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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

ROBERT WATT

JULY 28, 2005

received  
8/9/05  
mrd

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A P P E A R A N C E S

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SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE  
COMMISSION:

JONATHAN D. GOLDBERG  
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FOR THE WITNESS:

DAVID KAPLAN  
Frost, Brown, Todd, LLC  
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400 West Market Street  
Louisville, Kentucky 40202

1  
2                   The sworn statement of ROBERT WATT,  
3 taken in the offices of Goldberg & Simpson,  
4 3000 National City Tower, 101 South Fifth Street,  
5 Louisville, Kentucky, on Thursday, the 28th day of  
6 July, 2005, at approximately 1:05 p.m.

7  
8                                   EXAMINATION

9  
10 BY MR. GOLDBERG:

11                   Q.        Could you state your full name for me.

12                   A.        Robert Watt.

13                   Q.        And your business address?

14                   A.        300 West Vine Street, Suite 2100,  
15 Lexington, 40507.

16                   Q.        All right, sir. And are you a lawyer?

17                   A.        Yes.

18                   Q.        Okay. Who are you a lawyer with?

19                   A.        Stoll, Keenon & Park.

20                   Q.        All right, sir. Are you a -- or do  
21 you practice in the area of public utility law?

22                   A.        Yes.

23                   Q.        All right. And how long have you done  
24 that?

25                   A.        Since 1977.

1 Q. All right, sir. At Stoll, Keenon &  
2 Park?

3 A. Yes.

4 Q. Okay. Is KU, Kentucky Utilities, one  
5 of your clients?

6 A. Yes.

7 Q. And how long have they been one of  
8 your clients?

9 A. They've been a client of my firm for  
10 years, since the '40s, probably. I have actively  
11 performed services in the regulatory area for KU  
12 probably for only about the last two or three years.

13 Q. Okay. What type of services did you  
14 perform for KU before then?

15 A. The first regulatory representation  
16 that I had with Kentucky Utilities was the rate case  
17 which was concluded in 2004. We began working on it  
18 I guess in 2002, so that's when I started working for  
19 KU.

20 Q. All right. What kind of work did you  
21 do before that, or did you do public utility type  
22 work but just not for KU?

23 A. That's correct.

24 Q. All right. Fair enough. Is there a  
25 reason you began in 2002 to work for KU?

1           A.       Well, I'll speculate a little bit for  
2 you.

3           Q.       Yes, sir.

4           A.       I was asked to represent LG&E in a gas  
5 rate case that began in 1999, and that was concluded  
6 in 2000.  When the company decided to file a combined  
7 gas and electric rate case, they asked me to  
8 represent LG&E in connection with really the gas  
9 aspect of it.  As things went along during the course  
10 of the representation, I really formed, with some  
11 lawyers from Ogden, Newell & Welch, sort of into just  
12 a trial team, if you will, and we all shared duties  
13 for both companies.  So that's really how it came  
14 about with KU.

15          Q.       All right, sir.  So that I understand  
16 it, with regard to the two rate cases at issue -- and  
17 the numbers are 2003-00433, commonly referred to as  
18 the LG&E case, and 2003-00434, the KU case -- you  
19 were part of the team and thus you worked on both?  
20 Is that what you're communicating?

21          A.       Yes.

22          Q.       Okay.  Did you have a specific  
23 assigned task?

24          A.       Well, as I said, when it started, my  
25 assignment was to devote most of my attention to the

1 gas rates of Louisville Gas & Electric Company. But  
2 as the progress of the case went along, it became  
3 apparent that we all had to pitch in on all aspects  
4 of it, and we all did.

5 Q. All right, sir. When were you first  
6 asked to participate as a part of the team?

7 A. I think -- I think it was in -- let's  
8 see. It was in the spring of 2003.

9 Q. All right, sir. Do you have a  
10 recollection of that conversation?

11 A. A lawyer, who is no longer with  
12 Louisville Gas & Electric, by the name of Linda  
13 Portasik contacted me and asked me to represent the  
14 company in the rate case.

15 Q. Okay. Now, do you have a recognition  
16 of when the notice to file a rate case was actually  
17 filed?

18 A. It was the end of November, first of  
19 December of '03.

20 Q. Okay. And were you asked to  
21 participate in a matter involving North American  
22 Stainless?

23 A. I did not really work on the North  
24 American Stainless matter, no.

25 Q. Okay. Prior to the filing of the

1 notice, had you begun preparing with regard to the  
2 rate cases?

3 A. Yes.

4 Q. Okay. What kind of activity had you  
5 engaged in?

6 A. We engaged in an analysis of issues.  
7 We engaged in an analysis of the calculations of  
8 revenue requirements. Depreciation was an issue in  
9 the case, and we worked on an analysis of new  
10 depreciation schedules. We worked with witnesses in  
11 the development of testimony. Of course, worked on  
12 drafting the application. It's the usual range of  
13 activities that are necessary to prepare a rate case  
14 for filing.

15 Q. All right, sir. Had you prepared  
16 other rate cases for filing?

17 A. Yes.

18 Q. Okay. How many, the best you can  
19 recollect? More than five?

20 A. Yeah. Oh, yeah.

21 Q. Fair enough. Now, with regard to your  
22 work -- and let's use the notice of filing date in  
23 November of 2003. Did you have -- did you at any  
24 time contact employees of the Public Service  
25 Commission in your work?

1 A. No.

2 Q. Okay. And I trust that you've had  
3 some interaction through the years with members of  
4 the Public Service Commission?

5 A. Yes.

6 Q. Okay. I'm going to ask you some names  
7 specifically and get you to communicate with me. Are  
8 you familiar with Richard Raff?

9 A. Yes.

10 Q. Okay. Prior to notice date, end of  
11 November 2003, did you have any conversations with  
12 Mr. Raff about the rates?

13 A. Oh, no, I did not.

14 Q. About the rate cases.

15 A. No.

16 Q. Okay. Are you familiar with Mr. Isaac  
17 Scott?

18 A. Yes.

19 Q. Okay. Prior to the filing, did you  
20 have any -- or the notice, rather, did you have any  
21 conversations with Isaac Scott about the two rate  
22 cases?

23 A. No.

24 Q. Okay. Jeff Shaw, are you familiar  
25 with him?



1 A. Yes.

2 Q. Okay. Did you have any conversations  
3 with Mr. Jeff Shaw prior to the notice of filing?

4 A. No.

5 Q. Okay.

6 A. Jon, in these questions I'm assuming  
7 that you're asking me about did I have any  
8 conversations about the subject of the rate cases.

9 Q. Yes, that's correct.

10 A. Because I have in connection with  
11 other matters with the commission.

12 Q. I understand that. And I -- my  
13 inquiry is always about the rate cases, Mr. Watt. I  
14 don't want to go beyond that because that's not the  
15 scope of the engagement. But I would in this  
16 question -- period, if you had procedural  
17 discussions, please include those in your response.

18 A. Again, about the rate cases?

19 Q. Yes, sir.

20 A. I will.

21 Q. Okay. And I'm assuming your prior  
22 answers that you had no conversation prior to notice  
23 of filing, you don't want to change that.

24 A. Those answers are correct.

25 Q. All right, sir. Do you know Andrea

1 Edwards?

2 A. No.

3 Q. Do you know Faud Sharifi?

4 A. Yes.

5 Q. Okay. Did you talk to Mr. Sharifi  
6 about the two rate cases prior to notice of filing?

7 A. No.

8 Q. Do you know Martha Morton?

9 A. No.

10 Q. Okay. Now, let me ask you the same  
11 set of questions with regard to the various  
12 commissioners. Do you know Marty Huelsman?

13 A. Yes.

14 Q. Okay. Did you talk to Marty Huelsman  
15 about the rate cases prior to notice of filing?

16 A. No.

17 Q. Okay. Same question with regard to  
18 Gary Gillis.

19 A. I do know him, but I had no  
20 conversations with him prior to the filing of the  
21 rate -- of the notice of the rate cases.

22 Q. All right, sir. How about Chairman  
23 Mark David Goss?

24 A. I do know Mark David Goss, but I had  
25 no conversations with him about the rate cases.

1 Q. And as of that point in time, I do not  
2 think he was a member of the commission.

3 A. That's correct.

4 Q. Okay. All right. Now, let me focus  
5 time frame again. And after the notice of filing,  
6 what did you do with regard to the rate case?

7 A. Well, there was a very active period  
8 of preparing the filings. These were the final  
9 stages of the preparation. And most of the work that  
10 I did was in the drafting and the editing of the  
11 papers that we filed.

12 Q. The petition?

13 A. The applications, as well as the  
14 prepared testimony that was filed with them.

15 Q. Okay. I presume during that period of  
16 time -- and again, I'm -- notice of filing all the  
17 way through first date of hearing, which would be  
18 April 28th, 2004. Can you think of anything else you  
19 did besides what you've already told me with regard  
20 to the rate cases?

21 A. Well, after the rate cases were filed  
22 until the hearing, I participated in the preparation  
23 of responses to data requests and in the preparation  
24 of data requests that we submitted to witnesses for  
25 the interveners. In addition, I participated in the

1 preparation of rebuttal testimony. I participated in  
2 the preparation of witnesses for their testimony. Of  
3 course, I researched issues -- legal issues that  
4 required research. And, frankly, I can't think of  
5 any specific issues now, but I do remember doing  
6 research on the rate case.

7 Of course, I participated in strategy  
8 meetings about positions to take. I participated in  
9 what I call workshop meetings to throw ideas on the  
10 table and make sure that we were considering and  
11 addressing all the issues that were necessary to be  
12 addressed in order to properly present the rate  
13 cases. It was what I recognize as fairly typical  
14 activities in order to get very significant rate  
15 applications ready for hearing.

16 Q. All right, sir. Between the time of  
17 the notice of filing and the actual first date of  
18 hearing, April 28, 2004 --

19 A. Let me mention something to you.

20 Q. Yes, sir.

21 A. I think April 28th was a -- sort of a  
22 prehearing conference. The first day of the actual  
23 hearing was May the 4th, I want to say.

24 Q. That's correct. But what I was  
25 looking for is the first time all parties,

1 interveners --

2 A. Okay.

3 Q. -- LG&E/KU and Public Service

4 Commission staff were all together --

5 A. That would be correct.

6 Q. -- is April 28, 2004. Can you agree  
7 with that date?

8 A. Yes.

9 Q. Fair enough.

10 A. I will say to you, however, I was not  
11 in that conference, but I do know that it occurred.

12 Q. All right, sir. You're like most  
13 lawyers, Mr. Watt. You're anticipating the  
14 questions.

15 A. I'm sorry. I tell my witnesses not to  
16 do that.

17 Q. I thought you'd like me to point it  
18 out to you. It is a statement. It's not a  
19 deposition.

20 A. Okay.

21 Q. But it would be helpful if we process  
22 it that way.

23 A. I apologize.

24 Q. That's all right. That's all right.  
25 It's a normal tendency.

1                   We're back in time now, and I'm  
2 looking at that period between notice of filing and  
3 the first day all parties come to the Public Service  
4 Commission, April 28, 2004. Did you have any  
5 conversations with any members of the staff about the  
6 rate cases during that period of time, that you  
7 recall?

8                   A.       You know, I don't think I did. I  
9 reviewed my records very carefully when Mr. Stumbo's  
10 office submitted the subpoenas to the company, and I  
11 did not find any record of any communications with  
12 anyone at the Public Service Commission when I  
13 reviewed those records.

14                  Q.       Okay. That is the -- any employees,  
15 staff members --

16                  A.       That's correct.

17                  Q.       -- or commission members?

18                  A.       That's correct.

19                  Q.       All right, sir.

20                  A.       And again, this is about the subject  
21 of the rate case.

22                  Q.       Absolutely.

23                  A.       I might have had social contact or  
24 something with some of them, but nothing about the  
25 LG&E/KU rate cases.

1 Q. All right. Are you social friends  
2 with --

3 A. No.

4 Q. -- any of the people?

5 A. No, but we happen sometimes to be in  
6 the same places for social events.

7 Q. Fair enough. Let me ask you, then,  
8 using that same time period, date of -- notice of  
9 filing through April 28, 2004, did you have any  
10 conversations with any of the interveners?

11 A. Yes. I had some conversations with  
12 Betsy Blackford, who is in the rate intervention  
13 department of the attorney general's office,  
14 primarily about discovery issues.

15 Q. Do you know when those would have  
16 occurred?

17 A. Most of the discovery was in January  
18 and February and perhaps early March, so it would  
19 have been during those months. I can't tell you  
20 specifically when I had the conversations with her,  
21 though.

22 Q. All right, sir. And when you say  
23 "discovery," what are you defining for us?

24 A. In a rate case at the Public Service  
25 Commission, there is a procedural schedule that is

1 established. And the procedural schedule calls for  
2 two rounds of data requests to be served upon the  
3 applicant and one round of data request to be served  
4 upon the interveners. Prior to the filing of the  
5 rate case, the commission serves the data request on  
6 the applicants. And what I'm talking about is the  
7 serving and responding to those data requests.

8 Q. Do I understand correctly you would  
9 have been responding to Ms. Blackford about data  
10 requests submitted by the attorney general?

11 A. Yes.

12 Q. All right. And other than  
13 conversation with her, any other conversations with  
14 any other interveners?

15 A. I don't recall any.

16 Q. Okay. For the record, could you tell  
17 us who you believed were the interveners, as best you  
18 can recall?

19 A. The attorney general intervened.  
20 KIUC, which is Kentucky Industrial Utility Customers,  
21 intervened. MHNA, M-H-N-A, POWER, which is all caps.  
22 Community Action Council intervened. The Kentucky  
23 Division of Energy intervened. Kroger intervened.  
24 Ultimately, North American Stainless became a part of  
25 the case, but not by intervention, rather by the



1 consolidation of a proceeding between Kentucky  
2 Utilities and North American Stainless.

3 Q. Do you have a recollection of Fort  
4 Knox having --

5 A. Yeah. The Department of Defense was  
6 an intervener, yes.

7 Q. All right, sir. I think that you've  
8 got all the major groups. Euphemistically I've heard  
9 folks refer to MHNA/POWER and others as low income  
10 advocates.

11 A. That's what I understood them to be,  
12 yes, sir.

13 Q. All right, sir. Now, other than  
14 Ms. Blackford, you had no communication with anyone  
15 until April 28, 2004 about the rate cases.

16 A. When you mentioned Fort Knox, it  
17 reminded me that I may have had a conversation with  
18 Fort Knox's counsel, whose name I can't recall. He  
19 was a lawyer in an office in Alexandria or Arlington,  
20 Virginia, the DC area. And again, it would have been  
21 about some ministerial aspect of the case relating  
22 either to discovery or perhaps whether they were  
23 going to have a witness or something in that nature.

24 Q. Okay. Prior to going to the informal  
25 conference of April 28, 2004, what was your

1 understanding of what was your role to be at the  
2 hearings and possible negotiation sessions?

3 A. Well, first of all, I really did not  
4 participate -- strike really. I did not participate  
5 in any settlement negotiations prior to May 4, 2004.  
6 So I understood that I didn't have a role in  
7 settlement negotiations until we arrived at the  
8 commission for the first day of the hearing.

9 With respect to the conduct of the  
10 hearing, my responsibility was to prepare and be  
11 responsible for the direct examination of certain of  
12 the LG&E/KU witnesses and to prepare to cross-examine  
13 certain witnesses for the interveners, which is what  
14 I did.

15 Q. All right, sir. On April 28th until  
16 May the 4th, 2004, am I understanding that you did  
17 not participate in any discussions with the --  
18 between LG&E/KU and the interveners?

19 A. That's correct.

20 Q. And do I further understand you didn't  
21 participate in any discussions during that same  
22 period about the rate cases with any staff members or  
23 commission members?

24 A. That's correct.

25 Q. Okay. What was your understanding of

1 why your role changed on May the 4th?

2 A. When we -- when the hearing commenced,  
3 settlement discussions were -- they had been taking  
4 place during the April 28 conference. And then I  
5 think there were some conversations between  
6 representatives of all of the various parties through  
7 the course of the weekend. And those settlement  
8 discussions were not concluded, but all the parties  
9 felt that they could be fruitful. So once the public  
10 comment portion of the hearing was concluded, I think  
11 all of the parties asked the commission if we could  
12 adjourn the hearing for the purpose of continuing  
13 settlement negotiations.

14 Q. On May 4th?

15 A. Yes.

16 Q. Yes, sir.

17 A. When that occurred, I was part of the  
18 trial team, if you will, and we all ended up in that  
19 small conference room -- or small hearing room behind  
20 the main hearing room at the commission. And the  
21 LG&E/KU group was in a conference room that was right  
22 across the hall from that. I primarily was in the  
23 conference room, and as -- as things developed during  
24 the course of that day, it became my responsibility  
25 to draft the settlement agreement. So that was

1 really my major role in the settlement discussions  
2 was the drafting of the settlement agreement that  
3 ultimately was executed by the parties.

4 Q. Okay. When do you believe you first  
5 began drafting a settlement agreement? What time of  
6 the day on May the 4th?

7 A. I don't think I started on it until  
8 early to mid afternoon.

9 Q. All right, sir. Now, did you have an  
10 understanding that as of the time you began drafting  
11 that certain items were already agreed by the  
12 parties?

13 A. Well, we had already reached an  
14 agreement with Kroger. And I believe that David  
15 Brown, who was representing Kroger, and I want to say  
16 Kendrick Riggs, who was one of my co-counsel --  
17 Kendrick is from Ogden, Newell & Welch -- on behalf  
18 of LG&E and KU, had put together a settlement  
19 agreement. I don't remember if it was in final form  
20 or not. There was also a settlement agreement that  
21 was in the works in connection with -- senior  
22 moment -- the earnings sharing mechanism. So those  
23 documents were works in progress. And since they  
24 were in existence, being a good lawyer, I took those  
25 documents and used them as the basis to start working

1 up a settlement agreement for the rate case.

2 We wanted to try to get ahead of the  
3 curve so as we reached agreements we could insert  
4 them into the -- sort of the framework of the  
5 agreement, if you will. So that's why I started  
6 doing it. I wanted to have some sort of a document  
7 started so that as we were working along, we could  
8 have something for people to look at and get feedback  
9 to us.

10 Q. Okay. What was your understanding of  
11 the role of the commission during these discussions?

12 A. To my knowledge, the commission  
13 itself -- I mean, the three commissioners had no  
14 goal.

15 Q. All right, sir. How about the staff?

16 A. From my observations, the staff  
17 appeared to be in a role of -- sort of a dual role.  
18 Richard Raff was trying to facilitate the  
19 discussions, not necessarily to a particular point,  
20 but rather to get the parties talking and to also  
21 give the parties input as to the commission staff's  
22 view of particular resolutions of issues.

23 The same -- well, Isaac Scott and Jeff  
24 Shaw were also involved. And I thought what they  
25 were doing was looking at settlement proposals or

1 proposed resolutions of issues and giving us feedback  
2 as to whether these were things that were acceptable  
3 to the staff. They did not engage in negotiations,  
4 as I understand negotiations. It was more an  
5 oversight activity.

6 Q. When you say "acceptable to the  
7 staff," what is your frame of reference?

8 A. Well, if there were issues that we  
9 proposed to resolve in a fashion that was  
10 inconsistent with what the staff understood was the  
11 precedent or the guidance that the staff should  
12 follow, Jeff or Isaac or Richard would let us know  
13 that. And there were -- some of those issues did  
14 come up.

15 Q. Were they serving the same function  
16 with regard to the interveners?

17 A. Yes. When I say "us," I mean all the  
18 parties.

19 Q. Okay. Would you describe their role  
20 as one of mediation?

21 A. It was close to mediation. There was  
22 not the arm twisting that we've come to see in  
23 mediation today. But in terms of serving as a  
24 go-between and carrying messages from one group of  
25 parties to another group of parties, that was

1 occurring primarily with Mr. Raff.

2 Q. All right. Did you have an  
3 understanding on May the 4th what the position of the  
4 attorney general was on rate design as an issue?

5 A. The attorney general's position at the  
6 start of the 4th -- let me strike that.

7 Before we ever had any talks, the  
8 attorney general's position on rate design was for a  
9 rate design that tried to move as much of the rate  
10 increase away from residential consumers as the  
11 attorney general could reasonably argue, and also to  
12 try to keep as small as possible any fixed charges  
13 like reconnection charges, customer charges and the  
14 like. It was the typical attorney general position  
15 on those issues. It was nothing unusual.

16 Q. All right, sir. Did you have a sense  
17 that the parties were in basic agreement on rate  
18 design at the time you started drafting on May the  
19 4th?

20 A. I don't know about when I started  
21 drafting, but as the day came to an end, we did reach  
22 an agreement on it, yes.

23 Q. How about rate allocation, what was  
24 your understanding with regard to the settlement of  
25 the parties' positions on rate allocation? Do you

1 have a sense of that term?

2 A. I don't. Tell me what you mean by  
3 that.

4 Q. That's interesting because Mr. Riggs  
5 used it this morning, and I picked it up. I thought  
6 there were only two issues in a rate case, rate  
7 design and revenue. And he informed me there's a  
8 creature called rate allocation.

9 A. Tell me what Kendrick meant by that.

10 Q. I do not know, so you're --

11 A. I include --

12 MR. KAPLAN: I think he may have meant  
13 what you just understood to be rate design.

14 A. I include probably the content of rate  
15 allocation and rate design.

16 Q. All right, sir. So am I also correct  
17 that there was a fundamental agreement on the revenue  
18 side of the gas component?

19 A. That is correct.

20 Q. Okay. So by the time you started  
21 drafting, what was unresolved between LG&E/KU and the  
22 interveners?

23 A. Well, revenue requirement on the  
24 electric side. When I first started drafting, that  
25 was unresolved. There were some sort of experimental



1 rates and some rates that applied to a few customers,  
2 and I seem to recall that the attorney general was  
3 having a little bit of difficulty with some of the  
4 issues in that. I wasn't talking to the attorney  
5 general about those issues, so I can't remember for  
6 sure. But it seems to me as though issues -- for  
7 example, there was a -- if I'm not mistaken, there  
8 was a time of use pilot -- time of use rate that was  
9 ultimately agreed to. And the division of energy  
10 were the people we were talking to a lot about that.  
11 And I have some recollection that the attorney  
12 general was weighing in and had a position, and I  
13 just don't remember what it was.

14 Q. Okay. At the time you started  
15 drafting on May the 4th, had you come to an  
16 understanding that there was an agreement with the  
17 attorney general or had been an agreement on revenue  
18 requirement on electric sometime prior to May the  
19 4th?

20 A. I don't know.

21 Q. Okay.

22 A. I just don't recall.

23 Q. All right. You don't recall any such  
24 agreement?

25 A. Well --

1 Q. Or understanding. Agreement is a  
2 strong term.

3 A. I understood, as we left the  
4 commission on the 4th, that the attorney general  
5 announced that his office had agreed with the revenue  
6 requirement numbers that ultimately ended up in the  
7 settlement agreement.

8 Q. All right.

9 A. I don't think there was any agreement  
10 prior to late that afternoon. I -- I just don't  
11 remember that.

12 Q. Okay. And prior to leaving on the  
13 4th, you were under the impression that there was an  
14 agreement?

15 A. Yes, I was.

16 Q. Okay. And tell me what was the basis  
17 of your understanding.

18 A. Someone on the KU/LG&E team told me.

19 Q. All right. By way of example, did  
20 Mr. Howard or Ms. Blackford communicate to you  
21 agreement?

22 A. Not to me, no, no.

23 Q. So as I'm envisioning this, you were a  
24 scrivener, Mr. Watt?

25 A. That's pretty much what I was doing on

1 the afternoon of the 4th --

2 Q. All right, sir.

3 A. -- and into the evening, as a matter  
4 of fact.

5 Q. But it was communicated by your  
6 colleagues and teammates that there was an agreement  
7 on revenue requirement.

8 A. That's correct.

9 Q. So as you left on the 4th, were you  
10 thinking that there was agreement on the rate cases,  
11 on all issues between the interveners and LG&E and  
12 KU?

13 A. You know, it seems to me as though  
14 there were still some details that needed to be  
15 ironed out with some of the large use customers, for  
16 example, North American Stainless. But in terms of  
17 the major issues in the rate case, I felt that late  
18 on the afternoon of the 4th the major issues were  
19 settled.

20 Q. All right, sir. Did you continue to  
21 work through the evening on your settlement  
22 agreement, May the 4th?

23 A. Yes, until we got to the point that we  
24 had completed the portions of the agreement as to  
25 those issues that we knew were settled, yes.

1           Q.       All right.  May the 5th, next day,  
2           which would have been Wednesday.

3           A.       Yes, sir.

4           Q.       Okay.  Tell me what transpired from  
5           your viewpoint on Wednesday, the 5th.

6           A.       Well, we were scheduled to have  
7           another session among all the parties in the small  
8           hearing room.  And we were all in that hearing room,  
9           and we were really just talking about details.  And I  
10          can't remember -- I think maybe Dennis Howard was not  
11          in the room, but as we were having discussions he  
12          came into the room and leaned over and said something  
13          that none of us could hear to Betsy Blackford, or  
14          maybe her phone rang.  I can't remember.  But at any  
15          rate I do remember she said, "Hold the phone."  She  
16          said, "We can't go any further."  And in essence she  
17          said they were not authorized to agree to a  
18          settlement of the rate case.

19                   And I think immediately thereafter,  
20          pursuant to a schedule that had been established by  
21          someone, I would assume the commission, we all  
22          assembled in the -- in the main hearing room.  And  
23          the chairman wanted to know the progress of the  
24          settlement discussions, and I believe that Kendrick  
25          Riggs stood up and -- and reported the status of the

1 settlement negotiations.

2           And after that my recollection is that  
3 Richard Raff stood up and stated that he had heard on  
4 the radio, either an interview or a statement by  
5 Mr. Stumbo that he felt that there was collusion  
6 ongoing in the settlement of the rate case and that  
7 there were -- I believe also he mentioned ex parte  
8 contacts had taken place.

9           And the chairman thereupon went around  
10 the room and asked counsel for all of the parties to  
11 state whether or not counsel was aware of any such  
12 collusion or improper contact, and all of the parties  
13 stated that they were not aware. Dennis Howard, from  
14 the attorney general's office, did qualify his  
15 response by stating that he was not in every single  
16 meeting, so he could only speak to the ones that he  
17 attended.

18           Thereafter, we adjourned for more  
19 settlement discussions, and to try to figure out what  
20 to do if the attorney general decided not to  
21 participate in all or part of the settlement.

22           Q.       Okay. What date -- what day are you  
23 speaking of now, the 5th?

24           A.       I think this was the 5th, yes.

25           Q.       Let me refresh your memory and walk

1 back through a couple of things because you covered a  
2 lot of territory here. On the 5th, when you come  
3 back, as I understand what you're telling us, shortly  
4 before you were convened back in session by the  
5 chairman, Ms. Blackford announced that the attorney  
6 general would not agree to the revenue requirement  
7 numbers. Am I correct?

8 A. That's correct.

9 Q. Okay.

10 A. I don't know that she necessarily  
11 mentioned the revenue requirement number  
12 specifically, but the message was she was not on  
13 board with the settlement.

14 Q. All right. And "she" being, she was  
15 representing the attorney general, and that the  
16 attorney general was no longer on board.

17 A. That was my understanding.

18 Q. Okay. That's diametrically different  
19 than what you left with as an impression on the  
20 evening of the 4th, correct?

21 A. That's correct.

22 Q. Okay. As you left on the evening of  
23 the 4th, you thought there was an understanding  
24 amongst all of the parties.

25 A. I did.

1 Q. Okay. Now, you were not part of the  
2 negotiations. The only way that was communicated to  
3 you on the 4th was by your colleagues, correct?

4 A. That's correct.

5 Q. So you had no way of being able to  
6 tell what Ms. Blackford's authority or Mr. Howard's  
7 authority was from the attorney general. Am I  
8 correct?

9 A. That is correct.

10 Q. Okay. Do you recall on the 5th the  
11 attorney general coming to the Public Service  
12 Commission?

13 A. Mr. Stumbo?

14 Q. Yeah.

15 A. Yes, I do.

16 Q. Okay. And do you recall on the 5th --  
17 this would have been the same day Ms. Blackford made  
18 her announcement there was no agreement -- that there  
19 was a meeting sometime after that announcement  
20 between Mr. Riggs, Mr. McCall, the attorney general,  
21 Ms. Blackford and Mr. Howard?

22 A. I recall having been told about that,  
23 yes.

24 Q. All right. And again, I know you're  
25 in the drafting status here and not participating in

1 all the discussions. But do you have a recollection  
2 of that having occurred, this meeting and it being  
3 communicated to you that this meeting occurred?

4 A. Yes, I do have that recollection.

5 Q. Do you recall who told you about the  
6 meeting?

7 A. I don't, no.

8 Q. Okay. Do you have any recollection of  
9 the content of the meeting, what was said in it?

10 A. I do not.

11 Q. Fair enough. Now, after -- well, you  
12 do remember the attorney general coming over, I take  
13 it, then.

14 A. I think he came over that afternoon --

15 Q. Okay.

16 A. -- or very late morning. He was not  
17 there when Richard Raff stood up and announced what  
18 he had heard on the radio.

19 Q. Okay. I'm getting ready to focus that  
20 for you. I think that that occurred on the 6th, not  
21 the 5th.

22 A. Okay.

23 Q. I would ask you to think about that.  
24 Based upon Mr. Raff's statement that he heard on the  
25 radio this morning, all right, remarks by the



1 attorney general and reference that first thing in  
2 the morning of the hearing, does that refresh your  
3 memory that Mr. Raff's colloquy where he asked folks  
4 if they knew anything about collusion ex parte  
5 occurred on the 6th, not the 5th?

6 A. It easily could have been.

7 Q. Fair enough.

8 A. It easily could have been.

9 Q. After the announcement by  
10 Ms. Blackford going back on record, do I take it that  
11 the interveners, LG&E, KU and the staff and the  
12 commissioners engaged in the hearing process for the  
13 remainder of that particular day? I believe it's the  
14 5th, but it's whatever the day was.

15 A. Well, I remember that the hearing  
16 recommenced. And I guess you're right, it probably  
17 was the 5th. And what I remember about the hearing  
18 having recommenced is that we put our witnesses on  
19 and they were cross-examined by the attorney  
20 general's folks, by Ms. Blackford and perhaps  
21 Mr. Howard. And we cross-examined -- I believe it  
22 was three witnesses from the attorney general's  
23 office, maybe four. Personally, I cross-examined two  
24 of the attorney general's witnesses. I do remember  
25 that.

1           Q.       Okay.  Now, was the rest of the  
2 remainder of that day taken up with actual hearing  
3 before the commission?

4           A.       The day that we had the hearing -- and  
5 I'll accept your statement that it was the 5th -- I  
6 think it did take until the end of the day.

7           Q.       All right, sir.  What do you recall --  
8 or what function were you serving in the evening?  
9 Were you working the evening of the 5th?

10          A.       Well, we were -- the LG&E/KU team was  
11 staying at a motel in Frankfort and had arranged for  
12 the use of a meeting room.  And after the hearing was  
13 over, we went back there, although we may have had  
14 some discussions at the commission about settlement.  
15 I just don't remember.

16          Q.       All right.  And again, you were in the  
17 same role.  You were not participating in actual  
18 negotiations.  You were drafting?

19          A.       That's correct.

20          Q.       Okay.  Were you physically located at  
21 the PSC in a different room than the negotiations  
22 were taking place in?

23          A.       For the most part, yes.

24          Q.       Okay.  All right.  The day of the 6th  
25 Mr. Raff comes in and makes his announcement about

1 remarks being made on the radio by the attorney  
2 general. Do you have a vivid recollection of that?

3 A. Oh, yes.

4 Q. You described in detail what  
5 transpired after that. Do you have recognition of  
6 Mr. Riggs also making some remarks after Mr. Raff's  
7 remarks, the chairman's requesting to know if anybody  
8 knew of such kind of activity, ex parte  
9 communication?

10 A. Yes. Mr. Riggs did make some remarks.  
11 I don't remember what they were, but he did.

12 Q. All right. Now, did the hearing  
13 continue on after that exchange?

14 A. I think we adjourned pretty shortly  
15 after that exchange for the purpose of resuming  
16 settlement negotiations.

17 Q. All right, sir. And were the parties  
18 there for the remainder of the 6th?

19 A. I think so.

20 Q. Okay. What was your understanding of  
21 what the position of all the other interveners was as  
22 of the 6th? Were they in agreement with LG&E and KU  
23 on all issues as of -- as of the end of the day on  
24 May the 6th?

25 A. I don't remember exactly when the

1 settlement negotiations were concluded, but the last  
2 two parties, two groups of parties to reach agreement  
3 were North American Stainless and the low income  
4 organizations. Not because there were acrimonious  
5 discussions, but rather because the issues were so  
6 very complicated it took a long time to work them  
7 out.

8 Q. Were those concluded by the close of  
9 business on the 6th, "close of business" being the  
10 close of the negotiation session?

11 A. I just don't remember what date it  
12 was.

13 Q. All right. That would have been --

14 A. That would have been Thursday.

15 Q. Thursday, yes, sir.

16 A. I want to say that was when we  
17 concluded everything.

18 Q. All right, sir. My records indicate  
19 the next time the parties would have been together  
20 was the hearing on May the 12th, six days later.

21 A. Right.

22 Q. Did you attend that hearing?

23 A. I did.

24 Q. All right, sir. Do you recall what  
25 you did on the rate cases in terms of work activity

1 between May the 6th and May the 12th?

2 A. I looked at the settlement agreement  
3 because everybody was supposed to sign it and have it  
4 completely executed by the 12th. And I think there  
5 might have been some final signatures that were done  
6 that morning right before the hearing started. I  
7 think I might have worked with -- strike that. That  
8 was a terrible statement.

9 I think I worked with the company  
10 representatives in connection with developing  
11 testimony to present about the settlement agreement,  
12 which the company did on the 12th.

13 Q. So you were working on that between  
14 the 6th and the 12th?

15 A. Yes.

16 Q. Okay. Let me ask you, between  
17 April 28th and May the 12th, did you have any  
18 communication with any members of the staff of the  
19 Public Service Commission other than in the sessions  
20 that you've described?

21 A. Nothing other than exchanging  
22 pleasantries.

23 Q. All right. And did you have any  
24 communication with commission members about the rate  
25 cases from April 28th through May 12th other than in

1 the process of the hearing?

2 A. No.

3 Q. Okay. May the 12th, tell me what  
4 occurs.

5 A. Well, as I said, I seem to recall that  
6 we gathered in the hearing room No. 2. And we had to  
7 wrap up a few final signatures, it seems to me. The  
8 document was executed in counterpart and then, you  
9 know, the pages assembled. We had that session, got  
10 it finalized. Somebody was attending to getting  
11 copies made and the like. We then began the hearing  
12 during which I think our only witness was Mike Beer,  
13 and we put Mike on the witness stand to have him  
14 testify that he believed that the settlement  
15 agreement was a reasonable settlement and that it  
16 should be approved by the commission.

17 Now, understand the settlement  
18 agreement was not a total settlement agreement. It  
19 was a stipulation -- combination stipulation and  
20 settlement agreement. The attorney general did not  
21 agree with the revenue requirement for -- on the  
22 electric side and did not agree, I believe, on the  
23 depreciation rates. And I think those are the only  
24 two things with which the attorney general did not  
25 agree. So it was a stipulation among all the other

1 parties on those two issues, but not a settlement  
2 agreement.

3 Q. All right. At the close of the  
4 hearing on May the 12th, what was your understanding  
5 of the issues that the commission had to make a  
6 determination on?

7 A. Well, the revenue requirement on the  
8 electric side for both companies.

9 Q. Okay. And anything else?

10 A. Excuse me?

11 Q. They were reviewing the settlement  
12 agreement as a whole, were they not?

13 A. Yes, I'm sorry, they had to do that as  
14 well.

15 Q. Any other outstanding issues?

16 A. Not that I recall.

17 Q. Okay. Now, did you have anything to  
18 do on the rate cases after May the 12th?

19 A. I participated in the drafting of LG&E  
20 and KU's briefs.

21 Q. All right, sir. And when were they  
22 submitted; do you know?

23 A. I can't recall the -- I just don't  
24 recall.

25 Q. Fair enough. Do you recall in the

1 final order -- not final order -- the order of the  
2 Public Service Commission?

3 A. I want to say around June 10th or so.

4 Q. All right, sir. Sometime middle of  
5 June, toward the middle of June?

6 A. (Nods head up and down).

7 Q. Do I take it you had no contact about  
8 the rate cases with any of the commissioners between  
9 final presentation of testimony sometime on May the  
10 12th and the issuance of the ruling in June?

11 A. I had a social contact with Mark David  
12 Goss in the end of May. And, of course, I shook his  
13 hand and asked him how he liked being a commissioner,  
14 because at that point he was still relatively new,  
15 and told him that I appreciated the way that he  
16 conducted the hearing.

17 Q. All right, sir. Anything on the  
18 merits?

19 A. No.

20 Q. Okay. Anything else you remember of  
21 the conversation?

22 A. No, other than just pleasantries. It  
23 was a social setting.

24 Q. All right, sir. Now let me ask you  
25 the same question with regard to staff.



1           A.       I don't think I had contact with any  
2 staff member about LG&E or KU after May the 12th.

3           Q.       All right. So the only communication  
4 you had with either staff or commission member was  
5 the exchange of pleasantries with Chairman Goss?

6           A.       That's correct.

7           Q.       Okay. And was that some sort of  
8 Memorial Day event?

9           A.       It happened to be Memorial Day  
10 weekend. Mr. Goss' wife and I serve on the board of  
11 directors, with about 75 other people, of the  
12 Kentucky Mountain Laurel Festival. And it was at a  
13 director's dinner for that organization where I saw  
14 him.

15          Q.       All right, sir. In your time and  
16 experience in these two rate cases, did you ever  
17 witness what you thought was an ex parte  
18 communication by any of the parties?

19          A.       No.

20          Q.       And while the term "collusion" is a  
21 subjective term, at any time in your time and  
22 experience in the two rate cases did you witness  
23 anything that you thought was collusive behavior?

24          A.       No.

25          Q.       Okay. And let me finally ask you with

1 regard to the use of the term "inappropriate," which  
2 is also a subjective term, did you see or witness  
3 anything in your time and experience in the two rate  
4 cases that you thought was inappropriate behavior?

5 A. To the extent that the attorney  
6 general renigged on the settlement agreement, I felt  
7 that that was inappropriate. But other than that, I  
8 saw none.

9 Q. All right, sir. Are you familiar with  
10 the case of Cowan versus LG&E?

11 A. Yes.

12 Q. Okay. And I take it you are thus  
13 familiar with the tenets regarding ex parte  
14 communication?

15 A. I am.

16 Q. All right. And how do you incorporate  
17 those tenets in your practice before the Public  
18 Service Commission?

19 A. I simply do not -- now you're talking  
20 about my particular --

21 Q. Yes, sir.

22 A. My personal contact?

23 Q. Yes.

24 A. All right.

25 Q. And with specific reference to how you

1 would have used those tenets and your understanding  
2 of them in this particular -- these two rate cases.

3 A. Well, I take a -- maybe an extreme  
4 approach. I make sure that I have as little contact  
5 with members of the commission and its staff as I  
6 can. And when I do have a contact with those  
7 persons, I make very sure that I do not talk about  
8 the substance, much less the merits of any proceeding  
9 in which I'm representing a party before the Public  
10 Service Commission.

11 Q. Okay. And I trust you -- you  
12 conducted yourself that way with regard to these two  
13 rate cases.

14 A. Yes, sir.

15 Q. And with regard to your powers of  
16 observation, did you believe that the interveners and  
17 LG&E/KU team members also conducted themselves that  
18 way?

19 A. Absolutely.

20 MR. GOLDBERG: Okay. That's all I  
21 have, Mr. Watt. Thanks much.

22 THE WITNESS: Okay.

23 (STATEMENT CONCLUDED AT 1:55 P.M.)

24 \* \* \*

25

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 8th  
14 day of August, 2005, at Louisville,  
15 Kentucky.



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18 ELLEN L. COULTER  
NOTARY PUBLIC  
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I, the undersigned, ROBERT WATT, 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.

*Robert Watt*

ROBERT WATT

Subscribed and sworn to before me this 7<sup>th</sup>  
day of September, 2005.

*Kevin A. Kemp*  
NOTARY PUBLIC

My commission expires 12-19-2008

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LOUISVILLE, KY 40203

ERRATA SHEET

NAME Robert Watt DATE OF DEPOSITION July 28, 2005

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

Page 21 Line 14  
Change "goal" should be "role"  
Reason for change \_\_\_\_\_

Page 42 Line 6  
Change "renigged" should be "renege"  
Reason for change \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_  
Change \_\_\_\_\_  
Reason for change \_\_\_\_\_

Page \_\_\_\_\_ Line \_\_\_\_\_  
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Reason for change \_\_\_\_\_

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-	analysis [3] 7/6 7/7 7/9 and -- [1] 28/25 Andrea [1] 9/25 announced [3] 26/5 30/5 32/17 announcement [4] 31/18 31/19 33/9 34/25 another [2] 22/25 28/7 answers [2] 9/22 9/24 anticipating [1] 13/13 any [40] 7/23 8/11 8/20 8/20 9/2 9/7 12/5 14/4 14/5 14/11 14/11 14/14 15/4 15/9 15/10 16/13 16/14 16/15 18/5 18/17 18/21 18/22 23/7 23/12 25/23 26/9 28/14 28/16 29/11 32/8 37/17 37/18 37/23 39/15 40/8 41/1 41/18 41/21 43/8 44/10 any -- [1] 8/20 anybody [1] 35/7 anyone [2] 14/12 17/14 anything [8] 11/18 33/4 39/9 39/17 40/17 40/20 41/23 42/3 apologize [1] 13/23 apparent [1] 6/3 appearances [1] 44/5 appeared [1] 21/17 applicant [1] 16/3 applicants [1] 16/6 application [1] 7/12 applications [2] 11/13 12/15 applied [1] 25/1 appreciated [1] 40/15 approach [1] 43/4 approved [1] 38/16 approximately [1] 3/6 April [12] 11/18 12/18 12/21 13/6 14/4 15/9 17/15 17/25 18/15 19/4 37/17 37/25 are [15] 3/16 3/18 3/20 5/17 7/13 8/7 8/16 8/24 9/24 15/1 15/23 29/22 38/23 42/9 42/12 area [3] 3/21 4/11 17/20 argue [1] 23/11 Arlington [1] 17/19 arm [1] 22/22 around [2] 29/9 40/3 arranged [1] 34/11 arrived [1] 18/7 as [49] as -- [1] 19/23 ask [7] 8/6 10/10 15/7 32/23 37/16 40/24 41/25 asked [9] 5/4 5/7 6/6 6/13 6/20 19/11 29/10 33/3 40/13 asking [1] 9/7 aspect [2] 5/9 17/21 aspects [1] 6/3 assembled [2] 28/22 38/9 assigned [1] 5/23 assignment [1] 5/25 assume [1] 28/21 assuming [2] 9/6 9/21 at [28] 3/6 4/1 5/16 7/23 14/2 14/12 15/24 18/1 18/7 19/20 21/8 21/25 23/5 23/18 25/14 28/14 34/11 34/14 34/20 37/2 39/3 40/14 41/12 41/21 43/23 44/4 44/5 44/14 attend [1] 36/22 attended [1] 29/17 attending [1] 38/10 attention [1] 5/25 attorney [30] 15/13 16/10 16/19 23/4 23/5 23/8 23/11 23/14 25/2 25/4 25/11 25/17 26/4 29/14 29/20 30/5 30/15 30/16	31/7 31/11 31/20 32/12 33/1 33/19 33/22 33/24 35/1 38/20 38/24 42/5 authority [2] 31/6 31/7 authorized [1] 28/17 aware [2] 29/11 29/13 away [1] 23/10
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