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IN THE KENTUCKY PUBLIC SERVICE COMMISSION

IN RE: INVESTIGATION:

Case No. 2003-00433
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
ELECTRIC COMPANY

and

Case No. 2003-00434
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
CONDITIONS OF KENTUCKY UTILITIES COMPANY

* * *

SWORN STATEMENT

OF

MICHAEL S. BEER

AUGUST 10, 2005

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8/24/05 BOA

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A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE
COMMISSION:

JONATHAN D. GOLDBERG
Goldberg & Simpson
3000 National City Tower
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Louisville, Kentucky 40202

FOR THE WITNESS:

DAVID KAPLAN
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Louisville, Kentucky 40202

1 The sworn statement of MICHAEL S.
2 BEER, taken in the offices of Goldberg & Simpson,
3 3000 National City Tower, 101 South Fifth Street,
4 Louisville, Kentucky, on Wednesday, the 10th day of
5 August, 2005, at approximately 1:00 p.m.

6
7 EXAMINATION

8
9 BY MR. GOLDBERG:

10 Q. Would you state your full name.

11 A. Michael S. Beer, B-E-E-R.

12 Q. Okay. And your business address?

13 A. 220 West Main Street, Louisville,
14 Kentucky, 40202.

15 Q. Okay. And what is your occupation,
16 Mr. Beer?

17 A. I am an attorney by training.
18 Currently, I am the vice president of federal
19 regulation and policy for LG&E Energy Corp.

20 Q. Okay. Are you licensed to practice
21 law in the State of Kentucky?

22 A. Not in Kentucky, but in the State of
23 Illinois.

24 Q. Okay. And how long have you been in
25 your present position?

1 A. Since -- it would have been February
2 of -- actually it would have been since October of
3 2004.

4 Q. Okay. Prior to October of 2004, were
5 you employed by LG&E Energy, LLC?

6 A. I was.

7 Q. All right. Tell me -- let's go back
8 to your original employment with LG&E Energy, LLC,
9 and tell me the positions you've held.

10 A. All right. I started with the company
11 in February of 1998 as a senior corporate counsel. I
12 was promoted two years later to senior counsel
13 specialist regulatory. In February of 2001, I was
14 promoted to vice president, rates and regulatory
15 affairs. Then, as I said, I was promoted to -- or
16 reassigned to title of vice president, federal
17 regulation and policy, in 2004.

18 Q. Did your duties change from your
19 position in 2001 to 2004?

20 A. Yes, they did.

21 Q. Tell me the difference.

22 A. As vice president of rates and
23 regulatory affairs, I was responsible almost entirely
24 for the affairs of the company before the Kentucky
25 Public Service Commission, the Virginia State

1 Corporation Commission and, to a very limited extent,
2 the Tennessee Regulatory Authority. We had affairs,
3 matters, pending, proceeding at FERC. To the extent
4 that they involved the company, I was also
5 responsible for those. But at the time we had very
6 little proceeding, and so I focused primarily on
7 state issues.

8 Q. Okay. I take it you're familiar,
9 then, with the Commonwealth of Kentucky Public
10 Service Commission?

11 A. Yes, sir.

12 Q. Okay. Are you familiar with the staff
13 personnel there?

14 A. Yes.

15 Q. Okay. Let me give you the names of
16 some folks, and let me see if you are familiar with
17 them. Richard Raff?

18 A. Yes.

19 Q. Okay. And how long do you think
20 you've known Richard Raff?

21 A. I've known Richard since probably two
22 weeks after I started with the company back in
23 February of '98.

24 Q. Okay. Tom Dorman?

25 A. Yes.

1 Q. How long have you known Mr. Dorman?

2 A. I've known Mr. Dorman since he assumed
3 his responsibilities as executive director at the
4 Public Service Commission, and I -- the year escapes
5 me when that may have been.

6 Q. Okay. You had no contact with him in
7 a business sense prior to his becoming executive
8 director?

9 A. None whatsoever.

10 Q. Did you know him on a personal basis?

11 A. No, sir.

12 Q. Okay. Mr. Bob Amato?

13 A. I've -- the exact date or the
14 timeframe in which I met Bob first is -- is hard to
15 pin down, but I have to assume it would have been in
16 '98 as well.

17 Q. Okay. Isaac Scott?

18 A. Same answer.

19 Q. Okay. And Jeff Shaw?

20 A. Same answer.

21 Q. Faud Sharifi?

22 A. I would have made acquaintance with
23 Faud later in '98, perhaps as early as -- as late as
24 '99, but it would have been in that timeframe early
25 on in my employment with the company when I first

1 made their acquaintance -- his acquaintance.

2 Q. Ms. Martha Morton?

3 A. Same answer.

4 Q. Let me ask you about some
5 commissioners. Do you know Marty Huelsman?

6 A. Yes.

7 Q. And how long have you known
8 Mr. Huelsman?

9 A. I knew -- first met Mr. Huelsman when
10 he was the executive director at the Public Service
11 Commission prior to his ascending to the -- to the
12 commission.

13 Q. Okay. And Mr. Gary Gillis?

14 A. It would have been -- the first time I
15 met Mr. Gillis would have been as a commissioner, and
16 that would have been in February of 1998.

17 Q. Mr. Robert Spurlin?

18 A. I would have made Mr. Spurlin's
19 acquaintance when he came onto the commission. That
20 would have been after the retirement of Ed Holmes, I
21 believe. And I would say that's 2000, 2001
22 timeframe.

23 Q. Present chairman, Mark David Goss?

24 A. I've known Mr. Goss only since he's
25 become chairman of the commission.

1 Q. Okay. Ms. Ellen Williams?

2 A. And if I may, when I say I know them,
3 I'm really saying I'm acquainted with them in their
4 capacity. I don't know them on any --

5 Q. I was getting ready to ask you that.

6 A. -- personal or social level.

7 Q. Okay.

8 A. Okay. Ms. Williams would be the same
9 answer. I knew her only in her capacity as a member
10 of the Public Service Commission.

11 Q. Okay. Now, tell me -- and again,
12 going back to the timeframe 2001, your position then
13 through June 30, 2004 --

14 A. Mm-hmm.

15 Q. -- tell me what kinds of matters you
16 dealt with the Kentucky Public Service Commission on.

17 A. As -- as --

18 Q. What kinds of issues.

19 A. As a fully-regulated public utility,
20 we -- we operate very much in a fishbowl. There's
21 very, very little that we do that isn't subject to
22 the jurisdiction of the Public Service Commission.
23 And so as part of our relationship management with
24 our chief regulator, we would talk with them,
25 communicate with them, be in contact with them on a

1 very wide array of issues pending -- ranging from the
2 authority to -- to issue commercial paper, to engage
3 in financings, territorial disputes with other
4 electric utilities, issues of national policy concern
5 such as RTO development, transmission policy. In one
6 instance whether there was any interest in making
7 available to another municipality water from our Lake
8 Herrington reserve. Virtually anything -- tax
9 issues. As I said, financing issues, corporate
10 reorganization issues. Just about anything and
11 everything that is the subject of their jurisdiction,
12 we would have had contact with them. I would have
13 had contact with them during that time period.

14 Q. Are you the chief contact person from
15 LG&E/KU with the Kentucky Public Service Commission?

16 A. While I was vice president of rates
17 and regulatory affairs, yes, I was.

18 Q. Okay. And again, my questions are all
19 to that same time period, 2001 through June 30th,
20 2004.

21 A. Okay.

22 Q. You would have been the chief
23 spokesperson?

24 A. Yes.

25 Q. Okay. Now, as I understand the

1 relationship and the areas --

2 A. Well, may I -- please, I don't want to
3 be difficult, but when you say "chief spokesperson,"
4 my responsibilities would have been -- I was in
5 charge of the relationship and the point of contact
6 between the company and the commission.

7 Q. Okay. Thank you. Who else besides
8 you had contact with any of the staff members or
9 commissioners with the Public Service Commission?

10 A. It -- it could have been any number of
11 people, but typically the way we tried to manage the
12 relationship and the flow of information, we were the
13 point of interface or contact with the Public Service
14 Commission. And so if there were a need for
15 communications to take place between the company and
16 the commission, it would have been through our
17 offices that those communications would have been
18 made. So primarily it would have been myself and
19 those folks who worked in the rates and regulatory
20 affairs department, but certainly any number of other
21 people within the company had contact with members of
22 the commission staff during that timeframe on matters
23 that related to their specific areas of -- of
24 professional interest.

25 Q. Okay. Let's go through a few

1 examples.

2 A. Okay.

3 Q. Obviously I've taken a statement of
4 Mr. George Siemens.

5 A. Mm-hmm.

6 Q. Explain to me what kinds of things he
7 would have been in contact with the Public Service
8 Commission versus the kind of things you would, or is
9 it the same?

10 A. Mr. Siemens was actually -- was the
11 vice president -- is the vice president of external
12 affairs at the time. And Mr. Siemens' portfolio of
13 responsibilities were different, clearly, than ours,
14 and certainly to the extent that he was interfacing
15 or would have interfaced with the commission on
16 matters of state energy policy, things like that. He
17 would not have gone through our offices to arrange
18 for those kinds of meetings or those kinds of
19 communications. But typically, as I understand the
20 nature of Mr. Siemens' communications, they would
21 have been primarily involving matters pending or
22 about to be pending before the Kentucky legislature,
23 bills, draft legislation that the Kentucky Public
24 Service Commission either was supporting or opposing,
25 development of the governor's energy task force,

1 development of state energy policy. Those kinds of
2 things are -- are the things that I believe
3 Mr. Siemens would have been in contact with the
4 commission about.

5 Q. All right. Let me ask about some of
6 the more mundane functions. When there are issues
7 between your consumers as it relates to their meters,
8 does the Public Service Commission interface with
9 LG&E/KU on those kinds of things?

10 A. Yes, they do.

11 Q. Would those communications come
12 through your department or would somebody somewhere
13 else in LG&E/KU have authority to communicate?

14 A. Well, the responsibility for those
15 specific issues, let's say meter disputes or billing
16 disputes, would have arisen -- that responsibility
17 rests within the retail services organization in the
18 company. And the vice president over that is a
19 gentleman named David Vogel. We worked with David's
20 group to always be in the loop or in the pipeline
21 when communications would occur between the consumer
22 services group at the commission and the company.
23 Primarily where disputes would arise to an informal
24 complaint, say, we would be in that channel of
25 communication. But there oftentimes would be direct

1 communication between someone in the -- in the retail
2 group and Jenny Smith or someone on her staff that
3 would handle those types of complaints or issues.

4 Q. Okay. Would there be occasion for
5 engineers or other mechanical personnel who actually
6 deal with meters at LG&E/KU to communicate with
7 persons at the Public Service Commission?

8 A. Yes. There were -- there is required
9 to be periodic meter testing, inspection of
10 facilities, these kinds of things. Whenever there
11 may have been a contract or injury or an accident,
12 something like that, typically -- or maybe not
13 engineers, but certainly technicians or folks
14 responsible for metering facilities would have been
15 in contact and -- and spoken directly with folks at
16 the commission who had, as part of their
17 responsibility, enforcement of meter testing regs or
18 other standards that -- to which we would have been
19 subject.

20 Q. Okay. And then third segmentation
21 that I've become aware of as part of my work here is
22 that various demand usage studies are ongoing at
23 various times, as I understand it. Do you have
24 anything to do with that?

25 A. When you say "demand usage studies," I

1 guess we -- there were a number of different kinds of
2 studies that would be performed by members of the
3 company. Some -- some of those may have -- have been
4 developed with the assistance and input of my staff,
5 but there would have been others who would have been
6 involved in that as well, folks from retail, some of
7 the --

8 Q. Let me see if I can get to this a
9 different way. Are you familiar with a staff member
10 by the name of Daryl Newby?

11 A. Yes, at the commission.

12 Q. Yes.

13 A. Yes.

14 Q. Are you familiar with his function?

15 A. My involvement with Daryl has been
16 limited. And the only knowledge I have of his
17 function has been through the management audit branch
18 and through his role in an audit of our earnings
19 sharing mechanism that took place roughly in the 2003
20 timeframe. So Daryl may have had other
21 responsibilities at the commission, but those are the
22 ones that I know of, have knowledge of.

23 Q. Did that particular study come through
24 your department, contact between PSC and LG&E/KU?

25 A. Yes. We were responsible for the

1 management of that audit process, and so there was a
2 third-party independent contractor who had been hired
3 to -- to actually perform the audit. And we were --
4 my group and me personally was responsible for the
5 management of that audit process and the development
6 of that final audit report. And Daryl was part of
7 the management audit branch staff involved in that
8 effort.

9 Q. And was that ongoing at the same time
10 the LG&E/KU rate cases were being processed through
11 the Public Service Commission, or do you know?

12 A. The -- the -- the ESM audit, earnings
13 sharing mechanism audit, as we referred to it, that
14 process was ongoing, concurrent with the rate case
15 proceeding. We filed a rate case, I believe it was
16 in December of 2003. And it was during that period
17 that a portion of the audit process was also ongoing.

18 Q. Okay. I want to come back to this,
19 but while we're here and talking about individuals
20 and functions, am I interpreting your prior statement
21 to me correctly that you, Mike Beer, have no personal
22 or social relationship with any of the commissioners?

23 A. That is correct.

24 Q. And commissioners being ones -- the
25 present commissioners and the ones that I have named

1 for you.

2 A. Correct. The only -- the only contact
3 I ever had with them outside of the commission would
4 have been at industry or corporate
5 professional-related events.

6 Q. Okay. Now, with regard to that, I'm
7 familiar with an organization by the name of SEARUC
8 and an organization by the name of NARUC.

9 A. Correct.

10 Q. And I take it you attend those
11 seminars regularly.

12 A. Correct.

13 Q. And am I also correct that members of
14 the staff of the Public Service Commission and the
15 commissioners attend those functions?

16 A. They do.

17 Q. Okay. Tell me generally what those
18 two organizations do.

19 A. The -- the NARUC organization is the
20 National Association of Regulatory Utility
21 Commissioners. It is the nationwide trade
22 association, professional organization, if you will,
23 for public service commissioners across all of the
24 states who regulate retail, electric, gas, telephone,
25 water, whatever other kinds of services their states

1 regulate. They meet at least three times a year.
2 They are broken up into a number of different
3 committees. At each of these meetings the intent is
4 for the commissioners to get together, and they
5 convene and debate and discuss policy issues, matters
6 that are important and relevant to state regulation
7 of utilities, which typically is at the retail level.
8 At these meetings there are invited, by the
9 organization, members of the industry, professionals,
10 lawyers, accountants, academics, to come and present
11 papers, providing different professional viewpoints
12 on the issues that may be debated or be the subject
13 of those meetings.

14 NARUC typically debates resolutions
15 that are ultimately passed by the larger body. They
16 have no effect in law, per se, other than simply to
17 reflect the collective thinking of regulatory utility
18 commissioners around the country. And some of those
19 debates are hotly contested, as you can imagine. So
20 that occurs.

21 There is the winter meeting which
22 occurs in Washington, D.C., usually in February or
23 March. And that typically is a meeting to facilitate
24 contact between state regulators and the federal
25 regulators and members of the various congressional

1 delegations. There's the annual meeting that
2 typically takes place in November, and then there's a
3 summer meeting that typically takes place in the late
4 July, August timeframe. And the summer meeting is
5 typically where the committees all gather and -- and
6 develop their committee agendas for the -- for the
7 coming year.

8 Q. Okay.

9 A. SEARUC --

10 Q. Go ahead.

11 A. SEARUC is the Southeast Association of
12 Regulatory Utility Commissioners. And as NARUC
13 represents the entirety of regulatory utility
14 commissioners across the country, they are broken
15 down into regional groups. For example, there's
16 MARC, which is the Mid American Regulatory
17 Commissioners. There's NECPUC, which is the
18 Northeast Commission of Public Utility Commissioners.
19 They're broken down by regions or smaller groups.
20 SEARUC is the Southeast Association of Regulatory
21 Utility Commissioners. And so these groups focus
22 more on issues of concern to their specific region in
23 the function or operation or regulation of utilities
24 in those regions, and they typically meet once a
25 year.

1 Q. Okay. During the time period that the
2 rate cases were pending, and actually let's use the
3 time period, if we can, 2003 through June 30th, 2004.
4 During that period of time, I'm familiar with a NARUC
5 convention in Denver in November of 2003.

6 A. Mm-hmm.

7 Q. Did you attend that?

8 A. Yes, I did.

9 Q. Okay. And were members of the
10 Commonwealth of Kentucky Public Service Commission
11 there --

12 A. Yes, they were.

13 Q. -- in attendance?

14 I'm also familiar with the Washington
15 conference in February of 2004. Did you attend that?

16 A. Yes.

17 Q. Okay. And were members of the
18 Commonwealth of Kentucky Public Service Commission
19 there?

20 A. I believe so, yes.

21 Q. Okay. Now, the summer of 2003, do you
22 recall where the NARUC convention was?

23 A. I believe in the summer of 2003 --
24 2004, I believe, was in Salt Lake City. 2003 was --
25 I was thinking that was in Denver.

1 Q. All right. Do you know, then, where
2 the November would have been?

3 A. The November 2003 NARUC meeting would
4 have been held in Atlanta.

5 Q. Fair enough. And I take it at all of
6 those three there were members of the Commonwealth of
7 Kentucky Public Service Commission, both commission
8 members and staff. Am I correct?

9 A. I'm hesitating. Certainly in the --
10 the Denver meeting and the Atlanta meeting there were
11 both members of the staff and commission present. In
12 the February meeting, I'm struggling to recall
13 whether there were anyone other than just
14 commissioners present. There was a meeting at which
15 only commissioners attended, and I wouldn't want to
16 say that there were staff present when I can't
17 recall, in fact, whether staff were there at that
18 February, Washington meeting, but there were
19 certainly commissioners there.

20 Q. Do you have a recollection of
21 Mr. Dorman being present at any or all of those
22 meetings?

23 A. Mr. Dorman would have been present in
24 Denver. Mr. Dorman would have been present in
25 Atlanta. And I don't recall Mr. Dorman being present

1 in February, but he may well have been. I have no
2 recollection of that.

3 Q. Okay. And was Mr. Siemens present on
4 behalf of LG&E/KU? I guess I should call it by its
5 name, LG&E Energy, LLC?

6 A. Mr. Siemens -- I'm trying to recall
7 whether George was at Denver, and I simply can't do
8 it. I believe -- I don't believe George was in
9 Atlanta. I do believe he may have been there in
10 February in Washington.

11 Q. Okay. Now, do I take it that sometime
12 early in 2003, LG&E Energy, LLC, decided for both
13 LG&E and KU to move forward and file a rate case
14 sometime in the year 2003?

15 A. That decision actually -- as I take
16 your question, the decision to move forward with the
17 filing of a rate case was not made until much later
18 in the year. Frankly, it was not made up until the
19 time the statutory notice of intent was filed.

20 Q. I'm representing to you that was late
21 November of 2003.

22 A. Late November of 2003. What had been
23 decided at that point, what had been identified was
24 the need to seriously consider the preparation of an
25 application for an adjustment in rates. And we began

1 the process at that point of preparing to file a
2 case. But it was very clear to me and had been made
3 very clear to me by senior management that no
4 decision had been made to actually proceed with that
5 filing and none would be made until after the close
6 of -- of the test year that we had identified.

7 Q. All right, sir. When do you first
8 have a recollection of the consideration of a rate
9 case being filed?

10 A. We actually -- the first time that --
11 we had begun looking at whether it would be feasible
12 to file a rate case in late 2002, and the decision
13 was made at the time that it would -- it would not be
14 feasible at that time to -- to make such a filing.
15 And so we continued to analyze our financial
16 condition and situation and began in 2003 planning in
17 earnest on the assumption that we needed to be in a
18 position to file a case to begin getting the internal
19 team to do the necessary studies and the requisite
20 analysis that would support that -- that application.

21 Q. Okay. Who put together the teams that
22 would go through that study period?

23 A. I was responsible for -- with the
24 approval and the concurrence of certainly John
25 McCall, our general counsel.

1 Q. You report to John McCall?

2 A. I report to John McCall, yes. But I
3 would have been responsible for assembling the -- at
4 least the steering committee, the leadership team,
5 for that effort, who then would have gone out and
6 marshaled the resources within the company that would
7 be required to perform that analysis.

8 Q. Okay. Who would you consider the team
9 that made the decision ultimately to move forward and
10 file at least the notice of intent in November of
11 2003?

12 A. There wasn't a team. It was
13 Mr. Staffieri, who ultimately made the decision, our
14 chairman, president and CEO.

15 Q. Wrong question, Mr. Beer. Who
16 internally participated in the decision?

17 A. That would have --

18 Q. What I'm looking for is the people
19 around the meeting room who participated.

20 A. The -- well, it really occurred at two
21 levels. There was more or less a senior steering
22 committee, or leadership team that would have been
23 comprised of -- I was the chairman of that, or the
24 head of that group. There was representatives from
25 the law department. Dot O'Brien, Dorothy O'Brien was

1 deputy general counsel. Valerie Scott, who at the
2 time was the director of accounting. There were --
3 I'm trying to go around the room and recall who
4 exactly would have been -- who else would have been
5 on the team. For example, Ron Miller, who was over
6 our corporate tax -- is over our corporate tax
7 function.

8 Primarily director levels, what we
9 would consider senior managers, who would be
10 responsible for a component of the overall rate
11 filing were the ones that were directing the
12 fieldwork and the analysis. And then ultimately that
13 decision was made -- ultimately that analysis was fed
14 up to Mr.-- Mr. Reeves, who was our CFO, Brad Reeves,
15 John McCall and Vic Staffieri.

16 Q. All right. Externally, who was
17 involved?

18 A. Externally, we had the law firm of
19 Ogden, Newell & Welch, represented primarily by --

20 Q. Kendrick Riggs?

21 A. Kendrick Riggs. I've only spent most
22 of my life with him. Bob Watts from Stoll, Keenon.
23 We had from a consulting group the Prime Group, Steve
24 Seelye as an analyst and consultant. We had Bob
25 Rosenberg, who typically does our cost of service --

1 or cost of capital analysis.

2 Q. Is he an outside person?

3 A. He's an outside person as well. I'm
4 trying to go through the list --

5 Q. What is the name of his company; do
6 you know?

7 A. You know, it's -- off the top of my
8 head, I can't recall.

9 Q. Is he in Louisville?

10 A. No, no. Mr. Rosenberg is located in
11 Vermont, I believe.

12 Q. Tell me what his function was with
13 regard to the rate cases.

14 A. His function was to perform cost of
15 capital study and come up with a proposed return on
16 equity that he felt that he could support and sustain
17 based upon his professional expertise.

18 Q. Did he testify as an expert?

19 A. Yes, he did.

20 Q. Was his testimony prefiled with the
21 commission or did he actually make a personal
22 appearance at the commission?

23 A. It was prefiled as part of the
24 application that was filed in -- in December of 2003.
25 Then he was available and was present for

1 cross-examination had -- had he been called upon to
2 be examined.

3 Q. Okay. Was he physically present, to
4 your knowledge, beginning on April 28th, 2004, which
5 is the date of the first informal conference, through
6 the end of the next week, which were the actual
7 hearing dates?

8 A. I can't -- I can't say whether he was
9 present on the date of the initial informal
10 conference because I was not present on that
11 occasion. I was elsewhere working on a matter
12 related to the rate case. He was physically present
13 for a period thereafter. I believe it was through
14 that period of time that he would have been
15 physically present in Louisville. That's my
16 recollection.

17 Q. Okay. Physically present at the
18 Public Service Commission or here in Louisville? You
19 if you can't recall, you can't recall.

20 A. I'm sorry, I just can't recall.

21 Q. That's all right. Anybody else you
22 can think of externally that was part of the team?

23 A. Well, as I mentioned, Steve Seelye,
24 from Indiana. And he was physically present at the
25 Public Service Commission during that time period.

1 Q. What I'm looking for, Mr. Beer, is
2 anybody who would have knowledge of this matter.
3 Mr. Rosenberg is new to me. That's why I'm curious
4 about him.

5 A. Yeah, Mr. Rosenberg was one of our
6 testifying experts that had been representing the
7 company for a long period of time. I'm trying to
8 recall -- those are the names that I recall.

9 Q. Okay. Now, going back to the period
10 of time which you've identified for me, late 2002,
11 when the rate case possibility -- if that's a fair
12 term -- came up for LG&E Energy, LLC, consideration.
13 Did you ever have any contact with any staff member
14 at the Public Service Commission about the right
15 cases or the possibility of the rate cases? And
16 let's do this. Let's break this down into two ways.
17 Prefiling, which would have been prior to notice of
18 intent filed late November 2003, and post notice of
19 intent filing.

20 A. There had -- there had been -- because
21 of the operation of the earnings sharing mechanism
22 and because of the position the company was in
23 relative to its -- its allowed earnings and the fact
24 that it had filed an adjustment under that mechanism
25 recovering a substantial amount of money from -- from

1 the rate payers, there was speculation and there were
2 a number of rumors floating around that -- that --
3 expectations that the company had to file a rate
4 case.

5 And, you know, our response to that
6 was that, you know, the company certainly is aware of
7 its financial position, and it would be imprudent if
8 it weren't constantly looking at ways and means
9 available to it to -- to shore up its financial
10 position. The rumors were pervasive. And at one
11 point in time, I think in late -- it would have been
12 in late 2002, to address the rumors that -- that I
13 was aware of swirling around and the fact that we
14 weren't going to be filing a rate case in 2002, I had
15 a very brief conversation with Mr. Dorman that simply
16 said, "Tom, there's rumors everywhere that we're
17 coming in here with a rate case. We're not coming in
18 here with a rate case. There's" -- "there's no need
19 to expect it." And I didn't give him any indication
20 that we would be filing a rate case, that we were
21 doing anything more than what we'd said we'd always
22 been doing, and that was simply constantly evaluating
23 what options we have, our financial conditions and
24 situations and performance and when and if and
25 whether it would be an opportune time to file a rate

1 case.

2 Q. Other than that communication, was
3 there any other communications with the staff prior
4 to notice of intent filing of late November 2003 that
5 you personally participated in?

6 A. That I personally participated in.
7 Right before -- and I can't give you the timeframe,
8 but the decision on our part had been made to file a
9 statutory notice of intent, which would have been
10 late November, mid-November of 2003, courtesy call.
11 And I believe I had that call again with Mr. Dorman,
12 simply to say basically, "Tomorrow morning we will be
13 filing a statutory notice of intent to file a rate
14 case on or before the end of this year," whatever the
15 language of that notice was.

16 But it was -- it was certainly no
17 sooner than that, and the intent was nothing more
18 than we didn't want the commission to hear about it
19 or read about it the first thing in the papers the
20 next morning. And so it was literally nothing more
21 than -- no details, nothing other than the fact that
22 this would be filed the next day.

23 Q. Other than those two communications,
24 any others with the staff?

25 A. None that I participated in.

1 Q. Any communication between yourself and
2 any member of the commission during that same time
3 period?

4 A. None.

5 Q. Okay.

6 A. None.

7 Q. Now, so that I'm clear, through the
8 notice of intent to file a rate case from the 2002
9 date, this study time period, you would have attended
10 NARUC and SEARUC conventions where either
11 commissioners or staff or both were present, correct?

12 A. Correct.

13 Q. Is it your statement that at no time
14 did you ever discuss rate cases or the possibility of
15 a rate case with the commissioners or staff at any
16 SEARUC or NARUC or other convention?

17 A. That is my statement.

18 Q. All right. To your knowledge, did any
19 member or employee of LG&E Energy, LLC, have any
20 discussions with either commission members or staff,
21 other than the two conversations you've told me
22 about, prior to notice of intent to file in late
23 November 2003, to your knowledge?

24 A. To my knowledge, none -- none took
25 place.

1 Q. Okay. In addition to attendance at
2 seminars, it's also my understanding that LG&E
3 Energy, LLC, kept an office, along with other
4 regulated utilities, at 715 or 8 -- I forget --
5 Shelby Street in Frankfort, Kentucky. Am I correct?

6 A. Correct.

7 Q. Okay. In your duties did you have
8 opportunity to visit that site from time to time?

9 A. I did visit that site.

10 Q. Okay. And when you visit that site,
11 have you ever been socially engaged or in business
12 engaged with Tom Dorman?

13 A. I don't recall ever being in that
14 office during a time period where Mr. Dorman would
15 have been present.

16 Q. Okay. Now, as you would expect, we've
17 also had statement from Mr. Siemens and Mr. Dorman,
18 so we know physically that both of those gentlemen go
19 there from time to time. But it's your statement
20 that you were never there at any time when Mr. Dorman
21 was there.

22 A. I don't recall ever being there with
23 Mr. Dorman, no, sir.

24 Q. Fair enough. How about any other
25 commission members?

1 A. I don't recall ever being there with
2 any of the other -- any other member of the staff or
3 commissioners.

4 Q. Fair enough. And I take it that --
5 well, strike that.

6 Are you familiar with a term called
7 "Steak Night"?

8 A. Yes.

9 Q. Tell me what you know about Steak
10 Night.

11 A. Well, all I know about Steak Night is
12 secondhand because I never attended one.

13 Q. Fair enough. So you've never
14 participated in Steak Night?

15 A. Never participated in a Steak Night.

16 Q. Okay. You are familiar with the term
17 "Kentucky Night."

18 A. Yes.

19 Q. Okay. And have you participated in
20 Kentucky Night? I presume you have.

21 A. Yes.

22 Q. And as I understand it, Kentucky Night
23 is a dinner at NARUC or SEARUC, possibly other
24 seminars, that is for people from Kentucky. Am I
25 correct?

1 A. Correct.

2 Q. Okay. Focusing in on Kentucky Night,
3 I take it that Public Service Commission members and
4 staff attended those during the year 2003 and 2004.

5 A. Correct.

6 Q. Okay. You have a recollection of ever
7 having discussed the rate cases with any commission
8 member or staff member at a Kentucky Night function?

9 A. I had no such discussions.

10 Q. Fair enough. Okay. Let me turn to
11 your participation, if any, in the fall of 2003 prior
12 to the notice of intent to file with a company by the
13 name of North American Stainless.

14 A. Mm-hmm.

15 Q. Are you familiar with the controversy
16 between KU and North American Stainless?

17 A. Yes.

18 Q. As I understand it, North American
19 Stainless filed a complaint in September of 2003.

20 A. Correct.

21 Q. Okay. And LG&E Energy, LLC, filed
22 shortly thereafter for a tariff, special tariff.

23 A. Correct.

24 Q. Also sometime in either late September
25 or October of 2003.

1 A. Correct.

2 Q. With regard to the North American
3 Stainless matter, did you have an opportunity to have
4 discussions with the staff of the Kentucky Public
5 Service Commission prior to notice of intent to file,
6 which occurred later in November of 2003?

7 A. Prior to the notice of intent to file,
8 no.

9 Q. Okay. So that we're clear, you had no
10 communication after the filing of the complaint and
11 the tariff in September of 2003 with the commission
12 staff about the complaint or the tariff.

13 A. That's correct.

14 Q. Okay. We now arrived at the
15 November 30th, 2003 date, and what I'm trying to do
16 is walk you through this chronologically so that you
17 don't have to remember it all at one time. Do you
18 recollect having any communication with the staff or
19 commission members about either the North American
20 Stainless case or the rate cases? And we can now
21 refer to the rate cases as 00433 -- that's the LG&E
22 case -- and 00434, between notice of intent and
23 actual filing, late December 2004?

24 A. And your question is whether I had any
25 communication --

1 Q. Right.

2 A. -- regarding NAS or the rate cases?

3 Q. Yes.

4 A. No.

5 Q. Okay.

6 A. I -- certainly I don't recall any
7 about NAS, and I can -- I can -- I would not have had
8 any on -- and recall none about the rate case.

9 Q. Okay. Subsequent to the rate cases
10 being filed, what was your participation in the rate
11 cases from filing until date of informal conference,
12 which would have been April 28, 2004?

13 A. I actually wore two hats in that
14 process: One as a testifying witness for the company
15 on the regulatory policy issues relating to the -- to
16 the proposed increase in rates; and the other was as
17 being the person who was team leader for the managing
18 and process internally of taking what was initially a
19 concept and -- and refining that to a formal rate
20 application with supporting tariff changes and
21 prefiled testimony and all that was statutorily
22 required to support the application.

23 Q. Okay. Were you responsible for
24 responses to document requests by interveners and the
25 commission staff?

1 A. Yes.

2 Q. Okay. Were you responsible for
3 drafting or overseeing the drafting of requests made
4 to other parties?

5 A. For overseeing the drafting of those
6 requests, yes.

7 Q. All right. From date of filing, late
8 December 2003, to the informal conference, other than
9 in the normal function of preparing document
10 requests, did you have any contact -- preparing and
11 sending document requests, have any contact with the
12 staff or commission members?

13 A. In general?

14 Q. Yes, sir. No, related to the rate
15 cases --

16 A. Oh, related to the rate cases.

17 Q. -- or the North American Stainless
18 case.

19 A. I don't recall -- I don't recall any
20 communications with staff. Certainly none with the
21 commission.

22 Q. Okay. Fair enough. Commission
23 members?

24 A. Commission members. Commissioners.

25 Q. Okay. Do you have a recollection of

1 sometime in the spring of 2004 that the North
2 American Stainless case was consolidated with the
3 rate cases?

4 A. Yes, I do recall that.

5 Q. Did you participate in that procedural
6 matter?

7 A. When you say "participate in the
8 procedural matter," what do you mean?

9 Q. Did you oversee the filing of
10 pleadings with regards to the consolidation?

11 A. Yes, I would have been over that
12 process.

13 Q. Okay. And did you participate in the
14 decision to request the Public Service Commission to
15 consolidate the cases?

16 A. Yes.

17 Q. Okay. Now, focusing in on the
18 consolidation, do you have a recollection of any
19 conversations with the staff or commission members?

20 A. There may have been an informal
21 conference around that time period to which all of
22 the parties would have been invited. It would have
23 been a publicly-noticed proceeding, but I don't
24 recall having any conversations directly with staff
25 on any aspect of the NAS case.

1 Q. Fair enough. April 28, 2004 is the
2 date of the informal conference. Prior to the
3 informal conference, had LG&E Energy, LLC, engaged in
4 discussions with the intervening parties about the
5 rate cases?

6 A. Prior to April 28th?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. Tell me who you would identify
10 as interveners in the two rate cases.

11 A. Well, even though they're a party as a
12 matter of law, I always consider the attorney general
13 to be an intervener. The KIUC, Kentucky Industrial
14 Utility Customers. There was -- Kroger Corporation
15 was an intervener. North American Stainless. There
16 was the consortium of low-income groups, both for
17 Louisville and Lexington. There was the Department
18 of Defense. There was the Lexington-Fayette County
19 Urban Government. Tom Fitzgerald in -- what was it,
20 the Kentucky Resource Defense Counsel was an
21 intervener. I'm probably forgetting somebody. I
22 think there was a total of 13 interveners in the rate
23 case.

24 Q. Okay. You did very well, Mr. Beer.
25 You only missed one, the Kentucky Department of

1 Energy.

2 A. Okay. You're right.

3 Q. That's a quiz I've given everyone.

4 A. And they certainly were present.

5 Q. Now, do I take it you were involved --
6 "you" being LG&E Energy, LLC -- with all interveners
7 prior -- engaged in conversation prior to April 28,
8 2004?

9 A. Actually, I wouldn't say that we were
10 involved with all of the interveners, but we were
11 certainly involved with many.

12 Q. Okay. Do you specifically recall
13 conversations with members of the attorney general's
14 staff?

15 A. Yes, sir.

16 Q. And do you recall conversations with
17 representatives of KIUC?

18 A. Yes.

19 Q. And do you recall conversations with
20 representatives of Kroger?

21 A. Yes.

22 Q. How about the low-income
23 representatives?

24 A. Yes.

25 Q. Any others that you can recall?

1 A. We had discussions with North American
2 Stainless. I think those were primarily it.

3 Q. Okay. Prior to April 28, 2004, the
4 date of the first informal conference, I presume --
5 or rather I should say it is my understanding that
6 all issues were still outstanding except for possibly
7 issues related to Kroger. Is that a fair
8 characterization?

9 A. Very much so.

10 Q. Okay. Take me through the events of
11 April 28th, 2004, the informal conference, that day,
12 if you can recall it. That would be a Wednesday.
13 The way I always mark it, Mr. Beer, it's the
14 Wednesday before Derby.

15 A. It was. It was, indeed. The -- I
16 can't answer that question because I was not present
17 at that informal conference. I was with a smaller
18 group of people back at our offices meeting with NAS
19 trying to resolve the issues surrounding their
20 complaint and the drafting of a tariff that would
21 ultimately apply to them and other similarly-situated
22 customers, so I was not there on the 28th in the
23 commission offices.

24 Q. All right. I take it you were
25 unsuccessful in your efforts on April 28th with NAS.

1 A. On that date we were unsuccessful.

2 Q. Okay. April 29th, Thursday, did you
3 participate in negotiations at the Public Service
4 Commission about the rate cases or NAS or someplace
5 else?

6 A. I don't recall anything specific on
7 Thursday.

8 Q. Okay. On either April 28th or
9 April 29th, did you have any communications with any
10 member of the staff?

11 A. No.

12 Q. Okay. Did you have any communications
13 with any commission member --

14 A. No.

15 Q. -- about the rate cases?

16 A. None.

17 Q. Okay. April 30th, Oaks Day, did you
18 participate in discussions with any of the
19 interveners on that day?

20 A. Yes, I did.

21 Q. Okay. Tell me what you did.

22 A. Mr. Riggs and I and Mr. McCall met
23 with representatives of the attorney general's office
24 at the attorney general's office that morning in an
25 effort to try to resolve the issues that were

1 preventing the attorney general from completing the
2 settlement in the rate case.

3 Q. Okay. Prior to that meeting, did you
4 have an understanding with all other interveners,
5 other than North American Stainless, on issues
6 related to the two rate cases?

7 A. My recollection is at that point that
8 we did not have an agreement on all issues other than
9 the attorney general's issues. We were certainly
10 making progress, but there were -- again, my
11 recollection is that there were further negotiations
12 that were required on -- on a number of issues.

13 Q. All right. It has been represented to
14 me that the issues really revolve -- in the rate
15 cases, while complicated -- really revolve themselves
16 around two axes, if you will: one, rate design, or
17 rate allocation as it's commonly known; and revenue
18 requirement. Is that a fair statement?

19 A. It's very fair.

20 Q. Okay. And that the attorney general's
21 issue was revenue requirement as it related to
22 electricity.

23 A. Correct.

24 Q. Did he have, at that point in time,
25 issues with regard to rate design or rate allocation,

1 "that point in time" being your meeting on
2 April 30th?

3 A. The primary issue discussed during
4 that meeting of April 30th were revenue requirement
5 issues. The attorney general certainly had an
6 interest in rate design issues, but my recollection
7 of those things that we discussed on the 30th, they
8 were primarily revenue requirement related.

9 Q. Okay. Besides yourself and Mr. Riggs
10 and Mr. McCall, anybody else present other than
11 attorney general people? Let me make this easier for
12 you. Mr. Kurtz there or Mr. Boehm?

13 A. I do not recall either of them being
14 there.

15 Q. All right. Anybody else?

16 A. I don't believe so.

17 Q. Who was there for the attorney
18 general?

19 A. Mr. Howard, and I'm struggling with
20 whether Ms. Blackford was there for all or a portion
21 of the meeting. My recollection is she was there for
22 at least a portion of the meeting.

23 Q. Are you familiar with a gentleman by
24 the name of Dennis Fleming?

25 A. I've met Mr. Fleming once, but not in

1 relation to this proceeding.

2 Q. He did not participate in the meeting
3 of April 30th?

4 A. He was certainly not present in -- in
5 the area where we were meeting, and I hesitate to use
6 the "room" because we were in an open area out in the
7 middle of the floor and he was not present there.

8 Q. How long were you there?

9 A. No more than an hour.

10 Q. Okay. Was there any person present
11 from the Public Service Commission staff and/or
12 commission member?

13 A. No.

14 Q. Okay. Was there anybody hooked up to
15 the meeting through telephone?

16 A. No.

17 Q. Okay. You have no recollection of
18 Mr. Raff having participated in the meeting?

19 A. No, sir. No, in that particular
20 meeting, he was not present.

21 Q. Okay. Fair enough. Was anything
22 resolved at the April 30th meeting?

23 A. Nothing was resolved.

24 Q. Okay. So no agreement on revenue
25 requirement or any other issues at that point in

1 time.

2 A. Not that I can recall, no.

3 Q. Okay. Next week, let's start with May
4 the 3rd. Let me first ask on either Derby Day or the
5 Sunday after Derby Day, were there any discussions
6 with either staff, interveners or commission members
7 about the rate cases?

8 A. None that I'm aware of.

9 Q. Fair enough. Monday, May the 3rd, did
10 you participate in discussions?

11 A. We were scheduled to commence the
12 actual rate case hearing that day, and it's my
13 recollection that Chairman Goss convened the hearing.
14 I believe he offered the opportunity for public
15 comment and then adjourned the hearing to allow
16 negotiations to continue.

17 Q. Okay. Now, are you thinking that that
18 sequencing of events occurred on the first day of
19 hearing?

20 A. Yes.

21 Q. Okay. I'm representing to you the
22 first day of hearing was actually May the 4th,
23 Tuesday.

24 A. 4th, okay, all right.

25 Q. Okay. May the 3rd would have been a

1 nonscheduled hearing day. And thus my question, did
2 you participate in negotiations with any of the
3 interveners on that day?

4 A. I'm trying to recall the activity of
5 that day. I simply don't have a recollection.

6 Q. Fair enough. May the 4th, first day
7 of hearing.

8 A. Right. May 4th is -- as I was
9 mistaken, the chairman did convene the hearing, then
10 adjourned it for further negotiations.

11 Q. Okay. Did you participate in the
12 negotiations?

13 A. Yes.

14 Q. Okay. And where were the
15 negotiations?

16 A. The negotiations took place in and
17 around the commission headquarters.

18 Q. Okay. I'm smiling because it --
19 geographically it sounded like it was all over the
20 place. But were you in a particular room?

21 A. Well, we were -- we were in the -- I
22 believe it was hearing room 2 or 1A. It's the
23 smaller hearing room behind the main hearing room,
24 and that was more or less the center of negotiations.
25 But as -- as interveners and companies were

1 discussing individual issues, those folks would have
2 broken off and adjourned to another room somewhere in
3 the -- in the building to continue their
4 negotiations.

5 Q. Were all negotiations reported back to
6 the main group?

7 A. Yes, yes.

8 Q. Okay. I've been advised that Mr. Watt
9 served as a scrivener for various agreements that
10 were reached during the course of May 4th, 5th and
11 6th. Is that correct?

12 A. As agreements were reached, they would
13 come back and they would be reported, they would be
14 written down. The objective was to reduce everything
15 to -- to a -- to what ultimately became the
16 stipulation and partial settlement agreement.

17 Q. Okay. Do I take it that all
18 parties -- all interveners, LG&E and KU, were working
19 toward a settlement of all issues?

20 A. Yes.

21 Q. Okay. How long were you there on May
22 the 4th?

23 A. My recollection is very late in the
24 evening. Late into the evening. I would say perhaps
25 as late as 8:00 or 9:00.

1 Q. Okay. May the 4th?

2 A. Yes.

3 Q. Okay. And tell me, if you can, who,
4 if anyone, was present during the settlement
5 discussions from the Public Service Commission staff.

6 A. Richard Raff was present during some,
7 but certainly not all of the sessions that were held.
8 At times Isaac Scott was in the room. I believe at
9 times Jeff Shaw was in the room. But again, they
10 were -- they were present in their room for very
11 limited -- for very limited periods of time.

12 Mr. Raff was present more frequently, but certainly
13 not during the entirety of the proceedings either.

14 Q. Okay. Now, are you speaking for all
15 days here, May 4, 5 and 6?

16 A. I recall periods of time during those
17 days where Mr. Raff was absent from the room.

18 Q. Okay. How about Mr. Scott and
19 Mr. Shaw?

20 A. Certainly there were times when they
21 were absent from the room as well.

22 Q. Okay. Do you have a recollection of
23 any communication coming from any of the three
24 gentlemen to the group as a whole on May 4th, 5th and
25 6th?

1 A. Can you help me understand what you
2 mean by communication?

3 Q. Were they discussing the issues or
4 were they simply there to observe and let the parties
5 sort themselves out?

6 A. Mr. Scott, Mr. Shaw may have responded
7 to a question about commission precedent or
8 commission practice in administering a tariff or a
9 provision. Their involvement would have been very
10 brief. Their communication would have been very
11 brief or very limited. Mr. Raff -- Mr. Raff on
12 occasion would -- and he made it very clear it was
13 his own personal view and his own personal belief,
14 but would on occasion participate in the discussions
15 from the standpoint of I think trying to facilitate
16 movement, trying to keep the process moving forward,
17 but certainly didn't take an active or aggressive
18 role in -- in moving the parties, pushing the parties
19 in any direction.

20 (OFF THE RECORD)

21 Q. We were talking about the events of
22 May the 4th. I take it the parties negotiated well
23 into the evening?

24 A. Yes, sir.

25 Q. Okay. And were any agreements reached

1 on revenue requirement or rate design as of end of
2 negotiation session May 4th?

3 A. Well, my understanding as of May 4th,
4 the issue of revenue requirement itself had been
5 agreed to by all parties except the attorney general,
6 and the discussions that were taking place now were
7 discussions pertaining to rate design. The
8 allocation among customer classes of the increase in
9 rates, issues involving -- well, the North American
10 Stainless issue was, as of on the 4th anyway, I
11 believe, still outstanding, the design of that
12 particular tariff. But by that point the issues
13 outstanding were primarily specific to individual
14 interveners.

15 Q. So that I'm clear, in addition to the
16 individual intervener issues, you still had no
17 agreement on revenue requirement. Am I correct?

18 A. Not from the entirety of all parties,
19 no, sir.

20 Q. The attorney general was not in
21 agreement --

22 A. Correct.

23 Q. -- as of the end of the negotiation
24 session?

25 A. As it pertained to electricity.

1 Q. Yes, okay. May the 5th, tell me what
2 you recall of the events of May the 5th. Maybe I can
3 be helpful to you. Do you recall, for instance,
4 testimony being given on --

5 A. Yeah. And I'm -- what I'm trying to
6 get in my mind is at that point where the -- the
7 partial settlement and stipulation had pretty much
8 been reduced to writing and signed by all of the
9 parties, and that may have been what happened late on
10 the evening of the 4th. At some point -- and it may
11 have been the 5th -- I recall it -- it being
12 certainly the second or third day that hearings were
13 scheduled, that the attorney general's witnesses that
14 related to revenue requirement issues were put on the
15 stand and offered for cross-examination. And they
16 were, in fact, then cross-examined by all of the
17 parties, or by those parties -- every party had the
18 opportunity to cross-examine them. Certainly those
19 that had an interest in doing so did.

20 Q. Were there further negotiations on May
21 the 5th amongst all the interveners and LG&E and KU?

22 A. My recollection is by the time that
23 the hearing was formally reconvened for purposes of
24 taking testimony, that all matters outstanding
25 amongst all of the parties, except for revenue

1 requirement, had been -- had been resolved. And so
2 the only issue outstanding when the attorney
3 general's witnesses were offered for
4 cross-examination would have been revenue
5 requirement.

6 Q. Okay. Was there at any time on either
7 May 4th or May 5th where you believed that there was
8 an agreement reached amongst all interveners,
9 including the attorney general, on revenue
10 requirement?

11 A. I'm sorry I'm taking so long. I'm
12 being very careful to try to reconstruct the 4th and
13 what happened that night in my mind. There was --
14 there was a point in time where we had an agreement
15 where we believed -- or we believed we had an
16 agreement on the issue of revenue requirement with
17 the attorney general. There was a point in time
18 where the company had agreed to adjust its revenue
19 requirement in a way that would allow for certain
20 costs to be recovered through another mechanism.
21 That agreement, had it held, would have resolved all
22 outstanding issues.

23 At some point the attorney general
24 rescinded its -- his agreement to that arrangement
25 and indicated that the -- the figure was not -- was

1 not supported -- not supportable certainly by the
2 evidence, and we proceeded to -- to the hearing. And
3 I believe it was -- it was certainly the morning
4 before -- the morning before the attorney general's
5 witnesses were put on the stand that the issue of --
6 of a tainted process was first brought to light in
7 the hearing room at the Public Service Commission.

8 Q. Okay. Let me see if I can focus your
9 recollection. Do you have a recollection that by end
10 of negotiation on May the 4th, first day of hearing,
11 that there was an agreement on revenue requirement or
12 not?

13 A. Mr. Goldberg, there was a night -- and
14 I'm struggling with the chronology. There was a
15 night where there was much jubilation that we had
16 settled the case, as far as the revenue requirement
17 is concerned. I simply am struggling to place that
18 on May 4th.

19 Q. All right. Let me see if I can help
20 you a little bit. I'm representing to you that on
21 May the 5th the attorney general physically came to
22 the offices of the Public Service Commission and held
23 a press conference. I'm further representing to you
24 that on May the 6th, as part of the public record,
25 Richard Raff identified that the attorney general

1 that morning had been on the radio stating that the
2 process, in his mind, had been tainted by ex parte,
3 collusive or inappropriate behaviors. Using that all
4 public appearances and/or public record as reference
5 points, does that refresh your recollection of the
6 chain of events?

7 A. Well, certainly on -- on May 5th when
8 Mr. Raff made that -- and I do recall him making that
9 statement in the --

10 Q. May the 6th --

11 A. -- or May the 6th when he made that
12 statement. We then proceeded for the -- we had an
13 agreement, I believe, on the 4th. And on the 5th the
14 agreement was -- was rescinded.

15 Q. Okay. Now, with regard to the
16 recision, do you remember how you first learned that
17 the agreement had been rescinded?

18 A. Mr. Howard came into the room where
19 all of the parties had been assembled and had
20 announced that the deal was off, that that -- and I'm
21 not going to even attempt to paraphrase what he said,
22 but we were first informed of the fact that the
23 attorney general -- that there was no deal on revenue
24 requirement issues through Mr. Howard.

25 Q. Okay. Did the parties then proceed to

1 put evidence on on that day?

2 A. The attorney general was the only
3 party that put evidence on --

4 Q. Okay.

5 A. -- in the hearing.

6 Q. On the 5th?

7 A. And that was through his revenue
8 requirement witnesses.

9 Q. Okay. Would that have been on the 5th
10 and/or 6th, or do you recall?

11 A. My recollection, I keep recalling it
12 as being the 5th.

13 Q. All right. Now, do you know whether
14 or not the attorney general made an appearance at the
15 Public Service Commission and had a press conference
16 on the 5th?

17 A. I recall -- I do know that the
18 attorney general was -- was in the parking lot
19 appearing in front of -- of the media. I believe it
20 was on the 5th.

21 Q. Did you have, either on the 4th or the
22 5th, any conversations -- did you participate in any
23 conversations with the attorney general personally?

24 A. Attorney general meaning Mr. Stumbo?

25 Q. Yes.

1 A. No, sir.

2 Q. At any time did you have any
3 conversations with him personally?

4 A. I've never had any conversations with
5 Mr. Stumbo.

6 Q. Okay. Anything else you remember
7 about the events of May 5th? Were the parties still
8 negotiating on that day? And again, when I say
9 negotiation, after testimony was taken and the
10 commission members closed the formal part of the
11 hearing?

12 A. There were no negotiations that took
13 place after that point.

14 Q. Okay. Again, using the methodology
15 that was in place on the 4th in terms of the
16 discussions and the available hearing room, were
17 there discussions on May the 5th similar to that?

18 A. Again, it is my recollection that the
19 attorney general's witnesses went up on May 5th. And
20 prior to proceeding with those witnesses being
21 available for cross-examination, negotiations amongst
22 all of the parties would have concluded with the
23 execution of the stipulation and partial settlement
24 agreement, and that occurred the night before. And
25 my recollection is that that's the 5th. I may be in

1 error. I may be missing it by a day, but
2 irrespective of the day of the chronology of events
3 was, the parties reduced all of their agreements to
4 that single document prior to the attorney general's
5 witnesses going on the witness stand.

6 Q. Was the North American Stainless
7 situation concluded by that time?

8 A. Yes, it was.

9 Q. That was a separate negotiation?

10 A. Separate in the sense that it did not
11 take place in the room in which all other parties
12 were -- were present, but it was -- it was conducted
13 during that timeframe and in that building.

14 Q. Did you participate in that
15 discussion?

16 A. Yes, I did.

17 Q. Okay. Was that concluded by the time
18 the attorney general put evidence of revenue
19 requirement on?

20 A. My recollection is that it was, yes.

21 Q. Okay. So that by the time -- am I
22 correct that by the time the attorney general put his
23 evidence on, all issues had been resolved except for
24 the revenue requirement related to electricity?

25 A. I believe that's an accurate

1 statement.

2 Q. All right. Anything else you recall
3 from the events of May the 5th?

4 A. I recall that we did not get through
5 all of the -- the attorney general's witnesses that
6 day, and we carried the hearing over.

7 Q. To May the 6th?

8 A. To May the 6th.

9 Q. Okay. On May the 6th, or the third
10 day of actual hearing of testimony, do you recall
11 Mr. Raff's remarks that we identified earlier?

12 A. Mr. Raff -- I recall the remarks that
13 Mr. Raff made advising of the attorney general's
14 allegations of the process being collusive. And I
15 recall that the chair was outraged at that. My
16 reaction was that he was somewhat outraged by that.
17 The -- the parties were then polled, starting with
18 the attorney general's representation -- or
19 representatives, whether they had any knowledge of
20 any -- any of the wrongful conduct that had been
21 alleged.

22 And my recollection is that Mr. Howard
23 represented that certainly to the extent that he had
24 been involved and present in various proceedings or
25 discussions or negotiations, that no such conduct had

1 occurred, but he wouldn't make that statement to
2 those that may have occurred outside his presence.
3 Then all other parties went on record as saying that
4 they had not seen, nor were they aware of any of the
5 wrongful conduct that the attorney general had
6 alleged to take place. Now, whether that occurred on
7 the 5th or the 6th, that's where I simply am having
8 trouble fixing it to a specific date, but the
9 chronology of events I'm very clear on.

10 Q. Okay. After persons in the room went
11 on record as to their lack of knowledge about
12 ex parte, inappropriate or collusive behavior, was
13 evidence then put into the record, continued to be
14 put into the record?

15 A. I believe we went ahead with
16 additional testimony from the attorney general's
17 witnesses. That certainly was not the last event
18 that happened before the chair adjourned the hearing.

19 Q. Okay. Do you recall any other days in
20 which a hearing occurred with regard to the rate
21 cases? The official record indicates that May the
22 12th, the following week, there was a hearing.

23 A. We were -- we were originally
24 scheduled for three days, I believe, 4, 5 and 6, and
25 then it was continued to the following week. And I'm

1 sorry, I don't recall the specific events of that
2 day.

3 Q. All right. Do you recall being there,
4 present?

5 A. On the 12th?

6 Q. Yes.

7 A. What day of the week was that?

8 Q. I presume it would have been a
9 Tuesday --

10 A. Tuesday?

11 Q. -- or Wednesday. Wednesday, probably.
12 It is a -- would have been Wednesday.

13 A. Yes, I recall being there.

14 Q. All right. And I take it from your
15 reticence you do not recall specifically any activity
16 on that day.

17 A. What I remember is -- is -- the one
18 thing I do specifically recall is the commission --
19 the chairman -- Chairman Goss adjourning the hearing.
20 What I -- what I -- that may have -- that's -- that's
21 the most specific recollection I have of that day.

22 Q. Okay. Now, I'll represent to you the
23 commission issued its ruling on June the 30th, 2004.

24 A. Mm-hmm.

25 Q. In between April 28th, 2004 and

1 June 30th, 2004, did you have any conversations about
2 the rate cases with the any commission member?

3 A. None whatsoever.

4 Q. And let me ask you the same question
5 with regard to staff other than participation in the
6 hearing room where negotiations and/or evidence was
7 actually taken.

8 A. No, sir, I would not.

9 Q. And then finally let me ask you the
10 question specifically with regard to Mr. Dorman, any
11 conversations with him?

12 A. I don't recall even talking to
13 Mr. Dorman -- no, I don't recall ever even having a
14 conversation with Mr. Dorman during that time period.

15 Q. Fair enough. Now, with regard to
16 ex parte communications, I trust as a lawyer you have
17 an understanding of what ex parte communications are.

18 A. Yes, sir.

19 Q. Further, am I correct that there is a
20 prohibition at LG&E Energy, LLC, about ex parte
21 communications of any regulatory bodies?

22 A. That's correct.

23 Q. Is that part of the training given at
24 LG&E Energy, LLC, to employees?

25 A. It -- there -- it's not part of any

1 formal training module or protocol. But certainly it
2 is part of the -- a new employee comes into the area
3 where they may come in contact with regulators, and
4 it's just a part of their everyday training. It's --
5 you know, you're -- you're told from the outset about
6 the rules against ex parte communications, that we
7 take those rules very seriously, that we don't engage
8 in any ex parte communications, that there is very --
9 a very clear line across which we do not step. And
10 it's -- you know, whether you're in meetings or
11 private briefings or whether it's outside counsel or
12 me or internal supervision or whomever, it's just
13 part of our culture and part of our way of life that
14 you don't do that.

15 Q. Are you familiar with, by the way of
16 institutional memory at LG&E Energy, LLC, the case of
17 Louisville Gas & Electric versus Cowan?

18 A. Yes, yes. And that -- to answer your
19 question, yes, I'm aware of that.

20 Q. Okay. And what is your understanding
21 of the holding of that case?

22 A. Well, my understanding of that case is
23 that any communications that are conducted with a
24 decision maker outside of the presence of other
25 parties made with the intent to influence the

1 decision maker on a particular outcome are
2 specifically forbidden.

3 Q. Okay. And using that as a reference
4 for the two rate cases we've been discussing, did you
5 personally witness anything that you thought was an
6 ex parte communication during your participation in
7 these events?

8 A. I never personally witnessed anything
9 that gave me concern.

10 Q. Let me ask you the same question. Did
11 you witness anything that you thought was
12 inappropriate or evidence of collusive behavior
13 during your participation in this matter?

14 A. No, sir.

15 MR. GOLDBERG: That's all I have.

16 Thanks much.

17 THE WITNESS: Thank you.

18

19 (STATEMENT CONCLUDED AT 2:25 P.M.)

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1 STATE OF KENTUCKY) (
) (SS:
2 COUNTY OF JEFFERSON) (
3

4 I, ELLEN L. COULTER, Notary Public,
5 State of Kentucky at Large, hereby certify that the
6 foregoing sworn statement was taken at the time and
7 place stated in the caption; that the appearances
8 were as set forth in the caption; that prior to
9 giving testimony the witness was first duly sworn by
me; that said testimony was taken down by me in
stenographic notes and thereafter reduced under my
supervision to the foregoing typewritten pages and
that said typewritten transcript is a true, accurate
and complete record of my stenographic notes so
taken.

10 I further certify that I am not
11 related by blood or marriage to any of the parties
hereto and that I have no interest in the outcome of
captioned case.

12 My commission as Notary Public expires
November 5, 2007.

13 Given under my hand this the 2nd
14 day of August, 2005, at Louisville,
15 Kentucky.

16
17 
18 ELLEN L. COULTER
19 NOTARY PUBLIC
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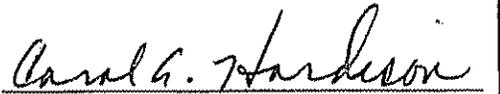
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I, the undersigned, MICHAEL S. BEER, do hereby certify that I have read the foregoing sworn statement, and that, to the best of my knowledge, said sworn statement is true and accurate, with the exception of the corrections, if any, listed on the errata sheet.



MICHAEL S. BEER

Subscribed and sworn to before me this 19th day of September, 2005.


NOTARY PUBLIC

My commission expires August 5, 2008

COULTER REPORTING, LLC
101 EAST KENTUCKY STREET, SUITE 200
LOUISVILLE, KY 40203

ERRATA SHEET

NAME MICHAEL S. BEER DATE OF DEPOSITION 8/10/05

After having read my deposition, I wish to make the following changes:

Page 13 Line 11
Change "contact" not "contract"
Reason for change clarification

Page 24 Line 14
Change "Rives" not "Reeves"
Reason for change clarification

Page 29 Line 25
Change "involving the Rate Cases" between "None" and "that"
Reason for change clarification

Page 30 Line 4
Change "involving the Rate Cases" after "None"
Reason for change clarification

Page 30 Line 6
Change "involving the Rate Cases" after "None"
Reason for change clarification

Page 30 Line 24
Change "involving the Rate Cases" after first "none"
Reason for change clarification

Page 34 Line 13
Change add to answer ", at least that I can recall."
Reason for change clarification

Page Line
Change
Reason for change

Page Line
Change
Reason for change

<p>-- [1] 28/18 D.C [1] 17/22 LLC [10] 4/5 4/8 21/12 27/12 30/19 31/3 33/21 38/3 61/20 61/24 LLC -- [1] 39/6</p>	<p>allow [2] 45/15 52/19 allowed [1] 27/23 almost [1] 4/23 along [1] 31/3 also [7] 5/4 15/17 16/13 19/14 31/2 31/17 33/24</p>	<p>association [4] 16/20 16/22 18/11 18/20 assume [1] 6/15 assumed [1] 6/2 assumption [1] 22/17 at [74] Atlanta [4] 20/4 20/10 20/25 21/9 attempt [1] 54/21</p>
<p>- -- [210]</p>	<p>always [4] 12/20 28/21 38/12 40/13 am [13] 3/17 3/18 15/20 16/13 20/8 31/5 32/24 50/17 53/17 57/21 59/7 61/19 64/10</p>	<p>attended [4] 20/15 30/9 32/12 33/4 attorney [36] 3/17 38/12 39/13 41/23 41/24 42/1 42/9 42/20 43/5 43/11 43/17 50/5 50/20 51/13 52/2 52/9 52/17 52/23 53/4 53/21 53/25 54/23 55/2 55/14 55/18 55/23 55/24 56/19 57/4 57/18 57/22 58/5 58/13 58/18 59/5 59/16</p>
<p>A</p>	<p>Amato [1] 6/12 American [13] 18/16 33/13 33/16 33/18 34/2 34/19 36/17 37/2 38/15 40/1 42/5 50/9 57/6</p>	<p>audit [10] 14/17 14/18 15/1 15/3 15/5 15/6 15/7 15/12 15/13 15/17 AUGUST [3] 1/18 3/5 18/4 authority [3] 5/2 9/2 12/13 available [5] 9/7 25/25 28/9 56/16 56/21 aware [6] 13/21 28/6 28/13 45/8 59/4 62/19 axes [1] 42/16</p>
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<p>B</p> <p>besides [2] 10/7 43/9 between [11] 10/6 10/15 12/7 12/21 13/1 14/24 17/24 30/1 33/16 34/22 60/25 billing [1] 12/15 bills [1] 11/23 bit [1] 53/20 Blackford [1] 43/20 blood [1] 64/10 Bob [4] 6/12 6/14 24/22 24/24 bodies [1] 61/21 body [1] 17/15 Boehm [1] 43/12 both [6] 20/7 20/11 21/12 30/11 31/18 38/16 Brad [1] 24/14 branch [2] 14/17 15/7 break [1] 27/16 brief [3] 28/15 49/10 49/11 briefings [1] 62/11 broken [4] 17/2 18/14 18/19 47/2 brought [1] 53/6 Brown [1] 2/9 building [2] 47/3 57/13 business [3] 3/12 6/7 31/11 but [39] 3/22 5/5 6/15 6/24 10/3 10/11 10/20 11/19 12/25 13/13 14/5 14/21 15/19 20/18 21/1 22/2 23/2 29/8 29/16 31/19 37/23 39/10 42/10 43/6 43/25 46/20 46/25 48/7 48/9 48/12 49/14 49/17 50/12 54/22 57/1 57/12 59/1 59/8 62/1 by -- [1] 24/19</p>	<p>CFO [1] 24/14 chain [1] 54/6 chair [2] 58/15 59/18 chairman [8] 7/23 7/25 23/14 23/23 45/13 46/9 60/19 60/19 chairman -- [1] 60/19 change [1] 4/18 changes [1] 35/20 channel [1] 12/24 characterization [1] 40/8 charge [1] 10/5 chief [4] 8/24 9/14 9/22 10/3 chronologically [1] 34/16 chronology [3] 53/14 57/2 59/9 City [3] 2/5 3/3 19/24 classes [1] 50/8 clear [8] 22/2 22/3 30/7 34/9 49/12 50/15 59/9 62/9 clearly [1] 11/13 close [1] 22/5 closed [1] 56/10 collective [1] 17/17 collusive [4] 54/3 58/14 59/12 63/12 come [7] 12/11 14/23 15/18 17/10 25/15 47/13 62/3 comes [1] 62/2 coming [4] 18/7 28/17 28/17 48/23 commence [1] 45/11 comment [1] 45/15 commercial [1] 9/2 commission [77] commission -- [1] 60/18 commissioner [1] 7/15 commissioners [22] 7/5 10/9 15/22 15/24 15/25 16/15 16/21 16/23 17/4 17/18 18/12 18/14 18/17 18/18 18/21 20/14 20/15 20/19 30/11 30/15 32/3 36/24 committee [3] 18/6 23/4 23/22 committees [2] 17/3 18/5 commonly [1] 42/17 Commonwealth [4] 5/9 19/10 19/18 20/6 communicate [3] 8/25 12/13 13/6 communication [11] 12/25 13/1 29/2 30/1 34/10 34/18 34/25 48/23 49/2 49/10 63/6 communication -- [1] 34/25 communications [17] 10/15 10/17 11/19 11/20 12/11 12/21 29/3 29/23 36/20 41/9 41/12 61/16 61/17 61/21 62/6 62/8 62/23 companies [1] 46/25 company [22] 1/6 1/11 4/10 4/24 5/4 5/22 6/25 10/6 10/15 10/21 12/18 12/22 14/3 23/6 25/5 27/7 27/22 28/3 28/6 33/12 35/14 52/18 complaint [5] 12/24 33/19 34/10 34/12 40/20 complaints [1] 13/3 complete [1] 64/9 completing [1] 42/1 complicated [1] 42/15 complicated -- [1] 42/15 component [1] 24/10 comprised [1] 23/23 concept [1] 35/19 concern [3] 9/4 18/22 63/9 concerned [1] 53/17 concluded [4] 56/22 57/7 57/17 63/19 concurrence [1] 22/24 concurrent [1] 15/14 condition [1] 22/16</p>	<p>conditions [3] 1/6 1/11 28/23 conduct [3] 58/20 58/25 59/5 conducted [2] 57/12 62/23 conference [13] 19/15 26/5 26/10 35/11 36/8 37/21 38/2 38/3 40/4 40/11 40/17 53/23 55/15 congressional [1] 17/25 consider [4] 21/24 23/8 24/9 38/12 consideration [2] 22/8 27/12 consolidate [1] 37/15 consolidated [1] 37/2 consolidation [2] 37/10 37/18 consortium [1] 38/16 constantly [2] 28/8 28/22 consultant [1] 24/24 consulting [1] 24/23 consumer [1] 12/21 consumers [1] 12/7 contact [19] 6/6 8/25 9/12 9/13 9/14 10/5 10/8 10/13 10/21 11/7 12/3 13/15 14/24 16/2 17/24 27/13 36/10 36/11 62/3 contact -- [1] 36/10 contested [1] 17/19 continue [2] 45/16 47/3 continued [3] 22/15 59/13 59/25 contract [1] 13/11 contractor [1] 15/2 controversy [1] 33/15 convene [2] 17/5 46/9 convened [1] 45/13 convention [3] 19/5 19/22 30/16 conventions [1] 30/10 conversation [3] 28/15 39/7 61/14 conversations [12] 30/21 37/19 37/24 39/13 39/16 39/19 55/22 55/23 56/3 56/4 61/1 61/11 conversations -- [1] 55/22 Corp [1] 3/19 corporate [5] 4/11 9/9 16/4 24/6 24/6 Corporation [2] 5/1 38/14 correct [24] 15/23 16/2 16/9 16/12 16/13 20/8 30/11 30/12 31/5 31/6 32/25 33/1 33/5 33/20 33/23 34/1 34/13 42/23 47/11 50/17 50/22 57/22 61/19 61/22 correctly [1] 15/21 cost [3] 24/25 25/1 25/14 costs [1] 52/20 could [2] 10/10 25/16 COULTER [4] 1/21 1/21 64/4 64/18 Coulter.LLC [1] 1/24 counsel [7] 2/2 4/11 4/12 22/25 24/1 38/20 62/11 country [2] 17/18 18/14 County [2] 38/18 64/2 course [1] 47/10 courtesy [1] 29/10 Cowan [1] 62/17 cross-examination [4] 26/1 51/15 52/4 56/21 cross-examine [1] 51/18 cross-examined [1] 51/16 culture [1] 62/13 curious [1] 27/3 Currently [1] 3/18 customer [1] 50/8 customers [2] 38/14 40/22</p>
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