21 correct?

22 A Rebuttal. Yes.

23 Q Okay. So you filed your rebuttal testimony on
24 August 29. And in your page 12, line 10 of your -- it was
25 -- I'm sorry. Was it rebuttal or surrebuttal that you

1 filed on August 29th?

2 A Rebuttal testimony.

3 Q Okay. I'm sorry. I'm getting confused here
4 with -- okay. So let me see. I appear to have misplaced
5 your testimony, Mr. Giles.

6 Okay. Now, did you file surrebuttal as well?

7 A No, I did not.

8 Q No, you didn't. Okay.

9 A Okay.

10 Q Now I'm -- now I'm back clear. Okay. I think
11 it was page 12, line 10 of your rebuttal testimony that
12 was filed on August 29th. You included a number for
13 off-system sales margins, didn't you?

14 A Yes, I did.

15 Q Okay. So on August 29th, you knew the number
16 for off-system sales margins from January 1st, 2007,
17 through July 30th, 2007?

18 A Yes.

19 Q Okay. Do you -- you don't -- but you don't know
20 when KCP&L updated its information to the PSC Staff, do
21 you?

22 A No.

23 Q Okay. So Mr. Traxler files his testimony on
24 August 30th, which contains the data request that KCP&L
25 responded to on June 27th basically saying that -- was it

1 -- I'm going to read Schedule SMT1-2 here.

2 The -- under the response, it would be the
3 fourth paragraph. "The determination of actual margins
4 for 2007, on a monthly basis is not yet complete. As a
5 result of the order in Case No. ER-2006-0314, we are
6 monitoring actual margins to be in compliance with the
7 order.

8 Additionally, with the introduction of SPPRTO in
9 February, we were further revising the analysis to
10 incorporate all costs attributable to the RTO and how they
11 affect non-firm off-system sales revenues and costs and
12 how they will be incorporated into the margin analysis."

13 So, in essence, even though there's lots of --
14 of data backing -- backing up this response, you know, is
15 it fair that if you're reading Mr. Traxler's rebuttal
16 testimony that you would come to the conclusion that you
17 don't know what KCP&L's off-system -- that he -- that he
18 didn't know what KCP&L's off-system sales margins were for
19 any portion of 2007?

20 A Yes. I think that's -- that's a correct
21 assessment of this testimony.

22 Q Okay. But you knew when you filed your
23 testimony on August 29th?

24 A I did. I -- I believe the -- the issue that I
25 discovered, somewhere right about this time frame is our

1 accounting department and Rusty Smith's department were
2 working together to make sure they came up with an
3 auditable margin calculation for the auditors.

4 And, typically, until we had this order in this
5 particular case, we had used a -- a midas model that --
6 actually called a pace model, redispached the unit, gave
7 the cheapest fuel cost to retail customers, et cetera.

8 For some reason, the auditing group didn't feel
9 that this was a verifiable or rigid enough exercise. And
10 I'm not sure what they were doing during this period of
11 January through June of '07. But they were trying to
12 refine that calculation and were waiting, and I can't
13 describe it any better than that, waiting until they got
14 all these issues resolved before they start reporting what
15 the actual margins were.

16 And, you know, my -- my response to that was
17 that it's -- it's not a significant difference, you know,
18 whichever -- you know, it was a very fine analysis they
19 were trying to get to, but it didn't change the number.

20 Q Okay. Is there -- is there any way that I can
21 -- can read KCP&L's response to Data Request No. 206 and
22 come out with the number that you gave in your rebuttal
23 testimony filed on August 29th? August -- yeah. I think
24 it's August. Yeah. August 30th. I'm sorry. No?

25 A No.

1 Q Okay. Can you go to Schedule SMT1-1 of
2 Mr. Traxler's rebuttal testimony?

3 A Okay.

4 Q See the -- the big paragraph there in the middle
5 of the page?

6 A Yes.

7 Q Can you read the second sentence, which begins
8 about the middle of Line 4 on that page?

9 A Beginning with The undersigned?

10 Q Yes.

11 A The undersigned agrees to immediately inform the
12 Missouri Public Service Commission if, during the pendency
13 of Case No. ER-2007-0291, before the Commission any
14 matters are discovered which would materially affect the
15 accuracy or completeness of the attached information.

16 Q Okay. Do you think KCP&L complied with this
17 request?

18 A Are you -- this -- this data request?

19 Q Right.

20 A Well, based on my quick observation, here, I
21 would say no. I don't -- I don't think we provided the
22 margins.

23 Q Okay. Do you see -- and, obviously, off-system
24 sales margins was an important issue in the last case.
25 And you can -- you can see why the parties in this case

1 would -- would want as much information as they could get
2 as quickly as they could get it, wouldn't you?

3 A Yes.

4 Q Okay. So it's not going to happen again, right?

5 A Right.

6 Q Okay. All right. Mr. Giles, have you reviewed
7 Mr. Hyneman and Mr. Dittmer's testimony?

8 A Yes, I have.

9 Q Do you recall their testimony that they
10 proffered that you're seeking one-sided or asymmetrical
11 rate treatment?

12 A Yes. I recall that.

13 Q Would you -- how would you respond to that?

14 A I would respond by stating that's not the case.
15 What -- what they are characterizing there is a
16 misrepresentation of the facts. And my testimony, both in
17 my service -- in my rebuttal testimony, I point out that
18 revenue matches expense.

19 And to the extent there's an expense that's been
20 in rates or recovered from customers, revenue is
21 established to recover those costs for the company. And I
22 think both Mr. Hyneman and Mr. Dittmer are using the
23 analogy that if there's an unusual non-occurring expense,
24 the company always want to recover that.

25 On the other hand, if there's a revenue that

1 comes into the company based on a prior period expense, we
2 could not want to flow that back it customers. And the
3 real issue comes back to revenue matching costs or revenue
4 matching expense.

5 I'll give you an example. And I think
6 Mr. Dittmer -- or Mr. Hyneman may have used this same
7 example. We had an ice storm in 2002, incurred a
8 substantial amount of cost in repairing the lines of
9 facilities attributable to that ice storm.

10 The company filed for an accounting authority
11 order, which, essentially, did not recover those costs.
12 All that accounting authority order accomplished was it
13 allowed us for book purposes to amortize those expenses
14 over a period of time.

15 We did not recover any of those costs until our
16 last rate case. In other words, you don't recover the
17 costs until you actually file a rate case and get the
18 revenue to recover the costs. So we did not recover four
19 months -- or four years, rather, of those expenses.

20 And similar to the expense with the Hawthorn 5
21 subrogation proceeds, in 1999, when the Hawthorn 5
22 explosion occurred , we incurred over \$150 million in
23 purchase power costs to replace the power loss from that
24 unit.

25 Customers were never billed for those costs. We

1 didn't file a case. We didn't ask to recover them. So
2 subsequent, we get a subrogation proceed in the test year,
3 in this case, of 2006, that's related to that additional
4 purchase power costs back in '99 and 2000.

5 So Mr. Dittmer and Mr. Hyneman propose that we
6 take that -- those revenues and amortize those over the
7 next five years, I believe, in this case. And it violates
8 the matching principle because customers have never paid
9 those expenses.

10 The -- the company did not have a rate case, did
11 not ask to recover those costs and, basically, they're
12 born by shareholders. Now, Mr. -- I can't -- I think it
13 was Mr. Hyneman. I'm not sure whether it was Mr. Hyneman
14 or Mr. Dittmer.

15 One of them said, well, if -- if you take my
16 argument to its logical conclusion, then no expenses are
17 being recovered in rates between rate cases, which is
18 exactly the opposite of what I'm saying.

19 Once you have a rate case and your expenses are
20 set at a certain level in the case, whether it's fuel
21 costs, whether it's salaries and wages, any incremental
22 costs beyond that is, in fact, born by shareholders.

23 So the position that the company takes and that
24 I feel is appropriate, had we had a fuel adjustment
25 clause, for instance, back in the '99/2000 period, those

1 costs would have flowed through to customers.

2 Now when the revenue comes back, you'll flow
3 that back through the fuel adjustment. In this case,
4 costs were never recovered from customers to begin with.
5 It's sort of long-winded answer, but --

6 Q Right. Okay. And so it's my understanding,
7 basically, you're -- what your position is is your last
8 case, rate case, really, was in 1985 and the rates went
9 into place sometime '85/'86.

10 As part of that rate case or subsequent
11 over-earnings complaint settlements, KCP&L was allowed to
12 keep its off-system sales margins above a certain base
13 amount that was included in rates and, you know, sort of
14 -- you know, part of that regulatory compact, say, you
15 recover a -- you -- you absorb additional salary
16 increases, additional fuel costs, no transportation costs,
17 et cetera, you know, and you've got to keep your
18 off-system sales, too. Is that -- is that sort of a fair
19 analogy?

20 A That's at fair analogy. The -- the distinction
21 -- the only distinction I would make is that we did have
22 -- just prior to the explosion of that Hawthorn 5 boiler,
23 we had actually negotiated a reproduction.

24 And the rate reduction was scheduled to go in in
25 March of, I believe, 1999. And the plant exploded in

1 February of '95. The conditions of that rate reduction
2 were such that we could have come back in because of that
3 outage and --

4 Q Because it was a material change?

5 A Material change.

6 Q Uh-huh.

7 A We did not do that. And during that time frame,
8 we, shareholders, basically footed the bill for those
9 purchase power costs.

10 Now, the other thing I need to make clear is
11 that during that time, there really wasn't much of an
12 off-system sales market. I mean, even though we didn't
13 have the unit, it wouldn't have been able to sell as much
14 into that market to begin with.

15 The market really didn't take a dramatic
16 increase until about 2002 when that plant went back --
17 back online. The other thing I pointed out to you is that
18 -- I can't remember again which of their testimonies, I
19 think it was Mr. Hyneman, quotes our rate of return.

20 But it's interesting that he quotes from 2002 on
21 after the unit was back in service. The two years where
22 we really struggled were '99, 2000 and part of 2001. I
23 believe Hawthorn 5 came back into service in the summer of
24 2001.

25 Q Okay. Now, you are here seeking recovery of

1 surface transportation board litigation costs, correct?

2 A Yes.

3 Q Now, should we, as a part of this case -- you
4 know, if we are going to award you those costs, should we
5 say something about how the proceeds should be
6 apportioned, if you recover anything?

7 A Yes. I think -- and I think this is a case
8 where there is a couple of things that could happen. One,
9 you can award the costs in the case. And one thing that
10 could happen is a successful litigation would reduce our
11 fuel costs on a going-forward basis.

12 Q Uh-huh.

13 A That should be reflected on an ongoing basis.
14 But there's also a potential for a retroactive refund.
15 And I think you're exactly right is if you allow those
16 costs in this case, you should point out that if there's
17 any successful return of money, that should be flowed back
18 to the customers.

19 Q How much -- can give us a percentage?

20 A At least half. Maybe all.

21 Q At least half, and maybe all. Well, I'll let --
22 I'll let other parties inquire about the fairness of that
23 statement.

24 Have you seen the -- I guess I'll call it the --
25 the graph on page 3 of Mr. Hyneman's surrebuttal

1 testimony?

2 A I have seen it. I don't have it in front of me.

3 Q Okay.

4 A Okay. I have it in front me. Which -- which
5 particular graph?

6 Q I believe it's page 3, I believe, that has three
7 columns?

8 A Okay.

9 Q Now, you just look at that graph. It certainly
10 seems like Mr. Hyneman has a -- a -- if nothing else, a --
11 a consistent method for amortizing non-recurring expenses.
12 Is that a fair statement?

13 A Yes.

14 Q Can you put together a graph like that that
15 shows me that -- that KCP&L has a consistent approach for
16 how it's choosing to -- to allocate these expenses as
17 either being amortized or not amortized?

18 A I believe we can. I think it would be the same
19 chart. But I -- I -- I mean, I think the -- the point
20 that -- that should be taken from this is that when the
21 company incurs costs that are legitimate costs, prudently
22 incurred, they need to be recovered. And that's typically
23 what all of these various categories or costs that have
24 been amortized that Mr. Hyneman refers to are.

25 On the other hand, it's -- on the revenue side,

1 you have to take into account whether those expenses or
2 costs were ever charged in the first place because, in the
3 one hand, you're setting revenue after the fact to recover
4 costs that were prudently incurred.

5 So the two are totally different. And I think
6 what Mr. Hyneman and Mr. Dittmer are both trying to
7 characterize here is that these are the same thing. You
8 ought to treat them the same.

9 Q Uh-huh.

10 A It's totally not the same thing. It's totally
11 different because one is the presumption that legitimately
12 incurred costs should be recovered.

13 On the other hand, their position is if those
14 costs -- if there are costs that have never been recovered
15 from customers, those should also be amortized. And the
16 two are totally different.

17 Q Okay. Now, when Mr. -- Mr. Giles, when
18 Hawthorne was down, you were still recovering costs for
19 the operation of Hawthorne in your base rates, correct?

20 A We were, yes.

21 CHAIRMAN DAVIS: Mr. Giles, I don't think I have
22 any further questions. Thank you.

23 JUDGE PRIDGIN: Mr. Chairman, thank you.
24 Commissioner Murray, any questions?

25 COMMISSIONER MURRAY: Just a few. Thank you,

1 Judge.

2 EXAMINATION

3 BY COMMISSIONER MURRAY:

4 Q Good afternoon, Mr. Giles.

5 A Good afternoon.

6 Q I'm sure you were here when Mr. Thompson made
7 his opening statement today; is that correct?

8 A I was.

9 Q He indicated that KCP&L was seeking a windfall.
10 Did you hear him say that?

11 A Yes, I did.

12 Q And he made a comparison to a homeowner needing
13 to make capital improvements to his home, taking out a
14 second mortgage to do so. Can you tell me what you think
15 of that analysis in comparison to KCP&L's capital
16 structure improvements and what you're seeking here?

17 A I think what Mr. Thompson was characterizing was
18 that the company was seeking more in a return component
19 than either was appropriate or reasonable and due to the
20 fact that we also have the provision of being additional
21 amortization to create cash flow, that we are somehow, as
22 he put it, seeking a windfall.

23 In fact, what we are attempting to do is to
24 maintain both our credit so we can finance this nearly
25 \$2 billion construction program, and, also, to continue to

1 issue equity in the -- in the investor market at a
2 reasonable price.

3 And that -- that essentially is what we're
4 attempting to do. I don't think it's a windfall in any
5 sense of the imagination. I think it's appropriate. And
6 given -- as Mr. Fischer stated, we have been able to issue
7 bonds, and we continue to look to -- we probably will be
8 issuing more equity and debt -- in fact, we will be in the
9 next year.

10 So given the capacity, the construction dollars
11 that were invested, we need, and it's not an unreasonable
12 request, to have an 11.25 percent return on equity.

13 Q All right. KCP&L has taken the position that
14 anything other than an equal shift in revenue and I know
15 shift in rates uniform to all classes with -- in violation
16 with the stipulation and agreement; is that correct?

17 A Yes.

18 Q Does that include the revenue shift proposals by
19 Trigen?

20 A Trigen was not a signatory to the regulatory
21 plan. So I think -- you know, they're -- they're probably
22 an exception that -- none of the parties that signed the
23 regulatory plan can propose revenue or rate shifting. But
24 since they weren't a signatory, I suppose they can propose
25 one.

1 Q All right. Was KCP&L asked in the last rate
2 case to do a cost of study service analysis of the general
3 service, all electric tariffs and separately metered space
4 heating -- heating rates?

5 A I believe we were asked to do that, but I don't
6 believe it was in this case. I'd have to go back and
7 look. But I believe that was a -- a requirement to do at
8 some point in time.

9 Q And has that been done, or has that been begun?

10 A It has not been done at this point.

11 Q Is KCP&L planning to do such a cost of service
12 study?

13 A Yes.

14 Q When?

15 A I -- I don't have a time frame. I'd have to go
16 back and look at what our commitment was. But definitely
17 by the time we have the rate design case in the last case,
18 which was Case No. 4, we filed sometime in, I believe,
19 September of '09.

20 Q And in the meantime, are you intending to leave
21 the general service of electric tariffs and separately
22 needed space heating rates as they are structured now?

23 A Yes.

24 Q What do you think about the argument that there
25 is -- this is discrimination that is anti-competitive with

1 those rates?

2 A I don't believe the rates are discriminatory. I
3 think Trigen would -- would, obviously, argue from their
4 competitive position that they're discriminatory and
5 provide an undue advantage to electric, heat or -- I think
6 we would probably make the same argument regarding their
7 steam rates and their chill water rate.

8 I think it's a competitive issue, and it's not
9 necessarily that the rates are inappropriate. It's a
10 competitor trying to get a new vantage.

11 Q All right. I want to ask you about rate case
12 expense and the position that these expenses -- the
13 deferred rate case expenses should be amortized in the
14 cost of service over two years. That's an agreement
15 between Staff and KCP&L at this point; is that correct?

16 A I believe so, yes.

17 Q And then KCP&L wants to include the unamortized
18 amount of those deferred expenses in rate base; is that
19 right?

20 A That's true.

21 Q And is that equivalent to allowing the company
22 to earn a return on the amount that was spent until such
23 time as those actual expenses are recovered?

24 A Yes.

25 Q And the reverse of that would be that the

1 company would be making the expense and having to wait an
2 extended period for recovery equivalent to making the loan
3 without interest --

4 A Yes.

5 Q -- to the ratepayers?

6 A Yes.

7 COMMISSIONER MURRAY: I think that's all I have
8 for you right now. Thank you.

9 JUDGE PRIDGIN: Commissioner Murray, thank you.
10 Commissioner Appling?

11 EXAMINATION

12 BY COMMISSIONER APPLING:

13 Q How are you doing, Chuck?

14 A I'm good. Doing great.

15 Q Great. I've got a couple short questions that I
16 -- I think I've heard the answer to them already, but I
17 just want to make sure I get them into the record. You --
18 from the '99 explosion, what was the plan, again, to --
19 that you all put in retirement?

20 A It was Hawthorne 5, our coal unit. It was --
21 it's about a -- at that time, it was about a 500 megawatt
22 unit.

23 Q What was the amount of the retirement on that?

24 A The -- the plant exploded in February of '99,
25 totally demolished the boiler and a lot of the facilities

1 around the boiler. The plant was retired and rebuilt for
2 a -- it -- it actually took about -- I want to say about
3 two and a half years to rebuild it. The plant was back in
4 service in summer of 2001.

5 And the plant, when it came back into service,
6 came back at its original cost less the insurance proceeds
7 that we received from the rebuild. So the net impact on
8 rates was pretty minimal as far as capital goes.

9 Q What -- what did you all get from the -- your
10 insurance company?

11 A We got almost the total cost of the rebuild,
12 except for the environmental equipment. We had to install
13 -- because it was a new boiler, we had to install current
14 environmental equipment.

15 My recollection is the -- we received somewhere
16 in the neighborhood of \$280 million dollars to rebuild the
17 boiler. And I think it cost somewhere around 350. Just
18 rough numbers. So most of it, other than the
19 environmental was totally paid by insurance.

20 Q KCPL, did you all receive other funds that was
21 not litigated?

22 A We sued about 12 different entities, and we
23 received -- the subrogation proceedings, we received money
24 from all three of those. Only one was actually litigated.
25 The others were settled. But we received around a hundred

1 -- roughly a \$110 million from those 12 entities.

2 Q Describe for me in about two minutes, if you
3 can, what is KCPL looking for here? I know what your ROE
4 is. We've been talking about it all morning. But give me
5 just a touch-down of what you're looking for that's going
6 to do you some good, the big numbers, okay?

7 A In this particular case we're --

8 Q This particular case. Yes.

9 A You mean in terms of dollars or --

10 Q Dollars.

11 A Somewhere in the neighborhood of 26,
12 \$28 million.

13 Q And this is to run through to next year?

14 A Actually, run through the next year and about
15 three months of the following year. We -- our next case
16 that we will file is to include the cost of IATAN II
17 environmental equipment.

18 Q Uh-huh.

19 A And due to outage scheduling, we scheduled that
20 outage to occur in December of 2008. So in order to get
21 that investment in the test year true-up period, we'll
22 have to file our next case of April of '09.

23 Q Last year, we --

24 A Well, pardon me.

25 Q Last year, we gave you 11.25, correct?

1 A Correct.

2 Q And that's what you're asking for again this
3 year?

4 A Correct.

5 Q Is that going -- is that going to do what you
6 need to do? Is that going to give you what you need for
7 this next year?

8 A Yeah. If --

9 Q You and I talked a lot about this when I visited
10 the plant up there three or four months ago. We walked
11 the whole thing, and we talked about a lot of things.
12 What I'm trying to get in my own mind, what did you --
13 what did you find there, you know? Go ahead.

14 A The -- the rate of return is all dependent upon
15 the adjustments that are made to the data in this case of
16 whether you -- we will actually ever be able to achieve
17 that return.

18 On top of that, the return is also dependent
19 upon the fact that we have a year lag. These rates will
20 go into effect in January of '08.

21 Q Uh-huh.

22 A And, of course, our costs continue to increase
23 during that time period. So those costs go unrecovered in
24 2008.

25 To the extent there's adjustments made in this

1 case that also reduce our revenue, that also reduces our
2 rate of return. So you take all of that together, and you
3 say, well, if we could come out with a certain dollar
4 amount, then we could deal with these other issues.

5 So the -- the rate of return is just one piece
6 of it. You've got to take into account what's the total
7 impact of the actual dollars, what we get. So our case
8 today is it about a \$38 million revenue requirement at an
9 11.25 return.

10 Q Okay.

11 A About -- the Staff's case is in the range of
12 about 14 million at 9.7. So somewhere between those two
13 numbers is probably a -- a good benchmark.

14 COMMISSIONER APPLING: Thank you.

15 MR. GILES: You're welcome.

16 JUDGE PRIDGIN: Commissioner Appling, thank you.
17 Commissioner Jarrett?

18 COMMISSIONER JARRETT: Yes, thank you.

19 EXAMINATION

20 BY COMMISSIONER JARRETT:

21 Q Yes. Thank you. Good afternoon, sir.

22 A Good afternoon.

23 Q I have just -- just a couple of questions. My
24 understanding is that KCP&L is asking for an ROE, a base
25 ROE of 10.75 percent, plus 50 basis points based on its

1 construction program which would raise that to the 11.25
2 percent; is that correct?

3 A Yes. yes. That's correct.

4 Q Yeah. This morning in opening statements,
5 Mr. Conrad was talking about the regulatory plan that's in
6 place. And I believe that -- and correct me if I'm wrong,
7 but I believe he indicated we should look at that in
8 context of no construction program when looking at the
9 needs of the company, and I wanted to give you an
10 opportunity to respond to that.

11 A I -- I think -- you know, it's our -- it's our
12 position and it's our rate of return witness's position
13 that due to the magnitude of this construction program and
14 the risks associated with that that in order for us to
15 raise the capital, both equity and debt, that we need to
16 raise over these next couple of years that the risk of
17 that investment is greater than a company that would, say,
18 have a modest construction program or even know a
19 construction program other than normal ongoing capital
20 improvements.

21 And I think the magnitude of what we're doing --
22 and I think we've testified before that we're adding over
23 60 percent more to our rate base or to our plant
24 investment, and given that level of risk that investors
25 would require at least a 50 basis point adder to the rate

1 of return.

2 Q So the -- so really, the risk, then, for KCP&L
3 from its standpoint is -- is just the large amount rather
4 than the type of construction it is? I mean, it would
5 seem to me that utility companies commonly build
6 generation plants.

7 A It -- it's really a combination of both, the --
8 the magnitude and the -- the type of construction. You
9 know, it's somewhat -- it's not unusual. It's pretty
10 standard.

11 But you think about it, we haven't built a base
12 load power plant since our Wolfe Creek nuclear plant came
13 online in 1986. The last coal unit we built was in 1980,
14 which was the IATAN I project.

15 So they're very large investments. They're very
16 complex and very complicated to get done on schedule and
17 under budget. So these -- these investments come along
18 really about once every 20 years. And even though you
19 would think utilities do this frequently and often, it's
20 really very infrequently.

21 COMMISSIONER JARRETT: Thank you, sir. I have
22 nothing further.

23 JUDGE PRIDGIN: Mr. Chairman?

24 EXAMINATION

25 BY COMMISSIONER DAVIS:

1 Q All right. Mr. Giles, I just had a couple more
2 questions here. Do you think it's good public policy to
3 use electricity to generate heat?

4 A I -- I think it -- it depends on the type of
5 electric -- electricity. Electric resistance heat,
6 electric boilers, not very efficient. If -- if it's a
7 heat pump, they're pretty efficient.

8 In most -- most large commercial office
9 buildings are -- are done with heat pumps, and -- which
10 draws energy from the air or the ground. If it's a ground
11 source, typically, commercial building in downtown Kansas
12 City, the one we -- we reside in 1201 Walnut. It's an all
13 electric building, all heat pumps. Very efficient.

14 Q Does that equation change at all when you have
15 more natural gas-fired electric generation creeping into
16 your base load?

17 A It -- yes, it would. In our case, our -- our
18 gas was primarily burned in the summertime. If you were a
19 utility that was burning a lot of gas in the winter, yeah,
20 it would have an impact.

21 Q Okay. Obviously, Commissioner Murray touched on
22 it, and Commissioner Jarrett touched on it. I had to step
23 out of the room for just a second. So this is a little
24 redundant. I apologize.

25 You've heard Mr. Thompson, Mr. Conrad espouse

1 the theory that -- that cash is cash?

2 A Yes.

3 Q Do you think that's correct?

4 A I think from a customer's viewpoint, they're
5 exactly right.

6 Q Okay.

7 A When I -- when I -- even though I don't pay my
8 bill, when my wife pays our bills, she's writing a check
9 for whatever is on that bill, whether it's -- and we view
10 it the same way.

11 When we look at impact on a customer, it's
12 whatever that rate generates. And, really, the only
13 meaning for this cash versus earnings related is -- is
14 purely a shareholder or company issue.

15 From our standpoint, earnings related cash
16 creates earnings. The amortization provision just creates
17 cash. We need both. You could get, obviously, the same
18 amount of cash with a very, very high rate of return.

19 Q All right.

20 A In fact, when we did the regulatory plan, I
21 actually showed calculations that would indicate we would
22 need 13 and a half percent return on equity during this
23 construction period to fund enough cash to keep our credit
24 ratings.

25 That, obviously, was a little more than most

1 people in the room could stomach. And that's when we came
2 up with this amortization provision.

3 Q Right. Now, as -- as part of the -- first of
4 all, you are familiar with the KCP&L experimental
5 regulatory plan?

6 A Yes.

7 Q Okay. As part of that plan, do you recall, was
8 there an anticipated five-year budget financing plan?

9 A There was. Yes.

10 Q Okay. And it was -- wasn't it anticipated that
11 KCP&L through its, I guess, parent company, GPE would
12 issue about \$560 million in equity, more or less?

13 A I don't recall the exact number. But that --
14 that sounds about right.

15 Q That's all right. Okay. And when investors are
16 considering whether or not they should buy that new
17 equity, do you think they're going to look at earnings?

18 A Yes.

19 Q Are you familiar with the term EBITDA?

20 A Yes.

21 Q What is EBITDA?

22 A Earnings Before Interest, Taxes, Depreciation
23 and Amortization.

24 Q All right. Do you think that this could -- do
25 you think this would be a relevant use of the term, you

1 know, EBITDA, when you're out there trying to evaluate
2 whether or not you're going to -- buy GPE stock?

3 A Yes. Stock and bonds. EBITDA is really a
4 measure of cash. It's really showing what -- what is the
5 cash potential of this company.

6 Q Well, it's -- it would be a measure of your --
7 your true -- your true earnings in a sense, wouldn't it?

8 A Yes.

9 Q Okay. Do you think it would be prudent for
10 KCP&L to pay dividends with amortizations?

11 A No.

12 Q Why not?

13 A Well, if you're paying dividends with -- with
14 amortization, you're essentially taking cash from the
15 customers and -- in the form of accelerated depreciation,
16 et cetera.

17 That's going to be a deduct from rate base going
18 forward. So on the one hand, you're -- you're reducing
19 your rate base with from the funds that are coming in.

20 And then on top of that, you're paying out cash.
21 So it's a drain on the shareholders and the earnings
22 potential doubles -- it essentially doubles in the impact.

23 Q Uh-huh. Do you think dividends are important to
24 shareholders?

25 A In -- in -- in the case of a public utility,

1 it's critical. It's -- you know -- when you think about
2 growth, which shareholders look for, you know, what's the
3 growth, it's a combination of the price of the stock and
4 the return or the dividends.

5 In the case of a utility, particularly, in our
6 case, KCP&L or GPE, you look at the growth potential and
7 regulated business with very modest growth in usage per
8 customer or customers or a total kilowatt hour usage is
9 one and a half to 2 percent a year.

10 In a regulated business, you have a rate of
11 return that's established. You're authorized. The --
12 really, the potential for growth is all in the dividend.
13 And in -- and most investors in utility stocks look for
14 that growth in the dividend, which, in our case, we've not
15 increased our dividend in at least a decade.

16 But on the other hand, we are paying a rate that
17 does provide a decent return, even without the growth of
18 the stock price. So that's -- that's what keeps the
19 engine running in the utility business is that dividend.

20 Q It's been suggested by the Commission staff that
21 companies like KCP&L that need to fund large
22 infrastructure improvements should just cut their
23 dividends and use those savings to -- to finance their --
24 their capital expenditures. Do you see any problems with
25 that theory?

1 A Yes. The -- the value of the -- to the
2 stockholder would drop dramatically. The price of the
3 stock would drop. The value that that shareholder is
4 holding would drop substantially.

5 Q Okay. But should that be a problem for the rest
6 of us?

7 A I think in -- in order to -- to have a viable,
8 ongoing utility and to have that utility as a utility such
9 as KCPL or GPE, that, yes, it's very important.

10 CHAIRMAN DAVIS: Okay. No further questions.
11 Thank you, Mr. Giles.

12 JUDGE PRIDGIN: Mr. Chairman, thank you. Are
13 there any further Bench questions? Any recross based on
14 Bench questions? No recross?

15 MR. THOMPSON: I have a couple.

16 JUDGE PRIDGIN: Mr. Thompson.

17 CROSS-EXAMINATION

18 BY MR. THOMPSON:

19 Q Chairman Davis asked you, Mr. Giles, about
20 Staff's change of position on the cost of removal income
21 tax issue. Do you recall that question?

22 A Yes.

23 Q Would you be surprised if I told you that Staff
24 doesn't consider that it's changed its position on that
25 issue?

1 A I don't -- I don't recall exactly the question
2 saying that -- or employing that they had changed their
3 position. I may have not understood.

4 Q Okay.

5 A I just know there's a difference in position.

6 Q In Staff's --

7 A In -- between the Staff and the company.

8 Q Very well. Thank you.

9 A Yeah.

10 Q With respect to bad debt, have you looked at
11 Staff's Statement of Positions?

12 A I -- I -- just what I have reviewed here today.

13 Q Okay. Would you be surprised if I told that you
14 Staff shows that as no longer being a contested issue?

15 A Would I be surprised?

16 Q No.

17 A No.

18 Q Okay. So as far as you know, that issue is
19 resolved?

20 A I don't know one way or another.

21 Q Okay. So you would not be surprised no matter
22 what I told you about that issue? Is that the case?

23 A Well, I know that Tim Rush and Steve Traxler
24 have been working to resolve certain issues. I don't know
25 the up-to-date minute resolution of a lot of issues in

1 this case.

2 Q Okay. Fair enough. Now, you also told Chairman
3 Davis, I recall, that incremental costs in excess of the
4 cost of service recognized in most recent rate case are
5 necessarily born by shareholders. Do you remember that?

6 A Yes.

7 Q Well, what if you're overearning?

8 A What would cause the overearnings?

9 Q Well, you know, between rate cases, costs and
10 rates get out of sync, don't they?

11 A Yes. Costs go up. Rates don't.

12 Q Well, sometimes costs go down, don't they?
13 Don't they?

14 A Very rarely.

15 Q Very rarely. Are you aware of the overearnings
16 complaint that the Staff brought against AmerenUE, I
17 believe, in 2000, 2001?

18 A 2000, 2001?

19 Q I think that's when it was.

20 A I'm not familiar with AmerenUE.

21 Q You don't recall that case? Okay. So you don't
22 think companies could ever overearn; that it?

23 A No, I didn't say that.

24 Q Well, hypothetically speaking, if the company
25 was overearning, then incremental costs between rate

1 cases, in fact, might be born by share -- by ratepayers;
2 isn't that right?

3 A I don't know what you mean by overearning.

4 MR. THOMPSON: Okay. No further questions.

5 Thank you, your Honor.

6 JUDGE PRIDGIN: Mr. Thompson, thank you.

7 Redirect?

8 MR. CONRAD: Your Honor, just --

9 JUDGE PRIDGIN: I'm sorry. Mr. Conrad.

10 CROSS-EXAMINATION

11 BY MR. CONRAD:

12 Q Mr. Giles, I was following along with your
13 questions that the Chairman asked you, particularly with
14 regard to the Hawthorne subrogation proceeds. Do you
15 recall that series of exchanges?

16 A I do.

17 Q And do I -- and I think, in specific, he asked
18 you about or you got to talking about the additional
19 purchase power expenses that have had to be incurred?

20 A Yes.

21 Q And I think I got down the quote correctly that
22 customers were never billed for those costs; is that
23 right?

24 A Yes.

25 Q Do you remember -- it's been a while ago. Do

1 you remember a little company out there in the east
2 bottoms called GST?

3 A I do.

4 Q Are you suggesting that you never billed them
5 for those costs?

6 A GST at that time was on a special contract.

7 Q I asked you did you bill them for those costs?

8 A Yes. Under that special contract.

9 Q And you do recall that there was some litigation
10 about that?

11 A There was a Commission --

12 Q That's litigation, sir. Is -- do you recall
13 that there was --

14 A Yes.

15 Q -- some litigation about that?

16 A I do.

17 Q Do you suppose that GST would have initiated
18 that complaint to which you refer if they hadn't been
19 billed for those costs?

20 A No.

21 Q So when you made the statement that customers
22 were never billed for those costs, were you excluding GST
23 as a customer -- excluding those costs as costs or
24 excluding the process that you used as something other
25 than billing?

1 A I was talking in generic terms about customers.
2 I wasn't talking about a special contract customer.

3 Q Well, GST was not a customer?

4 A They were a special contract customer.

5 Q Were they -- they were a customer?

6 A Yes, they were a customer.

7 Q Now, I believe Commissioner Jarrett asked you a
8 follow-up to my opening statement. Do you recall that?

9 A I don't know whether it was Commissioner
10 Jarrett, but I'll accept that.

11 Q Do you recall being asked about the -- something
12 about the regulatory plan?

13 A Yes.

14 Q Okay. What, in your view, was the purpose of
15 the regulatory plan?

16 A Well, the purpose of the regulatory plan from
17 KCPL's perspective was to enable us to embark on a
18 comprehensive energy plan that included building of a coal
19 plant, base load coal plant, environmental equipment that
20 we'll see in IATAN I, wind generation, and to protect our
21 credit rating once we made that announcement that we were
22 embarking on that. That was our objective.

23 Q If there had not been an anti-CWIP piece of
24 legislation such as Proposition 1, would you have needed
25 the regulatory plan?

1 A Yes.

2 Q Even though you could have filed a series of
3 rate cases to simply have recovered those increments or
4 recovered both on a return on them?

5 A Yes.

6 Q I see. And since the regulatory plan was
7 approved and the Commission issued its decision in the
8 0314 case, the plan of additions have -- have continued?

9 A We are -- are -- are in the process of building
10 the coal plant. The wind has been completed. The scene
11 environmental has been completed.

12 Q An environmental on one, IATAN I?

13 A It is currently underway. It is scheduled for
14 completion the end of '08.

15 Q Did you do anything else in addition to that
16 plan after the Commission's decision in 314?

17 A What do you mean by anything else?

18 Q Did you announce purchase of another utility?

19 A We did.

20 Q Was that comprehended by the regulatory plan?

21 A No.

22 MR. CONRAD: Thank you, sir. That's all.

23 JUDGE PRIDGIN: Mr. Conrad, thank you. Any
24 further recross?

25 MR. BRUDEN: If I may?

1 JUDGE PRIDGIN: Yes, sir. Mr. Bruden.

2 EXAMINATION

3 BY MR. BRUDEN:

4 Q Mr. Giles, I believe I heard you testify into
5 one -- regard to one of the questions that Mr. Dittmer, a
6 DOE witness, misrepresented the facts in regard to what
7 you referred to as asymmetrical rate treatment. Can you
8 tell me, please, how specifically Mr. Dittmer, in your
9 opinion, misrepresented facts?

10 A Well, my -- my reference there is to this idea
11 that the company only wants -- it actually was Mr. Dittmer
12 and Mr. Hyneman. Their position is that when there's
13 costs involved, the company wants to recover them. When
14 there's revenue involved, the company doesn't want to flow
15 that back, similarly to how the costs are amortized.

16 And my point is they are very different items.
17 Revenue follows costs. Revenue matches costs. So if the
18 costs are prudently incurred, they should be recovered.
19 That's the difference between the revenue side and the
20 cost side.

21 If the costs had already been previously
22 recovered from customers, then the revenue should
23 certainly be flowed back to customers. So it's a matching
24 principle.

25 Q Well, you're speaking of matching principle.

1 You're speaking rate-making theory which, of course, we
2 all have a long involvement in. But you said that he
3 misrepresented facts, sir. So where was a misrepresented
4 fact -- representation of a fact, such as what you speak?

5 A Well, as I just described it, that was -- that
6 was my reference.

7 Q Okay.

8 A If that's not a -- if that's not an accurate
9 characterization, then I'm sorry.

10 Q Okay. I wanted to ask this now. The explosion
11 and the consequent need for replacement power and so on,
12 did that cause the company to expend, to pay out more
13 money in total than it would have paid out had that
14 explosion had not happened and Hawthorne had remained
15 online?

16 A Yes.

17 Q Do you know how much more money, all total?

18 A It was over \$150 million.

19 Q And how do you calculate that, sir?

20 A We calculated it by looking at what -- what have
21 -- what would have been our cost of fuel and purchase
22 power with the unit in place versus without the unit.

23 Q Can you -- is -- is that found in any of the
24 exhibits or anywhere, any of the papers that are available
25 to us now, the calculation you just mentioned?

1 A It's not. It's -- it was provided in the
2 litigated case that Mr. Conrad referred to, but it -- it's
3 certainly available.

4 Q Okay. I did also want to ask, the company
5 received these monies in 2006 and booked them as a
6 negative expense in 2006, did it not?

7 A Booked them as a negative expense. No. I don't
8 -- I don't know that that's the case.

9 Q Okay. Did the company -- we can -- we can
10 discuss what we mean by negative expense. But did the
11 company receive the monies in 2006?

12 A Yes.

13 Q Okay. Did it book them in some way, shape or
14 form in 2006?

15 A Yes.

16 Q And is the fact that it received and booked
17 these monies in 2006 a strong indication that these monies
18 do bear some significant relationship to the test year
19 2006?

20 A No.

21 Q Why not?

22 A Well, the test year, what you're attempting to
23 do is to replicate an ongoing operation of the company.
24 So you're setting rates for an extended period of time.

25 Typically, you're not setting rates for just one

1 year. You're setting rates based on what the anticipated
2 long-term effect would be. So you use a test year to
3 quantify an estimate that impacts.

4 So by including in a test year an abnormal
5 revenue that's related to a ten-year old -- ten-year old
6 occurrence is not appropriate.

7 Q But you will agree with me, will you not, that
8 in order to treat these monies in the manner that you've
9 described, the Commission would have to ignore the fact
10 that they were booked and received in 2006, would it not?

11 A The fact that this was received in 2006 only
12 means that you need to adjust out that abnormal amount.
13 In --

14 Q Other than that, the year of receipt, the actual
15 year that the money came into the company's pocket is of
16 no relevance, of no meaning in this calculation in theory;
17 sir? Is that what you're saying?

18 A That's exactly right.

19 Q Okay. At page 5 of your rebuttal, you said that
20 Mr. Dittmer believes that the company was earning in
21 excess of other utilities; is that right?

22 A Yes.

23 Q Okay. Can you tell me why you believe that it
24 was and is Mr. Dittmer's view that the company was earning
25 in excess of other utilities?

1 A I have no idea.

2 Q No, no. I'm asking where do you find in his
3 testimony an assertion to the effect that the company was
4 earning in excess of other utilities?

5 A I don't have his testimony in front of me.

6 Q Let me provide you my copy, then. Or hold on.
7 We'll provide a clean copy. My colleague is absolutely
8 right.

9 MR. RIGGINS: Is that the Dittmer direct?

10 MR. BRUDER: Yes.

11 MR. RIGGINS: I can provide that to him.

12 JUDGE PRIDGIN: Mr, Giles, if I can get you to
13 hold on to your answer, the court reporter needs to change
14 tapes. If everyone can give us just a second, please.

15 (Break in proceedings.)

16 JUDGE PRIDGIN: All right. Thank you. And I'm
17 sorry. Is there a question pending? Mr. Giles, did you
18 have a question to answer?

19 MR. GILES: Yes.

20 JUDGE PRIDGIN: Whenever you're ready, sir.

21 A Page 19 of Mr. Dittmer's direct testimony, top
22 of the page. Quote, Finally, I note that KCPL's earnings
23 during the years 2000 through 2005 were adequate, if not
24 robust, in relation to returns being authorized by this as
25 well as other State Regulatory Commissions during the

1 noted years.

2 Q Adequate, but not robust. Now --

3 A If not robust.

4 Q Adequate, if not robust. Then it's your view
5 that that -- that in making that statement, Mr. Dittmer
6 was asserting that the company was earning in excess of
7 other utilities?

8 A That's what it says.

9 Q Where does it say in excess of other utilities,
10 sir?

11 A Well, this doesn't say it in particular. It
12 alludes to or adequate, if not robust, in relation to
13 returns being authorized by this as well as other State
14 Regulatory Commissions.

15 So that's what it says. And my interpretation
16 of it was what I stated in my testimony.

17 Q Okay. You have no further basis for that --
18 that statement at this point?

19 A No. It's based on this paragraph on page 19.

20 Q KCP&L sought an accounting order for the 2005
21 ice storm damage, did it not?

22 A We did.

23 Q In seeking and in obtaining that accounting
24 order, sir, was the company required to demonstrate that
25 those extraordinary costs would place it in the situation

1 of underearning?

2 A That is a standard that's typical for an
3 accounting authority order.

4 Q What is typical for an accounting authority
5 order?

6 A Well, that the -- the impact of the event must
7 be significant. And significant is not defined very
8 rigidly. But in general, we look at it that, you know, at
9 that point in time, anything over 10 or \$12 million would
10 be subject to going in to get an accounting authority
11 order.

12 Q Well, could we have the -- the court reporter
13 read the question back, please?

14 (The previous question was read back.)

15 Q (By Mr. Bruder) Well, okay. That's -- that's
16 not quite it. Let me just repeat it. We established that
17 KCPL did, indeed, seek such an accounting order.

18 And what I asked was, when it obtained that, was
19 it required to demonstrate that absent such an order it
20 would find itself in the situation of underearning? Did
21 it have to make such a demonstration, sir, or not?

22 A We incurred about \$55 million related to that
23 ice storm in 2002. We felt that was significant, and we
24 went in to get the accounting authority order based on the
25 magnitude of that. We didn't do a specific test or

1 calculation.

2 MR. BRUDER: Judge, I've asked the same question
3 twice, and it's a yes or no question. I do request that
4 -- that the witness be instructed to give a yes or no
5 answer to this question.

6 JUDGE PRIDGIN: All right. If you could ask it
7 one more time. And it does sounds like a yes or no
8 question to me. So if you could ask it one more time,
9 Mr. Bruder.

10 MR. BRUDER: Thank you.

11 Q (By Mr. Bruder) When the company came in for
12 this accounting order we've been discussing, was the
13 company required in order to obtain that order to
14 demonstrate that absent that order it would find itself in
15 a situation where it was underearning?

16 A Was it required by whom?

17 Q Was it required by any Commission rule, any
18 Commission order, any statute, any regulation, anything
19 else that had any binding authority of any sort upon the
20 company?

21 A Are you asking me was there a calculation
22 required or was just submitting the magnitude of the
23 dollars required? That's what we did is we submitted a
24 \$55 million expense and said we felt like this should be
25 amortized and that --

1 Q And did you assert when you submitted that --
2 that -- that if you didn't get that \$55 million expense
3 your company would be placed in a situation of
4 underearning? Yes or no, sir, please?

5 A I don't think we said we would be underearning
6 necessarily. I said it was a significant impact on
7 earnings.

8 Q Was your company required by any applicable rule
9 to make such a demonstration, sir?

10 A I don't know.

11 Q Is it your position now that if any credits or
12 refunds pertaining to a prior period are received during a
13 test period, those credits or refunds should go
14 exclusively to shareholders unless a party can demonstrate
15 that the company was overearning in the prior period from
16 which the refund or credit originated?

17 A No.

18 MR. BRUDER: Nothing further. Thank you.

19 JUDGE PRIDGIN: Thank you. Any further recross?
20 Redirect?

21 MR. RIGGINS: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. RIGGINS:

24 Q Mr. Giles, you were asked some questions by the
25 Chairman regarding the Surface Transportation Board

1 litigation. Specifically, he asked you to think about if
2 there was a retroactive refund awarded as a part of that
3 case how much of that money would go back to customers.

4 And as I recall, you hesitated for a minute, and
5 then you said somewhere between 50 percent and 100
6 percent. Does that match your recollection?

7 A Yes.

8 Q Was your hesitation based on the issue of how
9 much of those costs had actually been paid by customers?

10 A Yes.

11 Q And that goes back, does it not, to the point
12 that you made initially that just because an item is
13 amortized or amortization is allowed doesn't necessarily
14 mean that those costs are recovered from customers?

15 A That's correct.

16 Q So, for example, if it were to turn out that 100
17 percent of the surface transportation costs litigations --
18 litigation costs were -- were paid by customers, what
19 percentage of any retroactive refund would go to
20 customers?

21 A 100 percent.

22 Q If none of those costs were paid for by
23 customers, how much, if any retroactive refund would go to
24 customers?

25 A Zero.

1 Q And that's the basis of your argument regarding
2 the cost of subrogation issue, was it not?

3 MR. THOMPSON: Object to the form of the
4 question. This is redirect, Judge. He's not allowed to
5 ask leading questions.

6 MR. RIGGINS: I can rephrase the question.

7 JUDGE PRIDGIN: Thank you.

8 MR. RIGGINS: -- if it will make happy --
9 everyone happy.

10 JUDGE PRIDGIN: Sustained.

11 Q (By Mr. Riggins) Is that -- is that the same
12 basis on which you're arguing that Hawthorne 5 subrogation
13 costs -- or excuse me -- Hawthorn 5 subrogation refunds
14 should not be flowed back to customers?

15 MR. CONRAD: That's also leading. I object to
16 it.

17 Q (By Mr. Riggins) It's an open question.

18 JUDGE PRIDGIN: Overruled. I think the question
19 is, is that the basis. I don't think it's suggesting an
20 answer.

21 Q (By Mr. Riggins) You can answer.

22 A Yes.

23 Q Thank you. Chairman Davis and then counsel for
24 DOE asked you some questions about the additional costs
25 incurred as a result of the Hawthorn 5 explosion and, in

1 Chairman Davis' case, perhaps some of the savings that
2 occurred as a result of the Hawthorn 5 explosion. Do you
3 recall that?

4 A I do.

5 Q And with regard to the \$150 million figure
6 that's contained in your testimony on page 5, is -- was
7 your previous testimony that that number is the difference
8 between what KCPL actually had to pay for power with
9 Hawthorn out as compared to what it would have paid if
10 Hawthorn 5 had been operational?

11 A Yes. That's true.

12 Q So would it be an accurate statement that,
13 although there were savings and expenses as a result of
14 the Hawthorn 5 explosion, the expenses exceeded the
15 savings?

16 A Yes.

17 MR. THOMPSON: Object to the form of the
18 question.

19 JUDGE PRIDGIN: I'll overrule it.

20 Q (By Mr. Riggins) You were asked some questions
21 by Commissioner Murray regarding class cost of service and
22 rate design. Do you recall that?

23 A I do.

24 Q Did the signatory parties to the regulatory
25 plan, including KCPL, agree in that regulatory plan that

1 they would not do any class cost of service study in this
2 case?

3 A Yes.

4 Q Chairman Davis asked you some questions about
5 what -- what the impact would be on KCPL if it -- if it
6 cut its dividend to partially fund its construction
7 program. Do you recall that?

8 A I do.

9 Q And I think you talked a little bit about the --
10 the impact on -- on KCPL if that were to occur. Could you
11 tell us how that would impact KCPL's ability to continue
12 the construction program that's underway?

13 A The ability to issue equity at a price that
14 would generate enough funds to support the construction
15 would be impossible due to the drop in the stock price.

16 Q Moving on to a couple of questions from
17 Mr. Conrad, he referenced the -- the GST contract and
18 complaint filed at the Commission. Do you recall that?

19 A I do.

20 Q And you indicated, I believe, that, in fact, GST
21 did end up paying some of the increased costs associated
22 with the Hawthorn outage, did you not?

23 A Yes.

24 Q How many other customers had a contract like
25 GST's?

1 A At that time, I believe GST was the only one.

2 Q And with regard to the GST complaint case that
3 Mr. Conrad referenced, what was their -- what was their
4 complaint about in that case? Do you recall?

5 A Yeah. They had several complaints. One -- what
6 the main issue was, that the company was negligent, and,
7 therefore, they should pay the cost of the replacement
8 power under the terms of their contract because,
9 basically, the company blew the plant up.

10 They were also raising issues of overall plant
11 maintenance of the company for various other reasons and
12 were saying that even though their contract provided
13 real-time pricing to them, they didn't feel like they
14 should continue to pay it.

15 Q Do you recall in whose favor the Commission
16 ruled in that case?

17 A In KCPL's favor.

18 Q Mr. Conrad also asked you a question something
19 like this: If -- if Missouri had had a -- or had allowed
20 construction work in progress, would the amortization
21 provision of the -- the regulatory plan have been
22 necessary. Do you recall that?

23 A I do.

24 Q And I think you indicated it still would have
25 been necessary; is that right?

1 A Yes.

2 Q Does KCP&L have a similar regulatory plan in
3 Kansas?

4 A Yes, we do.

5 Q Does Kansas allow construction work in progress?

6 A Yes, it does.

7 Q Final question. You were asked some questions
8 by counsel for DOE about when the Hawthorn 5 subrogation
9 proceeds were received. Why were the Hawthorn 5 -- or at
10 least the subrogation proceeds that we're arguing about in
11 this case, why were those subrogation proceeds received in
12 '06 as opposed to '05 or '04 or '07 or any other year?

13 A It was just a matter of the timing of the
14 litigation and the time it took to resolve the -- the
15 issues.

16 MR. RIGGINS: Thank you. That's all I have,
17 Judge.

18 JUDGE PRIDGIN: All right, Mr. Riggins. Thank
19 you. All right. This looks to be a convenient time to
20 break. I show the time, according to the clock on the
21 back wall, to be about ten till three or a little before.
22 Let's resume at roughly five after three, and -- and we
23 will -- we will have Mr. Traxler come to the stand. All
24 right. We're in recess.

25 (Break in proceedings.)

1 JUDGE PRIDGIN: All right. We're back the
2 record. I understand that Mr. Traxler is the next
3 witness. Is there anything from counsel before he's
4 sworn?

5 Mr. Traxler, if you'd come forward and be sworn,
6 please.

7 MR. MILLS: Judge, I have a housekeeping matter
8 to bring up at some point, whenever it's convenient for
9 you.

10 JUDGE PRIDGIN: Okay. Mr. Mills, now is fine.

11 MR. MILLS: What -- is it -- is it possible to
12 get a CD of today's proceedings relatively quickly, like
13 perhaps this evening?

14 MR. THOMPSON: Did you find them that
15 interesting?

16 MR. MILLS: There was -- there was a exchange
17 between Commissioner Appling and Mr. Giles that seemed to
18 refer to a conversation that Commission Appling had with
19 Mr. Giles three or four months ago about what KCPL really
20 needed out of this case. And I want to review the CD to
21 be sure that my understanding of what Commissioner Appling
22 was saying is what he actually did say. Because if that
23 is the case, that's somewhat troubling. So --

24 MR. RIGGINS: The --

25 JUDGE PRIDGIN: I can e-mail our IT Department

1 and ask how quickly they can get a CD of today's
2 proceedings.

3 MR. MILLS: That -- that would be great. Thank
4 you. And failing that, can I ask that the transcript be
5 expedited?

6 JUDGE PRIDGIN: I already asked for that this
7 morning for other purposes. And, yes, certainly, that's
8 okay.

9 MR. MILLS: Both would be preferable.

10 MR. RIGGINS: Your Honor, I would also be
11 willing to put Mr. Giles back on the stand to inquire
12 about any questions that anyone had regarding that issue
13 if that would be helpful.

14 JUDGE PRIDGIN: Okay. Mr. Mills, is that
15 something that you want done? Or did you want to question
16 him? Or do you simply want the CD?

17 MR. MILLS: I certainly may want to question him
18 depending on what I see when I see the CD or the
19 transcript. My first step would be to -- just to confirm
20 what -- what it was that -- whether Commissioner Appling
21 said what I thought he said.

22 JUDGE PRIDGIN: If I'm not mistaken, Mr. Giles
23 is due to be back on the stand for other issues anyway,
24 so --

25 MR. MILLS: Yes, he is.

1 JUDGE PRIDGIN: All right. Mr. Mills, thank
2 you. Mr. Traxler, if you'd raise your right hand to be
3 sworn, please.

4 STEVE TRAXLER,
5 being first duly sworn to testify the truth, the whole
6 truth, and nothing but the truth, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. THOMPSON:

9 JUDGE PRIDGIN: Thank you very much. If you
10 would, please, have a seat. And, Mr. Thompson, anything
11 before he's tendered for cross?

12 MR. THOMPSON: Thank you, Judge.

13 Q (By Mr. Thompson) Mr. Traxler, with respect to
14 your direct testimony, do you have any corrections?

15 A Yes, I do. I have one question on my direct
16 testimony.

17 Q What is your correction?

18 A On page 12, line 22, at the end of the sentence,
19 the, the word spelled tiled, t-i-l-e-d, should be tied,
20 t-i-e-d.

21 Q Very good. Any other corrections to that piece
22 of testimony --

23 A No, sir.

24 Q -- which I think has been marked as Exhibit 112?
25 Now, Mr. Traxler, with respect to your rebuttal testimony,

1 with the transcript and CD, I don't know that we need to
2 go any further down this road.

3 MR. RIGGINS: That's fine.

4 JUDGE PRIDGIN: All right. Okay. Thank you.
5 We'll just postpone that for now. All right.

6 MR. RIGGINS: And with this, then, Mr. Giles is
7 available for, I guess I should say further
8 cross-examination on subrogation processes from Hawthorn
9 5.

10 JUDGE PRIDGIN: Okay. We're on Hawthorn 5
11 subrogation. I assume we'll have cross-examination from
12 Staff, Mr. Williams?

13 MR. WILLIAMS: Judge, I believe all the topics I
14 was going to cover were handled earlier today.

15 JUDGE PRIDGIN: Okay. Any -- any
16 cross-examination from counsel on Hawthorn 5? All right.
17 Seeing none, are there any Bench questions on Hawthorn 5,
18 commissioner Clayton?

19 COMMISSIONER CLAYTON: If that's all right, let
20 me ask a few questions, if I can, Judge.

21 TESTIMONY OF CHRIS GILES

22 CROSS-EXAMINATION

23 BY COMMISSIONER CLAYTON:

24 Q Good afternoon, Mr. Giles. I apologize for
25 coming in late. We've got a busy agenda tomorrow and

1 trying to juggle several things. So if I'm repetitive or
2 if I cover ground that's already been covered, I
3 apologize.

4 First of all, where is this issue located on
5 Staff's reconciliation? Is it an expense item?

6 A I -- go ahead, Nate.

7 MR. WILLIAMS: Commissioner, since you've asked
8 about Staff's reconciliation, perhaps I should direct you
9 to where it is. I believe it's line 102 on the second
10 page.

11 COMMISSIONER CLAYTON: I didn't want to trouble
12 you, Mr. Williams. 102. Thank you, though.

13 Q (By Commissioner Clayton) I think what I was
14 asking -- it's an expense item. It's not a rate-based
15 item. It's not a -- it's what -- okay. Mr. Giles, can
16 you just very briefly explain the issue to me and -- and
17 KCP&L's position?

18 A Sure. In 1999, KCPL's Hawthorn 5 unit had a gas
19 explosion, destroyed the boiler. The unit was out of
20 service for about two and a half years. It came back into
21 service in the summer of 2001.

22 During that time frame, the company incurred
23 about \$150 million in purchase power expense above what
24 would have normally been incurred had Hawthorn been
25 operating.

1 These costs were never passed through to
2 customers. KCPL did not file a rate case, did not ask for
3 recovery of those costs. The insurance proceeds consisted
4 of two parts from that explosion.

5 There was first the property damage that we were
6 paid in excess of \$200 million. That property settlement
7 was reduced -- was used to reduce the rebuild costs and,
8 thus, reduce rate base.

9 During the course of the past eight years,
10 several lawsuits, litigation issues have been resolved.
11 There were about 12 parties that the company sued and got
12 some money from all 12 of those.

13 The most recent one was received in 2006, which
14 just happens to coincide with the test year of this case.
15 KCPL adjusted out those proceeds due to two things. One,
16 it was a non-recurring event that really had nothing to do
17 with setting rates for 2008.

18 And, two, customers had never paid those
19 purchase power costs in the first place, which the
20 subrogation proceeds were related to.

21 Q So the subrogation -- the subrogation proceeds
22 were received from -- this wasn't an insurance claim.
23 This would have been --

24 A This was -- no. This was subrogation claims for
25 third parties.

1 Q Third parties. Okay. And that's the -- the
2 amount on this reconciliation over \$2 million, that's the
3 total amount re --

4 A I believe that's probably the amortization
5 amount, but I'm not sure. The Staff is proposing that
6 that be flowed through at an amortization over five years
7 into rates. And our position is it's inappropriate
8 because customers never paid the costs.

9 Q Was this issue -- did this issue arise in the
10 last rate case?

11 A No, it did not.

12 Q Wasn't there a similar issue --

13 A I --

14 Q -- relating to insurance proceeds? It may have
15 been the property damage. But I --

16 A It may have been property damage. Yes. There
17 was an issue related to how the property damage was
18 booked. And I think we resolved that issue. But --

19 Q Now I remember it coming before us. Somebody
20 resolved it, whether it was you all or us?

21 A Yeah.

22 Q If there is a different issue --

23 A This is a totally different issue.

24 Q Just so we're not relitigating an issue from the
25 prior case.

1 A No.

2 Q Okay. I think that's what I was wanted to
3 understand. Thank you very much.

4 A Yes.

5 JUDGE PRIDGIN: Commissioner Jarrett?

6 COMMISSIONER JARRETT: No.

7 JUDGE PRIDGIN: All right. Thank you. Any
8 recross based on Bench questions?

9 MR. CONRAD: Yeah.

10 JUDGE PRIDGIN: Mr. Conrad.

11 CROSS-EXAMINATION

12 BY MR. CONRAD:

13 Q Mr. Giles, earlier, we went through the
14 statement that you made that customers didn't pay these
15 costs. Are you talking about customers in a generic
16 sense, or are you talking about all customers 100 percent?

17 A Yes. I was talking about customers in a generic
18 sense. As I indicated earlier in response to your
19 question, and agreed with you that GST at that time was on
20 a special contract, and they were billed real-time prices,
21 which included the cost of this purchase power.

22 Q And that special contract was the matter that
23 was approved by the Commission, right?

24 A Yes. It was approved by the Commission.

25 Q And those were regulated revenues?

1 A Yes, they were.

2 Q So, in fact, then, the other part of your
3 statement that it should adjust these out because
4 customers didn't pay them, that also isn't quite correct,
5 is it?

6 A Well, no. It is correct.

7 Q Well, is it correct with respect to GST?

8 A Not correct with respect to GST.

9 Q So how have you addressed that in your
10 adjustment?

11 A Pardon?

12 Q How have you addressed that in your proposed
13 adjustment?

14 A GST declared bankruptcy sometime in 2002 or
15 three and no longer is a customer. And, also, at the time
16 they left our system, they left owing us approximate
17 \$6 million.

18 Q So have you done a calculation of how much they
19 had paid?

20 A I have not done that calculation, but it was not
21 going to equal \$6 dollars.

22 Q What is the basis, then, of that statement?

23 A Just my gut.

24 Q Where -- okay. Now we're -- that's -- that's
25 the test is whether it offends or doesn't offend your gut?

1 A Well, what's your question?

2 Q Is that the test that you're going to use now?

3 A Test for what?

4 Q For whether an adjustment is correct or not.

5 A GST is no longer a customer.

6 Q That's right. We -- we understand that.

7 A So what is your question?

8 Q The question, sir, is how have you accounted for
9 what GST paid with respect to the adjustment that you've
10 proposed?

11 A We took all of the insurance proceeds out of the
12 test year.

13 Q Have you quantified what GST paid for purchase
14 power?

15 A No.

16 Q So the answer, then, to my earlier question is
17 you have not accounted for the portion that GST paid?

18 A No.

19 Mr. CONRAD: Thank you. That's all.

20 JUDGE PRIDGIN: Mr. Conrad, thank you. Any
21 further recross?

22 MR. WILLIAMS: Yes, Judge.

23 JUDGE PRIDGIN: Mr. Williams.

24 CROSS-EXAMINATION

25 BY MR. WILLIAMS:

1 Q Mr. Giles, good afternoon.

2 A Good afternoon.

3 Q For the rates that were charged to KCPL
4 customers in the years 1999, 2000 and 2001, was Hawthorn 5
5 included in the cost of service upon which those rates
6 were based?

7 A Yes.

8 Q And that would have included a return on the
9 Hawthorn 5 unit -- Hawthorn Unit 5 costs?

10 A Yes.

11 Q And depreciation on Hawthorn Unit 5?

12 A Yes.

13 Q And property taxes on Hawthorn Unit 5?

14 A Yes.

15 Q And property insurance on Hawthorn Unit 5?

16 A Yes.

17 MR. WILLIAMS: No further questions.

18 JUDGE PRIDGIN: Mr. Williams, thank you. If
19 there's no further recross, redirect?

20 MR. RIGGINS: Just one question, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. RIGGINS:

23 Q And this is a follow-up to Mr. Williams'
24 question, and it's similar to one that we discussed when
25 Mr. Giles was up here earlier today. But recognizing that

1 costs associated with Hawthorn 5 remained in KCPL's rates
2 during that time frame when Hawthorn 5 was not operating,
3 can costs associated with the Hawthorn 5 outage still
4 exceed those costs?

5 MR. WILLIAMS: Judge, I'm going to object. He's
6 mischaracterized my question. My question was whether or
7 not the rates were based upon the cost of service that
8 included the costs associated with Hawthorn 5.

9 MR. RIGGINS: Well, that's what I intended to
10 state if I didn't state it that way. But I'll go with Mr.
11 Williams' characterization of his question to repeat.

12 Q (By Mr. Riggins) Did the expenses associated
13 with Hawthorn 5 outage exceed those costs that were
14 included as per Mr. Williams' statement?

15 A Yes.

16 MR. RIGGINS: That's all I have, your Honor.

17 JUDGE PRIDGIN: All right. Thank you. Nothing
18 further?

19 MR. BRUDEN: If I may --

20 JUDGE PRIDGIN: All right, Mr. --

21 MR. BRUDEN: -- say -- thank you.

22 CROSS-EXAMINATION

23 BY MR. BRUDEN:

24 Q You say that those costs exceeded -- the costs
25 of the outage exceeded the costs that were included in

1 rates for Hawthorn 5?

2 A Yes.

3 Q Now, they exceeded them -- the amount in which
4 they exceeded them, was that the \$150 million you
5 mentioned earlier?

6 A The \$150 million was the additional purchase
7 power fuel costs attributable above what we would have
8 incurred had Hawthorn 5 been operating.

9 MR. BRUDER: I'm -- I'm going to ask, please,
10 for a yes or no answer to my question.

11 Q (By Mr. Bruder) My question is, that
12 \$150 million figure that you mentioned, is that the total
13 amount by which the amount of money the company expended
14 be caused as a result of this explosion?

15 Is that the amount by which -- what it had to
16 expend exceeded what it would have expended if there were
17 not such an explosion, or is that merely the \$150 million
18 that you paid for purchase power?

19 A Since you want a yes answer, I will say yes. I
20 believe that's exactly what I just said.

21 Q The \$150 million is a measure of the total
22 amount that you paid for purchase power; is that right?

23 A No.

24 Q What is the -- what does the \$150 million
25 measure?

1 A I believe I just explained that before you
2 wanted a yes or no answer.

3 Q Well, perhaps I misunderstood you, sir.

4 A The \$150 million is in excess of what the fuel
5 and purchase power costs would have been had Hawthorn 5
6 been operating as normal. It was incremental costs above
7 and beyond Hawthorn 5's normal cost.

8 Q Did the explosion cause some of the company's
9 costs to go down?

10 A What company?

11 Q I'm sorry. I haven't understood you, sir. What
12 company?

13 A Pardon? Did you just ask me a question? You
14 said did this cause some other company's costs to go down,
15 and I said what company.

16 Q Oh, no, sir. I -- no. You misunderstood me.
17 What I asked was, there was an explosion. That explosion
18 caused your purchase power costs to go up. Did that
19 explosion result in any of your costs going down?

20 A As I said just before that, yes. Those costs
21 that we did not have to spend on the normal fuel and O&M
22 at the unit went down. They went to zero --

23 Q Okay.

24 A -- because the unit was not in existence.

25 Q Okay. And do we have a number for how far --

1 for what they were before they went to zero?

2 A I don't have it here with me. No.

3 Q Okay. But if we had that number, that would
4 constitute some result in savings to the company for this
5 explosion, would it not, sir?

6 A I believe I already answered. The 150 million
7 is in excess of that number. So if that number were to be
8 20 million, then the 150 is above the 20 million.

9 In other words, it's incremental costs. We
10 would have incurred 20 million. But, instead, we incurred
11 170 million, and the net difference is 150 million.

12 Q Okay. That's what I was seeking, sir. Thank
13 you very much.

14 JUDGE PRIDGIN: All right. If there's nothing
15 further for this witness? All right. Thank you,
16 Mr. Giles. We will then go on to Mr. Dittmer.

17 MR. MILLS: Thursday.

18 MR. RIGGINS: Your Honor, we all agreed we'd do
19 Mr. Dittmer's cross on all issues on Thursday.

20 JUDGE PRIDGIN: Thank you. That was probably
21 stated earlier, and I missed that. We'll go to
22 Mr. Hyneman on Hawthorn 5; is that correct?

23 All right, Mr. Hyneman, if you'd come forward
24 and be sworn, please.

25 JUDGE PRIDGIN: All right. If you'll raise your

1 right hand to be sworn, please?

2 CHARLES HYNEMAN,

3 being first duly sworn to testify the truth, the whole
4 truth, and nothing but the truth, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 JUDGE PRIDGIN: Thank you very much, sir.

8 Please have a seat. Anything to clear up before he's
9 tendered for cross?

10 MR. WILLIAMS: I'd just ask a couple questions.

11 Q (By Mr. Williams) Mr. Hyneman, do you have any
12 changes to your direct testimony which has been -- has
13 been marked for identification as Exhibit 108 and your
14 surrebuttal testimony that's been marked as Exhibit 109?

15 A No, I do not.

16 MR. WILLIAMS: Tender the witness.

17 JUDGE PRIDGIN: All right. Mr. Williams, thank
18 you. Any parties other than KCPL wish to cross
19 Mr. Hyneman on Hawthorn 5? Seeing no volunteers, any
20 questions from KCP&L?

21 MR. RIGGINS: Yes. I have a few, your Honor.

22 JUDGE PRIDGIN: Mr. Riggins.

23 CROSS-EXAMINATION

24 BY MR. RIGGINS:

25 Q Good afternoon, Mr. Hyneman.

1 A Good afternoon.

2 Q I just have a few questions for you this
3 afternoon. In your surrebuttal testimony, you talk a
4 little bit about the Hawthorn explosion, the -- the KCPL
5 rate decrease that occurred about that time. And I just
6 want to kind of go through the chronology with you to make
7 sure we're together on that.

8 The -- the approximately \$15 million rate
9 reduction that occurred around that time that was the
10 result of a stipulation between KCPL Staff and Public
11 Counsel, and that occurred in January of '99; is that
12 correct?

13 A That sounds correct. I know -- I think the
14 rates took effect in March.

15 Q Right. I think the stipulation specified that
16 the parties wanted the rate reduction to be effective
17 March 1st of '99?

18 A Correct.

19 Q And the -- the Commission actually ended up
20 approving that stipulation in -- in April of '99. Do you
21 recall that?

22 A I don't know the date of the approval of the
23 stipulation.

24 Q But -- but it did occur?

25 A Yes.

1 Q And as you pointed out in your testimony, I
2 believe, during that time frame, February of '99 was --
3 was when the Hawthorn plant exploded, correct?

4 A Correct.

5 Q And in the stipulation between the parties that
6 had been entered into and filed but had not yet gone into
7 effect, there was a -- a provision that allowed parties
8 to, in essence, break a moratorium if certain events
9 occurred, correct?

10 A That's correct.

11 Q And one of the events that would have allowed
12 KCPL to disregard the moratorium provision was an extended
13 outage or shut-down of a major unit which had a major
14 effect on KCPL; is that correct?

15 A That is correct.

16 Q Okay. And KCPL did not use that provision to
17 file a rate increase during the period of the moratorium,
18 did it?

19 A No, it did not.

20 Q And, in fact, it didn't file a rate increase
21 request until the first of '06; is that correct?

22 A That's correct.

23 Q Do you agree with -- with Mr. Giles that KCPL
24 incurred additional purchase power expenses as a result of
25 the Hawthorn outage?

1 A If you're looking for a yes/no response, I would
2 say yes.

3 Q All right. Do you agree -- Mr. Giles has in his
4 testimony the figure of \$150 million. Do you agree with
5 that number?

6 A No. I've seen no support for that number.

7 Q Do you have a reason to disagree with it or to
8 suggest another number is a more appropriate number?

9 A I have no opinion on that number.

10 Q Did -- did you ask for any sort of documentation
11 or support for that number after it appeared in Mr. Giles'
12 testimony?

13 A No. The -- the relevance to Staff's position of
14 that number wasn't -- wasn't very relevant, so I did not
15 pursue additional discovery on that.

16 Q I understand. We -- we talked earlier about the
17 fact that KCPL did not use the out provision contained in
18 the stipulation agreement. KCPL also did not request --
19 for example, in the accounting authority order, it did not
20 file a request to amortize those costs in any way; is that
21 correct?

22 A That's correct.

23 Q You were -- were you here when Mr. Giles
24 testified a little bit earlier today about the subrogation
25 proceeds?

1 A Yes, I was.

2 Q And in response to a question about the proceeds
3 that were received in '06, the ones that are at issue here
4 today, Mr. Giles said, basically, that the reason they
5 were received in '06 was because that was how long the
6 litigation took. Do you recall that question and answer?

7 A I re -- I do recall that.

8 Q Is that consistent with your understanding of
9 why the proceeds were received in '06 as opposed to some
10 other year?

11 A I would -- it's logical that that is true. I
12 have no independent verification that that is true.

13 Q Okay. Did KCPL receive any subrogation proceeds
14 before 2006?

15 A I believe it did.

16 Q Do you know whether it expects to receive any
17 subrogation proceeds in 2007?

18 A I do not believe it does.

19 Q Okay.

20 A But that's just on my memory of reading
21 documents to that effect.

22 Q What about 2008, the year the rates are going to
23 be affected in this case?

24 A I recall reading a document -- again, I'm
25 testing my memory -- that this completed the subrogation

1 issue. That's all I can remember.

2 Q Okay. If -- let's -- let's kind of talk in
3 hypothetical terms for a moment. If KCPL had, in fact,
4 asked for some sort of recovery of those costs as it was
5 incurring either through a rate increase or request for an
6 AAO or whatever so that those costs actually were flowed
7 through to customers, your position still would be that
8 once proceeds were received that those proceeds should go
9 back to customers, correct?

10 A Yes. My position is that KCPL's customers paid
11 for those costs, incremental costs.

12 Q Okay. And --

13 A Now, whether they were explicit in an AAO rate
14 increase, that's not relevant in my position.

15 Q And that position is based upon your belief that
16 KCPL could have asked for recovery of those costs and
17 didn't, so it must have been doing all right? I'm
18 paraphrasing, I know. But is that the gist of your
19 position?

20 A Well, it's -- it's not as simple as that. My
21 position is -- is based on KCPL did not demonstrate -- it
22 had a significant earnings impact of -- of the Hawthorn 5
23 where it was not earning a reasonable rate of return. And
24 all the evidence available to me is with the prior years
25 to 1999, even in 1999, KCPL agreed to rate reductions.

1 And when a utility agrees to rate reductions,
2 that's an indication to me that their earnings were in
3 excess of their allowed rate of return. And subsequent to
4 that, KCPL provided documentation, which I list on page 8
5 of my surrebuttal testimony, that indicates their ROEs
6 were, you know, in the range between 13, 14, 12.8 percent.
7 So very hefty return on equities and appeared subsequent
8 to that.

9 Q You're right. Those were years in Hawthorn 5
10 was back online.

11 A Right. And they agreed to rate reductions on
12 years prior to that. So my -- the evidence indicates to
13 me that KCPL's earnings were so sufficient that it not --
14 it did not have a need to seek explicive rate recovery of
15 those subrogation -- or of the incremental costs from the
16 Hawthorn 5 explosion.

17 Q Just so the record is clear, KCPL agreed to that
18 rate reduction before the Hawthorn explosion, right?

19 A Yes.

20 Q Yes. And the numbers that you have in your
21 testimony regarding ROE are for periods of time when
22 Hawthorn 5 was back online. Would I find in your
23 testimony the returns on equity for 1999, 2000 and 2001
24 when Hawthorn 5 was not online?

25 A You -- you won't. The request -- data request

1 response did not go back that far. It went back as early
2 as 2002.

3 MR. RIGGINS: Okay. Thank you. That's all I
4 have.

5 A So -- okay.

6 MR. RIGGINS: Thank you.

7 JUDGE PRIDGIN: Let me see if we have any Bench
8 questions. Commissioner Clayton?

9 COMMISSIONER CLAYTON: No questions.

10 JUDGE PRIDGIN: Commissioner Jarrett?

11 COMMISSIONER JARRETT: No questions.

12 JUDGE PRIDGIN: All right. Any redirect?

13 MR. WILLIAMS: Just a couple of questions,
14 Judge.

15 REDIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q Mr. Hyneman, do you know of any reason why KCPL
18 could not have sought an accounting authority order or
19 have filed a rate case after Hawthorn 5 exploded in
20 February of 2000 -- or 1999?

21 A No.

22 Q And what does that mean to you, the fact that
23 they did not file for an accounting authority order or for
24 a rate -- or a rate case in that time frame?

25 A It indicates to me that their earnings during

1 Order has been issued, I think, this morning, but it would
2 give you until Tuesday noon, I believe, to object to that
3 nonunanimous stip. I just thought I'd let you know about
4 that.

5 Okay. Anything further before we go on to
6 the next witness? All right. In that case, Mr. Dittmer,
7 if you'll come forward to be sworn, please, sir.

8 (Witness sworn.)

9 JUDGE PRIDGIN: Thank you very much.
10 Please have a seat. Mr. Bruder or Mr. Campbell, anything
11 to clear up before he's tendered for cross?

12 MR. BRUDER: We've provided DOE
13 Exhibits 801, 802, 803, Mr. Dittmer's testimonies,
14 respectively direct HC version, direct public version and
15 surrebuttal.

16 JAMES R. DITTMER testified as follows:

17 DIRECT EXAMINATION BY MR. BRUDER:

18 Q. Sir, please state your name for the record.

19 A. James R. Dittmer.

20 Q. And are there any changes or additions that
21 you'd like to make in any of the testimonies we've
22 provided at this time?

23 A. Yes. I have a few typographical errors to
24 correct.

25 Q. Please state them.

1 A. Okay. First with regard to Exhibit 801,
2 which would be the HC version, and 803, which would be --
3 excuse me, 802, the direct public version, if you refer to
4 page 3, line 3, the word tax should have been capitalized.

5 If you go to page 6, now, the correction is
6 actually to a confidential section. I don't think what
7 I'm going to insert would probably concern the company,
8 but I should warn the parties, including the company and
9 the Commission, that there's an insert to one of the
10 confidential sections on line 19. So I guess I'm asking,
11 can I go ahead and put it in even though we're not in a
12 closed session?

13 JUDGE PRIDGIN: I don't know if you need to
14 consult with KCPL and see if that's something they're
15 comfortable having done in a public forum. If not, we
16 need to go in-camera so we can do that.

17 THE WITNESS: I can show them very quickly
18 what it is.

19 I'm told they want to make that correction
20 in-camera.

21 JUDGE PRIDGIN: All right. If you bear
22 with me just a second, we'll go in-camera, please. And
23 while we're still in public forum, if we can make whatever
24 highly confidential corrections you need to make all at
25 once so we can just go in-camera once, if that's possible.

1 THE WITNESS: I think this is the only one.

2 JUDGE PRIDGIN: Okay. Just a moment,
3 please.

4 THE WITNESS: Unless my memory is failing,
5 I think it's the only one.

6 JUDGE PRIDGIN: I understand.

7 (REPORTER'S NOTE: At this point, an
8 in-camera session was held, which is contained in
9 Volume 10, pages 647 through 648 of the transcript.)

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1 JUDGE PRIDGIN: All right. We're back in
2 public forum.

3 THE WITNESS: Okay. Now referring to
4 page 7 of Exhibits 801 and 802, line 5, the word employee
5 is listed as singular. It should be plural, employees.

6 On page 12, line 17, the word effective
7 should be effect. On page 13, line 7, KCP's should be
8 KCPL's. Still on page 13, line 23, the word suite should
9 be suit. And there's going to be a number of changes to
10 the year. 2005 should be 2004 on the following
11 references: On page 16, line 24, 2005 should be 2004.
12 Page 17, line 5, 2005 should be 2004. Still on page 17,
13 line 19, 2005 should be 2004. And one more time on
14 page 19, line 9, 2005 should become 2004. And that's the
15 last of the changes to the 801/802 exhibits.

16 Now moving on to Exhibit 803, my
17 surrebuttal testimony, page 3, line 12, shareholder is
18 singular. It should be plural, shareholders. On page 9,
19 line 12, the word be should be being. And on page 11,
20 line 8, between the words consider and earnings, the word
21 whether, w-h-e-t-h-e-r, should be inserted. And on
22 page 13, line 16, the language in bold there in the middle
23 that says that party should be that no party ever could.
24 And that concludes all my corrections.

25 MR. BRUDER: We have nothing further. This

1 witness is available for cross-examination.

2 JUDGE PRIDGIN: Mr. Bruder, thank you. Let
3 me see who has cross-examination. Mr. Riggins, cross for
4 this witness?

5 MR. RIGGINS: Yes, sir.

6 JUDGE PRIDGIN: Staff?

7 MR. WILLIAMS: No.

8 JUDGE PRIDGIN: OPC? No cross.

9 Mr. Riggins, when you're ready, sir.

10 CROSS-EXAMINATION BY MR. RIGGINS:

11 Q. Good morning, Mr. Dittmer.

12 A. Good morning.

13 Q. Would you turn, please, to page 15 in your
14 direct testimony.

15 A. I am there.

16 Q. And on that page, you set forth your
17 rationale for amortizing the subrogation proceeds
18 associated with the Hawthorn 5 explosion, correct?

19 A. I do.

20 Q. And as I understand it, paraphrasing
21 somewhat, your rationale is essentially that because the
22 Commission in the past has allowed amortization of
23 significant and extraordinary expenses, it's fair to
24 permit amortization of significant and nonrecurring income
25 in essence; is that correct?

1 A. Income, benefits, yes.

2 Q. Did KCPL ever seek or obtain an Accounting
3 Authority Order to amortize the expenses associated with
4 the Hawthorn explosion?

5 A. No, it did not. It specifically had
6 authority to come in to request rate relief if a
7 significant outage occurred, but it did not ask for rate
8 relief or an Accounting Authority Order.

9 MR. RIGGINS: Thank you, Mr. Dittmer.
10 That's all I have, your Honor.

11 JUDGE PRIDGIN: Mr. Riggins, thank you.
12 See if we have any questions from the Bench. Commissioner
13 Appling?

14 COMMISSIONER APPLING: I just got here,
15 Judge. No questions at this time.

16 JUDGE PRIDGIN: Commissioner Jarrett?

17 COMMISSIONER JARRETT: No questions.

18 JUDGE PRIDGIN: I have no questions.

19 Redirect?

20 MR. BRUDER: Nothing, sir.

21 JUDGE PRIDGIN: All right. Thank you.

22 Nothing further. Mr. Dittmer, thank you very much.

23 If I'm not mistaken, we would then move on
24 to Mr. Giles on the nuclear fuel overcharge.

25 Mr. Williams?

1 MR. WILLIAMS: Judge, I thought we were
2 going to do Mr. Dittmer on the other issue.

3 JUDGE PRIDGIN: I'm sorry?

4 MR. WILLIAMS: Long-term incentive
5 compensation and short-term executive compensation.

6 JUDGE PRIDGIN: Okay. I'm sorry. I
7 thought he was on the stand for those issues. Do counsel
8 have cross for those issues?

9 MR. WILLIAMS: I don't. If we covered
10 both, that's fine.

11 JUDGE PRIDGIN: Just to make sure, no
12 further questions for Mr. Dittmer on any issue?

13 MR. RIGGINS: That's correct, your Honor,
14 from KCPL.

15 JUDGE PRIDGIN: All right. Thank you very
16 much. Then we'll move on to Mr. Giles.

17 MR. BRUDER: Excuse me. I should ask that
18 the testimonies be admitted to the record. Thank you.

19 JUDGE PRIDGIN: Mr. Bruder I believe has
20 offered Exhibits 801, which is 801HC, that's what I have,
21 801HC, 802 and 803 have been offered. Is that correct,
22 Mr. Bruder?

23 MR. BRUDER: Yes.

24 JUDGE PRIDGIN: Any objections?

25 (No response.)

1 JUDGE PRIDGIN: All right. Hearing none,
2 Exhibits 801HC, 802 and 803 are admitted.

3 (EXHIBIT NOS. 801HC, 802 AND 803 WERE
4 RECEIVED INTO EVIDENCE.)

5 JUDGE PRIDGIN: And Mr. Giles is back on
6 the stand, and you are still under oath. We will -- is
7 there anything from KCPL before he stands cross?

8 MR. BLANC: Just quickly, this is
9 Mr. Giles' last scheduled appearance in the hearing, so
10 we'd like to offer his testimony.

11 JUDGE PRIDGIN: I show that as Exhibit 8NP
12 and HC and Exhibit 9NP and HC, and those have been
13 offered. Any objections?

14 (No response.)

15 JUDGE PRIDGIN: Hearing none, Exhibits 8NP
16 and HC, Exhibit 9NP and HC are admitted.

17 (EXHIBIT NOS. 8NP AND HC AND 9NP AND HC
18 WERE RECEIVED INTO EVIDENCE.)

19 JUDGE PRIDGIN: Nothing further?

20 MR. BLANC: No. I tender him for
21 cross-examination.

22 JUDGE PRIDGIN: Cross-examination,
23 Mr. Williams?

24 MR. WILLIAMS: No cross.

25 JUDGE PRIDGIN: Any cross on nuclear fuel

1 overcharge refunds? Seeing none. Any Bench questions?
2 Commissioner Appling?

3 COMMISSIONER APPLING: I have no questions.

4 JUDGE PRIDGIN: Commissioner Jarrett? I
5 have no questions. Mr. Giles, thank you very much, sir.

6 And before we make Mr. Hyneman maybe
7 unnecessarily walk up just to leave, will any counsel have
8 cross-examination for him?

9 MR. BLANC: KCPL has a couple questions for
10 him.

11 JUDGE PRIDGIN: Very good. Is Mr. Hyneman
12 available? Thank you. Mr. Williams, anything before he
13 stands cross?

14 MR. WILLIAMS: No, Judge.

15 JUDGE PRIDGIN: All right. Thank you.
16 Mr. Hyneman, you're still under oath, sir. Any other
17 counsel other than KCPL have cross? All right.

18 Mr. Blanc?

19 CHARLES HYNEMAN testified as follows:

20 CROSS-EXAMINATION BY MR. BLANC:

21 Q. Good morning, Mr. Hyneman.

22 A. Good morning.

23 Q. The refund issue pertains to KCPL's claim
24 that DOE was overcharging KCPL for uranium enrichment
25 services; is that correct?

1 A. Yes.

2 Q. And you recommend that this issue be
3 treated like the Hawthorn 5 subrogation proceeds issue; is
4 that correct?

5 A. For ratemaking purposes, exactly the same,
6 yes.

7 Q. Now, over what period did KCP&L claim the
8 overcharging occurred?

9 A. I believe the period was 1986 through 1992.

10 Q. Is it through '93 perhaps, '86 to '93?

11 A. Yes, '93. I'm sorry. '93.

12 Q. And do you recall if KCPL filed a lawsuit
13 against DOE to recover these overcharges?

14 A. I know there was a lawsuit, and I know the
15 name of the lawsuit, but I don't know if KCPL was a party
16 to it or just a beneficiary of the -- of the results of
17 the lawsuit.

18 Q. That's a fair distinction. But a lawsuit
19 was filed against DOE concerning these refunds?

20 A. Yes.

21 Q. And do you know when that suit was filed?

22 A. The only thing I know, it was probably
23 after 1993.

24 Q. Fair enough. Would it be surprising to
25 learn that it was filed in 2004? Does that sound

1 reasonable?

2 A. Yes, it is reasonable.

3 Q. And I won't ask you to stipulate that, but
4 let's just assume that that was the case. Do you recall
5 if DOE paid a refund to settle the lawsuit we're talking
6 about?

7 A. Yeah. I believe they paid a \$29.5 million
8 refund.

9 Q. Now, assuming that suit was filed in 2004,
10 had it settled quickly and KCPL had received the refund in
11 2004, would you still be seeking to include the refund
12 proceeds in this case?

13 A. No.

14 Q. Thank you. Now, if we could focus on the
15 period of the overcharges, 1986 to 1993 period for a
16 moment. Did KCPL seek any rate increases during that
17 period?

18 A. No.

19 Q. Did KCP&L's base rates increase during the
20 period as a result of the overcharges?

21 A. No.

22 Q. Did KCPL have a fuel adjustment clause in
23 place at the time?

24 A. No.

25 Q. Did KCPL seek an Accounting Authority Order

1 concerning the overcharges?

2 A. No.

3 Q. Did Staff file an overearnings complaint
4 against KCPL during the period?

5 A. File a complaint? I don't know. I know
6 that there was a rate reduction that --

7 Q. Did Staff file a complaint?

8 A. I'm not sure technically if they did or if
9 they reached a Stipulation & Agreement to reach rates
10 outside of a formal complaint issuance. I don't know the
11 technicalities of it. I do know rates were reduced during
12 that period.

13 Q. But you don't know whether a formal
14 complaint was filed?

15 A. No, sir, I don't.

16 Q. Now, what's the test year in this case?

17 A. The test year in this case is the 12 months
18 ending December 31st, 2006, updated through known and
19 measurable changes through September 30th, 2007.

20 Q. Has KCPL made any attempt in this case to
21 recover the overcharges from DOE that were the subject
22 matter of the lawsuit?

23 A. Yes.

24 Q. KCPL, can you show me in the reconciliation
25 where KCP&L sought to recover the amounts that DOE

1 overcharged it during the 1986 to 1993 period?

2 A. Well, the refund is designed to compensate
3 for those, and KCPL is seeking recovery of the refund in
4 this case.

5 Q. But KCPL isn't seeking to directly recover
6 the amount of the overcharges? You're referring to the
7 refund, I understand, but to the extent those amounts
8 differed, KCPL, the issue in this case is focused on the
9 refund?

10 A. Right. But I wouldn't assume that those
11 amounts differed materially.

12 Q. Okay. Has KCPL -- I guess the only tie --
13 I guess you testified earlier that had the settlement been
14 received in 2004, you wouldn't be seeking to include the
15 refund as an issue in this case, correct?

16 A. That is correct.

17 Q. So the only tie to the test year in this
18 case is that KCPL happened to receive the refund in 2006?

19 A. Yes.

20 MR. BLANC: No further questions.

21 JUDGE PRIDGIN: Mr. Blanc, thank you. See
22 if we have any Bench questions. Commissioner Appling?
23 Commissioner Jarrett, any questions?

24 COMMISSIONER JARRETT: No questions.

25 JUDGE PRIDGIN: I have none. Redirect?

1 the credit metrics. And we have found in the last
2 two cases that, in fact, that what is driving the
3 need for amortization, is the funds for operation as
4 a percentage of total debt.

5 MR. MILLS: Okay. Judge, I don't have
6 anything further.

7 JUDGE PRIDGIN: All right. Thank you.
8 Mr. Trippensee, thank you very much. Are we then
9 ready to go on to off-system sales with Mr. Crawford?

10 MR. ZOBRIST: Judge, I think it might be
11 better to go with Mr. Giles first. He sort of
12 introduces Mr. Crawford, unless there's an objection.

13 MR. MILLS: I have no objection.

14 JUDGE PRIDGIN: I'm hearing no
15 objection, so that's fine.

16 (THE WITNESS WAS SWORN.)

17 JUDGE PRIDGIN: Thank you very much.
18 Please have a seat, sir. Anything before you stand
19 cross?

20 DIRECT EXAMINATION BY MR. BLANC:

21 Q. Mr. Giles, do you need to correct
22 anything in your true-up direct testimony?

23 A. No.

24 MR. BLANC: Tender him for
25 cross-examination and offer his true-up direct for

1 admission.

2 JUDGE PRIDGIN: Let me verify the
3 exhibit number. Was it No. 39 NP and HC?

4 MR. BLANC: Exhibit No. -- yes, your
5 Honor.

6 JUDGE PRIDGIN: 39 NP and HC has been
7 offered. Any objections?

8 (NO RESPONSE.)

9 JUDGE PRIDGIN: 39 is admitted without
10 objection.

11 (EXHIBIT NO. 39 NP AND HC WERE RECEIVED
12 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

13 JUDGE PRIDGIN: See if we have any
14 cross-examination. Any from Staff?

15 MR. DOTTHEIM: No questions.

16 JUDGE PRIDGIN: Public Counsel?

17 MR. MILLS: Just a few brief questions.

18 JUDGE PRIDGIN: Any other counsel? I'm
19 sorry.

20 (NO RESPONSE.)

21 JUDGE PRIDGIN: Okay. Mr. Mills.

22 CROSS-EXAMINATION BY MR. MILLS:

23 Q. Mr. Giles, what can you tell us about
24 generation unit -- unit of availability so far in
25 2007 on nearby and regional utilities?

1 A. I don't have any information on -- on
2 that.

3 Q. Would Mr. Crawford have that
4 information?

5 A. Possibly.

6 Q. Okay. I will check with him. Now, I'm
7 gonna try to -- try to do this without getting into
8 highly confidential numbers, but what we've been
9 talking about does have highly confidential numbers
10 in it.

11 But can you tell me how you calculated
12 your anticipated total off-system sales margins for
13 2007? You've got some actual, some projected. How
14 did you calculate the projected part?

15 A. Well, if you're asking for the details,
16 that's probably more appropriate for Burton, Burton
17 Crawford.

18 Q. Okay. I will ask him that too. Now,
19 in your testimony, page 2, line 13 -- and the number
20 there is highly confidential, so I'm not gonna
21 reveal it, but there's a number there that shows
22 what on a total company basis you believe KCPL
23 will -- will miss the 25th percentile target by
24 for 2007. Is that -- is that what that number is
25 showing?

1 A. That's correct.

2 Q. Okay. So Missouri's share of that is
3 roughly half?

4 A. Approximately, yes.

5 Q. Okay. Now, with respect to questions
6 about the portion of the projected shortfall that's
7 due to unplanned outages, would those questions be
8 better for you or Mr. Crawford?

9 A. Mr. Crawford.

10 MR. MILLS: Well, then, I think most of
11 my questions are gonna be deferred for Mr. Crawford.
12 I think that's all I have, then.

13 JUDGE PRIDGIN: All right. Thank you.
14 Bench questions, Commissioner Jarrett?

15 COMMISSIONER JARRETT: No questions.

16 JUDGE PRIDGIN: Thank you. Redirect?

17 MR. BLANC: No, your Honor.

18 JUDGE PRIDGIN: All right. Thank you.
19 Mr. Giles, thank you very much. I assume, then,
20 we're ready for Mr. Crawford?

21 (THE WITNESS WAS SWORN.)

22 JUDGE PRIDGIN: Thank you very much,
23 sir. Please have a seat. Anything to clear up
24 before he stands cross?

25 DIRECT EXAMINATION BY MR. BLANC:

1 Q. Mr. Crawford, do you have a correction
2 to make to your true-up direct testimony?

3 A. Yes, I do. There is -- is one
4 correction that needs to be made, though it is a
5 number that is HC, page 3.

6 JUDGE PRIDGIN: Do you actually --

7 THE WITNESS: Well --

8 JUDGE PRIDGIN: I think we need -- might
9 need to go in-camera if you are saying an HC number.

10 THE WITNESS: The number actually
11 appears earlier in the testimony, so it's just a
12 matter of substituting it.

13 MR. BLANC: I think what he's trying to
14 do, your Honor, is avoid going in-camera if we have
15 to. Basically, the reference of the number appears
16 twice; one reference is correct, the other is
17 incorrect, and I think he's going to provide a line
18 and page number to substitute one for the other.

19 JUDGE PRIDGIN: That's fine, if you --
20 that's -- that's fine.

21 THE WITNESS: Okay. On 3, line 12, the
22 number that is marked HC should be the number that is
23 on page 2, line 12. So the number on page 2, line 12
24 is correct.

25 JUDGE PRIDGIN: So the number -- excuse

1 me. The number that is currently page 3, line 12,
2 should be the same as the number on page 2, line 12?

3 THE WITNESS: That is correct.

4 JUDGE PRIDGIN: Thank you. I'm sorry,
5 Mr. Blanc.

6 BY MR. BLANC:

7 Q. Do you have any other corrections to
8 your testimony today?

9 A. I do not.

10 MR. BLANC: I'd offer his testimony for
11 admission at this time.

12 JUDGE PRIDGIN: Exhibit 38 NP and HC has
13 been offered. Any objections?

14 (NO RESPONSE.)

15 JUDGE PRIDGIN: 38 is admitted with no
16 objection.

17 (EXHIBIT NO. 38 NP AND HC WERE RECEIVED
18 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

19 MR. BLANC: Tender him for
20 cross-examination.

21 JUDGE PRIDGIN: Mr. Blanc, thank you.
22 Let's see who has questions. Mr. Mills, you'll have
23 questions? Any other counsel?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: All right. Mr. Mills,

1 when you're ready.

2 CROSS-EXAMINATION BY MR. MILLS:

3 Q. Okay. Well, I guess I can't trip you up
4 with my first two questions because you've heard them
5 already. Mr. Crawford, what can you tell us about
6 generation unit availability so far in 2007 on nearby
7 and regional utilities?

8 A. In terms of 2007 data, we do not have
9 access at this point in time to that -- that sort of
10 data. We do have information related to earlier time
11 periods that comes from the North American Electric
12 Reliability Council.

13 Q. So for 2007, though, for the purpose of
14 this case, you don't have any information and there's
15 nothing in the record that will tell this Commission
16 what percentage of the shortfall would be due to
17 other utilities' unplanned outages?

18 A. No, we do not.

19 Q. Okay. Now, with respect to the
20 projected total off-system sales margins for calendar
21 year 2007, how did you calculate and what assumptions
22 did you make to project out the -- is it three months
23 of data that you're projecting, October, November,
24 December?

25 A. That is correct.

1 Q. How did you -- how did you make those
2 projections?

3 A. We have a production cost simulation
4 model that's really divided into two pieces. The
5 first part of the model projects regional market
6 places by hour, basically for the whole eastern
7 interconnect which is basically the region east of
8 the Rocky Mountains on an hour-by-hour basis. And we
9 use those market prices as input into a production
10 cost simulation model that simulates the operations
11 of KCPL's system combined with a projection of what
12 the retail load is going to be.

13 We run the production cost model. It
14 assigns generation that we have available to the
15 cheapest stuff available to retail load. And then
16 anything above our retail load requirements that
17 is profitable to sell into that wholesale market
18 gets sold into the wholesale market and that forms
19 then the basis for the projection of the off-system
20 sales for the last three months.

21 Q. And when did you most recently run that
22 model?

23 A. We -- we run it every week.

24 Q. And the numbers in -- in your testimony
25 and Mr. Giles' testimony are based on a run of that

1 model when?

2 A. I don't have the exact -- the exact date
3 of that. It would either have been late October or
4 early November. Likely late October.

5 Q. Okay. So, for example, in your direct
6 testimony on page 1, the number you give there at
7 line 16 through 17, you're saying that was -- that
8 was calculated late October, early November?

9 A. That's correct.

10 Q. Does that change significantly from when
11 you ran it in late September?

12 A. I guess it depends on your definition of
13 significant. Yeah, it has -- it has likely
14 changed. Like I said, we do this every week.
15 Natural gas prices are pretty -- pretty volatile
16 and that does change the number. I wouldn't expect
17 it to be, you know, anything more than \$5 million
18 difference.

19 The difference would be less than --
20 easily less than that.

21 Q. Do you know whether it's going up or
22 down since earlier in the fall? And looking -- and
23 remember here, we're talking about the shortfall
24 number, so a higher number would mean you're less --
25 you're farther away from your target.

1 Do you know if your -- if your recent
2 calculations project you get a closer to the -- to
3 the 25th percentile marker or farther away?

4 A. I don't -- I don't have that
5 information.

6 Q. Okay. Are these projections
7 relatively -- well, I shouldn't say relatively. Are
8 these projections sensitive to the price of natural
9 gas?

10 A. Yes, they are -- they are quite
11 sensitive to the price of natural gas.

12 Q. And if you ran them late October or
13 early November, they wouldn't take into account the
14 recent run-up of natural gas prices that we've seen
15 in the last several days; is that true?

16 A. This number does not -- does not reflect
17 that.

18 Q. Okay. And in general terms, as natural
19 gas prices go up, do KCPL's off-system sales margins
20 go up or down?

21 A. They -- they go up.

22 Q. So as natural gas prices go up, you make
23 more money off of off-system sales margins?

24 A. Yes, in general --

25 Q. In general.

1 the estimate -- in the actuals that have -- have
2 been provided, so that's why it's not an unqualified
3 yes. There are some additional profits that would
4 not have been reflected.

5 Q. If Mr. Schnitzer had included those,
6 would his -- would his 25th percentile target number
7 have gone up or down?

8 A. If there were profits to be included
9 from arbitrage, they would have possibly gone up.

10 Q. So that are you saying that if you -- if
11 you take into account the profits from arbitrage, it
12 would have made it -- it would make it harder to hit
13 the 25th percentile rather than easier?

14 A. If you include the margins, it makes it
15 easier to hit the 25th percentile.

16 Q. But Mr. Schnitzer did not include those?

17 A. No. This is -- this is -- this is --
18 these transactions are something new for -- for
19 KCP&L.

20 MR. MILLS: And, Judge, I think the rest
21 of my questions are gonna be highly confidential.

22 JUDGE PRIDGIN: All right. If you'll
23 bear with me just a moment, please. Excuse me. I
24 turned off my microphone. If you'll bear with me
25 just a moment.

1 (REPORTER'S NOTE: At this point, an
2 in-camera session was held, which is contained in
3 Volume 16, pages 1259 through 1261 of the
4 transcript.)

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1 JUDGE PRIDGIN: All right. We are back
2 in public session. Mr. Mills, any more questions?

3 MR. MILLS: No. And, Judge, did you
4 admit 215 HC while we were in-camera?

5 JUDGE PRIDGIN: Yes, I did. I admitted
6 it without objection.

7 MR. MILLS: No further questions.

8 JUDGE PRIDGIN: All right. No further
9 cross. Let me see if we have any bench questions.
10 Mr. Chairman?

11 CHAIRMAN DAVIS: No questions.

12 JUDGE PRIDGIN: All right. Thank you.
13 Commissioner Jarrett, no questions. Any redirect?

14 MR. BLANC: Just a couple of questions,
15 your Honor.

16 JUDGE PRIDGIN: When you're ready.

17 MR. BLANC: Going to Exhibit 215 HC --
18 and we won't need to go in-camera, your Honor.

19 JUDGE PRIDGIN: I'm sorry. We won't
20 need to go --

21 MR. BLANC: We will not.

22 JUDGE PRIDGIN: Okay. Thank you.

23 REDIRECT EXAMINATION BY MR. BLANC:

24 Q. The response to that DR speaks to the
25 reduction in revenues attributed to unplanned

1 outages, correct?

2 A. Correct.

3 Q. With respect to the outages that have
4 occurred this year, how does KCPL's generation output
5 compare to other utilities with a comparable
6 generation fleet in the U.S.?

7 MR. MILLS: Judge, I'm gonna object.
8 That goes beyond the scope of the questions that I
9 asked. I simply asked him to identify the number of
10 lost off-system sales revenues from KCPL's unplanned
11 outages.

12 MR. BLANC: Your Honor, Public Counsel
13 was clearly implying that those outages are a result
14 of reduction in margins, and as a result impact of
15 revenue requirement in this case and go to their
16 advocacy for the 40th percentile. So I think the
17 outages and how to compare them to utilities in the
18 industry are relevant to this line of questioning.

19 JUDGE PRIDGIN: All right. I'll
20 overrule.

21 THE WITNESS: If you take the KCPL
22 generating fleet, coal generating fleet, and it
23 operates equivalent to industry averages, the
24 generation that we're projecting for this year based
25 on -- up through the first of November, that we're

1 gonna come in at -- let me take a step back.

2 If you were to run our generating fleet
3 at national average capacity factors for similar
4 units, our fleet would produce about 14.8 million
5 megawatt hours on an annual basis. The projection
6 for this year is right at 14.8 million megawatt
7 hours.

8 Carry out a few decimal places where
9 maybe 4,000 megawatt hours over the -- over the
10 average, the average is based on data from the North
11 American Electric Reliability Council for average
12 generation, average capacity factors for similar
13 plants from 2003 to 2005.

14 BY MR. BLANC:

15 Q. And those generation numbers for KCPL,
16 they do take into account the outages that occurred
17 this year?

18 A. Yes, they do.

19 MR. BLANC: No further questions, your
20 Honor.

21 JUDGE PRIDGIN: All right. Thank you.
22 If there's nothing further for Mr. Crawford, then?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: All right. Thank you,
25 Mr. Crawford. You may step down. It is straight up

1 noon according to the clock on the back of the wall.

2 No better time to break for lunch.

3 It looks like we would next have
4 Mr. Schnitzer, Mr. Robertson -- Mr. Robertson,
5 Mr. Traxler on off-system sales and then Mr. Rush, I
6 believe on some accounting issues. And then that
7 would be all the witnesses that we have left; is that
8 correct?

9 MR. MILLS: And then I've -- I've got
10 just one or two questions for Mr. Schnitzer and
11 then --

12 JUDGE PRIDGIN: Okay.

13 MR. MILLS: Probably it will be very
14 brief depending on his answers.

15 JUDGE PRIDGIN: Okay. And am I taking
16 that that you might want to get Mr. Schnitzer on and
17 off the stand before we break?

18 MR. MILLS: It would certainly be okay
19 with me if it would help the schedule out.

20 MR. ZOBRIST: Yeah, that would be --
21 that would be terrific.

22 JUDGE PRIDGIN: Works for me.

23 MR. ZOBRIST: Okay.

24 JUDGE PRIDGIN: And that's assuming no
25 other counsel has cross-examination which I think has

1 been the way we've been going on off-system sales.
2 All right. Mr. Schnitzer if you'll raise your right
3 hand to be sworn, please.

4 (THE WITNESS WAS SWORN.)

5 JUDGE PRIDGIN: Thank you very much,
6 sir. You can have a seat. And anything we need to
7 take up before he's tendered for cross?

8 DIRECT EXAMINATION BY MR. ZOBRIST:

9 Q. Mr. Schnitzer, do you have any
10 corrections to your true-up direct?

11 A. I do not.

12 MR. ZOBRIST: No corrections, Judge.
13 I'd tender him for cross-examination.

14 JUDGE PRIDGIN: All right. Thank you.
15 Cross-examination. Mr. Mills, you'll have questions?

16 MR. MILLS: Just a couple, yes.

17 JUDGE PRIDGIN: Any other counsel?

18 (NO RESPONSE.)

19 JUDGE PRIDGIN: All right. Mr. Mills.

20 CROSS-EXAMINATION BY MR. MILLS:

21 Q. Mr. Schnitzer, did -- were you in the
22 room when I was cross-examining Mr. Crawford?

23 A. I was.

24 Q. Okay. Did you have any input into the
25 way KCPL determined how to project revenues from