

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

The Application of Kentucky Power)
Company to Withdraw Its Tariff RTP)
Pending Submission by the Company) Case No. 2012-00226
And Approval by the Commission of)
a New Real-Time Pricing Tariff)

* * * * *

Notice Of Filing Of Transcription.

Kentucky Power hereby files a transcription of the November 1, 2012 proceedings in this matter. The transcription was prepared from the video recording by Karen Sue Gibson, Court Reporter.

Respectfully submitted,



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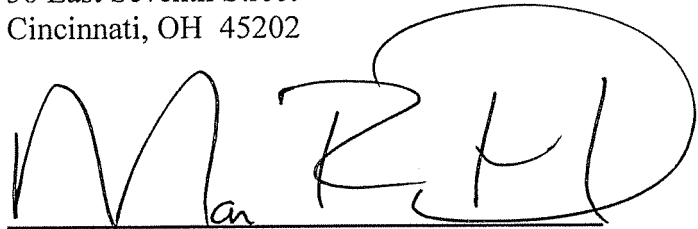
COUNSEL FOR KENTUCKY POWER
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by first class mail, postage prepaid upon the following party of record and the Attorney General, this 21st day of November, 2012.

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A handwritten signature in black ink, appearing to read "Mark R. Overstreet". The signature is written in a cursive style with large, bold letters. The "M" and "R" are particularly prominent. The signature is written above a horizontal line.

Mark R. Overstreet

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BEFORE THE COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

- - -

In the Matter of: :
: :
Application of Kentucky :
Power Company to Withdraw :
Its Tariff RTP Pending : Case No. 2012-00226
Submission By The Company :
and Approval By The :
Commission Of A New :
Real-Time Pricing Tariff. :

- - -

PROCEEDINGS

before Mr. David Armstrong, Mr. Jim Gardner, and Ms.
Linda Breathitt, Commissioners, at the Commonwealth
of Kentucky, 211 Sower Boulevard, Frankfort, Kentucky
called at 10:18 a.m. on Thursday, November 1, 2012.

- - -

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KIUC Exhibit	Identified	Admitted
1 Unanimous Settlement Agreement	15	95
2 Direct Testimony of Ranie K. Wohnhas, 6-1-12	18	95
3 Tariff RTP, Original Sheet No. 30-1, P.S.C. Electric No. 8, Filed 6-1-2008	21	95

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4	Excerpt from PSC Order in Case No.009-00459	29	95
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6	Tariff R.T.P., 2nd Revised Sheet No. 30-1, Canceling 1st Revised Sheet No. 30-1, P.S.C. Electric No. 9, Filed 7-1-2012	33	95
7			
8	Letter from Mark Overstreet to the Commission with Attachment KPSC Case No. 2007-00166, 2011 Annual Report, Item No. 10	35	95
9			
10	12-16-11 Letter from Mark Overstreet to the Commission with Attachment Real-Time Pricing Program Evaluation Report	37	95
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12	August, 2012, Financial Report Pages for Kentucky Power Company	45	95
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14	Kentucky Power Company, 2012, Third Quarter Report, Financial Statements	46	95
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16	Regulatory Research Associates, Regulatory Focus, 10-4-12	49	95
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Ky Power Exhibit Identified Admitted

1	Pre-Filed Testimony of Errol K. Wagner Dated 5-20-10 in PSC Case No. 2009-00459	94	120
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PSC Exhibit	Identified	Admitted
1 Tariff Q.P., Original Sheet No. 10-1, PSC Electric No. 9 and Tariff C.I.P.-T.O.D., Original Sheet No. 11-1, PSC Electric No. 9, Filed 6-29-2010	62	120

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Thursday Morning Session,
November 1, 2012.

- - -

VICE CHAIR GARDNER: My name is Jim Gardner, and I'll be conducting the hearing this morning. And with me is our Chairman, Dave Armstrong, and Commissioner Breathitt.

Could I have appearance of counsel, please.

MR. OVERSTREET: Certainly. I'm Mark Overstreet with the law firm of Stites & Harbison. My office is located here in Frankfort at 421 West Main Street. And I'm appearing on behalf of Kentucky Power Company.

MR. KURTZ: Good morning, Commissioners. Mike Kurtz and Jody Kyler for KIUC. The KIUC companies comprised here are Marathon Petroleum, AK Steel, Air Products and Chemicals, Air Liquide, and EQT Corp. Thank you.

COMMISSIONER BREATHITT: Is Judy just behind you?

MR. KURTZ: Yes, she is.

MS. BURNS: I'm Faith Burns with Commission Staff.

1 VICE CHAIR GARDNER: I neglected to
2 actually to state the Case No. which is 2012-00226
3 which is the Application of Kentucky Power Company to
4 Withdraw Its Experimental Real-Time Pricing Tariff As
5 Well As Its Application for Approval of Its
6 Experimental Real-Time Pricing Rider Contingent Upon
7 The Commission's Approval of the Company's
8 Application to Withdraw Its Experimental Real-Time
9 Pricing Tariff.

10 Is there any public comment on this
11 matter? Was notice given?

12 MR. OVERSTREET: Yes, your Honor, and it
13 was filed of record end of last week.

14 MS. BURNS: And it was -- it was
15 adequate, your Honor.

16 VICE CHAIR GARDNER: Are there any
17 outstanding motions?

18 MR. KURTZ: Yes, there is, your Honor,
19 KIUC. On June 1 of this year, Kentucky Power gave
20 notice it was going to file a docket to eliminate
21 tariff RTP. Upon getting that notice Marathon
22 Ashland sent a letter into the executive director,
23 and on June 7, KIUC filed a motion to dismiss.

24 What we alleged as a matter of law in

1 that motion to dismiss is that in Kentucky Power's
2 last rate case there was an agreement, a unanimous
3 agreement, settlement agreement, approved by the
4 Commission where the tariff RTP would be extended for
5 a three-year period. ---

6 The June pleadings of Kentucky Power
7 seeking to terminate the tariff RTP early and to
8 replace it with the rider we've asserted as a matter
9 of law is a violation of the settlement agreement and
10 the Commission order. So we moved to dismiss this
11 case on that grounds.

12 We recognized in that pleading that under
13 the Mobile-Sierra Doctrine the Commission does have
14 the authority to change settlement agreements when
15 it's in the public interest. But because the outcome
16 of this case will have no effect on other consumers,
17 because this is a one-time, nonrecurring revenue loss
18 or revenue gain, we don't believe the public interest
19 standard has been met at all.

20 Now, we have no problem with this case
21 going forward on the question of should the rider be
22 put in place with the tariff so that there is a
23 choice between the two, but on the question of
24 whether the tariff should be terminated before the

1 settlement agreement, before the three-year period,
2 which runs until June of next year, it is our opinion
3 that that's -- that this case is a violation as a
4 matter of law of the -- of the settlement agreement
5 and that part of the case should be dismissed, so we
6 renew that motion at this time.

7 VICE CHAIR GARDNER: Mr. Overstreet, you
8 are welcome to respond, if you like, but we will take
9 this motion under advise -- under advisement and
10 decide at the same time as the rest of the case. You
11 are welcome to make an argument now, if you would
12 like.

13 MR. OVERSTREET: Your Honor, we -- we
14 addressed Mr. Kurtz's motion back in June of this --
15 this year. I won't repeat those arguments here. One
16 thing that we were going to ask at the conclusion of
17 the hearing is if we could file briefs in this
18 matter, and we would like the opportunity to further
19 address that in the brief, if it's necessary.

20 VICE CHAIR GARDNER: Yeah. I mean,
21 unless everything ends up crystal clear at the end of
22 the day, I can't believe that we wouldn't allow a
23 briefing schedule because there is so many legal
24 issues involved in this case so.

1 Ms. Burns.
2 MS. BURNS: Yes, your Honor. I have a
3 personal matter that I need to disclose, if we're at
4 that point.

5 VICE CHAIR GARDNER: Would you wait just
6 one moment.

7 Were there any other motions?

8 MR. OVERSTREET: Your Honor, I don't have
9 a motion. There were two things I would like to
10 bring to the attention of the Commission and the
11 parties.

12 And the first is that Mr. Polly whose the
13 president and chief operating officer of the company
14 intended to be here today. Unfortunately he had
15 surgery last week and has not returned to work. And
16 he wanted the Commission to know that but for that he
17 would have been here today.

18 The second matter is a personal matter
19 and that is I've been enjoying a dry hacking cough
20 for the last three weeks, and it causes me to
21 strangle when I speak a lot so I'll -- it sounds like
22 I'm harrumphing; I'm not. I'm just trying to catch
23 my breath so I apologize for that.

24 VICE CHAIR GARDNER: I guess Mr. Kurtz

1 would like it if you couldn't talk. Witnesses as
2 well.

3 Any other preliminary?

4 MR. OVERSTREET: Nothing else, your
5 Honor.

6 VICE CHAIR GARDNER: Counsel.

7 MS. BURNS: Yes, your Honor. It so
8 happens that my mother owns property and one of the
9 Marathon entities has an easement and a pipeline over
10 that property. I have no ownership of the property.

11 Yesterday I'm told that a representative
12 of Marathon showed up at my mother's home, and I live
13 there as well. I was not there when he showed up,
14 but apparently the gentleman wants to speak with my
15 mother about her particular Marathon situation. And
16 my mother wants me to be there when she discusses
17 that with him.

18 So I disclosed that to counsel yesterday,
19 asked if they had a problem with my continued
20 participation in the case. They indicated they did
21 not, but I just want to make that known in open forum
22 that if anyone has a problem with my continued
23 participation.

24 VICE CHAIR GARDNER: Does anybody have

1 any objection?

2 MR. OVERSTREET: No, your Honor, no
3 objection.

4 VICE CHAIR GARDNER: Mr. Kurtz?

5 MR. KURTZ: No objection.

6 VICE CHAIR GARDNER: Any further
7 preliminary matters?

8 MS. BURNS: We just -- in addition to the
9 outstanding motion that Mr. Kurtz indicated, we have
10 a few confidentiality petitions that still remain to
11 be addressed in this case.

12 VICE CHAIR GARDNER: (Inaudible) later.
13 Okay.

14 Counsel.

15 MR. OVERSTREET: We would call Mr. Ranie
16 Wohnhas, please.

17 (Witness sworn.)

18 VICE CHAIR GARDNER: Please have a seat.
19 State your full name, please.

20 MR. OVERSTREET: Mr. Wohnhas.

21 VICE CHAIR GARDNER: State your full
22 name, please.

23 THE WITNESS: My name is Ranie Wohnhas.

24 VICE CHAIR GARDNER: And with whom are

1 you employed?

2 THE WITNESS: I'm employed with Kentucky
3 Power Company.

4 VICE CHAIR GARDNER: And what is your
5 business address, please?

6 THE WITNESS: 101A Enterprise Drive here
7 in Frankfort, Kentucky.

8 VICE CHAIR GARDNER: And your position
9 with Kentucky Power Company?

10 THE WITNESS: I'm the managing director
11 of regulatory and finance.

12 VICE CHAIR GARDNER: You may proceed.

13 MR. OVERSTREET: Thank you, your Honor.

14 - - -

15 RANIE WOHNHAS

16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Overstreet:

20 Q. Mr. Wohnhas, do you cause to be filed in
21 this -- excuse me -- proceeding three sets of
22 testimony and three -- and also data request
23 responses?

24 A. Yes, I -- yes, I did.

1 Q. Do you have any changes, additions, or
2 corrections to those?

3 A. I do not.

4 MR. OVERSTREET: The witness is available
5 for cross-examination, your Honor.

6 MR. KURTZ: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Kurtz:

10 Q. Good morning, Mr. Wohnhas.

11 A. Good morning, Mr. Kurtz.

12 Q. Tariff RTP has been on the books of
13 Kentucky Power for approximately how long?

14 A. Approximately four years.

15 Q. Okay. And that tariff is currently in
16 effect?

17 A. Yes, it is.

18 Q. And, right now, you have 10 customers on
19 that tariff; is that correct?

20 A. That is correct.

21 Q. Okay. Now, you've filed -- or Kentucky
22 Power filed on June 1 a notice that you wanted to
23 terminate that tariff RTP and replace it with rider
24 RTP; is that correct?

1 A. That is correct.

2 Q. And the rider is considerably different
3 than the tariff.

4 A. It is different than the tariff, yes.

5 Q. Okay. Mr. --

6 MR. KURTZ: Your Honor, if I could have
7 marked as KIUC No. 1.

8 MR. OVERSTREET: Mike.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Wohnhas, were you employed by
11 Kentucky Power on May 20, 2010?

12 A. I was.

13 Q. Okay. Were you involved in the rate case
14 negotiations in Kentucky Power's last rate case?

15 A. I was not.

16 Q. Okay. Are you aware of provision 9A of
17 that settlement agreement that is on page 11?

18 A. I'm aware of that provision, yes.

19 Q. Okay. Could you read paragraph 9 -- 9A,
20 please.

21 A. "The existing RTP tariff shall be
22 extended for an additional three-year period.
23 Further, the tariff shall be amended to permit
24 customers to enroll at any point during a year for a

1 minimum 12 consecutive month period."

2 Q. Okay. When would that three-year period
3 end?

4 A. The three-year period as was filed in the
5 negotiated settlement and documents was June, 2013.

6 Q. June, 2013: Now, will you turn to the
7 next page here of this KIUC No. 1. Do you see the
8 highlighted paragraphs?

9 A. Yes, I do.

10 Q. Okay. Have you read those paragraphs
11 before that -- essentially where all the parties to
12 the settlement agreement pledge that they'll support
13 the settlement agreement?

14 A. I have.

15 Q. Okay. Do you think that Kentucky Power's
16 effort to terminate tariff RTP before the three-year
17 period is consistent with your pledge to support all
18 the terms and conditions of the settlement agreement?

19 A. Yes, I do.

20 Q. Okay. Why is that? How is that?

21 A. The settlement agreement is in any type
22 of -- is, you know, is a deal between all the parties
23 that both must agree to and do their part of that
24 deal. And in this case the company is of the opinion

1 that the KIUC, the customers that they represent,
2 have not held up their part of the bargain of that
3 deal and the fact of -- in the -- being on the tariff
4 RTP that they are not switching, managing load to
5 lower price periods and, thus, was the purpose of
6 issuing the rider RTP as a way of still keeping the
7 realtime pricing as an alternative as we felt the
8 Commission wanted to do going back to the order in
9 2007 and, thus, you know, we provided an alternative.

10 Q. Let me ask you again, you -- Kentucky
11 Power pledged that it would keep tariff RTP in place
12 until June of next year, yet you've proposed to
13 terminate it early. And as I understand it, you
14 believe that's consistent with the settlement
15 agreement because you think the KIUC customers on
16 tariff RTP are not complying with the tariff?

17 A. That is correct.

18 Q. Okay. Don't you agree that that tariff
19 gives the customers essentially the choice between
20 the mark -- the cost-based rate or market-based rate?

21 A. No. The purpose of the tariff is as is
22 explicit in there is to switch or to manage their
23 load to lower price periods when they are using
24 real-time pricing and that is not happening.

1 Q. Well, let me ask you --

2 MR. KURTZ: Let me have -- this is --
3 this is already in the record but I'll have it marked
4 as KIUC No. 2 anyway for ease of reference.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 COMMISSIONER BREATHITT: Is this two?

7 MR. OVERSTREET: Can I have two? Thank
8 you. I forgot.

9 Q. (By Mr. Kurtz) Now, this is an excerpt
10 from your June 1 testimony. Do you recognize that?

11 A. I do.

12 Q. Do you see the part that I've
13 highlighted?

14 A. Yes, I do.

15 Q. Can you read that? Can you read that
16 portion of your testimony?

17 A. "The current tariff effectively allows
18 customers to choose between the lower of cost-based
19 rates and market-based rates which was neither the
20 company's nor the Commission's intent when the
21 experimental tariff was approved."

22 Q. So as I read your testimony, the
23 customers -- since the tariff gives the customers the
24 choice between a cost-based rate or a market-based

1 rate, which is what you've testified to, how is it
2 inconsistent with the tariff if they choose market
3 pricing?

4 A. What they're not doing is they are not
5 shifting load. Part of the -- the requirements of
6 the tariff RTP is that they shift their load to take
7 advantage in order for -- to be able to understand
8 the purpose of -- of doing that real-time pricing was
9 to see if customers could and what benefits would
10 happen if they were to shift their load.

11 Q. Now, we'll get into this in greater
12 detail later, but do you understand that the
13 utilities of this commonwealth have to all file
14 copies of their tariffs -- written copies of their
15 tariffs with the Commission? You understand that,
16 correct?

17 A. Yes, sir.

18 Q. Okay. Do you think that it is the words
19 of the tariff that govern what the utility intended
20 those words to mean that are -- that is operative for
21 rate making purposes?

22 MR. OVERSTREET: Your Honor, I'm going to
23 object to the question to the extent it calls for a
24 legal conclusion, but Mr. Wohnhas may go ahead and

1 answer.

2 VICE CHAIR GARDNER: You may proceed.

3 A. Could you restate it, please?

4 Q. Let me start again. Do you know how many
5 utilities the Commission regulates?

6 A. No.

7 Q. Okay. Would you accept, subject to, 25
8 electric, 70 something sewer, numerous water
9 companies, well over 100?

10 A. I know they have a lot, yes.

11 Q. Do you understand that all those
12 utilities have tariffs, lawful tariffs, on file?

13 A. Yes, I do.

14 Q. Do you understand that the statutes
15 require that the utilities have tariffs on file?

16 A. Yes, I do.

17 Q. Okay. Now, do you think it is a -- the
18 words of the tariff govern the rate making process or
19 what the utilities intended those words to mean that
20 govern?

21 A. Well, again, I'm not a legal expert on
22 that at all but, you know, it's -- I guess I would
23 say that's to the -- to the Commission as to how they
24 interpret the words or the intent as they are filed

1 and as they are used in each of the utilities.

2 Q. So you think it would be a workable
3 process for the Commission to every time somebody has
4 a question about what the tariff means, instead of
5 reading the words, go back to the utility and ask
6 them what the utility meant?

7 A. I don't know that I have an answer to
8 that.

9 MR. KURTZ: Okay. Let me have marked as
10 KIUC No. 3.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Do you recognize this as tariff RTP?

13 A. Yes, I do.

14 Q. Okay. Was this the tariff RTP that was
15 in effect at the time the settlement agreement in the
16 last rate case was entered into?

17 A. Yes, it would have been.

18 Q. Okay. And was this the tariff RTP that
19 Kentucky Power pledged would be in existence -- or
20 would be extended for three additional years?

21 A. This was the tariff that was in effect at
22 that time, yes.

23 Q. Well, when Kentucky Power agreed that the
24 existing RTP tariff shall be extended for an

1 additional three-year period, is this the tariff RTP
2 that shall be extended for three years?

3 A. Well, I think if you go to the prefiled
4 testimony of Errol Wagner in Exhibit 3 of his -- of
5 the settlement where it's for on behalf of the
6 supporting the unanimous settlement agreement.

7 VICE CHAIR GARDNER: Mr. Wohnhas, you
8 said the prefiled testimony of Errol Wagner.

9 THE WITNESS: In case 2009-00459. I'm
10 sorry. I wasn't explicit. I'm sorry. It was what
11 was filed in support of the unanimous settlement
12 agreement.

13 A. If you were to go to the tariff that's
14 filed in there, you will notice that what was being
15 filed as part of the case was slightly different than
16 what you just have shown me, Mr. Kurtz.

17 Q. Was this -- when Kentucky Power agreed in
18 the last rate case that the existing tariff RTP would
19 be extended for an additional three-year period, when
20 I -- when I asked the Commission docketing people to
21 provide the RTP tariff that was in effect on May 20,
22 2010, this is the -- this is the tariff they gave me.
23 Is this not the tariff that was extended?

24 A. It is -- was the tariff. I'm just

1 telling you as part of what was filed with the
2 unanimous settlement agreement; there were changes to
3 some rates as well as to some -- to some text.

4 Q. Well, there was a little bit of change to
5 allow customers to get on the tariff at any time
6 rather than a one time, right? Is that what you are
7 referring to?

8 A. And that's what I'm --

9 Q. Okay.

10 A. Because it is slightly different than
11 what you have given me.

12 Q. Yeah, but this was -- this was the RTP
13 tariff in effect at the time the rate case was
14 settled in May of 2010, correct?

15 A. Correct.

16 Q. Okay. Now, when we read the first
17 highlight I put there, "the customer will pay
18 real-time prices for load in excess of an amount
19 designated by the customer." Do you see that?

20 A. Yes, I do.

21 Q. Okay. Now, real-time prices for purposes
22 of this tariff essentially means the PJM[®] market
23 price, correct?

24 A. That's absolutely, yes.

1 Q. Now, this program description is -- let
2 me read this to you because this is probably the more
3 operative part of the tariff that we're debating,
4 isn't it, this program description?

5 A. It's part of what's being discussed, yes.

6 Q. Okay. "The experimental real-time
7 pricing tab is voluntarily, will be offered on a
8 pilot basis for a three-year period." So this was
9 going to extend -- this was going to terminate, I
10 mean, but for the settlement in the rate case,
11 correct?

12 A. That is correct.

13 Q. Okay. So part of the settlement --

14 A. I will say unless there would have been
15 some other type of request to extend it, it was
16 scheduled to terminate.

17 Q. Okay. This experimental pilot program
18 was going to terminate, and we extended it for three
19 years in the rate case settlement, correct?

20 A. We extended it until June of 2013.

21 Q. Okay. And this is the tar -- okay. Now,
22 it goes on to say "The RTP tariff will offer
23 customers the opportunity to manage their electric
24 cost by shifting load from higher cost to lower cost

1 pricing periods or by adding new load during lower
2 priced periods. The experimental pilot will also
3 offer the customer the ability to experiment in the
4 wholesale electricity market by designating a portion
5 of the customer's load subject to standard tariff
6 rates with the remainder of the load subject to
7 real-time pricing." Now, what does that second --
8 what does that second sentence mean to you, that
9 you'll also offer the customer the option of market
10 pricing? What does the word "also" mean to you in
11 that context?

12 A. Okay. You said the second sentence, but
13 you're talking from the third sentence.

14 Q. Okay.

15 A. Which one -- I just need to know which
16 one you're referring to.

17 Q. The sentence that says it will also offer
18 the customer the option of market pricing. What does
19 that sentence mean to you?

20 A. Well, at the time that that was written
21 it is my understanding that we thought that you --
22 the company would be able to carve out specifically
23 for the industrial customers who would be on
24 real-time pricing the amount of the wholesale energy

1- market specifically to them, and as we answered in a
2 data request, that that was not able to happen. It
3 was something we thought we could do, and we were not
4 able to do that.

5 Q. Now, you're -- you're billing EQT, Air
6 Products -- EQT has seven accounts on your real-time
7 pricing right now, does -- does it not?

8 A. That is correct.

9 Q. Okay. Marathon Petroleum, Air Products,
10 and AK Steel are all on this tariff right now.

11 A. That is correct.

12 Q. Okay. And you're billing them market
13 pricing like right -- right now, correct?

14 A. We're billing them the -- what the LMP
15 prices are at PJM at the hourly timeframes during the
16 month.

17 Q. Okay. So you know how to bill them
18 market pricing under this tariff. And, in fact, all
19 this discovery, all this correspondence back and
20 forth since about 2008 or '9 when you ran various
21 scenarios, how much it would cost under this -- under
22 the tariff, what the market price would be, you know
23 how to bill them under market pricing, correct? And
24 you're doing it right now, aren't you?

1 A. That's correct.

2 Q. Okay. Now, what we're -- what we're
3 really talking about in this case is whether or not
4 this will go on for an -- an additional nine months
5 or whether it will be terminated early; isn't that
6 what we're really talking about in this case?

7 A. I think that's the option that we've got
8 out there is, yes, basically.

9 Q. Essentially our position is we should
10 have this -- this rate in effect for the three-year
11 period that was agreed to in the settlement
12 agreement, and essentially you're saying that it's
13 contrary to the intent of the tariff and you want to
14 terminate it early. That's -- is that what's going
15 on?

16 A. Well, I mean, it is explicit in here is
17 that in order to be on the tariff and to -- the
18 purpose of the tariff was to shift and see the
19 customers shifting load and that's not happening. So
20 we really had the option of either terminating them
21 by seeing that the customers that are -- those 10
22 customers that are not on there. Or the other option
23 we chose to do was to unveil the rider RTP as another
24 alternative that under the rider RTP if a customer so

1 chooses to do nothing as what is happened in the
2 tariff RTP, they are -- other than slight changes in
3 their billing would be relatively the same.

4 But if they chose to shift load, they
5 could have the opportunity of getting a benefit which
6 seemed to fit more what the actual customers chose to
7 be on tariff RTP were wanting to do.

8 Q. Now, if the Commission reads the sentence
9 that says "The experimental pilot will also offer the
10 customer the ability to experiment in the wholesale
11 electricity market by designating a portion the
12 customer's load subject to standard tariff rates with
13 the remainder of the loads subject to real-time
14 prices," if the Commission reads that sentence as
15 giving customers the option of market pricing without
16 load shifting, then your -- then those specific words
17 would govern over your intent. Do you agree?

18 A. You're going to have to -- you lost me in
19 that question, I'm sorry.

20 Q. If the Commission determines that the
21 actual words of the lawful rate is inconsistent with
22 your intent, what would govern? Your intent or the
23 actual words?

24 A. Again, that's a -- all I can answer to

1 that is from the standpoint of, as in any document,
2 from a word standpoint you put together what you
3 think is necessary to get your -- your intent across
4 and so I -- legally I don't know that I can sit here
5 and say what is the governing, the words or the
6 intent.

7 Q. Okay.

8 A. I'm not the legal expert.

9 MR. KURTZ: Your Honor, if I could have
10 marked as KIUC No. 4.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Do you recognize this as the cover page
13 of the Commission order approving the settlement
14 agreement in the last Kentucky Power rate case?

15 Mr. Wohnhas?

16 A. I'm.

17 Q. I'm sorry.

18 A. Yes.

19 Q. Okay. Now, Kentucky Power got benefits
20 out of this settlement agreement, did it not?

21 A. When you say they got benefits.

22 Q. Well, I mean, otherwise you wouldn't have
23 agreed presumably. I mean, you got a \$63.66 million
24 rate increase that was agreed to by the parties

1 unanimously and approved by the Commission, correct?

2 A. Yes.

3 Q. Okay. You got a 10-1/2 percent return on
4 equity on your environmental surcharge unanimously
5 agreed by the parties and approved by the Commission,
6 correct?

7 A. Yes.

8 Q. Okay. And is -- now, on page 6 of the
9 order where the Commission is reciting the settlement
10 agreement says "Kentucky Power's existing real-time
11 pricing tariff shall be continued for three years
12 with customers able to enroll at any point during a
13 year for a minimum period of 12 months." --Did I read
14 that correctly?

15 A. Yes, sir.

16 Q. So part of the settlement -- part of the
17 bargain was the three-year extension of this tariff
18 RTP; is that correct?

19 A. That is correct.

20 Q. Okay. There was no mention of a rider
21 RTP with a baseline approach, was there?

22 A. Not at this point in time, no.

23 Q. Now, early on I asked you do you
24 recognize Kentucky Power is required to uphold the

1 settlement agreement and -- and not abrogate it, so
2 to speak. Do you remember that provision in the
3 settlement agreement?

4 A. I'm not sure about that word abrogated
5 but I do -- we talked about the idea that, you know,
6 I brought up a deal is a deal and both parties have
7 to put up their part of what the bargain was, and in
8 this case the company doesn't feel that the KIUC
9 customers that have joined have done their side of
10 the deal. So is the reason for offering the rider
11 RTP as an alternative.

12 Q. Okay. Now, you understand that the KIUC
13 customers believe that they have the ability to also
14 experiment in the wholesale market by designating a
15 portion of their load to be essentially under the
16 normal tariff and part of it at the RTP tariff.
17 That's the way they read that provision.

18 A. I mean, I can't answer for how they read
19 it.

20 Q. Okay. Now, there is a 12-month minimum
21 stay on this RTP tariff, is there not?

22 A. That's the way it's currently written,
23 yes.

24 Q. Okay. So if the Commission were to

1 terminate the existing tariff RTP and then replace it
2 with rider RTP, they would also be terminating that
3 12-month minimum stay provision as well.

4 A. They would have to decide on how they
5 would do that but that, you know, clearly could be an
6 option. I don't want to speak for the Commission.

7 Q. Now, you refer to I guess Mr. Wagner's
8 testimony. There was a slightly different RTP tariff
9 that --

10 A. That's filed as an exhibit, yes.

11 Q. And the difference was essentially that
12 you could get on the rate any time during the year
13 rather than waiting until I think it was May 1?

14 A. That was one of the provisions of the
15 change, yes, and also the other provision of the
16 change was -- is stated "experimental real-time
17 pricing is voluntary and will be offered on a pilot
18 basis through June, 2013," made that specificity in
19 that.

20 Q. And before it was going to expire on
21 June, 2010, but with the three-year extension it now
22 says June, 2013. Well, let's just do on KIUC No. --

23 A. It initially sets for -- I mean, if you
24 go back to the original tariff, it said on a pilot

1 basis for a three-year period. It went into effect
2 on June 1, 2008. All right. So three years from
3 that would have been May of 2011.

4 Q. Thank you.

5 A. All right. But in what was agreed upon
6 and filed in the tar -- in the supplemental exhibit
7 by Mr. Wagner and then he also had a statement on
8 page 2 of his testimony, it says "I also sponsor the
9 proof of revenue calculations and the particular
10 tariffs that reflect and implement the agreement --
11 which was the idea of through June, 2013."

12 Q. Okay. So originally this tariff was to
13 expire in June of 2011. We had the settlement
14 agreement, the Commission approved the settlement
15 agreement, three-year extension, and now, it is
16 stated to expire on its own June of 2013.

17 A. June 30 of 2013, yes.

18 MR. KURTZ: I think I'm on No. 5.

19 COMMISSIONER BREATHITT: You are.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Just for identification this is the
22 currently effective tariff RTP, Mr. Wohnhas; is that
23 correct?

24 A. Yes, it is.

1 Q. Okay. Now, this -- in terms of the
2 program description there's been no change to the
3 wording; is that correct?

4 A. From the part of the previous tariff in
5 effect, that would be correct.

6 Q. Okay. Now, the only change is in that
7 term which is on page 3 where the term is now -- is
8 now the extended term rather than the old term and
9 customers can enroll any time rather than in a
10 specific date; is that correct?

11 A. That's correct.

12 Q. Okay. But the language where we are
13 having our dispute, this program description, load
14 shifting or experiment -- also experiment in the
15 wholesale market, that's -- that's exactly the same.

16 A. Yes, it is.

17 Q. Okay.

18 COMMISSIONER BREATHITT: Mr. Kurtz, you
19 were saying the load shifting and experimenting -- I
20 don't want to put word in your mouth.

21 MR. KURTZ: Yes, ma'am. The --

22 COMMISSIONER BREATHITT: You're saying
23 that they -- your position is they mean the same
24 thing?

1 MR. KURTZ: No. Our position is under
2 this program description there's two separate things
3 that a customer can do. It can either load shift or
4 it can just designate a part of its load to be
5 real-time pricing and, therefore, exoteric experiment
6 in the wholesale market. They are one or the other
7 and -- one or the other.

8 COMMISSIONER BREATHITT: Thanks for the
9 clarification.

10 MR. KURTZ: Yes, ma'am.

11 Okay. Just -- just a couple more
12 exhibits on this point and then I'll move on. If we
13 could have this marked as KIUC 6.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. OVERSTREET: Is this 6, Mike?

16 MR. KURTZ: Yes.

17 Q. Do you recognize this as something that
18 Mr. Overstreet filed with the Commission?

19 A. Did you ask a question?

20 Q. Okay. Yeah. Can you read that
21 highlighted portion at the very end.

22 A. "It is noteworthy to mention that in a
23 Commission order in Kentucky Power Company's last
24 retail rate case, Case No. 2009-00459, the R" --

1 excuse me, "the RTP tariff was continued for three
2 years and will allow customers to enroll at any point
3 during a year for a minimum period of 12 months."

4 Q. Okay. And I guess this is part of your
5 annual reporting requirements about how the rate is
6 working and so forth?

7 A. Yes.

8 MR. KURTZ: Okay. One last -- one last
9 document. Essentially it's another one of these
10 annual reporting. I just want to confirm you told
11 the Commission the same thing, that the tariff is to
12 continue for three years.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 VICE CHAIR GARDNER: Is this No. 7?

15 MR. KURTZ: Yes, sir.

16 Q. (By Mr. Kurtz) Am I correct that this is
17 another one of those annual reporting?

18 A. Yes, you are.

19 Q. Okay. And you've made the same
20 representation to the Commission that -- that the
21 tariff is to extend for three additional years?

22 A. Yes.

23 Q. Again, that would be until June of
24 2000 --

1 A. Through June, 2013.

2 Q. '13, okay. Now, part of your complaint
3 about the tariff RTP, and the reason as I understand
4 it you want to replace it with the rider, is twofold:
5 Customers are not load shifting, No. 1, and, No. 2,
6 of an adverse financial impact on Kentucky Power; is
7 that correct?

8 A. The main point is the idea that they are
9 not shifting which is part of the explicit
10 requirement being on the tariff, and then because of
11 that not shifting, yes, the customers are getting the
12 possibility of a big windfall for doing nothing.

13 Q. Well, now, we un -- you understand that
14 the energy portion of the market pricing is -- is
15 unpredictable, so to speak?

16 A. Definitely changes.

17 Q. And in July of this year, customers
18 actually lost money by being on tariff RTP rather
19 than make money.

20 A. Actually of the 10 customers only 2 of
21 them lost money.. The other eight, to a small amount,
22 made a little bit of money.

23 Q. Okay. And I understand your testimony in
24 that month -- month Kentucky Power was \$100,000 ahead

1 versus where you would have otherwise been. The next
2 month it turned around and you lost 1.2 million.

3 A. That would be correct.

4 Q. Okay. So -- and that's because the
5 energy pricing portion -- we know for sure that the
6 capacity pricing, the PJM RPM, is less expensive than
7 your embedded -- average embedded cost capacity
8 price; isn't that known with certainty basically?

9 A. I would have to defer that to Mr. Roush,
10 being the PJM expert on that, and I don't want.
11 Because he is here as a witness we'll let him answer.

12 Q. Well, you've testified to it. I mean,
13 you basically said that it's 51 cents per kW versus
14 the \$13 on average.

15 A. And that's true, if you're just talking
16 at that level, yes.

17 Q. Yeah. The demand charge -- we know the
18 customers will save money on the demand charge or the
19 capacity side of it, but the energy is unpredictable.

20 A. That would be correct.

21 Q. Now, when Kentucky Power signed the
22 settlement agreement in May of 2010, you knew what
23 the capacity rates were going to be today, did you
24 not?

1 A. Yes. We knew because you do it three
2 years in advance so we would have known what the
3 capacity market was for that time period.

4 Q. You knew to the penny that -- that the
5 capacity rate was going to be a lot lower than your
6 average embedded cost capacity rate when you signed
7 the settlement agreement.

8 A. It was going to be lower.

9 Q. And that's because the way the PJM base
10 residual auction for the reliability pricing model
11 RPM capacity, it's an auction done in May of a year
12 for three years out.

13 A. That is correct.

14 Q. So, for example, May of 2012, it was for
15 the '15-'16 planning year.

16 A. That is correct.

17 Q. Okay. So when you signed the settlement
18 agreement, you knew that the capacity part of the PJM
19 rate was going to be a lot lower than your embedded
20 cost. Again, I think you've answered that.

21 A. It was a known number.

22 Q. Okay. Now, the energy is the
23 unpredictable part because it varies quite a bit,
24 does it not?

1 A. It does day-to-day.

2 Q. Okay. Now, you've made an -- you've made
3 an estimate that you will lose between 10 and 20
4 million dollars on the RTP tariff if it's allowed to
5 run its full 12 months; have you not?

6 A. That is -- that was the estimate, yes.

7 Q. Okay. Now, Kentucky Power's finances
8 right now are pretty good though, aren't they?

9 A. What do you mean by finances?

10 Q. Let me back up and ask one other
11 question. Let's assume that the Commission allows
12 this tariff to run its course and we only have these
13 customers on the tariff for a one-year period. Do
14 you have that assumption in mind? In other words,
15 the tariff is not extended beyond June, '13 but just
16 terminates by its own terms June of '13, okay?

17 A. All right.

18 Q. Okay. Whatever revenue loss or gain
19 Kentucky Power would experience would be
20 unrecoverable in a base rate case or uncreditable if
21 you make money in a base rate case, would it not,
22 because it would be a one-time nonrecurring event?

23 A. I would disagree with that and from the
24 standpoint of, again, going back to the idea that the

1 use of the tariff and the idea to that tariff, you
2 know, I guess I also-disagree being two positions and
3 the fact if the customer is not going to shift, then
4 the revenue and the purpose of and requirement of
5 that tariff is to shift, then, you know, the company
6 believes that revenue should be returned back to the
7 company, and it should be recovered.

8 Q. Well, I understand in a base rate you can
9 only get -- nonrecurring events are proformed out,
10 correct?

11 A. State that again.

12 Q. In a base rate case, this Commission's
13 practice, as is the practice of all commissions in
14 regulated jurisdictions, I believe, is that
15 nonrecurring revenues or expenses are taken out of
16 the test year and proformed out?

17 A. I would say in a normal nonrecurring, I
18 would agree with that. I don't -- we don't believe
19 this is -- this follows and fits into that type of
20 nonrecurring --

21 Q. Well, if the tariff --

22 A. -- because it's against what the tariff
23 and what they should be on and so, you know, we have
24 to go and ask for that recovery because you are

1 hurting not only Kentucky Power but all the other
2 customers of Kentucky Power. It's just not those 10
3 customers.

4 Q. Now, if the Commission -- if the
5 Commission determines that this tariff, if it expires
6 in June of next year, is nonrecurring, then whatever
7 revenue gain or loss would be -- would not be
8 included in a rate case; isn't that correct?

9 A. Again, we would bring it up to get
10 recovery in a rate case, and if the Commission so
11 chose to differ from that, that they have that right.

12 Q. Now, what if you made money on it? Would
13 you -- would you credit customers that -- in your
14 next rate case?

15 A. If they -- again, if they were not
16 shifting, you know, if they are not abiding by the
17 tariff, yes.

18 Q. Let's ask this, if you file future test
19 year and you project your revenues and expenses, the
20 tariff that is gone, terminated, dies by its own
21 terms in June of next year, would have no place in
22 the future test year; isn't that correct?

23 A. I'm not going to answer that from the
24 standpoint we're not going to file -- never filed a

1 future test year so I really don't know how to answer
2 that.

3 Q. Well, you understand deferrals, right?
4 You've got a deferral application in here because you
5 had one time unexpected, nonrecurring storm damage,
6 and in order to recover it, you've got to get a
7 deferral order; isn't that right?

8 A. That is correct.

9 Q. Okay. Now, if this tariff expires, why
10 would that be treated any different? You would not
11 recover it unless the Commission allowed you to defer
12 it under regulatory accounting.

13 A. Again, we can sit here and go back and
14 forth on this, but the point is if it was something
15 that the customers were doing in compliance with the
16 tariff, it would be different, but they're not
17 complying by the tariff.

18 Q. I want -- I asked you earlier if Kentucky
19 Power's earnings are doing just fine right now, and I
20 think you -- do you remember that question a while
21 back?

22 A. You asked if our finances were doing
23 well, and I asked what particular were you speaking
24 of.

1 Q. How about your earnings?

2 A. For 2012?

3 Q. For the most recent 12-month period.

4 A. Yeah. Our -- is right at -- don't hold
5 me to the exact number but at 11 percent.

6 Q. Okay. That's good because you've
7 testified that one of the things you don't like about
8 customers using this tariff is it could be a revenue
9 loss to the company, could be, depending on what
10 energy prices do, and that it could adversely affect
11 your finances.

12 A. That is correct.

13 Q. Okay. But at 11 percent you're just
14 fine, aren't you?

15 A. Well, I mean, that's what it is as of
16 right now. We've got nine more months of data. You
17 know, the idea if we were to lose somewhere in that
18 range, the 10 to 20 million, that it would have an
19 effect on our -- on our ROE of up to 3 basis points.

20 Q. Well, you testified that a full 12 months
21 would be 2.3 basis points on page --

22 A. Okay.

23 Q. -- 10 of your June 1 testimony. Do you
24 recall that?

1 A. What page, sir? I'm--sorry.

2 Q. 10.

3 A. Yeah. If we had a reduction of \$17.4
4 million of retail sales, it would be by 2.3 percent.

5 Q. Okay. And that's revenue; that's not
6 earnings, correct?

7 A. The ROE -- it said would reduce Kentucky
8 Power's ROE by 2.3 -- it's 2.3 basis points.

9 Q. Right. My point is the revenue number of
10 17.4 would have to be reduced for taxes, the tax
11 differential for earnings purposes, correct?

12 A. Sure.

13 MR. KURTZ: Now, now that we are on to
14 this topic of your earnings, so I would like to have
15 marked as KIUC -- KIUC No. 8.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Do you recognize this as the monthly
18 financial report that all the utilities -- Kentucky
19 Power files with the Commission?

20 A. I do.

21 Q. Okay. This is the most recent one. On
22 page 2 it shows that your earnings, your after tax
23 earnings, for the 12-month rolling period ending
24 August of 2012 was 49.99 million?

1 A. I see that, yes.

2 Q. Okay. And that your equity -- on the
3 next page your equity balance at the end of August,
4 2012, was 472 million?

5 A. Yes.

6 Q. Okay. So that on the last page I simply
7 divided to get your return on equity for the 12-month
8 period ending August of 2012 of 10.59 percent?

9 A. Yes, sir.

10 Q. Okay. Now, this -- this period ending
11 through August of 2012 included two months of the
12 real-time pricing?

13 A. That would be correct, sir.

14 Q. Because the customers went onto it on
15 July 1 so this -- this number includes two months.

16 A. Yes.

17 Q. Okay. And we have 10 more to go from
18 August, correct?

19 A. From August, yes, if this were extended
20 for the full 12 months.

21 MR. KURTZ: Now, one more document on
22 finances.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Now, do you recognize this as the

1 Kentucky Power's third quarter annual report?

2 A. Yes, I do.

3 Q. Okay. This is something filed with the
4 SEC under Sarbanes-Oxley, et cetera; is that correct?

5 A. Various places but, yes.

6 Q. Okay. I pulled this off the AEP website
7 but so -- so for the nine months ending September of
8 2012, your net income was 39.963 million?

9 A. Yes, sir.

10 Q. Okay. And that your equity balance at
11 the end of September, 2012, 476.6 million?

12 A. Yes, sir.

13 Q. Okay. So because we had nine months
14 worth of -- you said -- before we had 12 rolling
15 months ending in August, this is just the first nine
16 months of calendar year 2012 so I annualized the
17 first nine months. Do you understand, divide by
18 12 -- divide by 9, multiply by 12 to get an
19 annualized number?

20 A. Is this your sheet, the third one?

21 Q. Yes, yes. I explained to you how -- how
22 we annualized. We took the nine months of actual,
23 divided by 9, and multiplied by 12 to get what it
24 would be on a 12-month basis.

1 A. I mean, I see your calculation.

2 Q. So based on that calculation --

3 A. I mean, it's roughly because I stated
4 ours is actual through September was 11 point
5 something so.

6 Q. Pretty accurate? --

7 A. It's in the ballpark. It's in the
8 ballpark.

9 Q. Pretty accurate. Now, then this -- this
10 number includes three months of the real-time pricing
11 tariff.

12 A. Yes, it does.

13 Q. Okay. With nine months left to go, so to
14 speak, right?

15 A. Yes.

16 Q. Okay. And that 11.18 percent return on
17 equity is pretty good compared to what utilities get
18 from commissions, get awarded from Commissions?

19 A. Return on equity is like a rollercoaster
20 ride. It's up and down but, right now, that it's --
21 it is pretty good for us. The point here is in this
22 fact that if we lose nine more months of 1.2 million
23 a month, there's not very much of a chance that we'll
24 stay at 11 percent return on equity.

1 Q. What if you had nine more months of
2 making an extra 100,000?

3 A. Then we would have a much better chance
4 of doing that. That's the risk.

5 VICE CHAIR GARDNER: That was Exhibit No.
6 9?

7 MR. KURTZ: Yes, sir, yes, I'm sorry, the
8 third quarter earnings would be KIUC No. 9.

9 Q. Do you follow the KU LG&E pending rate
10 case?

11 A. I know of it.

12 Q. Do you know what the Attorney General's
13 return on equity expert recommended for KU LG&E?

14 A. I do not.

15 Q. So if I said it was 8.5 percent, you
16 would not know if that was accurate or not?

17 A. I would not know if that's accurate or
18 not.

19 MR. KURTZ: One last ROE exhibit, try to
20 put your numbers in a little bit of perspective.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Do you -- are you familiar with this
23 document?

24 MR. KURTZ: KIUC No. 10, if we could have

1 this marked.

2 Q. This is the summary of the ROEs awarded
3 by state commissions.

4 A. I am familiar with it, yes.

5 Q. Okay. Now, we could go -- this one goes
6 all the way back to 1990. That's not terribly
7 relevant, but if we just look at the most recent ROEs
8 for electrical awarded by commission across the
9 United States. You see how they do it by quarter?

10 A. Yes.

11 Q. Okay. Appalachian Power is an affiliate
12 of Kentucky Power, correct?

13 A. No. They are an affiliate of -- well,
14 they are an affiliate with -- yes.

15 Q. They are -- another AEP operating.

16 A. AEP operating company.

17 Q. Do you know anything about rate making in
18 Virginia?

19 A. I worked in APCo Virginia in regulatory
20 for about two years.

21 Q. Now, recently the state legislature there
22 allowed the Commission to put 100 and 200 basis point
23 premiums for various types of riders that were
24 approved. Was that in effect when you worked there?

1 A. I'm not -- I'm not aware of that.

2 Q. Okay. Well, let's just look for the
3 first quarter of 2012, the average ROE awarded was
4 10.84?

5 COMMISSIONER BREATHITT: Are you on page
6 4?

7 MR. KURTZ: Yes, yes, I am. I'm sorry.

8 Q. Do you see that, Mr. Wohnhas?

9 A. I see where -- yes.

10 Q. Now, I just want to point out Virginia
11 because you see a lot of these, Virginia Power,
12 there's four Virginia Power proceedings in this
13 sample group ranging from 11.4 to 12.4, these are --
14 you see these are relatively small amounts of money.
15 One was a rate reduction. Do you know -- would you
16 know if those were tracker cases?

17 A. I would not know.

18 Q. Okay. In any event you say you would
19 know not know if they included 100 and 200 basis
20 points premiums?

21 A. I would not.

22 Q. Okay. Well, the second quarter of 2012,
23 you see where the average ROE awarded by state
24 commissions around the country was 9.92?

1 A. Yes, I see that.

2 Q. And you see -- turn to the last page on
3 page 5 -- the average ROE, there were only four
4 samples, but it was 9.78?

5 A. Yes, I see that.

6 Q. So your -- your actual earned ROE is
7 considerably higher than what state commissions are
8 awarding utilities.

9 A. It is currently higher that's what being
10 awarded, yes. Currently, I guess, is the key word.
11 It's only been up to that level over the last two
12 years, maybe three or four months.

13 Q. So your -- your ROE for the -- for the
14 current ROE, which includes three months of the
15 real-time pricing tariff, is -- is still -- right now
16 is okay. There --

17 A. Currently -- currently it's higher than
18 it is in No. 2.

19 Q. Okay.

20 MR. OVERSTREET: Your Honor, I don't know
21 if Mr. Kurtz is going to move to introduce this
22 exhibit, but I'm going to object on the grounds that
23 Kentucky Power's ROE is set by this Commission and
24 what other commissions are doing is irrelevant. This

1 is not a cost of money case.

2 MR. KURTZ: Well, your Honor, Kentucky
3 Power made it an issue when he testified that their
4 ROE would be reduced by 2.3 percent with -- if this
5 RTP tariff was allowed to go into effect and so it --
6 they have made it an issue. And I think what other
7 commissions award puts -- puts the company's 11.18
8 percent return on equity in perspective.

9 In fact, if anything, they are
10 overearning right now, not underearning.

11 VICE CHAIR GARDNER: We'll let it in for
12 the limited purpose that it's been expressed.

13 Q. (By Mr. Kurtz) I just want to ask you a
14 few questions about your rebuttal testimony, Mr.
15 Wohnhas. Do you have your rebuttal testimony, page
16 7? Let me know when you're there.

17 A. I'm there.

18 Q. Okay. Thank you, sir. Lines 18 through
19 20, if I understand it, you say that during July, the
20 hourly LMP prices, that's the locational marginal
21 price energy price, correct?

22 A. That's correct.

23 Q. Okay. It spiked between 100 and 200
24 dollars, you actually probably mean megawatt-hour,

1 not kilowatt-hour, I just noticed that. This should
2 be an M instead of a K? \$100 a kilowatt-hour would
3 be pretty much. Right? It should be per
4 megawatt-hour and not kilowatt-hour?

5 A. You are correct, that would be correct.

6 Q. Okay. So it spiked between 100 and 200
7 dollars per megawatt-hour 20 times and between 200
8 and 300 dollars should be megawatt-hour 10 times and
9 over \$300 a megawatt-hour 4 times; is that correct?

10 A. Yes, it is.

11 Q. And you conclude that because customers
12 did not back down their usage during the very high
13 priced -- and those are -- energy portions that they
14 are not engaging in load shifting or responding to
15 price signals essentially.

16 A. The 10 customers, yes.

17 Q. Yes. Now, suppose they would have
18 actually backed down their usage during those hours,
19 what would that have done to your financial
20 situation? Would that have been -- wouldn't that
21 have hurt Kentucky Power financially?

22 A. Well, from a pure financial we would
23 have -- if they were to have shifted, they would have
24 received a greater benefit. We, Kentucky Power,

1 would have had less so it would reduce that some. --
2 But part of this whole project as well is that, you
3 know, the idea of the cost. You know, the cost to
4 serve doesn't change if they don't do anything. We
5 still have to have the cost out there to serve these
6 customers.'

7 Q. Now, hold on. Let me just focus on this.
8 You say 100, 200, 300 dollars per megawatt-hour,
9 that's very high priced, right?

10 A. Yes.

11 Q. Normally the -- you would see on-peak
12 prices in the PJM \$40, off-peak or less?

13 A. Generally, somewhere in those ranges.

14 Q. So if they would have shifted their usage
15 from these high priced periods and not bought real
16 high priced electricity from Kentucky Power, that's
17 what load shift would have done, and they wouldn't be
18 buying \$300 megawatt-hour power. They would not --
19 not be buying it. This would have hurt you
20 financially, wouldn't it?

21 A. That's what I stated. It would be a --

22 Q. Okay. So here -- here is the sort of
23 dilemma, you say, oh, these customers aren't load
24 shifting and we're losing money, but if they did load

1 shift, you would lose money.

2 A. If they were to load shift and to move
3 theirs to the lower priced times, in the bigger
4 scheme of things then we are able to use that energy
5 for other purposes and, per se, would not need to buy
6 that next kilowatt-hour or bill that next megawatt of
7 generation.

8 Q. Well, in this July timeframe, if they
9 didn't buy \$300 a megawatt power from you and --
10 well, actually -- actually what would have happened
11 is that would have still been sold into the PJM
12 wholesale market; had they ratcheted down their
13 generation, that actually would have been sold as a
14 wholesale sale, off-system sale, wouldn't it?

15 A. It would be a possibility, yes.

16 Q. And then in that case the profits from
17 off-system sales would have got allocated to all the
18 AEP affiliates according to the member load ratio.
19 That's what would have happened.

20 A. If there would have been some, that's
21 correct.

22 Q. Okay. So the fact that they didn't load
23 shift and bought \$300 power from you and it went on
24 your books, that helped you financially.

1 A. I'm not sure I follow the last.

2 Q. Yeah. If they had backed down their
3 usage, AEP PJM would have dispatched that into the
4 wholesale market --

5 A. It would have offset some of that lost,
6 yes.

7 Q. So -- so instead of sharing off-system
8 sales profits with Ohio Power and Indiana Michigan,
9 Appalachian, you actually by virtue of them not load
10 shift kept that \$300 a megawatt-hour sale right on
11 Kentucky Power's books. That's what happened, isn't
12 it?

13 A. I would agree.

14 Q. Isn't that what happened?

15 A. Yeah. There was no off-system sales
16 because nothing -- the customer did not do any
17 shifting. The possibility of off-system sales.

18 MR. KURTZ: Okay. Your Honor, those are
19 all my questions. Thank you.

20 VICE CHAIR GARDNER: Counselor.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Burns:

24 Q. I have a few, Mr. Wohnhas. Let's go to

1 your rebuttal testimony, page 5, down around lines 19
2 through 21.

3 MR. OVERSTREET: Could you just give me a
4 second to flip some pages.

5 That was page 5, Ms. Burns?

6 MS. BURNS: Uh-huh, yes, sir.

7 MR. OVERSTREET: Thank you.

8 Q. Down at the bottom of the page.

9 A. Yes. Wait for my counsel.

10 MS. BURNS: Are you there, Mark?

11 MR. OVERSTREET: I'm there, thank you.

12 I'm sorry.

13 MS. BURNS: That's fine.

14 Q. Yeah, down around lines 19 through 21 you
15 state first "Prior to any of the current tariff RTP
16 customers signing the contract to take service under
17 tariff RTP I was told by representatives of
18 Catlettsburg Refining (Marathon) that Marathon liked
19 the ability to shift load." My question is this, why
20 did Kentucky Power allow Catlettsburg Refining or any
21 other customer to take service under the tariff RTP
22 if you knew that that company liked the ability to
23 shift load?

24 A. Well, that is why we ended up -- we

1 did -- you could have just denied them access to
2 tariff RTP. But that's why we filed this case in --
3 with the rider to put it out there as, No. 1, there
4 wasn't 100 percent certainty that these customers
5 could because like I state there further it was also
6 my understanding that some of the other -- that they
7 did not intend, it wasn't that they couldn't, it was
8 the intent, but without knowing that specifically the
9 company felt it was a better option to basically ask
10 for this tariff to be removed, have the rider RTP
11 which was -- would seem to fit more towards what
12 these customers wanted to do, and the fact of being
13 able to get a windfall, you know, for doing nothing
14 from a managing their load standpoint. So that was
15 the reason for taking this route of filing this
16 application.

17 Q. Still on your rebuttal testimony back at
18 page 4, lines 9 and 10, you say that "Any tariff that
19 allows a customer to respond to price signals by
20 moving or adding load to lower priced periods as does
21 tariff RTP encourages load shifting." And in your
22 opinion is load shifting a requirement to take
23 service under the tariff RTP?

24 A. Most definitely. If you look at there it

1 says the opportunity to make those type of
2 adjustments, and if you don't do that, then that's --
3 why have the tariff RTP.

4 Q. And who qualifies under -- what's the
5 subset of people -- who qualifies to take service
6 under tariff RTP?

7 A. The main is it was only available to
8 those customers who their regular retail tariff was
9 QP, quantity power, or CIP-TOD.

10 Q. Okay.

11 A. And then they had to have at least 1
12 megawatt of -- of load.

13 Q. Does Kentucky Power have signed contracts
14 with all the customers that are currently taking
15 service under the real-time pricing tariff?

16 A. Each of the 10 customers have signed an
17 addendum to their contract to take for the RTP, and
18 in that addendum they quantified how much load they
19 were shifting.

20 MS. BURNS: Okay. Could you provide
21 copies of those to us as a post-hearing response,
22 copies of all the --

23 MR. OVERSTREET: Yes, we'll do that.

24 MS. BURNS: Of the 10 customers.

1 MR. OVERSTREET: With the Commission's
2 permission, we'll file those along with the petition
3 for confidential treatment because it contains
4 customer specific information and that's consistent
5 with our filings in this case to date.

6 MS. BURNS: Sure.

7 Q. And I'm going to presume that the date
8 that each customer began taking service under tariff
9 RTP is going to be included in those addendums, but
10 if it is -- if for some reason it's not, could you
11 provide those dates?

12 A. All of -- the tariffs all become
13 effective July 1.

14 Q. Okay.

15 A. Now, the date that they signed the
16 addendum will differ but that will be on the
17 addendum.

18 Q. Yes. And the date they began taking
19 service, we need that as well, if that's --

20 A. Well, like I say, that is July 1. I
21 mean, that's a known, all those 10 customers.

22 Q. Everybody?

23 A. Everybody was July 1.

24 MR. OVERSTREET: Would you want us to put

1 that in writing?

2 MS. BURNS: Yeah, that'd be fine.

3 MR. OVERSTREET: Okay.

4 MS. BURNS: Okay. Let's talk a little
5 bit about the tariffs QP and the CIP time of day. I
6 brought two documents.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. OVERSTREET: Ms. Burns, we're going
9 to call this?

10 MS. BURNS: We're going to call it how
11 about 1 and 2.

12 VICE CHAIR GARDNER: PSC exhibits.

13 MR. OVERSTREET: PSC.

14 MS. BURNS: Yeah. We'll call them both
15 PSC 1.

16 MR. OVERSTREET: They are both PSC 1?

17 MS. BURNS: Yes. (Inaudible.)

18 MR. OVERSTREET: Okay. Thank you.

19 Q. (By Ms. Burns) If you'll look at the one
20 that's called tariff QP and then the other one is
21 CIP-TOD. Could you explain what -- let's take the
22 one, the QP, explain what that is. What is -- what
23 is -- who is eligible?

24 A. The basic difference between these two is

1 in the availability of service, the seventh 7,500 kW
2 limit. For the tariff QP it's less than 7,500. For
3 the CIP-TOD it's 7,500 and above. Of course, there's
4 different rates for those but that's the main
5 difference between a customer that would be on one
6 versus the other.

7 Q. And is it -- as you said before, in order
8 to be on tariff RTP a customer would have had to have
9 been on tariff QP or on tariff CIP-TOD; is that
10 correct?

11 A. That's correct because one -- the RTP, as
12 I said before, was 1 -- or 1,000 kW and that's the
13 beginning limit of really tariff QP, from 1,000 to
14 7,500; CIP is above 7,500. So that's why it's
15 limited to these two tariffs.

16 Q. Okay. And if you'll look over on the
17 second page of each of those tariffs, the sheet 10-2
18 and then sheet 11-2.

19 A. Yes.

20 Q. All right. Down at the bottom of 10-2,
21 it talks about terms of contract. Would you read
22 that, please.

23 A. On 10-2?

24 Q. 10-2, yes, sir.

1 A. "Contracts under this tariff will be made
2 for an initial period of not less than two years and
3 shall remain in effect thereafter until either party
4 shall give at least 12 months' written notice to the
5 other of the intention to terminate the contract.
6 The company reserves the right to require initial
7 contracts for periods greater than two years.

8 "A new initial contract will not be
9 required for existing customers who change their
10 contract requirements after the original initial
11 period unless new or additional facilities are
12 required."

13 Q. All right. Do you know if any of your QP
14 customers that went on the real-time pricing tariff,
15 did any of those customers give Kentucky Power a 12
16 months' notice of termination under their tariff QP?

17 A. No, because they were not terminating
18 service.

19 Q. Okay.

20 A. All right. It was just a switch or, you
21 know, either a partial load or full load to RTP. We
22 felt that did not need that.

23 Q. All right. And --

24 A. And no one did.

1 Q. All right. And Kentucky Power did not
2 give notice that they were going to terminate their
3 QP service to the customers.

4 A. No.

5 Q. No, okay. All right. On the CIP time of
6 day tariff, actually I think the term of contract is
7 on page 11-3 at the very top. Could you read that,
8 please.

9 A. "Contracts under this tariff were made
10 for an initial period of not less than two years and
11 to remain in effect there -- thereafter until either
12 party shall give at least 12 months' written notice
13 to the other of the intention to terminate the
14 contract. The company reserves the right to require
15 initial contracts for periods greater than two years.

16 "A new initial contract period will not
17 be required for existing customers who change their
18 contract requirements after the original initial
19 period unless new or additional facilities are
20 required."

21 Q. All right. Same question here, did any
22 of the CIP time of day customers give Kentucky Power
23 a 12-month notice of termination?

24 A. No.

1 Q. And did Kentucky Power give any of the
2 CIP time of day customers a 12-month notice?

3 A. No.

4 Q. Do you have copies of all of the QP
5 contracts and the CIP time of day for that subset of
6 10 people?

7 A. I don't, no. I mean, we have them --

8 Q. Who does?

9 A. -- with the company. I just -- you know,
10 they would be on file, but I don't have them.

11 VICE CHAIR GARDNER: Excuse me. What was
12 your question again?

13 MS. BURNS: If -- if they had copies of
14 the QP contracts or the CIP time of day contracts of
15 the 10 customers who are on the real-time pricing.

16 A. I mean, we can provide it at the end.

17 Q. Does the company have them? Could you
18 provide copies of those?

19 A. Yes.

20 Q. All right.

21 MR. OVERSTREET: Absolutely.

22 VICE CHAIR GARDNER: Your first question
23 was the addendum and this is your question for each
24 of those and this is the original contract.

1 MS. BURNS: Yes, yes.

2 Q. And this is another post-hearing response
3 submission. For the months of July, August,
4 September, and October of 2012, could you provide the
5 amounts that each customer whose on the real-time
6 pricing tariff would have been billed had they been
7 on their prior tariff. Like if -- of the CIP time of
8 day customers instead of being on the real-time, if
9 they had remained on the CIP time of day, what would
10 they have been billed? Could you do that?

11 A. We can do that. The one -- the EQT
12 customers --

13 Q. Yes.

14 A. -- the seven of those, those seven --
15 those seven customers are billed throughout the
16 month.

17 Q. Okay.

18 A. All right? So for that -- I guess what
19 I'm saying for the month of October, really some of
20 theirs is going to go clear into mid -- mid November
21 before we'll have that so -- and I know there is a
22 short timeframe so I can give you -- we already have
23 available July, August, and September.

24 Q. Okay.

1 A. We will shortly have the Marathon, AK
2 Steel, and Air Products within the first week of
3 November because they are billed at the end of the
4 October. The EQT, I mean, we can update you as we
5 have them, but they won't be completed until sometime
6 later, you know, there about mid to the 20th of the
7 month just because of their cycle billing.

8 Q. Okay. What you have -- what you have as
9 of -- just a -- what a reasonable -- what's a
10 reasonable date?

11 MR. OVERSTREET: You tell us when you
12 want it.

13 A. I mean we could give you --

14 MS. BURNS: October 31 is fine.

15 MR. OVERSTREET: Okay.

16 MS. BURNS: October 31.

17 A. Okay. All right.

18 MR. OVERSTREET: Just so that the record
19 is clear, what -- with respect to the seven EQT
20 customers --

21 MS. BURNS: Yes.

22 MR. OVERSTREET: -- we won't have
23 billings for through --

24 THE WITNESS: -- October.

1 MS. BURNS: Yes.

2 MR. OVERSTREET: Through October 31
3 because that's not the way they're billed. We will
4 provide the prior three months.

5 MS. BURNS: Yes.

6 A. And then the three -- then the fourth
7 month for Air Products, Marathon, and AK Steel
8 because we've we'll have that data. That -- that
9 will be -- it will be -- today's -- it will probably
10 take us at least a week to get that.

11 Q. Okay.

12 A. By the time we get all the data and go
13 through all the computations.

14 Q. Okay.

15 A. I'm assuming you want to compare it
16 against what their RTP is.

17 Q. Yes. That's correct.

18 A. And that's what will take a little time.

19 Q. All right. That's fine.

20 VICE CHAIR GARDNER: So the -- just so we
21 already have the RTP billing or you wanted that as
22 part of the data request?

23 MS. BURNS: We want -- we want both.

24 A. We don't have it yet so we'll provide it.

1 Back to your rebuttal testimony, page 8. I'm sorry,
2 rebuttal page 7, starting about line 16, you say "As
3 an example, if any of these customers had any
4 intention of shifting load to manage their energy
5 usage, this would have occurred in July when price
6 signals were high. During July hourly LMP prices
7 spiked to between 100 and 200 for kilowatt-hour 20
8 times, to between 200 and 300 kilowatt-hours 10
9 times, and to over \$300 per kilowatt-hour 4 times.
10 Review of each of these 10 customers' loads during
11 these high priced hours shows that no attempt was
12 made to manage their energy usage."

13 Then in your rebuttal testimony at the
14 top of page 9, lines 4 through 7, you say, "However,
15 the 10 customers taking service under tariff RTP are
16 not the only customers who are eligible for rider
17 RTP. Once eligible customers who are able to modify
18 their load may take service under RTP and benefit
19 from shifting their load to lower priced periods."
20 My question is this, why do you think an eligible
21 customers would want to take service under the rider
22 RTP if they did not take service under tariff RTP?

23 A. Well, I think, you know, what we were
24 trying to say here is that for the 10 current

1 customers that are taking service under tariff RTP
2 and based on our evaluation of them shifting load and
3 them not shifting load, we probably would expect them
4 not to necessarily be on rider RTP because they would
5 have to do something. And as I said before, they're
6 getting a windfall for doing nothing.

7 But the other point we were saying was
8 when this RTP was initially provided as an option,
9 there was 106 QP and CIP-TOD customers. So it's
10 still an option that one of those other customers may
11 be willing or want to be on that tariff. That's all
12 we were trying to say.

13 Q. Do you know what -- what has the
14 September and October, 2012, data shown with regards
15 to load shifting, if any?

16 A. We haven't looked at October's yet but
17 August and September, again, there was no shifting
18 that we could tell and we even asked the data request
19 of KIUC which they did not have information that we
20 would have it so to the best of our ability, what we
21 get from the metered data there's been no shifting of
22 load by any of the 10 customers.

23 Q. All right. On your response to staff's
24 second request for information, over at item 6.

1 A. Which set? I'm sorry.

2 Q. Second.

3 A. Second set? Thank you.

4 MR. OVERSTREET: And, I'm sorry, you said
5 item 6, Ms. Burns?

6 MS. BURNS: Uh-huh, item 6, part A.

7 COMMISSIONER BREATHITT: Ms. Burns, is
8 that still the rebuttal?

9 MS. BURNS: No, ma'am. That's the data
10 request.

11 COMMISSIONER BREATHITT: It's probably
12 buried somewhere in here.

13 MS. BURNS: Yes, ma'am.

14 Q. It's up at the top of page 2 of 2 on that
15 response.

16 A. Yes.

17 Q. It states that "The company plans to
18 review the 10 customers' operations under tariff RTP
19 to take further action as is appropriate including
20 but not limited to back billing the customers whose
21 operations do not comport with the intended
22 applicability of the tariff." My question is this,
23 what will Kentucky Power evaluate in its review of
24 the 10 customers taking this service under tariff RTP

1 to figure out whether back billing of any of those
2 customers is appropriate?

3 A. Well, the main thing of evaluation is
4 whether or not they are shifting load. Again, as a
5 requirement of the tariff, if they are not shifting
6 load, you know, but that is also why we put this
7 before the Commission as a way of allowing them to
8 make sure we're not overstepping our bounds but that
9 would be what is the determination of whether we
10 would then consider back billing or whatever way the
11 Commission may decide the proper way to address it.

12 Q. All right. Down in your response to item
13 6B -- or actually still up in 6A of the second
14 information request. You talk about customer
15 qualifications for taking service under the RTP
16 tariff, and you talk about open position in the -- in
17 the QP 10 customers demand not less than 1 megawatt,
18 customers specify at least 100 kilowatt being subject
19 to the tariff, the customer taking service under
20 either the QP or the CIP time of day at the time of
21 request.

22 A. Yes. --

23 Q. And then at item 6B your response states
24 "The four qualifications are necessary but not

1 sufficient conditions for participation under tariff
2 RTP." My question is this, can you explain or define
3 what the sufficient conditions for participation
4 under tariff RTP are?

5 A. I think what we're saying here is that to
6 at least qualify to be on the tariff you must be,
7 again, getting back to, as it states there, 1
8 megawatt, put at least 100 kW into the -- onto the
9 tariff RTP under QP TOD but what we're coming back to
10 under the sufficient conditions is that that allows
11 you to be from starting point to be able for, but
12 then you must shift load. You must be able to manage
13 your load to take the RTP concept and to use it.
14 Without shifting load, without then, you know --
15 again, what's happening right now is that customers
16 are receiving, you know, in the months of August and
17 September roughly \$1.2 million, and they haven't done
18 anything to shift their load.

19 Q. Does Kentucky Power intend to put the
20 rider RTP into effect at the end of this suspension
21 period?

22 A. I mean, based upon the Commission's
23 order, if that's what they would pull out, to
24 discontinue tariff RTP, yes, and allow the rider RTP,

1 it would become effective as soon as an order came
2 out.

3 Q. If the rider RTP had been in effect
4 starting July 1, 2012, and the 10 customers who are
5 currently taking service under the tariff RTP were
6 under the rider, what would be the revenue shortfall
7 experienced by Kentucky Power from July 1, 2012,
8 through the end of October, October 31, 2012?

9 A. It would be dependent upon -- you would
10 have to make some assumptions as to how much load
11 they put on there and each -- the difference is, and
12 I can't give you that right now, is that there is
13 under the rider you provide a baseline, and so you
14 would have to go back and provide a baseline for all
15 10 of those customers which we have not done at this
16 point, so I really can't give you an answer for that
17 right now.

18 That would be -- that would be one of the
19 analysis that probably would have been -- if it had
20 been in existence, the companies -- the customers,
21 I'm sorry, would have asked just like they asked for
22 a different analysis before they got on tariff RTP.

23 Q. All right. For the customers on the
24 tariff RTP, for those customers who are able to shift

1 load from higher priced periods to lower priced
2 periods, would the portion of load not shifted still
3 be billed under tariff CIP time of day or QP, and
4 would the load shifted be billed under tariff RTP?

5 A. Under the rider?

6 Q. Yes.

7 A. All right. Yeah. Under the rider
8 it's -- you establish a baseline, all right, and then
9 for how many megawatts so what you -- to make that
10 calculation of how you changed based upon the
11 baseline, and it would be billed out based on that
12 difference from the baseline to the actual, if I
13 understand your question.

14 MS. BURNS: I think that's all right now,
15 your Honor. I'm going to have some later but.

16 - - -

17 EXAMINATION

18 By Vice Chair Gardner:

19 Q. I have a couple of questions,
20 Mr. Wohnhas. Okay. Currently you have 10 companies
21 that are on that rider; is that correct? On the
22 tariff.

23 A. 10 -- 10 customers are currently on the
24 tariff, yes.

1 Q. In the real-time pricing tariff.

2 A. That is correct.

3 Q. Okay. And tell me why -- what
4 distinction you put when you file the rider --
5 real-time pricing rider, why you called it a rider
6 rather than a tariff.

7 A. Just to try to -- honestly we talked
8 about calling it a tariff again. We went with the
9 word rider to try to make a clearer distinction
10 between the two. Nothing more than that.

11 Q. Help me understand the -- the date
12 difference and why it is June 30, 2013, not June 30,
13 2014.

14 A. I was not a party to the -- to the
15 negotiations and as -- all I can tell is you what the
16 documents came out and everyone agreed to and the
17 idea of --

18 Q. When you say the documents, you mean the
19 settlement agreement or --

20 A. Well, the settlement -- I was talking
21 about going back to Mr. Wagner's testimony in support
22 of the settlement agreement. And specifically he
23 filed, you know, a thick-exhibit that had all the
24 tariffs and whatever. And, you know, in looking at

1 that tariff RTP, it specifically said through June,
2 2013.

3 Now, I cannot give you anything more than
4 that. I wasn't a party from the idea of three years
5 from the time of the settlement. I don't have
6 privileged information to that. I'm sorry.

7 Q. Okay. Can -- can you tell me where in
8 the tariff RTP it says June 30, 2013?

9 A. Well, all it says is June, 2013. It
10 doesn't say 30th.

11 Q. Sure. Can you give me -- show me where
12 that is?

13 A. You have -- hold up just a moment. Too
14 many papers.

15 If you go under -- do you have a copy of
16 the tariff?

17 Q. The revised sheets numbers 30 and then 1,
18 2, 3, 4?

19 A. 30-1 under "Program Description," if you
20 look at the current tariff, in the first -- in the
21 "Program Description" at the end of the first
22 sentence.

23 Q. Got it. Thank you.

24 A. You're welcome.

1 Q. The very -- the very first one that was
2 filed in 2008 said "on a pilot basis for a three-year
3 period."

4 A. That is correct.

5 Q. It stated that language. On KIUC Exhibit
6 No. 5 which is tariff RTP.

7 A. Yes, sir.

8 Q. My question is sheets 1 and 2 have
9 stamped file dates of July 1, 2012.

10 A. Yes, sir.

11 Q. And 3 and 4 have 2010, the stamped file
12 dates? Is that correct or should those also have
13 been 2012?

14 A. No. If there were no changes to those
15 sheets, when we do the annual updates, we don't
16 change the stamp. We don't submit -- so there have
17 been no changes to sheets 3 and 4 at the time we
18 filed this last filing.

19 Q. Okay. Look at the third one where it's
20 got term.

21 A. That's the T for text out there? Oh,
22 term, I'm sorry.

23 Q. Yeah, term at the bottom of sheet No.

24 3 --

1 A. Yes, sir.

2 Q. -- where it says at the very last
3 sentence no additional customers will be placed under
4 this tariff after July 1, 2012.

5 A. Yes.

6 Q. So the 10 that were placed on it were
7 placed on it July 1, 2012, or previously?

8 A. Yes. They all became -- in fact, all of
9 them became effective on July 1. They signed
10 addendums the latter part of June between -- I forget
11 the dates now, and then all of them went into -- to
12 be effective July 1.

13 Q. Okay. Okay. You're going to have to
14 explain to me again Mr. Kurtz's questions to you on
15 page 7 of your rebuttal testimony where it was
16 (inaudible) about his concept of had -- had they
17 shifted money you all -- catches me. Had they
18 shifted load as the tariff hopes that they do, in
19 fact, Kentucky Power Company would have lost money.

20 A. The concept if that -- if there -- it's
21 just from the standpoint of revenue.

22 Q. Correct.

23 A. I mean, by them shifting the load it
24 would have reduced our revenue that would have come

1 into Kentucky Power.

2 Q. But can you tell me why that's the case
3 during that particular time.

4 A. Because they are going to appear at a
5 time and receiving and paying rates that were cheaper
6 than Kentucky Power's. So the prices at the LNP the
7 idea would have been cheaper than what the tariff
8 rates for those customers would have been, thus, so
9 the total revenue coming in to Kentucky Power would
10 have been less.

11 Q. So had they shifted --

12 A. And I guess that's, you know, the point.
13 The point here is that that still happened in the
14 fact that they didn't shift but the prices were so
15 low between ours that we still lost revenue for doing
16 nothing.

17 Q. And so the 10 customers at this point are
18 on the -- the tariff RTP, not rider RTP.

19 A. Correct. Rider RTP has not been approved
20 by the Commission to this point.

21 Q. Now, did -- in the -- find the rider
22 handy. Did -- in the -- physically or mechanically
23 how -- as I understand it, the customers who are on
24 or intended to be on rider RTP are supposed to

1 designate some amount of their load above a certain
2 megawatt level as being on that -- as being on the
3 rider RTP, as I read the tariff, in the conditions of
4 service, which is on the first page of it. It says
5 "The customer designates the maximum amount of load
6 to be supplied by Kentucky Power Company under the
7 applicable tariff GP or tariff" -- I mean, it says,
8 "all load in excess of that will be billed at tariff
9 RTP" so it's got to be at least 100 kilowatts. It
10 has to be designated under the tariff RTP. So did
11 the -- did the 10 -- so, first of all, how did --
12 what means did the 10 customers use to designate some
13 amount of their load on the different tariffs?

14 A. Okay. You confused me a little only back
15 when you said rider RTP and then tariff RTP. I just
16 want --

17 Q. Excuse me. I'm sorry, not rider, I'm
18 sorry.

19 A. Okay. I just wanted to make sure.

20 Q. Yeah, yeah, yeah.

21 A. That's okay. I mean, they verbally and
22 eventually in a document --

23 Q. And what's the document?

24 A. It's the addendum.

1 Q. Okay. So when we see the --

2 A. When you see addendum, it will say -- and
3 we answered that in the data-request under
4 confidentiality what that was.

5 Q. Sure.

6 A. How much they designated to be taken
7 under RTP -- tariff RTP.

8 Q. So in the addendum to the contract, was
9 where they designated how much of the load would be
10 subject to which tariff.

11 A. That is correct.

12 Q. Okay. In the -- and you'll see that and,
13 again, as Mr. Overstreet said, that will be given to
14 us under confidential -- confidentiality.

15 The -- in the contracts themselves I
16 guess there's no designation of load amounts because
17 under the contracts themselves that's only under the
18 QP or CIP-TOD.

19 A. In that contract which we're also -- the
20 original contract, it will also have what their
21 contract of load is because we use that contract of
22 load for determination if we have to do a minimum
23 billing or such so there will be a -- an amount
24 (inaudible) in for what the original contract under

1 QP or CIP-TOD.

2 Q. But in the contract itself there's no
3 designation like there is under the tariff RTP
4 because it's just one -- one tariff, if you will.

5 A. That is correct.

6 Q. Okay. Maybe just one more question. Let
7 me follow up again on questions that counsel for the
8 Commission asked and it has to do with both the
9 tariff CIP-TOD and tariff QP and it's that language
10 about term of contract. And counsel was asking you
11 about until either party shall give at least 12
12 months' written notice to the other of the intention
13 to terminate the contract. And as I understand you
14 to say, although this language says you've got to
15 give notice of intention to terminate contract, you
16 all viewed that language as meaning terminate the
17 service and not terminate that particular contract.

18 A. Effectively, yeah, because part of our
19 thinking is in the addendum and whether they shifted
20 a portion of their load or they shifted all of it,
21 which some of them did, you know, the idea being if
22 it were to go the full 12-month period and then be --
23 the tariff would then go away under RTP, they would
24 come back under CIP-TOD or QP and then that contract,

1 you know, would then continue on so where there was
2 not a discontinued because as they are intertwined
3 between those tariffs so to -- in effect we're not
4 thinking that as where they're terminating --
5 actually terminating or stopping or moving their
6 service.

7 Q. Okay. And maybe that will become clearer
8 to me when we're able to see the terms of the
9 contract and the addenda itself. And, again,
10 Kentucky Power in the face of -- of these 10
11 companies saying we're taking service under the
12 rider -- excuse me, I keep saying rider, under the
13 tariff you all took the position that at least until
14 the Commission makes a decision, you're going to go
15 as if, in fact, the -- deal as if, in fact, you're
16 under the tariff; is that correct?

17 A. Yes.

18 Q. The real-time tariff?

19 A. It gas; No. 1, the time to see if those
20 customers would shift load and then -- then also by
21 doing the -- offering the riders as an option trying
22 to keep real-time pricing, you know, before the
23 Commission but until a decision was made so, yes.

24 Q. Okay. And -- that's all I have at this

1 time. Thank you.

2 COMMISSIONER BREATHITT: Vice Chairman, I
3 do have a few questions.

4 VICE CHAIR GARDNER: Sure.

5 - - -

6 EXAMINATION

7 By Breathitt:

8 Q. I do have a few questions. When Kentucky
9 Power offered this tariff, did you offer the tariff
10 on your own, or was the tariff asked for by
11 customers?

12 A. The original tariff --

13 Q. The original tariff.

14 A. -- in my understanding was brought upon
15 by the Commission and other stakeholders. To the
16 best of my knowledge, and not being involved when it
17 originally was there, I do not believe it was
18 something that was asked for by any particular
19 customers.

20 Now, we did, when this was being
21 discussed and whatever, did go out and talk to a few
22 of the CIP-TOD and QP customers to explain the
23 concept and such to get some reaction, and it was
24 mixed results. Some said we would not be interested.

1 Others said I'll think about it. And some others
2 said, you know, I might really be. But it was a
3 very, very, you know, 50,000 foot level discussion.

4 Q. With not being an original participant
5 when this was developed, what do you think the policy
6 reasons were for encouraging this type of tariff or
7 offering this -- for your company offering this type
8 of tariff?

9 A. Again --

10 Q. From your experience of being an
11 executive with a subsidiary of American Electric
12 Power. You must be familiar with --

13 A. Sure.

14 Q. -- in policy discussions.

15 A. It was, I mean, honestly it was to see if
16 by having access to price signals, all right, would
17 access to those signals, all right, and knowing what
18 those signals are, would a customer be willing to
19 take the effort which would have to be to follow
20 those to adjusted their load to be able to possibly,
21 you know, reduce their bill and because it's -- it is
22 something that you have to watch on a daily basis.
23 You have to. The energy prices change daily. The
24 capacity as Mr. Kurtz says we know thee years in

1 advance. But those energy prices are daily prices so
2 to be affluent in it -- in it, you must be looking at
3 it daily and making those decisions and, you know, I
4 believe that it is somewhat -- is somewhat -- that is
5 part of the holdback of a lot of customers of doing
6 this because it actually takes a lot of work.

7 During between 2008 and 2010, there were
8 inquiries about getting on tariff RTP and no one ever
9 chose to pursue beyond just a general, you know,
10 what's the possibility. We ran a few analyses at
11 that point as well and no one wanted to participate
12 in that. I can't tell you definitively why they
13 chose not to. They did not tell us those, or if they
14 did, I wasn't aware of them, you know. But it is an
15 effort and, you know, if you are willing to put forth
16 that effort, there is a possibility, you know, you
17 can reduce your bills that you incur so it is
18 something (inaudible) that was the general purpose of
19 trying to do that.

20 Q. In your rebuttal testimony on page 8 --
21 actually on page 7, we've gone over this a couple of
22 times.

23 A. Uh-huh.

24 Q. You stated that no attempt was made to

1 manage their energy usage at line 21. A likely
2 response to such a strong incentive clearly shows
3 they were unable to shift or manage their load from
4 line 22. Do you -- have you come up with any reasons
5 why the customers were unable. And you just stated
6 that it's difficult. It takes a lot of analysis and
7 work but. I don't want to answer the question for
8 you. Why do you think they were unable to show --

9 A. And that may be a little bit, you know,
10 the word unable in there, that's being too probably
11 presumptuous on my part but, you know, what we saw
12 was that there was no shifting.

13 There was -- in our opinion there are
14 some of the 10 customers just from where we as a --
15 being a customer of ours, depending on the type of
16 production they have, you know, again, they're on
17 CIP-TOD. That's a time of day type of deal so they
18 should have some type of movement to shift and so
19 it's really either they are unable, possibly some of
20 them are unable, and then others may just not want to
21 from the standpoint of the effort.

22 And, right now, with the prices so low no
23 effort gets them the windfall and they don't have to
24 do anything. That was never the intent.

1 Q. What type of -- and this could be a
2 question for KIUC's witness but what type of industry
3 are the seven customers, the -- the --

4 A. I mean, again, clearly if I misstate on
5 these, they can correct, but there's an oil refinery.
6 There's --

7 Q. No, the EQT customers, there's seven and
8 they're listed by the communities that they are in.

9 A. And they're compressor stations is
10 probably the best way to explain.

11 Q. Compressor stations.

12 A. They're gas compressor stations.

13 Q. And then my final question is on page 8
14 of your rebuttal you state -- the question was has
15 the company reached conclusions concerning the
16 tariff, and you answered yes. You say that the
17 tariff has not encouraged load shifting is what's its
18 intent. Is that still your answer?

19 A. Yes, it is.

20 Q. And would you -- would the company be
21 likely to offer this again in the future, this type
22 of tariff?

23 A. Well, I think we've -- and the answer to
24 that is yes, through the rider. I mean, I think

1 we -- the idea is to try to change it to -- to be
2 something that still allows real-time pricing to be,
3 you know, an alternative out there.

4 Q. So the policy goals of energy efficiency
5 and load shifting and demand response are still
6 important, would you say?

7 A. Absolutely.

8 COMMISSIONER BREATHITT: I don't have
9 anything else.

10 VICE CHAIR GARDNER: Proceed.

11 MR. OVERSTREET: Thank you, Mr. Vice
12 Chairman.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Overstreet:

16 Q. Mr. Wohnhas, what is the
17 company's authorized -- what is the company's
18 authorized return on equity as I'll -- well, stop
19 there.

20 A. 10-1/2 percent and the last rate case was
21 for -- to be used for our environmental purposes and
22 we kind of us that basis target for everything else.

23 Q. And that was as established by this
24 Commission; is that correct?

1 A. As approved through the settlement, yes.

2 Q. All right. And -- in the -- in the
3 settlement agreement paragraph 7 on page 7, will you
4 accept, subject to check, that it provides that the
5 parties to this unanimous settlement agreement have
6 specified a return on equity of 10-1/2 percent for
7 purposes of determining the rate increase referred to
8 in paragraph -- or referred in paragraph 1 above?

9 A. Yes.

10 Q. Okay. And Mr. Kurtz was asking you
11 questions about the company's approximate 11.2
12 percent rate of return for varying periods ending
13 around September of this year; is that correct? Do
14 you remember those -- that questioning?

15 A. Yes.

16 Q. Do you expect the company to continue to
17 earn 11.2 percent through the remainder of the
18 existence of tariff RTP if the company -- if the
19 Commission does not allow the company to withdraw it?

20 A. I do not.

21 Q. And taking the -- and 11.2 percent, if
22 you subtracted the 2.3 percent that you testified to
23 in your direct testimony as the -- as the possible
24 reduction to the company's ROE, what would that

1 result in?

2 A. In the 9s.

3 Q. Well, would you accept, subject to check,
4 that's 8.9 percent?

5 A. 8 point.

6 Q. And is that more than or less than the
7 authorized 10 percent -- 10-1/2 percent?

8 A. That's less.

9 Q. Okay. And, Mr. Wohnhas, I think you
10 testified and, I apologize, I don't remember in
11 response to whom, that the company has analyzed its
12 financial results under tariff RTP for the months of
13 July, August, and September; is that accurate?

14 A. That is correct.

15 Q. And what is the net result of those
16 operations through the end of September 30, 2012?

17 A. The company has lost \$2.35 million --

18 Q. Okay.

19 A. -- in revenue.

20 Q. Okay. And in your testimony, your direct
21 testimony in this case, you specified that the
22 company estimated that it would -- if tariff RTP were
23 allowed to continue through its -- its -- through
24 June 30, 2013, that the company stood to lose 10 to

1 20 million dollars. Do you remember that testimony?

2 A. Yes, I do.

3 Q. Is that estimate still valid in your
4 opinion?

5 A. Yes, it is.

6 Q. Okay. Mr. Wohnhas, just so the record is
7 complete, you made reference in your testimony to
8 Mr. Wagner's testimony in the rate case, the last
9 rate case, 2009-00459 in support of the settlement
10 agreement. Do you remember your references to
11 those -- that testimony?

12 A. Yes, I do.

13 MR. OVERSTREET: Okay. And I guess this
14 should be marked for identification as Kentucky Power
15 1?

16 VICE CHAIR GARDNER: Yes.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 VICE CHAIR GARDNER: Mr. Kurtz, while he
19 is handing that go out, do you want to move for
20 admission of your --

21 MR. KURTZ: Yes, sir, I would. I move
22 for the admission of KIUC Exhibits 1 through 10, I
23 believe.

24 VICE CHAIR GARDNER: Do you have any

1 objections, Mr. Overstreet?

2 MR. OVERSTREET: Only the objection that
3 I made and had it overruled.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 Q. (By Mr. Overstreet) And can you identify
6 what you have before you, Mr. Wohnhas?

7 A. Yes. It is the prefiled testimony of
8 Errol K. Wagner on behalf of Kentucky Power in
9 support of the unanimous settlement agreement in the
10 case of 2009-00459.

11 Q. And it's -- it's only portions of that
12 prefiled testimony; is that correct?

13 A. That is correct.

14 Q. Okay. And included within those portions
15 are the first two pages of Mr. Wagner's testimony?

16 A. That is correct.

17 Q. Okay. At the bottom of page 1, it's not
18 numbered, but it's the one with the prefiled
19 testimony of Errol K. Wagner on behalf of Kentucky
20 Power Company before the Public Service Commission of
21 Kentucky. There's a question that starts at the
22 bottom of that page on line 18, "What is the purpose
23 of your testimony?" Do you see that?

24 A. Yes, I do.

1 Q. I apologize for standing.

2 Would you start reading the answer to
3 that question beginning with the -- the final
4 sentence in the answer which is on page 2?

5 A. "I also sponsored the proof of revenue
6 calculations and the particular tariffs that reflect
7 and implement the agreement."

8 Q. Okay. And was there attached to
9 Mr. Wagner's testimony an exhibit called EKW
10 Settlement Exhibit 3?

11 A. Yes, sir. There is, yes.

12 Q. And did that -- and do you have that in
13 front of you or a portion of that in front of you?

14 A. Yes.

15 Q. Okay. And on page 1, I think it's sheet
16 3 -- excuse me, 30-1 under the -- does it specify
17 that the -- when the tariff is expected to end?

18 A. Yes, under the program description.

19 Q. And what is that date?

20 A. Says -- that first sentence says
21 "Experimental real-time pricing tariff is voluntary
22 and will be offered on a pilot basis through June,
23 2013."

24 Q. Okay. And, Mr. Wagner -- excuse me,

1 Mr. Wohnhas, Mr. Kurtz asked you a series of
2 questions about the company's understanding of the
3 intent of the tariff. Do you remember that -- those
4 questions?

5 A. Yes, I do.

6 Q. Okay. Is the company relying solely upon
7 its understanding of the intent of the -- of the
8 tariff in claiming that load shifting is required
9 under the tariff?

10 A. Yes, sir.

11 Q. It belongs solely on the intent. There's
12 nothing in the words of tariff itself. Well, let's
13 do it this way, let me direct your attention to the
14 program description of the tariff -- section of the
15 tariff.

16 A. Okay.

17 Q. And what does that second sentence of
18 that?

19 A. "The RTP tariff will offer customers the
20 opportunity to manage their electric costs by sifting
21 loads from higher cost to lower cost pricing periods
22 adding new load during lower priced periods."

23 Q. And do you think that that language -- is
24 it the company's position that language establishes

1 the requirement that customers shift load to take
2 service under the tariff?

3 A. Yes.

4 Q. Okay. And there's a sentence that
5 follows that says "The experimental pilot will also
6 offer customers" -- "the customer the ability" -- put
7 my glasses on, "the ability to experiment in the
8 wholesale electricity market by designating a portion
9 of the customer's load subject to standard tariff
10 rates with the remainder subject to real-time
11 prices." Is that a separate and independent -- let
12 me ask the question differently.

13 Does that in the company's understanding
14 allow a customer to take service under the tariff
15 without shifting load?

16 A. No. They go to together.

17 Q. Okay. Thank you. Just one further
18 question. Mr. Wohnhas, are you familiar with the
19 Commission's decision in case 2006-00045, in the
20 Matter of the Consideration of the Requirements of
21 the Federal Energy Policy Act of 2005 Regarding Time
22 Paced -- Based Metering, Demand Response, and
23 Interconnection Service?

24 A. I'm aware of it.

1 Q. Okay. And do you know whether that -- in
2 that order the Commission required Big Rivers East
3 Kentucky Power Cooperative, Kentucky Power, KU and
4 LG&E to develop voluntary pol -- real-time pricing
5 programs for their large commercial and industrial
6 customers?

7 A. Yes.

8 Q. So when the company filed this tariff
9 RTP, it was doing so in response to the direction of
10 the Commission.

11 A. Yes.

12 Q. Okay. Oh, yes. You had several
13 questions about page 7 of your rebuttal testimony.
14 And in particular the statement that on -- beginning
15 on line 18 "During July, hourly LMP prices spiked to
16 between" and then it goes on to mention what those
17 price spikes were?

18 A. Yes.

19 Q. Okay. Let's just go through those, if we
20 could. How many times did it spike to between 100
21 and 200 dollars per megawatt-hour?

22 A. 20 times.

23 Q. 20 times so that's 20. And how many
24 times did it spike to between 200 and

1 300 megawatt-hours?

2 A. 10 times.

3 Q. Okay. So that's a total so far of how
4 many times?

5 A. 30.

6 Q. Okay. And then how many times did it
7 spike to over \$300 a megawatt?

8 A. Four.

9 Q. That's a total of --

10 A. 34.

11 Q. 34. Do you know how many hours there
12 were in the month of July? Well, let me ask it this
13 way, will you accept, subject to check, that if you
14 multiply 24 hours a day times 31-days in the month of
15 July, that's 744 hours?

16 A. Yes.

17 Q. So it reached those prices 34 times out
18 of 744 hours.

19 A. That would be correct.

20 MR. OVERSTREET: Okay. That's all I
21 have, your Honor.

22 MR. KURTZ: If I could follow up very
23 briefly, thank you.

24 - - -

1 RE-CROSS-EXAMINATION

2 By Mr. Kurtz:

3 Q. Mr. Wohnhas, a couple of things about
4 this 12-month notice.

5 MR. KURTZ: Just to clear up, could I
6 approach the witness, Mr. Gardner?

7 VICE CHAIR GARDNER: Absolutely.

8 MR. KURTZ: I only have one copy.

9 MR. OVERSTREET: Do you mind if I come
10 with you?

11 MR. KURTZ: Yeah.

12 MR. OVERSTREET: You do mind?

13 MR. KURTZ: No, I don't mind.

14 Q. Terms and conditions, rate schedule
15 selection, just so we can understand, will you read
16 the first paragraph for new customers and then stop
17 about selecting rates for existing customers, just
18 a --

19 A. This is the rate schedule selection
20 section of our tariffs sheet 2-7. First says "The
21 company will explain to the customer at the beginning
22 of service or upon request the company's rates
23 available to the customer. The company will assist
24 customer in the selection of the rate schedule best

1 adapted to customer's service requirements provided,
2 however, that the company does not assume
3 responsibility for the selection or that cus" -- "or
4 that customer will be" -- I'm sorry, "or that
5 customer will at all times be served under the most
6 favorable rate schedule." That's the first
7 paragraph.

8 Q. Okay. So for a brand new customer they
9 could select tariff RTP, rider QP, TOD, residential
10 if -- whatever the right for a new customer, you'll
11 help them pick the right schedule; is that correct?

12 A. Other than RTP they had to be existing
13 for a period of time before they could select it.

14 Q. But anyway you'll help a new customer
15 choose the right schedule.

16 A. We help them understand the schedules and
17 they choose.

18 Q. Okay. Now, will you read the second
19 paragraph about -- about the ability of an existing
20 customer to change rate schedules.

21 A. Second paragraph reads "Customer may
22 change their initial rate schedule selection to
23 another applicable rate schedule at any time by
24 either written notice to the company and/or by

1 executing a new contract for the rate schedule
2 selected, provided that the application of such
3 subsequent selection shall continue for 12 months
4 before any other selection may be made. In no case
5 will the company refund any monetary differences
6 between the rate schedule under which service was
7 billed in prior periods and the newly selected rate
8 schedule."

9 Q. Okay. So let's go back. So this
10 12-month notice in the QP, the large power schedules,
11 that applies as you've testified if the customer is
12 essentially going to close down their factory and not
13 buy power from Kentucky Power any more because they
14 can change rate schedules under that provision any
15 time as long as they are buying service from you.

16 A. And then they continue for a period of 12
17 months.

18 Q. Right. And so if I was to continue 12
19 months under tariff RTP, it would go from July of '12
20 through June of '13. But in any event that 12-month
21 notice deals with a customer that's closing down
22 their factory, and the minimum bills apply and so
23 forth, but you can change rate schedules any time as
24 long as you're going to stay on it for 12-more-

1 months; is that right?

2 A. You can change it at any time as long as
3 you go 12 more months and 12-month notice period
4 is -- is to allow if they are going to shut down or
5 whatever for, you know, the company to be prepared
6 and they may even stop earlier than that and we bill
7 the minium.

8 Q. Right. But, I mean, the 12-month notice
9 that staff counsel was talking about, that's for a
10 customer that's going to close down their factory,
11 but an existing customer, as long as they are
12 continuously buying power from you, they can change
13 rate schedules essentially every 12 months if they
14 want; isn't that right?

15 A. Basically, yes.

16 Q. Okay, okay. Just so that's clear, so
17 there was no requirement for the customers to give a
18 12-month notice to go on tariff RTP.

19 A. No, we did not put that in there.

20 Q. All right. Now, I want to just ask you
21 about this -- this back billing data response to
22 staff. If -- are you aware of the Filed Rate
23 doctrine? Have you heard of that concept?

24 A. The --

1 Q. Filed Rate Doctrine.

2 A. Not --

3 Q. Okay. How about the prohibition against
4 retroactive rate making?

5 A. I do know about the retroactive rate
6 making.

7 Q. What does that mean in your mind?

8 MR. OVERSTREET: I'm going to have the
9 same objection I had before. Mr. Wohnhas is not an
10 attorney.

11 MR. KURTZ: To the extent he knows. I'm
12 not asking for a legal opinion.

13 VICE CHAIR GARDNER: You may answer to
14 the extent that you know.

15 A. Basically, you know, that I don't -- that
16 there will be -- I don't know who necessarily, if
17 it's the Commission, but there's clearly within, I
18 understand, the commonwealth that we do not go back
19 and do any retroactive rate changes.

20 Q. Okay. Now, let me ask, when you said in
21 this data response is you would consider all
22 appropriate actions including back billing if the
23 customer didn't load shift and you think they should
24 have, essentially?

1 A. Uh-huh.

2 Q. Okay.

3 A. Yes.

4 Q. Now, let's look at the tariff. First of
5 all, to understand whether or not the customer load
6 shifted, you need to -- all -- let me start again.

7 All you know is how much power the
8 customer actually used for any period of time. You
9 don't know what they would have used, do you?

10 A. No. I mean, that's why we ask the
11 question of the -- of the KIUC is to help with that
12 as to whether or not the customer -- we were asking
13 the customer did you do anything and got no response.

14 Q. Okay. So in order to understand with
15 certainty whether somebody load shifted, you would
16 need to know two things: What they actually used and
17 how many they would have used but for load shifting.

18 A. Well, what we did --

19 Q. Well, and the second part of it is
20 impossible to know. You cannot know what a customer
21 would have used, could you?

22 MR. OVERSTREET: Excuse me. Let me
23 object. I think that was a compound question. You
24 asked two questions.

1 Q. Let me start again. You know how much --
2 historically looking back you know exactly to the
3 kilowatt-hour and kilowatt how much a customer
4 actually used who has a demand meter and when they
5 used it, don't you?

6 A. Historically, yes.

7 Q. But in order to know for sure whether
8 they shifted load, you would need to make an
9 assumption about what they would have used.

10 A. What we did is in the analysis that we
11 did was basically took and had to compare their
12 actual usage in July, August, and September that we
13 have done thus far and match it up against what they
14 had done historically, in other words, last July,
15 August, September, and make the best assumptions we
16 could at looking at how their -- their load shaped in
17 relationship to the prices at the hours to determine
18 if we felt that they had made a shift.

19 Q. But in order to know with certainty you
20 would need to know what they would have used --

21 A. What --

22 Q. -- for the shift and that's basically
23 impossible, isn't it, to know with certainty what
24 they would have used?

1 A. No. I mean, we could -- I mean, again,
2 the reason for our question to the KIUC was to find
3 out from the customer did you shift. They would know
4 for certainty if they made any shifts, and we got no
5 response.

6 Q. Well, let me ask you people use different
7 amounts of electricity because AK Steel, for example,
8 whether they have a tight order book or they have a
9 back or they have more steel than they can sell,
10 won't that affect how hard they run that facility?

11 A. That's right. It changes from month to
12 month, year to year, but relatively the less we know
13 of something that they have told us for an example in
14 this period two instances, Marathon had a lightning
15 strike situation and so their usage was down, I
16 forget how many days, for a period of time until we
17 knew that that was something we couldn't match up
18 against and AK Steel also had a two-week period of
19 time in July that they were by their own decision
20 down for quite a bit of time.

21 So outside of those types of things, you
22 know, they would have to let us know if they've done
23 anything with their normal operations.

24 Q. Let's read the operative sentence I think

1 counsel -- going back to "The RTP tariff will offer
2 customers the opportunity to manage their electric...
3 costs by shifting loads from higher cost/lower cost
4 pricing periods or by adding new load during lower
5 priced periods." When it says "shifting load," it
6 doubt say how much, does it?

7 A. It does not say how much.

8 Q. It could be 1 kilowatt or it could be 25
9 megawatts.

10 A. It could be any amount.

11 Q. Okay. Now, what you're saying in this
12 back billing question is you are going to make a
13 determination that you knew how much they would have
14 used and they did not shift -- even the tariff
15 doesn't specify how much they should have shifted,
16 you're going to say I know what they would have used.
17 I know that they didn't shift very much and,
18 therefore, I'm going to back bill the customer for
19 the -- the rate they would have been on the CIP-TOD
20 or the QP rate; is that what you're testifying to?

21 A. The back billing is in our determination
22 they shifted no service so, you know, what you're
23 back billing is what the difference between -- you
24 know, we've calculate between the RTP tariff and what

1 they would have been on had they not had those so
2 it's an amount we've already calculated.

3 Q. I know you can do that, but you're going
4 to say even though the tariff --

5 A. That's what we're going to do.

6 Q. Even though the tariff doesn't say how
7 much they should have shifted, you're going to
8 make -- you're going to make an assumption that in
9 your opinion they didn't shift enough and, therefore,
10 you're going to back bill; is that what you're
11 saying?

12 A. In the company's position they didn't
13 shift any.

14 Q. So you knew what -- you knew over any
15 period of time or any -- how much they would have
16 used. You know that?

17 A. We know what we know, and we asked for
18 assistance and received none. We have no other but
19 to make that determination.

20 Q. So you're -- you're telling the
21 Commission that -- retroactive rate making beside --

22 A. It's not retroactive rate making.

23 Q. It's not?

24 A. No. It's back billing. We do that on

1 meters. We do that on a lot of things.

2 Q. You know what the customer would have
3 used, and in your mind even though the tariff doesn't
4 say how much they should have shifted or doesn't
5 require, you are going to say they didn't shift
6 enough, and we are going to back bill; is that your
7 testimony?

8 A. That would be one of the options is to
9 bill them for everything they didn't shift and we
10 would have to assume based on all the data we have
11 that they had no shifting of data.

12 Q. Now, where in the tariff does it give you
13 that authority?

14 A. Authority to do what?

15 Q. To go back and tell the customer we know
16 what you would have used, you didn't shift enough in
17 our opinion, and we're going to back bill you
18 millions of dollars.

19 A. I think that's why we're here before the
20 Commission right now is to try to get that decided.

21 Q. I'm asking where in the tariff does it
22 give you the ability to say "I know what you would
23 have used, you didn't shift enough in my opinion, and
24 I'm going to charge you millions of dollars"?

1 A. I think in all of our, without looking
2 through the tariffs, but our billings if there are --
3 if the billing is not in accordance with the tariff
4 and anything in any of our tariffs today, we would go
5 back and correct those billings. In our opinion that
6 would be where this would be is the fact they are not
7 following the tariff and that if you're not going to
8 follow the tariff and then we would go back and
9 correct the billing.

10 Q. So 1 kilowatt shift would have been
11 enough? Because the tariff doesn't define how much
12 you're supposed to shift so you're saying that one
13 tenth of a kilowatt would be enough?

14 A. I don't know what would have.

15 Q. So you're going -- even though the tariff
16 doesn't say that, you or somebody in the company is
17 going to make that subjective decision?

18 A. Make a decision on the fact that there
19 was no shifting whatsoever.

20 Q. So you know what they would have used;
21 you're saying that? You know with precision exactly
22 how much they would have used?

23 A. We know what they used and they've -- no
24 one said that they shifted and they made a

1 determination to shift. So if you're not -- if
2 you're not going to say you made an attempt to shift,
3 that means everything -- I don't know that else to
4 say, sir.

5 Q. Now -- well, you are basing this on a
6 data request when you asked KIUC how much did the
7 customer shift, and we said we don't have that data.
8 You have -- you have the hourly billing data. You
9 know -- you have more infor -- is that what you 're
10 basing this on?

11 A. We asked and they said we didn't have the
12 information. And if you --

13 Q. Does the cus -- the customer gets a bill
14 at the end of the month for total usage. They don't
15 have hourly data, do they? You do.

16 A. They can get hourly data.

17 Q. From you.

18 A. Yep.

19 Q. Okay. Well, you have the data.

20 A. But don't they also know whether they
21 shifted or not? They're the ones out there at their
22 own site. I don't know how else to get the
23 information without asking them.

24 Q. So if they tell you that they have

1 shifted some amount -- some amount of load, that that
2 will satisfy you.

3 A. It would go a long ways towards trying to
4 decide what they're doing.

5 Q. Okay. So if we submit letters or
6 something, that part -- that part of your concern
7 will be satisfied if these customers say that they
8 have shifted at least some amount of their load in
9 response to price signals. That will be okay?

10 A. Again, we need to see that's the whole
11 part that they are making an effort to do -- to do
12 something with that shifting.

13 Q. Okay. That's good to now. All right.
14 Now, you would agree that there's no shift minimum or
15 maximum defined in the tariff so any amount's okay?

16 A. There is nothing -- there is no amount
17 specifically mentioned in the tariff now.

18 Q. Okay. Now, in terms of this threat to
19 back bill these customers millions of dollars, are
20 you going to seek Commission approval of that first
21 or are we just going to --

22 A. I don't think it's a threat. I think it
23 was just an option that was out there to -- as a
24 possibility of doing that. Much rather get it

1 -resolved through the Commission and an order there
2 that we are trying to do through this hearing and
3 through the what was filed.

4 Q. You understand by statute Commission
5 orders are to be -- to set rates to be followed in
6 the future. Do you understand that by 278 2
7 something because that's what the statutes call for,
8 new rates to be followed in the future?

9 A. I understand that basically, generally,
10 yes.

11 Q. Okay.

12 VICE CHAIR GARDNER: Mr. Kurtz, I don't
13 want to interrupt but.

14 MR. KURTZ: I'm done. Thank you, Vice
15 Chair Gardner.

16 VICE CHAIR GARDNER: Do you have
17 questions?

18 MS. BURNS: Yes, I do, sir.

19 VICE CHAIR GARDNER: Can I? I mean, it's
20 12:30. Do you know how long you'll take?

21 MS. BURNS: If it's 5 minutes, it will
22 surprise me.

23 VICE CHAIR GARDNER: I'm not trying to --

24 MS. BURNS: Oh, I know. I know. But I

1 think I'm about done.

2

- - -

3

RECROSS--EXAMINATION

4

By Ms. Burns:

5

6

7

Q. A few things. No. 1, is it possible to be billed under tariff QP and also the real-time pricing tariff?

8

9

10

11

A. Yes. If you have a portion -- if you do not put all -- just a portion of your load over onto RTP, the portion that you leave on QP will be billed on QP.

12

13

14

15

Q. Okay.

A. And of those 10 customers some chose to leave and some chose to leave some on QP and others chose to move off.

16

17

18

Q. Okay. And I would presume it's also possible to be billed under tariff CIP-TOD and tariff RTP, correct?

19

20

21

22

23

24

A. Yes.

Q. Okay. Tariff QP talks about that it's available for commercial and industrial customers with demands less than 7,500 kilowatts. And then it talks about customers shall contract for a definite amount of electrical capacity in kilowatts which

1 shall be sufficient to meet normal maximum
2 requirements but in no case shall the contract
3 capacity be less than 1,000 kilowatts. What happens
4 if the contract capacity -- what if the customer does
5 not take at least 1,000 kilowatts? How is that QP
6 customer billed? Is there a minimum demand or a
7 minimum bill that kicks in, a minimum monthly billing
8 demand?

9 A. I'm not sure I follow your question if
10 they --

11 Q. If you have -- if the contract says
12 you're going to have at least -- you've got to
13 contract at least for 1,000 kilowatts and what if
14 their usage isn't 1,000 kilowatts? What if it falls
15 below that?

16 A. I mean, if it -- if it would -- would
17 continually go below 1,000 kilowatt-hours, they would
18 have to be taken off that tariff and put on a
19 different tariff.

20 Q. Okay.

21 A. All right? And but that 1,000, I mean,
22 it's kind of what's the norm monthly type of deal.
23 Occasionally one that's in there that may be at the
24 low end of that, if they were to fall down and let's

1 say for a month 950, we wouldn't kick them off that
2 until we saw it was a continual under the 1,000kW
3 limit.

4 Q. Well, when does your -- your minimum
5 charge kick in?

6 A. The minimum charge is 60 -- is a
7 60 percent ratchet so basically if they had a load of
8 less -- let's say they had a contract for 1,000, make
9 it simple, if they were below 600, if they used 500
10 kW in a month, we would bill them at 600, that
11 60 percent.

12 Q. Because of that 60 percent.

13 A. Pardons?

14 Q. Because of the 60 percent clause in the
15 tariff.

16 A. That's correct.

17 Q. All right. And the same thing for the
18 CIP time of day. There's a similar provision in
19 that; is that correct?

20 A. That is correct.

21 Q. Logistics, has Kentucky Power given
22 thought to how it would transition its customers from
23 the real-time pricing tariff to the real-time pricing
24 rider if that is approved? Because the rider

1 provides for a customer baseline and how -- how long
2 would it take logistically to determine what that
3 customer baseline would be for the rider?

4 A. I mean, it could not happen immediately
5 because exactly that, they would -- each customer
6 that would want to be considered for the rider RTP,
7 we would have to create a baseline, and it would
8 take -- I don't have exact time, but it would take,
9 you know, a few weeks to get that put in there, and
10 it's also something that, you know, you work with the
11 customer to agree on what that baseline is.

12 So there is an inter -- interaction
13 between the two that -- so you could not stop the
14 tariff on one day and then everyone sign up the next
15 day to be on rider RTP.

16 MS. BURNS: Exactly, exactly. And I need
17 to move to introduce into evidence staff's marked
18 Exhibit 1.

19 VICE CHAIR GARDNER: Any objection?

20 MR. OVERSTREET: No objection.

21 MR. KURTZ: No.

22 Could I ask one clarifying question? I'm
23 sorry.

24 MS. BURNS: I'm done.

1 VICE CHAIR GARDNER: So ordered.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 VICE CHAIR GARDNER: Any Commissioners
4 need to speak to the motions?

5 Okay. Do you have any redirect?

6 MR. OVERSTREET: I just have one but may
7 I move to introduce Kentucky Power 1?

8 VICE CHAIR GARDNER: Any objection?

9 MR. KURTZ: No.

10 VICE CHAIR GARDNER: So ordered.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 MR. KURTZ: But let me clarify.

13 - - - -

14 FURTHER RECROSS-EXAMINATION

15 By Mr. Kurtz:

16 Q. RTP, tariff RTP, there's no requirement
17 that customers that are on the tariff have to go on
18 rider RTP and negotiate a baseline. They could go
19 back to the regular firm service rate; isn't that
20 correct?

21 A. Right. I mean, the idea of what was --
22 what was submitted was to terminate tariff RTP. They
23 do not have to go to rider RTP. They could go back
24 and take 100 percent of the service under QP or

1 CIP-TOD.

2 MR. KURTZ: Thanks for the clarify --
3 clarification.

4 MR. OVERSTREET: Just -- just a very few
5 questions, your Honor.

6 - - -

7 FURTHER REDIRECT EXAMINATION

8 By Mr. Overstreet:

9 Q. Mr. Wohnhas, Mr. Kurtz was asking you
10 questions to the effect that if a customer, and let's
11 just use Marathon -- actually let's use -- let's not
12 use Marathon. Let's use Air Products shifted --
13 excuse me, signed up for tariff RTP and then shifted
14 1/10 of 1 kilowatt, would that be sufficient to meet
15 the shifting requirements under the tariff? Do you
16 remember that question?

17 A. I do.

18 Q. Okay. And let's say that that, in fact,
19 occurred. And Kentucky Power and Air Products agreed
20 that that 1/10 of 1 kilowatt, in fact, was shifted.
21 Would that allow Air Products to take its entire RTP
22 designated load at the RTP price?

23 A. No. I think that, again, part of it is
24 that they have to -- the idea is 100 kW, all right?

1 So, you know, if they are going to move 100 kW, you
2 know, the shift should be at least, you know, up to
3 that left.

4 Q. Okay. Let me ask the question this way
5 then, let's say they shifted 100 kW and the -- and
6 we'll shift to a hypothetical customer at this time
7 to avoid any questions about customer specific
8 information in a public session. And they shifted --
9 and they designated let's say 5 megawatts, okay? So
10 if they shifted 100 but they designated 500 kilowatts
11 but they designated 5 megawatts for service under
12 tariff RTP.

13 A. Okay.

14 Q. Would the shifting of that 100 kilowatts
15 result in that customer being able -- being billed
16 for the remaining 4.9 megawatts at tariff RTP prices,
17 or would it only be the 100 kilowatts?

18 A. The 100.

19 Q. Thank you. And just one question about
20 this. Mr. Wohnhas, I'm going to hand to you KIUC's
21 responses to Kentucky Power's data request 30 through
22 33.

23 VICE CHAIR GARDNER: Do you want to mark
24 this?

1 MR. OVERSTREET: Yes. I would like to
2 have this marked as Kentucky Power Exhibit 2, please,
3 your Honor.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. OVERSTREET: Did I give you one,
6 Mr. Kurtz?

7 MR. KURTZ: Yes.

8 MR. OVERSTREET: Okay.

9 Q. Do you recognize these responses?---

10 A. Yes, I do.

11 Q. Okay. And let's just take the --

12 MR. OVERSTREET: Your Honor, if I might,
13 these are actually -- when they were provided to us
14 by KIUC, they weren't numbered but these do -- these
15 are the responses to 30 to 33.

16 Q. And in that first page the question is
17 "Please refer to page 9, lines 4 to 22 and page 10,
18 lines 1 to 7 Mr. Baron's testimony from each calender
19 monthly period from July 1, 2012, to present.
20 Please, A, identify by amount, date, and time in
21 15-minute intervals the load, if any, Marathon
22 shifted from a higher priced period to a lower priced
23 period." Do you see that question?

24 A. Yes.

1 Q. And what was KIUC's response on behalf of
2 Marathon?

3 A. "KIUC objects to this request on the
4 grounds that such information is already available to
5 Kentucky Power."

6 Q. So the answer for Marathon was that
7 Kentucky Power would have information sufficient to
8 determine whether the shift took place?

9 A. That's the way I understand it, yes.

10 Q. Okay. And then the next question which
11 would be 31 relates to AK Steel and the response, is
12 it identical?

13 A. Yes, it is.

14 Q. Okay. Skip two-pages and this would be
15 the response to 33. It's the one asking about the
16 seven EQT compressor stations.

17 A. Yes.

18 Q. Okay. And is the response to that the
19 same?

20 A. Yes, it is.

21 Q. Okay. Now, flip back one page which
22 would be page -- which would be request 32 and the
23 answer is different, is it not?

24 A. It is different, yes.

1 Q. Okay. Is the -- is the first sentence
2 which is the objection, is it identical?

3 A. It is identical.

4 Q. Okay. Would you go ahead and -- and read
5 for the Commission the remainder of that response.

6 A. "Without waiving such objection, Air
7 Products has neither shifted load nor added any new
8 load to a lower priced period since July 1, 2012.
9 KIUC notes these actions are not required in order to
10 take service under tariff RTP."

11 MR. OVERSTREET: That's all the questions
12 I have, your Honor.

13 MR. KURTZ: Could I just have one quick
14 follow-up?

15 COMMISSIONER BREATHITT: Could we take a
16 break?

17 MS. BURNS: I think we're about done.

18 MR. KURTZ: One.

19 - - -

20 FURTHER RECROSS-EXAMINATION

21 By Mr. Kurtz:

22 Q. This dialogue with Mr. Overstreet
23 100 kilowatts, 5 megawatts and so forth, is that
24 anywhere in the tariff we could track those numbers?

1 A. No.

2 Q. The tariff doesn't identify any amount of
3 load shift?

4 A. No.

5 MR. KURTZ: Okay. Thank you.

6 VICE CHAIR GARDNER: All right. Let's
7 take a break and come back at 2 o'clock.

8 MR. OVERSTREET: Are we through with
9 Mr. Wohnhas?

10 MR. KURTZ: Yes.

11 MS. BURNS: Yes, yes.

12 MR. OVERSTREET: Thank you. I mean, he
13 will be there here but I just -- so Mr. Roush will go
14 over there.

15 I would move the admittance of Kentucky
16 2. Thank you.

17 VICE CHAIR GARDNER: Any objection?

18 MR. KURTZ: No objection.

19 VICE CHAIR GARDNER: So admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 (Thereupon, at 12:50 p.m., a lunch recess
22 was taken.)

23

24

1 Thursday Afternoon Session,
2 November 1, 2012.

3 - - -

4 VICE CHAIR GARDNER: Okay. We are back
5 on the record.

6 Counsel, do you have another witness?

7 MR. OVERSTREET: Yes, I do, your Honor.
8 We -- Kentucky Power Company calls David M. Roush.
9 He's our second and final witness.

10 (Witness sworn.)

11 VICE CHAIR GARDNER: Please state your
12 name.

13 THE WITNESS: My name is David M. Roush.

14 VICE CHAIR GARDNER: With whom are you
15 employed?

16 THE WITNESS: I'm employed by American
17 Electric Power Service Corporation.

18 VICE CHAIR GARDNER: Okay. What is your
19 mailing add -- your business mailing address, please?

20 THE WITNESS: One Riverside Plaza,
21 Columbus, Ohio 43215.

22 VICE CHAIR GARDNER: And what's your
23 position with American Electric Power Service
24 Corporation?

1 THE WITNESS: I'm director of regulated
2 pricing and analysis.

3 VICE CHAIR GARDNER: You may ask.

4 MR. OVERSTREET: Thank you, your Honor.

5 - - -

6 DAVID M. ROUSH
7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Overstreet:

11 Q. Mr. Roush, did you cause to be filed in
12 this proceeding rebuttal testimony?

13 A. Yes, I did.

14 Q. Do you have any changes, modifications,
15 or additions to that testimony?

16 A. No, I do not.

17 MR. OVERSTREET: The witness is available
18 for cross-examination.

19 MR. KURTZ: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Kurtz:

23 Q. Good afternoon, Mr. Roush.

24 A. Good afternoon, Mr. Kurtz.

1 Q. Okay. You are director of regulated
2 pricing for AEP?

3 A. For AEP Service Corporation, yes.

4 Q. Are you familiar with the riding RTP
5 that's being proposed here?

6 A. Yes, I am.

7 Q. Okay. Now, as I understand rider RTP,
8 the customer and the utility are to establish a CBL,
9 customer baseline; is that correct?

10 A. That's correct.

11 Q. What -- what is the CBL?

12 A. Generally the CBL is going to be the
13 historical usage for the customer for the prior
14 12-month period. The provisions of rider RTP allow
15 for certain adjustments to that that would be -- that
16 would cause that historical data not to be
17 representative. For example, some of the things
18 Mr. Wohnhas discussed earlier of, you know, the
19 lightning strike or something like that, you could go
20 back and adjust for that. A condition of rider RTP
21 obviously is that mutual agreement on a CBL must be
22 reached.

23 Q. Okay. So it's -- it's sort of a
24 normalized historic usage pattern by hour for the

1 customer?

2 A. That's correct. It would be an 8760-hour
3 profile.

4 Q. Okay. So as I understand it, the
5 customer would be on the large power rate, the
6 CIP-TOD or QP, that would be their basic rate and
7 then this rider would be layered on top of that, the
8 rider RTP?

9 A. That's correct. Generally how it would
10 work is the customer's normal usage -- their actual
11 usage for the month would be billed on the standard
12 tariff QP, standard tariff CIP-TOD, and then you
13 would look at their actual usage for the month
14 relative to their baseline scaled up to match that
15 same actual kWh usage so all you would be left with
16 would be positive and negative deviations in
17 kilowatt-hours in given hours and those positive and
18 negative deviations from the CBL would net to zero
19 for the month, but you take the positive deviations
20 times LMP and the negative deviations times LMP and
21 that would be the RTP portion of the bill,
22 effectively.

23 Q. So the deviation from the baseline or the
24 benchmark, that's how you measure how much load was

1 shifted in any given hour?

2 A. I do, correct.

3 Q. Okay. So, for example, if it was hot,
4 \$100 a megawatt-hour, \$200 a megawatt-hour, the July
5 numbers, and the customer saw those price signals, it
6 could reduce its usage from the baseline, and then it
7 would get credit for those LMP energy prices,
8 correct?

9 A. That's correct. So if in a given hour
10 the customer took action and reduced their usage by,
11 make a number up, a megawatt-hour and during that
12 hour the LMP price was \$100 a megawatt-hour. For
13 that 1 megawatt of reduction in that hour times \$100
14 they would get a \$100 credit for that hour.

15 Now, the presumption and why the CBL
16 matches on a total monthly basis, the CBL total kWh
17 is the same as the annual kWh so there's some
18 other -- or the monthly kWh, I apologize, so some
19 other hour there is a positive deviation of 1
20 megawatt that's being billed at an LMP price as well
21 so it's really the difference in LMP that happens.
22 If I reduce a megawatt here, I save \$100 and I add
23 that megawatt in a cheap hour, say \$30, I pay \$30
24 then so the net savings to the customer is \$70.

1 Q. Okay. And the -- the deviation from the
2 baseline, either up or down, allows you to measure
3 the load shift with precision; isn't that correct?
4 Because you know the baseline, the CBL, it's a set
5 stated number, and you know the actual usage, and
6 that differential up or down allows you to measure
7 load shift with precision, correct?

8 A. I would say as precise as you can under
9 the defined mechanism. There are, you know, any
10 number of mechanisms for establishing a CBL. The one
11 the company has preposed in rider RTP is one way to
12 measure the load shift.

13 Q. Okay. But that is -- that is your
14 attempt to measure the load shift as accurately as
15 you can.

16 A. I believe so, yes.

17 Q. Okay. And just one fine point on this,
18 in the rider RTP there's no PJM capacity charge,
19 there's no RPM amount, because the only -- because
20 they're not -- the customer is not buying a chunk of
21 its usage at market. All it's doing is getting
22 credit or debit for its energy use above or below the
23 hourly baseline, correct?

24 A. Correct. Under rider RTP or tariff RTP.

1 neither one of the customers is really buying a chunk
2 of their usage, to use your term, at market. My
3 understanding of Kentucky regulation is the customers
4 don't have the ability to go to the market.

5 Q. Well, let's just say it this way under
6 the tariff RTP there isn't a PJM RPM capacity
7 component that the customer pays in lieu of the
8 embedded costs component in the otherwise applicable
9 tariff. That's the \$13 a meg -- a kW month on
10 average versus the 51 cents kW month for the current
11 RPM. Does that not ring a bell?

12 A. The tariff RTP, as it stands today, does
13 use the RPM capacity market to price capacity, that's
14 correct.

15 Q. Okay.

16 A. However, the customer and the company
17 neither one can actually buy that capacity in the
18 capacity market.

19 Q. But that's how it's priced under the
20 tariff.

21 A. It's purely a pricing mechanism. You do
22 not actually access it in the market.

23 Q. Okay. Now, let's go back to the riders,
24 just to understand, you've got a customer baseline of

1 something hourly usage so you know what the benchmark
2 is, and then on every hour of the month you look at
3 the actual usage to measure the load shifting that
4 the customer has actually done, correct?

5 A. I believe that's correct, yes.

6 Q. Okay. Now, the -- you -- you identified
7 on page I think 4 of your testimony that -- you
8 reference Case 2007-00166. It's the company's
9 initial application. It's Application of Kentucky
10 Power For An Order Approving A Pilot Real-Time
11 Pricing Program For Large Commercial And Industrial
12 Customers; is that correct? You reference it on page
13 4, line 17 of your testimony.

14 A. Did you reference Case 2007-0066?

15 MR. OVERSTREET: I'm sorry, Mr. Kurtz.
16 What page was that?

17 MR. KURTZ: Of his testimony page 4, line
18 17.

19 MR. OVERSTREET: Thanks. That's what I
20 needed.

21 Q. It's the original RTP order. And in that
22 case the Attorney General -- I'll read from page
23 12 -- so the AG also expresses his concern that
24 Kentucky Power is not using the customer baseline

1 approach, CBL, in its program, the AG notes that the
2 approach utilized is revenue neutral to Kentucky
3 Power's own embedded costs associated with the power
4 provided or passed through to participants. However,
5 it is not designed to be cost neutral to
6 participants.

7 And then -- can I just read from the
8 Commission's order just to have you comment? Page
9 11, the Commission says "Kentucky Power responds to
10 the AG's concern regarding its decision not to use a
11 CBL approach by acknowledging that the Commission did
12 not direct the companies to implement a particular
13 type of program, Kentucky Power argues by allowing
14 flexibility in designing programs, the Commission
15 freed the companies to use their companies' specific
16 experience and develop programs that provide their
17 customers with appropriate pricing signals while" --
18 "while avoiding the allocation of additional costs to
19 other customers. In addition, Kentucky Power argues
20 that the deployment of CBL programs and Kentucky
21 Power's model will provide the Commission with
22 additional information it would otherwise lack."

23 If you want to see the actual -- I just --
24 want to ask you to clarify, Mr. Roush, that in the --

1 in the original case approving tariff RTP the AG said
2 how come you're not using a baseline and Kentucky
3 Power said ours is different, or how would you
4 characterize Kentucky Power's decision not to use the
5 CBL in the -- in the tariff RTP?

6 A. Sure. There are kind of a multitude of
7 reasons why Kentucky Power did not choose to use a
8 CBL approach originally in the tariff RTP. The first
9 one, the one I think we spent a lot of time talking
10 about earlier with Mr. Wohnhas was the fact that we
11 were kind of uniquely separated among Kentucky
12 utilities in that we had access to wholesale market
13 real-time pricing information from PJM.

14 So that was something that was unique and
15 why it was ref -- one of the reasons why it was
16 referenced in the tariff is that Kentucky Power had
17 wholesale real-time prices that they could use in
18 their tariff. That -- that's different from other
19 tariffs and particularly the other tariffs that we
20 were aware of at the time was a PSO, Public Service
21 of Oklahoma, tariff that uses a CBL approach. That's
22 an affiliate of Kentucky Power's. They use a CBL
23 approach. -- They have had that program for a number of
24 years. It's based off of, you know, internal

1 dispatched type pricing because they don't have a
2 market like PJM.

3 In that tariff, which has a CBL
4 provision, we have experienced -- seen where the CBL
5 became problematic in a couple of ways. The first
6 way that we saw it problematic was a circumstance
7 where the real-time dispatch rates were fairly high,
8 a customer actually reduced their usage significantly
9 because -- I don't know whether they went out of
10 business or effectively came pretty close to going
11 out of business, and with the CBL approach, they paid
12 for the CBL at the tariff and then they got -- for
13 the deviations they were paid -- they were paid
14 real-time prices.

15 And the net effect was the customer was
16 going out of business, and if you took the CBL
17 standard bill plus the deviations times real-time
18 prices, they produced a circumstance where we were
19 actually having to pay the customer net total bill
20 for not using.

21 And so there was some circumstances like
22 that that we were aware of that led us to say this
23 experimental tariff in of Kentucky which was the
24 first experimental tariff for the AEP companies in

1 the East doing industrial real-time pricing that we
2 wanted to try a different approach as part of the
3 experiment.

4 Now, you know, take -- you know, viewing
5 it as an experiment, we said let's try this approach.
6 We were fairly new into PJM, joining them in 2004,
7 the whole capacity concept in PJM was fairly new as
8 well, so it was even newer, so we endeavored to try
9 something different as part of an experiment and
10 that's what led to tariff RTP.

11 Q. Do you think the CBL, customer baseline,
12 approach proposed in your rider fixes or addresses
13 some of those prior problems you identified?

14 A. Very much so, yes.

15 Q. Now, without a baseline to measure off
16 of, the CBL, how can you track either -- the
17 differences in uses? How can you track how much load
18 a customer shifted without a CBL? Without having a
19 baseline to measure against, how can you possibly
20 know how much load a customer has shifted?

21 A. Mr. Wohnhas had exhibits in his testimony
22 where he effectively did that very CBL type
23 comparison, you know, saying here is a prior period.
24 Here is, you know, this time last year, here is this

1 year, did a comparison, and did that computation.

2 Q. So are you saying that there really
3 should be -- or there should be a CBL in the tariff
4 RTP only customers just don't know about it?

5 A. No. I guess what I'm really saying is
6 that from day one in the energy policy ap proceeding
7 through the 2007-00166 case to today, our review of
8 real-time pricing was that the only thing that makes
9 sense is for somebody to put load that is capable of
10 being price responsive on a tariff. If you have load
11 that is not price responsive, it doesn't belong on
12 tariff RTP and that's the way the tariff was set up
13 with that designated amount of load. I've got this
14 level of load I know I can't do anything with. That
15 should be on the regular QP/CIP-TOD tariff, but only
16 the load above that level is what really belongs on
17 tariff RTP.

18 Q. Now, on rider RTP where there is a
19 baseline, the customer can know whether it's above or
20 below the baseline, and so it knows whether it's
21 shifting above or below its historical usage,
22 correct? That's the whole intent of it, correct?

23 A. They -- the -- under rider RTP they will
24 know the baseline and they will know -- they will

1 have kind of a number of knowing -- a number of
2 knowing whether they are above or below the baseline.
3 Now, I think they know whether they are shifting,
4 irrespective of that. If I actually take a
5 production process off in an hour, I know I've taken
6 a production process off in the hour. I know I
7 didn't produce load.

8 Q. Under tariff RTP where there is no
9 baseline and there is no set megawatt or
10 kilowatt-hour shifting mandate specified, how is the
11 customer supposed to know whether they've shifted an
12 adequate amount to satisfy Mr. Wohnhas so they don't
13 be back billed for millions of dollars?

14 A. I think it goes back to an answer I gave
15 you just a little bit earlier. First, I do think
16 it's explicit in the language of the tariff that load
17 shifting is required. The second part of it is that
18 the company's expectations the way the tariff was
19 writted -- written everything from the beginning of
20 this, you know, the EPAP proceedings, everything
21 else, was that load that's capable of being shifted
22 and that is being shifted belongs on a real-time
23 pricing tariff. Load that isn't doesn't belong on
24 there at all.

1 Q. Well, that -- I don't know if you
2 answered my question. Without a customer baseline --
3 first of all, all the other utilities in Kentucky
4 that have RTP tariffs have baseline approaches,
5 correct?

6 A. That's my understanding, correct.

7 Q. Now, Kentucky Power's tariff RTP is
8 different and it was intentionally different from
9 that Commission language. Kentucky Power didn't want
10 a baseline, and they said that was okay, right?

11 A. Kentucky Power did propose intentionally
12 a tariff without a baseline.

13 Q. Now, without a baseline how is the
14 customer supposed to know whether or not they have
15 shifted enough to satisfy Mr. Wohnhas or anyone?

16 A. It goes back again to the same answer of
17 if I'm putting X megawatts on tariff RTP, I ought to
18 be able to shift X megawatts.

19 Q. Where is that stated in tariff RTP?

20 A. I think it goes back to the language
21 we've been beating to death today.

22 Q. Go ahead because that's -- that's news to
23 me.

24 A. I keep going back to the program

1 description sentence, the RTP tariffs will offer
2 customers the opportunity to manage their electric
3 costs by shifting load from higher cost to lower cost
4 pricing periods or by adding new load during lower
5 price periods.

6 Q. Well, go back. How much load is required
7 to be shifted under the sentence you just read? It
8 doesn't say, does it?

9 A. To me if a load is contractually under
10 tariff RTP, then that load should be shifted.

11 Q. It doesn't say how you measure whether a
12 shift occurred, does it?

13 A. To me the way I read the tariff you set
14 up a designated level of load. You say this load, 10
15 megawatts, this load I can't do anything with; I want
16 it kept under the standard tariff. The load above 10
17 megawatts, that's what I have operation flexibility
18 for, that's what I should be shifting. That's the
19 way I view it.

20 Q. So the customer is supposed to know
21 that's in the tariff even though it's not written in
22 the tariff?

23 A. I believe it is.

24 Q. What you read certainly read didn't say

1 that, did it? It says -- it says an opportunity to
2 manage the load by -- by shifting load from -- it
3 doesn't say how much load. It doesn't say how it's
4 measured -- the shift is measured. It doesn't say
5 any of that.

6 A. To me the load that's on RTP should be
7 shiftable.

8 Q. Well, where -- but do you agree that a
9 customer should be able to read a tariff and
10 understand what -- what it is -- is in the tariff and
11 not have to divine the intent of the utility?

12 A. I generally think most customers can't
13 read the tariff and understand what's in the tariff.
14 I -- just because of the complexity of some of the --
15 some of the features of the tariff. I mean, nothing
16 against -- and I'm thinking generally, broadly, if I
17 handed tariff RS or another tariff to my mom, would
18 she understand what all is in there? No.

19 Q. Let's go to your rebuttal testimony, if
20 you could, please, page 4. Are you there?

21 A. Yes, I'm there.

22 Q. Okay. I see you're discussing the
23 development of tariff RTP. On line 22 you use the
24 word "intent" and then in the next question page 5,

1 line 4, you're asking "what was the company's
2 intent." And then line 6 "the intent," line 16 "the
3 intent," and then on the next page 6 "Kentucky Power
4 and intended." Now, this is a lot of what -- what
5 you intended this tariff to mean. How is the
6 customer reading the words of a tariff supposed to
7 know what Kentucky Power intended if the words
8 themselves don't actually say it?

9 A.- I guess I think the words themselves
10 actually say it, but I think what we do have is after
11 sitting here today, different folks are reading that
12 language and evidently interpreting it differently,
13 but I think the intent does matter because that was
14 the basis for the crafting of the tariff language.

15 Q. Well, without a baseline how is the
16 customer supposed to know how much load it actually
17 shifted? Without having a starting point, aren't we
18 in this esoteric question about what would the
19 customer have used versus what it did use? I mean,
20 we're -- this is the discussion I had with
21 Mr. Wohnhas. He is supposed to divine what the
22 customer would have used compared to what they did
23 use and that would be his load shift versus a CBL we
24 have in writing every hour, we know what the

1 benchmark is, and you can measure it with precision.
2 How is the customer supposed to know how much shifted
3 without a baseline?

4 A. To me it's very simple. I mean,
5 customers even before we get into fancy things like
6 real-time pricing, customers on tariff QP, tariff
7 CIP-TOD, PL -- programmable logic controllers, demand
8 controllers, those types of things, they are very
9 cognizant of how much they use and what the processes
10 within their facilities do. So, you know, I'm taking
11 a very simple example, if machine X uses a megawatt
12 and you turn off machine X, you have reduced the load
13 a megawatt. I don't think it's that esoteric.

14 Q. And you would agree that the words of the
15 tariff don't identify how much load is supposed to be
16 shifted; you would agree with that.

17 A. I think the words of the tariff say that
18 the load you are putting on the tariff ought to be
19 shiftable.

20 Q. Where does it -- where does it say that?
21 I mean, maybe that was your intent but where does it
22 say that and how would a customer know that was your
23 intent if it's not written?

24 A. Refer to the program description we have

1 been discussing.

2 Q. Okay. Go ahead and read that one more
3 time.

4 A. "The RTP tariff will offer customers the
5 opportunity to manage their electric costs by
6 shifting load from higher cost to lower cost pricing
7 periods or by adding new loads during lower price
8 periods."

9 Q. Again, it doesn't say how much load to
10 shift or how the shift should be measured, does it?
11 Those words don't, do they?

12 A. The words do not say how to measure
13 shift. The words to me say that the load that's on
14 the tariff ought to be shiftable.

15 Q. Okay. Then it goes on to say "The
16 experimental pilot will also offer the customer the
17 ability to experiment in the wholesale electricity
18 market by designating a portion of the customer's
19 load subject to standard tariff rates with remainder
20 of the load subject to real-time prices." What does
21 that mean to you? I mean, not -- not what is your
22 intent. What do those words mean to you?

23 A. The words mean to me that Kentucky Power
24 was unique in the State of Kentucky and we were part

1 of PJM which had a real-time price in the market and
 2 that customers would be able to see those real-time
 3 prices instead of internal dispatch computed prices
 4 that need to be done in utilities that aren't part of
 5 the wholesale electricity market.

6 Q. I think we've discussed this enough.
 7 Sorry.

8 Will you turn to page 9 of your
 9 testimony, please.

10 COMMISSIONER BREATHITT: Testimony or
 11 rebuttal?

12 MR. KURTZ: Rebuttal, yes.-

13 A. I'm there.

14 Q. Okay. This is a chart of average monthly
 15 locational marginal prices for energy, correct? LMP
 16 is energy.

17 A. Yes.

18 Q. This is an on-peak/off-peak average, I
 19 assume?

20 A. It's an all hour.

21 Q. All hour, yeah, around the clock. Okay.
 22 And so this goes from June of '07 to September of
 23 2012?

24 A. That's correct.

1 Q. Okay. And what -- you presented this to
2 show that in June of 2010 when the settlement
3 agreement was entered into, where would you say the
4 energy market was?

5 A. 35.

6 Q. \$35 a megawatt-hour? A little bit more
7 maybe?

8 A. In my view it was recovering. It was
9 recovering from the economic downturn that occurred
10 in '09.

11 Q. Okay. But where does the line cross?
12 You had that long line that says settlement date.
13 May 20, 2010, was the settlement date where -- what
14 was the energy price the day of the settlement?

15 A. I have no idea.

16 Q. Well, no. I mean, it's there. It's 35
17 or 36, 37 dollars a megawatt-hour. The line crosses
18 about there?

19 A. The line may cross somewhere between 35
20 and 40, but I don't view that as meaningful.

21 Q. Okay. Well, I mean, it's your testimony.
22 Why did you put that line in there to show what the
23 LMP was on the date the settlement was signed?

24 A. No. I did not put that in there to show

1 what the LMP was the date the settlement was signed.

2 Q. It says "settlement date" with a line
3 going through, and it says "as you can see, energy
4 prices in the first nine months of 2012 have averaged
5 approximately 21.7 percent lower than the
6 corresponding period in 2010 which includes the date
7 of the settlement."

8 Maybe I misunderstood why you have
9 settlement line in there, but I thought you were
10 showing that -- what the energy prices were the date
11 the settlement was signed.

12 A. No, I wasn't showing what the energy
13 prices were the date the settlement was signed. What
14 I was trying to show was the trend which is, you can
15 see, 2007, 2008 LMPs were, you know, in the 40 to 70
16 range. Yeah, the economic downturn of 2009 LMPs
17 dropped into the low 30s.

18 Q. Now --

19 A. Kind of late '09 going into '10, you see
20 the recovery in the LMPs were kind of back, you know,
21 ranging in the 30 to 50 range, and then you've seen
22 since mid to late '11, the prices have kind of fallen
23 again.

24 Q. Okay. Let's reiterate one thing, and you

1 said this the page before, when the day AEP --
2 Kentucky Power signed the settlement, you knew what
3 the capacity prices were, the RPM capacity prices, in
4 the PJM market because that's done on that three-year
5 forward basis, correct?

6 A. That's correct.

7 Q. Energy prices you didn't know the day you
8 signed the settlement, correct, because you couldn't
9 see -- you couldn't see from May of 2010 until today
10 what the energy prices were unlike capacity, correct?

11 A. That's correct.

12 Q. Okay. But you knew the day you signed
13 the settlement that energy prices are quite volatile,
14 didn't you? Look at the -- look at the first half of
15 that chart when they range from 70 all the way down
16 to 27.

17 A. Yes. Energy prices fluctuate.

18 Q. So when you signed -- when AEP signed the
19 settlement, you knew that energy prices could be
20 higher or lower because it's a very volatile
21 commodity market. I mean, AEP is sophisticated
22 enough to know that; isn't -- isn't that true?

23 A. Yes, the company is aware that energy
24 prices can change. The -- what the company also was

1 aware of was that tariff RTP, our expectation, and
2 the way the tariff was crafted and the way the tariff
3 was written, our expectation was customers would put
4 load that is price sensitive on the tariff and not
5 put load that is not price sensitive on the tariff.

6 Q. Now, between now and June of 2012, it's
7 possible that energy prices could fluctuate either up
8 or down from where they are today; isn't that
9 correct?

10 A. Yes. Energy prices fluctuate hourly or
11 even actually on a 5-minute basis.

12 Q. And it's possible that if energy prices
13 go up, the customers that are on tariff RTP could
14 lose money versus the standard rate if energy prices
15 go up high enough; isn't that correct?

16 A. It's possible but not likely based upon,
17 you know, the information that Mr. Wohnhas used to
18 compute the exposure estimate which is forward data
19 for, you know, a period of time and the period of
20 time through June of '13.

21 Q. And if -- and if the customers lose money
22 on the tariff, actually instead of this being a 10 to
23 20 million dollar loss to Kentucky Power it could be
24 a net gain to Kentucky Power; isn't that correct?

1 A. I think that's a hypothetical. I don't
2 think it's probable.

3 Q. It may not be probable, but it's
4 certainly possible--given the volatility of energy
5 markets, isn't it?

6 A. I am not an expert, but I would be hard
7 press to do see that happening.

8 Q. Now, when Kentucky Power signed this
9 settlement agreement in May of 2010 knowing the
10 volatility of energy prices, just because they went
11 in the wrong direction you're not asking the
12 Commission to bail out Kentucky Power out of a bad
13 business bargain, are you or are you?

14 A. No. Again, it goes back to the point of
15 the issue is kind of two parts, the part -- the first
16 part that you're focusing on is that energy prices
17 are lower, yes, that's true. The second part that's
18 also true is that customers are -- have placed load
19 on tariff RTP with no intent, ability to shift that
20 load, to actually respond to real-time prices which
21 is the core fundamental intent of why we have tariff
22 RTPs in the first place.

23 Q. Let me ask you this hypothetical, assume
24 the Commission allows the tariff RTP to last the full

1 three years agreed to in the settlement and approved
2 by the Commission and then puts into place your rider
3 RTP with a baseline, then at least on a going forward
4 basis once your rider with a baseline is in effect,
5 all of your concerns that you just expressed will be
6 satisfied going forward; isn't that correct?

7 MR. OVERSTREET: Excuse me, Mr. Kurtz.
8 Forward from what date?

9 MR. KURTZ: Forward from June of 2013
10 assuming that the tariff is allowed to go the full
11 three years agreed upon in the settlement.

12 A. I apologize. That was a long one. Can
13 you give me that one back, please.

14 Q. Okay. If -- if the Commission allows the
15 tariff to stay in effect for the full three years
16 agreed to in the settlement and then puts the rider
17 in, the rider with the baseline, all of your concerns
18 will be then satisfied going forward once the rider
19 with the baseline is put in; is that correct?

20 A. I think so but I'm going to play it back
21 to make sure I got it right. The -- if rider RTP is
22 put into effect and -- on any given date, the
23 concerns over customers placing load on RTP and not
24 shifting will be addressed.

1 The outcome would then be as customers
2 shift load, they are financially rewarded which
3 benefits them. If it's Kentucky Power and it's other
4 customers, by reducing Kentucky Power costs, by
5 allowing, you know, all of the positive benefits, the
6 whole reason why real-time pricing is out there to
7 have.

8 Q. Okay. So in that sense is this really a
9 nine-month question, who bears the financial benefit
10 or burden of this nine-month period, because if the
11 Commission puts the rider into effect on July 1 of
12 '13, at least from that period going forward, you'll
13 be satisfied, and then the customers will have the
14 benefit of their settlement bargain through the
15 entire three-year period.

16 A. I guess I'm still not quite with you
17 there on the customers will have the benefit of their
18 settlement bargain because I feel -- I view that the
19 settlement bargain was price responsive load went on
20 RTP, nonprice responsive load didn't.

21 Q. Okay. And you can -- you can at least
22 understand that because there wasn't a baseline in
23 the tariff that the customers did not have that
24 understanding about how much load they needed to

1 shift, how it would be measured, and all of the
 2 things we've discussed.

3 A. No, I don't agree with that.

4 Q. You don't? Then why did -- staff counsel
 5 asked Mr. Wohnhas why did you allow Marathon to go on
 6 the tariff when they told you up front they couldn't
 7 and wouldn't shift load.

8 A. And I'm not really Mr. Wohnhas. It's his
 9 decision.

10 MR. KURTZ: Okay. Thank you, Mr. Roush.

11 No more questions, your Honor.

12 MS. BURNS: Okay. I have a few, your
 13 Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Burns:

17 Q. Mr. Roush, if you would please go to your
 18 rebuttal testimony page 10.

19 A. I'm there.

20 Q. Down around lines 15 through 23, you're
 21 asked if the tariff RTP had been successful. You
 22 stated that it had not. And then at one point there
 23 starting on line 19 you say "As a result, some of the
 24 largest industrial entities in Kentucky Power service

1 territory are benefiting by receiving below cost
2 service at the expense of Kentucky Power and without
3 any benefit to Kentucky Power or its customers."

4 Could you explain how those large industrial
5 customers are receiving below cost service at the
6 expense of others.

7 A. Certainly. It basically comes down to
8 two measures, to the extent a (inaudible) is paying
9 below the CIP-TOD tariff -- I mean receiving service
10 at below Kentucky Power's costs; the second part of
11 it, and that's the part we have been discussing at
12 length, is that would be acceptable if they were
13 doing something that, i.e., shifting load which had a
14 commensurate reduction in Kentucky Power's cost of
15 service. Without that happening they are just
16 getting a lower bill without any cost reductions
17 being realized by shifting in response to price
18 signals.

19 Q. And from your -- the discussion that you
20 just had about the rider RTP, is it safe to say that
21 it's your testimony that because there's the customer
22 baseline load, the CBL, in the rider that that
23 requires customers to shift load as a condition of
24 service?

1 A. It kind of accomplishes two things. It
2 allows -- if they don't shift load, the bill is going
3 to be basically the same under rider RTP roughly. I
4 mean, it's not going to be perfect but it's going to
5 be basically the same. If they do shift load, they
6 shift load out the proper way out of high cost into
7 low cost, then it will save money. If for some
8 reason they do the opposite and shift load out of low
9 cost into high cost hours, then they will actually
10 pay more.

11 So it kind of gives you that -- gives you
12 kind of both parts. If you do not pay, nothing
13 happens but if you do shift load, if you shift -- if
14 you shift load out of low cost to high cost hours or
15 had load in low cost hours, you will save money.

16 Q. Does the rider require a customer to
17 shift load as a condition of service?

18 A. I believe it does because it has the
19 exact same language as tariff RTP, I presume.

20 Q. You talked a little bit about the PJM
21 capacity market and the PJM capacity rates. Subject
22 to check, and I'm going to give you some numbers
23 here, and you can provide that as a post-hearing
24 response, subject to check, would you agree that the

1 PJM capacity auction amounts by year for the year
2 2012-2013, the amount is 1646 per megawatt day?

3 A. That's correct.

4 Q. Okay. 2013-'14, 2773 per megawatt day?

5 A. That's correct.

6 Q. 2014 and 2015, 12599 per megawatt day?

7 A. That's correct.

8 Q. 2015-2016, 136 per megawatt day. -

9 A. That's correct. I happen to have it with
10 me.

11 Q. Very good.

12 MR. OVERSTREET: Excuse me. Is that
13 satisfactory or do you want us to --

14 MS. BURNS: Yes, that's satisfactory.

15 MR. OVERSTREET: We don't need to file a
16 data request response, okay.

17 MS. BURNS: I think that's all right now,
18 your Honor.

19 VICE CHAIR GARDNER: Any questions?

20 COMMISSIONER BREATHITT: I do.

21 -- -- --

22 EXAMINATION --

23 By Commissioner Breathitt:

24 Q. Good afternoon, Mr. Roush.

1 A. Good afternoon, Commissioner.

2 Q. I think I'm going to have these same
3 questions for Mr. Baron.

4 COMMISSIONER BREATHITT: Are you
5 Mr. Baron?

6 MR. BARON: Uh-huh.

7 Q. Whose responsibility is it, as I'm
8 learning more about load shifting than I've ever
9 learned before, and I don't know nearly as much as
10 you do and Mr. Baron knows, but whose responsibility
11 is it to know if a load has been shifted? Did I say
12 that well enough?

13 A. That's a fair question, yes. I think
14 it's two parts. The company can look at actual meter
15 data and see if there has been a change by looking at
16 the actual data and saying, okay, well, they normally
17 ran around the clock and, now, they're starting --
18 they're not running in the hot summer afternoon.

19 I think the discussion we had earlier the
20 customer obviously will know because they have taken
21 some action to change the way they are operating. So
22 we kind of have to look at it more after the fact
23 this happened and inspected the actual meter data and
24 make a determination, but ultimately a customer

1 should know if they have changed their behavior, if
2 they're not running this piece of equipment summer
3 afternoons, that kind of thing.

4 Q. Is there a monetary reason for it to be a
5 secret or to -- let me say is there a proprietary or
6 monetary reason for that information not to be fully
7 known or understood?

8 A. I'm struggling to think of a circumstance
9 where that might be the case.

10 Q. Because to me load shifting is load
11 shifting and it at the end of -- I sometimes during
12 this proceeding have thought it should be a secret,
13 but it shouldn't be a secret, should it?

14 A. I'm having a hard time of thinking of a
15 reason why it would be secret. The only time -- one
16 example I can think of is, you know, some customers
17 are in -- you know, most customers are very
18 competitive.

19 Q. That I do understand.

20 A. Yes. And if knowledge of whether they
21 are operating or not or what their production level
22 is would be of some value to a competitor.

23 Q. Okay.

24 A. That's a circumstance where I think there

1 could be a concern but Mr. Baron might be able to
2 better speak to that.

3 COMMISSIONER BREATHITT: Okay. Well,
4 I'll ask him that as well. That's the only question
5 I had. It's been kind of bugging me since the
6 beginning.

7 THE WITNESS: Thank you.

8 - - -
9 EXAMINATION

10 By Vice Chair Gardner:

11 Q. Mr. Roush, I have a couple of questions
12 that I'm unfortunately going to go back through some
13 of what Mr. Kurtz asked you. But the first question
14 I had has to do with the capacity charge. And when I
15 look at the tariff RTP and it talks about weight,
16 it's got the different components of rates and
17 sitting right there is the capacity charge. And so I
18 understand and I see that and it's got the other
19 components, energy charge, transmission charge, et
20 cetera, et cetera.

21 And I assume that under tariff RTP the --
22 the capacity charge as it says there is the auction
23 price set in the RPM auction held by PJM in each
24 planning year. I guess it was indicated one knows

1 that three years in advance; is that correct?

2 A. Yes, Commissioner.

3 Q. Okay. Now, if I look at the rider RTP, I
4 understand that you have got this baseline issue, and
5 I will get to that in a minute, but show -- tell me
6 where in there the capacity price fits in.

7 A. Sure. It's kind of implicit because it's
8 part -- part of the standard tariff billing. So in
9 rider RTP what we're doing is saying whatever you use
10 during the month, we calculate your bill into the
11 regular tariff and that includes a charge for
12 capacity, energy, fuel.

13 Q. Does that actually say that here? Or
14 show me where.

15 A. Oh, I'm sorry, yes. I apologize.

16 Q. Is that where it says billing
17 determination for SB plus PC plus the sum amount,
18 summation of all those?

19 A. Sorry. (Inaudible.)

20 Q. No problem.

21 A. Yes. It's really in the defined term SB
22 where the customer's billed for the current billing
23 period based on current usage and billed under the
24 appropriate standard tariff including all applicable

1 riders. So that's kind of the first step because you
2 calculate a bill just normal tariff based on actual
3 usage.

4 Q. Okay. And then the new bill SB within
5 that includes the capacity charge; is that right?

6 A. Correct. The standard tariff rate
7 includes basically the company's cost of service
8 which would include capacity, energy --

9 Q. Okay. Is --

10 A. -- everything.

11 Q. And is that -- does that go back to
12 the -- I'm sorry, standard tariff is a defined term
13 because it's capitalized, I assume, so I would go to
14 another one of AEP's tariffs and see tariff pages and
15 see what standard tariff means and in there I would
16 see capacity charge; is that correct?

17 A. Not quite. And actually if you flip back
18 one page in the rider to sheet 30-1.

19 Q. Yes.

20 A. Under mandated service under standard
21 tariff as tariff QP and tariff CIP-TOD.

22 Q. Oh, I see. So I would go then into the
23 CIP-TOD to -- let's do that for a second. Muddle
24 through. Look at one of the tariffs, CIPs.

1 MR. KURTZ: Excuse me, that's Staff 1,
2 Staff No. 1.

3 VICE CHAIR GARDNER: Right.

4 MR. KURTZ: Oh, I'm sorry.

5 Q. And --

6 A. I apologize, Commissioner, I don't have
7 that with me. Can I have my attorney give it to me?

8 Thank you. You'll never see the term
9 capacity charge.

10 Q. Is that the demand charge?

11 A. Demand charge and capacity charge are
12 used somewhat interchangeably.

13 Q. So when -- just so I understand it, so
14 then we're in this tariff CIP-TOD, I'm looking at the
15 demand charge, which, I mean, I've got the on-peak
16 and off-peak or primary subtransmission, transmission
17 and that's going to be based on Kentucky Power's cost
18 of service.

19 A. Correct.

20 Q. Okay. So unlike (inaudible) -- so unlike
21 the real-time where we use PJM's capacity and the --
22 in the -- in the rider RTP we're not using PJM's
23 capacity. We're using the Kentucky Power's embedded
24 costs, cost of service for capacity; is that right?

1 A. Correct. Actually in rider RTP for
2 everything except for changes of usage, we're using
3 Kentucky embedded costs and only for changes of usage
4 are we using real-time market pricing.

5 Q. When you say change in usage, do you mean
6 the energy charge?

7 A. Correct, correct, the delta in the energy
8 charge.

9 Q. Right, right, right, yes. So okay. So
10 that's the capacity. So in the rider RTP the concept
11 is we've got this baseline, the CBL, and let's just
12 pick some particular point in time on that and so
13 what they -- you're -- what you believe this means is
14 that they designate -- there's a CBL and they
15 designate a particular quantity of power that they --
16 that they will be in effect subject to real-time
17 prices; is that correct?

18 A. I think you might be mixing the two a
19 little bit. Under rider RTP what would happen would
20 be their normal CBL usage is billed on the regular
21 tariff.

22 Q. Correct.

23 A. And then to the extent they deviate from
24 that CBL, either up or down, those deviations are

1 where billed -- are billed or credited at real-time
2 pricing.

3 Q. Right. But they also designate an amount
4 of their -- don't they designate an amount of power
5 that's -- or capacity that's going to be -- don't
6 they designate, for example, they have got designated
7 at least 100 kilowatts as the -- don't they?

8 A. I believe that's on the tariff RTP. That
9 was the different.

10 Q. A thousand kilowatts rider?

11 A. (Inaudible.)

12 Q. On an experimental basis demand, so
13 there's no limit as to -- there's no minimum as to
14 how much they can -- they will be using; is that
15 right? So they are putting their hope -- I thought
16 that they -- on the rider RTP they had to designate a
17 particular amount of their load that would be subject
18 to rider RTP.

19 A. That was actually under current tariff
20 RTP. Under rider RTP their whole load kind of goes
21 on it, as we were talking earlier, how the standard
22 bill is calculated, you just bill the whole load on
23 standard tariff.

24 Q. Okay. So they are building their whole

1 load on the standard tariff and then, you know,
2 you've got your curve and then at one particular --
3 if we pick -- if we pick a particular point in time,
4 then whether it's 5 minutes or 15 minutes or an hour,
5 we look at what the realtime price is on the PJM
6 market; is that correct?

7 A. Yes.

8 Q. And then what they are going to be paying
9 for or getting a credit for is the amount that the
10 energy charge on the PJM real-time price deviates
11 from that load curve at that particular points.

12 A. I think that sounds right. I'm a visual
13 person too so I'm kind of drawing the picture with
14 you is that their CBL is X and they actually use a
15 little less than X, the amount that they are a little
16 less will be credited at the real-time price at that
17 point and then another hour a little above, it will
18 be charged for the real-time price. And then the net
19 of those kilowatt-hour deviations will net to zero
20 over a month, but the dollar deviation won't.

21 Q. Okay. And so the assumption is is that
22 so mechanically -- I think I understand that now.

23 So really all of their load is going --
24 under the rider and this is what you all -- under the

1 rider all of their load is going to be measured that
2 way to determine an energy charge for the year; is
3 that right? So -- so rather than 15-minute interval,
4 5-minute interval, whatever, let's assume there's as
5 you said the 8,760 hours in a year so let's assume
6 then you need to determine a price by hours so that
7 means there is going to be a calculation as to what
8 the real-time price is 8,760 times a year, we're
9 going to look at whether it's above it or below it,
10 credit, debit, and then you sum up all of those and
11 that determines what their energy charge is for the
12 year under the rider.

13 A. Correct, correct.

14 Q. Okay. And then under the -- under the
15 other -- under the tariff RTP, what we assume is that
16 they are going to sort of a priori designate an
17 amount on the front end that will be subject to
18 real-time price over the course of that year and
19 then -- is that correct, and then -- so --

20 A. Yes, sir.

21 Q. Okay. So then it's sort of -- and
22 there's no comparison. It's just say that if they
23 took their whole load and they put it on there and
24 they are just going to be subject to the real-time

1 price on that and it's up to them to shift the load
 2 as they see fit to try to minimize the -- the amount
 3 of the price -- the cost they are going to pay; is
 4 that correct?

5 A. Yes, Commissioner. That sounds correct.

6 VICE CHAIR GARDNER: That's all I have.
 7 Thank you.

8 MR. KURTZ: Oh, I'm sorry.

9 VICE CHAIR GARDNER: We thought you were
 10 asking to see if you needed to ask any more
 11 questions.

12 MR. KURTZ: Oh, no, if Mr. Overstreet has
 13 redirect.

14 MR. OVERSTREET: I don't think so.

15 MR. KURTZ: Sorry.

16 VICE CHAIR GARDNER: No redirect? Any
 17 follow-up on cross?

18 MR. KURTZ: No, your Honor.

19 MS. BURNS: No, your Honor.

20 VICE CHAIR GARDNER: Thank you,
 21 Mr. Roush.

22 THE WITNESS: Thank you.

23 VICE CHAIR GARDNER: Does that complete
 24 your case, Mr. Overstreet?

1 MR. OVERSTREET: Yes, your Honor. That
2 concludes Kentucky Power's case.

3 MR. KURTZ: We would call Mr. Baron, your
4 Honor.

5 (Witness sworn.)

6 VICE CHAIR GARDNER: Please have a seat.
7 Mr. Baron, state your full name, please.

8 THE WITNESS: Stephen J. Baron.

9 VICE CHAIR GARDNER: With whom are you
10 employed?

11 THE WITNESS: J. Kennedy & Associates,
12 Inc.

13 VICE CHAIR GARDNER: What is your
14 position with J. Kennedy & Associates, Inc.?

15 THE WITNESS: I am president of J.
16 Kennedy & Associates.

17 VICE CHAIR GARDNER: And what is your
18 business?

19 THE WITNESS: 570 Colonial Park Drive,
20 Suite 305, Roswell, Georgia 30076.

21 MR. KURTZ: Thank you, your Honor.

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STEPHEN J. BARON

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Kurtz:

Q. Mr. Baron, do you have in front of you a
document marked the direct testimony and exhibits of
Stephen J. Baron?

A. Yes.

Q. Were -- was this document prepared by you
or under your direct supervision?

A. Yes.

Q. Do you have any corrections or additions
you would like to make to this testimony?

A. None that I'm aware of.

Q. Did you file an errata letter correcting
a portion of this?

A. There was a correction in the -- just as
I recall in the data response actually where I said
that -- let me find that. I think one of the
sentences in my testimony should have been stricken.
Is that what you are referring?

Q. Yeah. Do you have that so we can make
sure that everybody else?

1 A. Yeah. I don't have the letter but there
2 was the first sentence of -- well, I do have the data
3 response. It's basically on page 24 at line 9 of my
4 testimony. And I apologize, looking for my data
5 responses. I believe it was the first line -- the
6 first sentence, excuse me. Let me get that. I'm
7 trying to find the data response. Mr. Kurtz, do you
8 recall which? I'll find it. I'm just going through
9 it.

10 Q. The data response --

11 MR. OVERSTREET: May I?

12 MR. KURTZ: Yeah, thank you,
13 Mr. Overstreet.

14 MR. OVERSTREET: I believe it's No. 24,
15 Mr. Baron. It just happens to be the same number as
16 the page.

17 THE WITNESS: Oh.

18 MR. OVERSTREET: I think it's data
19 response 24.

20 THE WITNESS: In response to the company?

21 MR. OVERSTREET: Yes.

22 THE WITNESS: Oh, okay. I'm sorry.

23 MR. OVERSTREET: I hope I got that right.

24 THE WITNESS: They are not numbered.

1 MR. OVERSTREET: Yeah. You noticed that
2 too.

3 THE WITNESS: All right. Hold on.
4 (Inaudible.)

5 Q. (By Mr. Kurtz) I think it was --
6 Mr. Baron, your answer in response to staff and if
7 you -- instead of fumbling through all of that, can
8 you just make the correction here on the stand, if
9 you just want to strike a sentence?

10 A. Yes. I thought it was a response to
11 staff testimony. That's why -- questions. Basically
12 our position is that the tariff RTP, it would be we
13 would remove that first sentence so the question
14 reads "Do you believe the tariff RTP should be
15 allowed to expire on June 30, 2000 -- 30, 2013?"
16 Strike the sentence and the -- the remaining part of
17 that paragraph would still continue.

18 Q. So we should strike "No, I believe the
19 tariff RTP should continue beyond June 30, 2000" --

20 A. Yes, that's correct. I apologize.

21 Q. Okay. So we strike --

22 COMMISSIONER BREATHITT: The answer
23 begins with the word "after."

24 MR. KURTZ: Thank you.

1 THE WITNESS: That's correct. That's
2 correct, ma'am.

3 MR. KURTZ: Now, with that change, your
4 Honor, the witness is available for cross.

5 VICE CHAIR GARDNER: Mr. Overstreet.

6 MR. OVERSTREET: Thank you, Mr. Vice
7 Chairman.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Overstreet:

11 Q. Mr. Baron, do you have your testimony in
12 front of you? And I'll get some water too while
13 you're getting it.

14 A. Yes.

15 Q. Could I ask you to turn to page 4, line
16 13.

17 A. Page 4, line 13?

18 Q. And am I correct in my understanding that
19 your testimony was filed on behalf of Kentucky
20 Industrial Utility Customers, Inc., or KIUC?

21 A. Yes.

22 Q. Okay. And I think you heard Mr. Kurtz
23 this morning indicate that the members of KIUC that
24 are participating in this proceeding are Air Liquide,

1 AK Steel, Air Products, the seven EQT compressor
2 stations and Marathon; is that accurate?

3 A. That's my understanding.

4 Q. Yes. And were you also submitting
5 testimony on their behalf in this proceeding, or is
6 it just exclusively KIUC?

7 A. It's my understanding that my testimony
8 is on behalf of KIUC. I believe the customers you
9 cited Mr. Kurtz identified are members who are
10 supporting this -- participating in this particular
11 intervention, but it is on behalf KIUC.

12 Q. Okay. And am I correct in my
13 understanding that you are the witness responsible
14 for all KIUC data request responses in this
15 proceeding?

16 A. Yes, to the -- to the extent that I'm the
17 witness in this case, I am supporting those.
18 Obviously some of those date responses included
19 e-mails that I wasn't directly involved in so I'm --
20 but I'm -- to the extent that I'm the witness in the
21 case I am supporting the responses.

22 Q. Can you identify for the Commission the
23 representatives of the participating KIUC members
24 that you spoke to in connection with the preparation

1- of your testimony and the data request responses in
2 this case.

3 A. I didn't -- in preparation of this
4 particular testimony I did not speak to any of the
5 members.

6 Q. Okay. Okay. And then, you know, I --
7 are you aware that instruction 2 to Kentucky Power's
8 data requests to KIUC indicated that the data
9 requests were continuing and should be supplemented
10 as new information became available?

11 A. I guess I'm generally aware of that. I
12 don't specifically recall that, but I guess I can
13 accept that.

14 Q. Yeah.

15 A. I know it's common in certain types of
16 discovery requests.

17 Q. In fact, KIUC had that same instruction
18 in its data request to Kentucky Power.

19 A. I'll accept that.

20 Q. Okay. And I just need you to confirm, if
21 you will, that there were no supplemental responses
22 filed after the initial data request responses were
23 filed for KIUC.

24 A. None that I'm aware of.

1 Q. Okay. Thank you. Now, Mr. Baron, you
2 agree, don't you, that nowhere in your prefiled
3 testimony do you address the ability of AK Steel, Air
4 Products, or the seven EQT compressor stations,
5 Marathon, or even Air Liquide to shift load in
6 response to price signals?

7 A. I -- I think that's true. I didn't
8 address that because the tariff -- RTP tariff does
9 not require that. It doesn't have a provision in it
10 that specifies that any load that is moved to that
11 tariff must be shifted. Now, apparently I guess what
12 I learned today is that the company's position is
13 that it -- all of it, e 100 percent, must be shifted
14 but even based on the wording as written, there are
15 no provisions of that so I didn't address that.

16 Q. Well, I think it's probably safe that if
17 there is anything that's clear in this proceeding,
18 that the company and you disagree on that -- on that
19 particular point. You agree, don't you, Mr. Baron,
20 that nowhere in your prefiled testimony do you
21 address whether AK Steel, Air Products, Marathon and
22 the seven EQT compressor stations, in fact, shifted
23 any load in response to price signals?

24 A. That's correct. I -- I did not review

1 that question and as we -- I think we talked about or
2 it was talked about in some of the cross of Mr. Roush
3 and Mr. Wohnhas, that really in order to know whether
4 a customer truly shifted load, you would have to --
5 you would have to know what -- what the criteria was
6 in the rider RTP that the company is now proposing
7 there is this customer baseline that looks every
8 single hour and compares the actual usage to that
9 baseline.

10 For tariff RTP I think -- well, it's
11 clear that there is nothing in there that discusses
12 that, and even based on the company's representations
13 today that that really is in there, that load
14 shifting is a requirement, as I understand now, that
15 all of the load that's moved to RTP, under the
16 company's interpretation, must be shifted, all of it.

17 So I'm not even sure what that means
18 except that if a customer previously had megawatt in
19 the on -- in the hours of 7 a.m. to, say, 11 p.m. in
20 the summertime, an on-peak period, that that would
21 disappear and that's sort of -- that's the way I
22 would interpret what I guess Mr. Roush was saying,
23 that it all has to be shifted.

24 Absent that I don't know what else --

1 what else you -- how else you would interpret it.
2 What does shifting mean? It's not described in the
3 tariff. It's sort of an opportunity to shift load in
4 response to the economic price signals of RTP.
5 That's the idea of the tariff.

6 Q. Mr. -- Mr. Baron, that's a great speech
7 but it's not really responsive to -- to my question.
8 I think you know that. Do you have in front of you
9 the Kentucky Power Exhibit 1 in this proceeding?

10 A. I don't -- I don't think I do. Is it?

11 Q. It's -- it's the data request -- your
12 data request 30 through 33.

13 A. I may have that. I was handed that.
14 Well, Kentucky -- no. This is Errol Wagner's
15 testimony.

16 MR. OVERSTREET: Thank you, Ms. Kyler.
17 No, that's Errol's testimony. And I may have the
18 number wrong. Maybe it's 2. I apologize. Yeah,
19 that's 2. I think that's -- that's the curve ball I
20 threw you. I apologize.

21 A. I do have it now, thank you.

22 Q. It was unintentional.

23 A. I understand.

24 Q. Now, and we discussed this a little bit

1 on -- on Mr. Wohnhas' redirect, but in these data
2 requests Kentucky Power asked and you had the
3 oppor -- you as a witness in the sponsor of this data
4 request had the opportunity to answer whether these
5 entities that are taking service under tariff RTP
6 had, in fact, shifted load; is that accurate?

7 A. Yes.

8 Q. Okay. And your response was "KIUC
9 objects to this request on the grounds that such
10 information is already available to Kentucky Power."
11 So you would agree that Kentucky Power knows whether
12 these customers shifted or not based upon this
13 response, right? Because you say the information is
14 available to Kentucky Power.

15 A. Yes. Under some definition of what load
16 shifting means, like a CBL, for example, I mean, the
17 company is the entity that has the hourly load data
18 of the customer last year, two years ago, they have
19 the hourly load data since the customer has been on
20 RTP. And the company then would be in position, if
21 it desired, to make some kind of comparison if that
22 was the determination of load shifting. That's --
23 that was the intent of this response, that -- that I
24 certainly don't have the data. I'm not -- I don't

1 believe the company -- the customers have the hourly
2 load data, and certainly we know that the company
3 does have that data.

4 Q. And your response to the data request
5 specifically asking for that data, you didn't qualify
6 it any way. You just said Kentucky Power has that
7 data, right?

8 A. Well, yes, and we assumed that the
9 company would understand what it meant, yes.

10 Q. Would you turn now to page 17, lines 19
11 to 22 of your testimony. If you give me a second,
12 I'll catch up with you there.

13 A. Page 17, line 19?

14 Q. Correct. And lines 19 through 22. Just
15 let me know when you're there, Mr. Baron.

16 A. I'm there. I'm just reading.

17 Q. No, that's fine. Take your time.

18 A. Yes, I've read it.

19 Q. Okay. Thank you. And could you just
20 read that for the Commission -- Commission, please.

21 A. Yes. "At page 10 of his testimony,
22 Mr. Wohnhas forecast that Kentucky Power's return on
23 equity 'ROE' would drop from 8.9 percent to
24 6.6 percent if existing tariff RTP remains in effect.

1 Even if this forecast is accurate, a 6.6 percent ROE
2 for one year is not serious enough to condone
3 revising the previously approved settlement."

4 Q. Okay.

5 A. I would just add I think the evidence we
6 saw today was instead of 8.9 percent, the ROE is in
7 the range of 11 plus percent.

8 Q. For the period indicated, right?

9 A. For the period ending in September --

10 Q. Right.

11 A. -- of this year.

12 Q. ...And, now, could I get you to turn to
13 Kentucky Power data request No. 23. And, I'm sorry,
14 your response to that. I was unclear. Just let me
15 know when you have that.

16 A. Unfortunately it's not numbered.

17 Q. Okay.

18 A. Is there -- I have a page printout.

19 Q. Yeah, page number at the bottom.

20 A. If you give me the page and I apologize
21 for this.

22 Q. Well, it's --

23 A. Or if you could just give me the first.

24 Q. It has a page 30 at the bottom. Will

1 that help?

2 A. Okay. And the question starts with?

3 Q. "Please refer to page 17, lines 19" --

4 A. Yes, I've got that.

5 Q. Okay. And those are the same lines we
6 were just talking about that I had you read, right?

7 A. Correct.

8 Q. Okay. And the data request asked, and
9 this is before you get to subparts A and B, asked you
10 to identify all returns on equity for Kentucky Power.
11 And you continued our quote, and this is from your
12 testimony, "serious enough to condone revising a
13 previously approved settlement." Do you see that?

14 A. Yes.

15 Q. Okay. In your response did you identify
16 any such data requests?

17 A. No.

18 Q. Okay. Mr. Baron, at the -- Mr. Kurtz was
19 asking you about corrections to your testimony. You
20 indicated that on page 24 that the first two
21 sentences of that response should be stricken.

22 A. Yes.

23 Q. Why were those sentences included in the
24 as filed ---

1 A. I'm sorry?

2 Q. Why are those sentences included in the
3 as filed testimony?

4 A. I think at some point it was probably
5 just poor construction of the paragraph and obviously
6 it didn't state, you know, the position that I think
7 the last sentence of that paragraph, but at this
8 point it would be premature to rule that tariff RTP
9 should expire was really the intent, that the
10 Commission basically instituted an experimental pilot
11 to gain information about customer behavior in
12 response to RTP.

13 -- That was extended in the settlement in
14 2010 and what we're -- what I'm really saying in that
15 answer is that depending on how the -- what the
16 ultimate results of this pilot show the Commission
17 would review it and then make a determination. So in
18 the first sentence it says "No, it shouldn't be
19 terminating" but really is clarified in the remaining
20 part of the paragraph and so I wanted to remove that
21 to make it more clear.

22 Q. But as originally filed, you had a simple
23 answer of no; is that correct, in that first sentence
24 in response to the question?

1 A. You're talking about the first two
2 sentences "no"?

3 Q. The one --

4 A. Yes. And, again, if you read the entire
5 paragraph, you could see that what we're really --
6 what I was really saying was after the Commission has
7 a chance to review the results of the pilot, the
8 experimental pilot, it may be that the RTP tariff
9 should continue and, whereas, in the beginning it
10 just said emphatically no, it shouldn't be. It was
11 not clear.

12 Q. All right. And if I can get you to focus
13 on what is now the first sentence of the response but
14 is -- but was the third sentence of the response as
15 originally filed.

16 A. Correct.

17 Q. And just it states "After the Commission
18 has" -- excuse me, Mr. Baron. "After the Commission
19 has had the opportunity to review actual financial
20 and operating results associated with tariff RTP,
21 modifications to its structure may be appropriate."
22 Did I read that correctly?

23 A. Yes.

24 Q. Okay. And you would agree, don't you,

1 that if the Commission takes your advice to "review
2 the actual financial and operating results" that
3 among the operating results to be reviewed as well as
4 customers taking service under tariff RTP shifted
5 their load in response to price signals?

6 A. That could be one of the factors, yes too
7 but remember that the purpose of -- of an RTP tariff
8 is not -- it's not like direct load control of say an
9 air conditioner where -- or an interruptible rate for
10 industrial customer where the customer says I'm
11 placing 10 megawatts on interruptible rate. And when
12 the company tells me that peak -- peak capacity is
13 scarce, it is an emergency, I will curtail it or in
14 some cases the company can actually curtail it
15 itself.

16 RTP is a different structure for
17 hopefully achieving economic benefits in the same
18 fashion, and the difference is that customers get to
19 look at the price signals. They look at the
20 real-time pricing rates on-peak/off-peak. They make
21 economic decisions as to whether it makes sense to
22 produce on-peak at those prices or to not -- to not
23 do that and maybe put a third shift on in the -- on
24 the on-peak hours because those look -- those prices

1 are going to stay high. Those -- the RTP allows the
 2 customer to basically make the decisions based on the
 3 economic pricing.

4 It is a different structure than a
 5 traditional direct load control or interruptible
 6 rate. It's very important to understand that
 7 difference and that's why the RTP tariff as
 8 structured allows customers to do that.

9 MR. OVERSTREET: That's all the questions
 10 I have at this time. Thank you.

11 MS. BURNS: No questions.

12 - - -

13 EXAMINATION

14 By Commissioner Breathitt:

15 Q. I'm going -- Mr. Baron, how are you?

16 A. I'm doing, Commissioner Breathitt.

17 Q. We're nearing the end. I wanted to ask
 18 the very similar or same questions that I asked
 19 Mr. Roush about load shifting. And you gave me a
 20 tutorial just now on this tariff and the ability of
 21 the customer to take advantage of the price swings.
 22 So this is -- this load shift, is load shifting a
 23 secret?

24 A. From the customer --

1 Q. Whether or not a company does it, an trim
2 customer shifts. -- --

3 A. In the case of industrial interruptible
4 load where for -- certainly for large customers many
5 times that is well kno -- that is known. Sometimes
6 it is competitive, even for direct load control. In
7 the case of RTP and load --

8 Q. That's the instance the questions are.

9 A. Yes. It could -- I would think, and it
10 really would have to be almost on a case-by-case
11 basis, but I would think that that type of
12 competitive information that a customer would not
13 want revealed to the general public. Certainly if
14 that was a requirement of the tariff, it would be no
15 problem revealing that or having that information
16 known to the company, to the Commission.

17 With regard to the general public, I
18 think, I would guess, based on my experience working
19 with industrial customers, that it could be
20 competitively sensitive to know that a customer is
21 doing some production process change that, you know,
22 visibly in the market.

23 Q. So if a -- an industrial customer shifts
24 its load, it could make -- it could have an economic

1 positive effect on the price of the production at
2 this point in time.

3 A. Yes. It could. In other words, if the
4 price was so high -- was high enough in the on-peak
5 to justify whatever capital investments or other
6 production decisions like paying employees extra --
7 higher -- extra wages for working a night shift, if
8 that was the response, the company would -- the
9 customer would make that evaluation. They would look
10 at the LMPs on-peak, the LMPs off-peak and decide on
11 a -- probably on a case-by-case basis, I would expect
12 that even, in other words, every time LMP on-peak is
13 \$100 and it's \$30 off-peak, you know, there may be a
14 rule that says we don't produce. But on the other
15 hand, they may make a decision depending on what the
16 market for their product is.

17 So that's what RTP allows a customer to
18 do to respond to these market price signals in terms
19 of electric prices and try to be economically
20 efficient. That's really the goal.

21 Q. Let me know if you agree with what I'm
22 about to say. I have -- it seems to me what I've
23 gleaned from this proceeding is that it's been
24 difficult for KIUC's customers to employ the use of

1 load shifting. Is that -- in this instance that it's
2 new, that they -- I don't -- is that correct or not?

3 A. I don't -- I don't know the answer as to
4 whether it is technically difficult, in other words,
5 they simply can't do it because the production
6 process or rather the customer, the price
7 differentials, even the high on-peak numbers we saw
8 in July, if they were expected to go for the whole
9 year, then a customer might make some capital
10 investments even for this year.

11 If a customer knew that they were going
12 to be on this RTP tariff for the next five years,
13 then -- and prices on-peak and off-peak started
14 gravitating towards larger differentials or even the
15 same differentials, it might make economic sense, and
16 it probably would for some customers, to make capital
17 investments to actually do the type of load shifting.

18 At this point the -- what's being gleaned
19 from this is customers are able to respond to actual
20 incremental marginal costs of electricity vis-a-vis
21 the market and for Kentucky Power that is the -- that
22 is their true margin of cost. It is what -- because
23 at any point AEP is either buying or selling into the
24 market.

1 And even after interconnection agreement
2 goes away in 2014, Kentucky Power may be doing that
3 on its own and so they are getting this kind of
4 information as to, you know, how customers react.

5 Q. You had answered a question from
6 Mr. Overstreet in order to know if a customer shifted
7 load, you would have to know what the criteria was.
8 What do you mean by "criteria"?

9 A. Well, what I mean is the company is now
10 saying without -- again, in the context there is no
11 customer baseline requirement, it's not built into
12 the tariff, there's no -- there's no nomination by
13 the company -- by the customer when they -- when they
14 move to this tariff, they'll -- there is nothing in
15 the tariff. But even -- but if there was, let's say
16 there was a language in there, you couldn't just have
17 language in there customer agrees to shift load
18 because what does that mean? The company hasn't
19 defined that. Does that mean that if a customer
20 moves 100 -- 500 kW to tariff RTP, RTP tariff, then
21 the customer agrees to move -- to then take all that
22 500 kW that had been operating in the hours of, say,
23 9 a.m. to 11 p.m. during weekdays in the summer and
24 drop it to zero and just increase loads somewhere

1 else or just simply drop it to zero? Or does it mean
2 that a customer can shift some of that load, that
3 they can -- in response to certain price signals they
4 can reduce load in those on-peak hours by a certain
5 amount of certain percent or what have you.

6 None of that is defined in the tariff and
7 so it's really, to me, a customer reading this tariff
8 would not have any beforehand knowledge as to knowing
9 what the rules of the game are that the company is
10 now setting up after the fact. And I just find that
11 to be very unusual, and I've never seen it before.

12 Q. So that's what you mean by criteria.
13 It's language in the tariff, explicit language in the
14 tariff?

15 A. Yes, Commissioner, exactly, knowing what
16 it would mean to shift load. What does that mean?

17 Q. But, still, a company, an industrial
18 customer company, would know whether it shifted load
19 or not, wouldn't it?

20 A. Yes. A customer would know and they --
21 they -- if price is on-peak were --

22 Q. Regardless of the criteria it would know
23 whether it shifted load.

24 A. I think a customer, yes, a customer would-

1 know whether they had planned to operate at this
2 level and, now, in response to these high RTP -- LMP
3 prices, they've decided to bring it down, and it
4 might be they brought it down simply because it
5 doesn't make sense to make steel during the on-peak
6 hours or maybe they can figure out a way to produce
7 more in the off-peak.

8 And, yes, they can -- they can do that.
9 There's no criteria in the tariff that says what
10 their supposed to do, only that they're facing these
11 prices, highs and lows, you make the decision.
12 That's what the tariff says.

13 COMMISSIONER BREATHITT: Thank you.
14 That's helpful.

15 THE WITNESS: Thank you, Commissioner.

16 - - -

17 EXAMINATION

18 By Vice Chair Gardner:

19 Q. Mr. Baron, I have a couple of questions,
20 and they -- tell me the -- first of all, I'm not
21 trying to question your qualifications, I'm trying to
22 find the extent of your knowledge about what other
23 utilities or what your direct experience is with
24 respect to real-time pricing tariffs is -- are, so if

1 you can tell me about your testimony, have you
2 examined them, tell me about that stuff.

3 A. Commissioner, I have been -- I have been
4 involved in many, many cases where the utilities have
5 RTP tariffs of some sort. I've looked at them. I --
6 I don't recall whether I have actually and I've
7 testified in a lot of cases where there's market
8 pricing involved so that -- to some extent that is
9 pure RTP, in other words, like in Pennsylvania or
10 maybe Ohio, but I don't recall at this point that
11 I've testified on RTP tariff structures in the past.
12 I just don't remember that.

13 Q. Okay. Let me ask this, you said it's --
14 it's unusual and the rider RTP uses the baseline and
15 my question is is that a usual way of measuring
16 shifting load? If it is, is it not -- what's another
17 way of measuring so -- because that's really the
18 concerns that you have about the tariff RTP is
19 basically how you measure this, so help me understand
20 that.

21 A. Yes. My experience is that -- that a lot
22 of the RTP tariffs that I've seen and probably
23 southern company Georgia Power may have been one of
24 the first, it established a customer baseline

1 (inaudible) and it's similar to the other utilities
2 in Kentucky.

3 Q. Right.

4 A. And I don't know how -- it's to some
5 extent similar to what rider RTP is. It may not be
6 exact but it's close. And so that is -- that is --
7 and that construct is generally incorporated in those
8 types of tariffs for the purpose of just allowing the
9 customer to have changes in their rate, in their
10 bill, based on deviations I think -- I think
11 Mr. Roush may have been describing, which I agreed
12 with, deviations in -- between their actual uses in
13 any given future period and this what they otherwise
14 would have used and that is priced at RTP.

15 But there is a distinction, of course, in
16 this tariff that the Commission when it approved the
17 original tariff recognized that it did not have a CBL
18 feature and said we would like -- the Commission said
19 we would like to get information on what, you know,
20 somebody else -- a different approach than what the
21 other utilities in the state are doing.

22 Q. Well, is there -- are you aware of any
23 other way other than the CBL of measuring the shift?
24 I mean, is that -- is there another way that you are

1 aware of regarding the CBL?

2 A. No other way except to the extent that a
3 customer -- for example, if the tariff had a
4 provision that said in order to participate in -- if
5 any customer participating in this tariff has to
6 identify a particular process in its overall
7 production facilities, that it agrees to not operate
8 during the on-peak period or operate only half its
9 otherwise level. In other words, you could focus it
10 perhaps on a particular piece of equipment.

11 In some cases for an interruptible range
12 which is a direct load, customers identify -- like a
13 steel company might identify an arc furnace load so
14 their rolling mill or something else would not
15 necessarily be interruptible, but the arc furnace
16 would be and so that's identified. That might be
17 another way but I think the general way of doing it
18 is the CBL approach.

19 Q. Okay. And the latter way you described
20 is more consistent with what you said earlier in your
21 testimony that that's really more of an interruptible
22 type of tariff than it is a real-time pricing tariff.

23 A. Yes, because if you actually -- that's
24 the only way you can say all the load subject to this

1 tariff is shifted meaning -- shifted in that context
2 means it was here, it's now down to zero, it's gone,
3 or we agreed to shift, reduce half of it, whatever.

4 Q. And did you understand Mr. Roush to say
5 that, in effect, the real-time pricing tariff that --
6 that there was almost a priori notion that if, in
7 fact, they participate -- if, in fact, a customer
8 participated, that they were assuming -- or presuming
9 that the customer would then engage in load shifting
10 and that that's -- that's what the tariff was?

11 A. I did hear him say that. And, of course,
12 we don't agree, and in particular we don't agree not
13 only because there's no language in there but
14 conceptually --

15 Q. How do you measure it?

16 A. How would you know and what does it mean
17 to shift load?

18 VICE CHAIR GARDNER: Okay. Thank you so
19 much. I appreciate it.

20 THE WITNESS: Thank you, Commissioner.

21 MR. KURTZ: A little bit of redirect, if
22 I could, please.

23 VICE CHAIR GARDNER: Sure.

24 MR. KURTZ: I want to recombine both of

1 your questions.

2

3

REDIRECT EXAMINATION

4

By Mr. Kurtz:

5

Q. Mr. Baron, I want to focus -- Vice Chair

6

Gardner and Commissioner Breathitt had asked you

7

questions, and I want to just sort of establish a

8

dichotomy between the rider and the tariff. Okay.

9

Follow me on this. The rider, you start with your

10

normal tariff, the CIP-TOD or the QP, your normal

11

tariff, the customer is on the normal billing like a

12

regular industrial customer, right?

13

A. Yes.

14

Q. Okay. Then there's this historical

15

annual baseline that is negotiated between the

16

utility and the customer, take out abnormalities,

17

that's the benchmark, right?

18

A. And that's done before the fact, before

19

the customer signs.

20

Q. Now, then you look every hour of the year

21

whether you're above or below the baseline and if --

22

correct?

23

A. Yes.

24

Q. Okay. If you're above the baseline, you

1 are using more, and you are charged the real-time
2 energy rate.

3 A. Yes. And the only caveat is, as
4 Mr. Roush said, that the CBL load pattern, the hourly
5 loads are adjusted up or down to reflect sort of
6 current level of usage.

7 Q. Okay.

8 A. So absent that, yes, I agree.

9 Q. So if you use more than your baseline,
10 you're charged the market price for energy only,
11 right?

12 A. Correct.

13 Q. Okay. If you use less of your baseline,
14 you're getting a credit for the market price of
15 energy, right?

16 A. Yes.

17 Q. Okay. There's no market based PJM RPM
18 capacity or in the -- in the rider because you're
19 paying for all your capacity through the normal
20 industrial tariff, correct?

21 A. That's correct.

22 Q. Okay. Now, let's look -- let's look at
23 the tariff. The tariff has PJM capacity, PJM energy,
24 customer charge, transmission, and you're supposed to

1 nominate how much of your load you want on that
2 market-based PJM and how much you want on the regular
3 tariff.

4 A. That's the -- that's what the tariff
5 says.

6 Q. Okay. And so it's -- it's a mix of part
7 cost based rate and part market based rate is your
8 understanding, right?

9 A. Yes. It's a -- effectively a pure market
10 based rate for the portion of load that is moved to
11 the tariff RTP.

12 Q. Okay. That's why there's the PJM demand
13 charge, energy charge, transmission charge, customer
14 charge, miscellaneous. You're buying a chunk of your
15 power at the PJM market, the amount you say I want
16 market for.

17 A. Right. You're buying it, the company
18 says, you know, you're not really buying it from the
19 market, but you're buying it and it's priced as
20 though you were buying it from the market. It's
21 identical to the market buy.

22 Q. And just -- in your -- in your mind there
23 is no requirement to load shift under the tariff
24 because all you're doing under the tariff is saying

1 how much you want at market and how much you want at
2 cost.

3 A. Yes, that's correct. And certainly one
4 of the things I -- when I was listening to Mr. Roush,
5 the -- you know, if -- I thought I heard he and
6 Mr. Wohnhas say all of the load on RTP -- tariff RTP
7 needs to be shifted, then it sort of occurred to me
8 why would you have a PJM capacity rate tied to the
9 highest on-peak demand? There wouldn't be any for
10 that load.

11 Q. Well, you're paying for capacity. You're
12 paying for PJM capacity at the amount that's -- at
13 market pricing, you're paying the normal tariff rate
14 for the amount of capacity that's at cost.

15 A. Correct. That's correct. And that was
16 the -- that was the pure intent of the tariff to
17 allow customers to face these market prices for all
18 the (inaudible).

19 Q. As it said experiment in marketing
20 pricing or something to that effect in the actual
21 tariff.

22 A. That's -- that would be my view, yes.

23 Q. Without a baseline is it -- is it
24 virtually impossible to measure how much load

1 shifted?

2 A. Yes. As I was saying -- responding to
3 both of the Commissioners and to Mr. Overstreet, I
4 think it would be -- it would be impossible to know
5 other than -- that whether a customer actually
6 shifted without reference to some benchmark as to
7 what would you have done absent being on RTP and
8 that's a CBL approach.

9 Q. And that's what every other utility has
10 for real-time pricing that you are aware of except
11 for Kentucky Power.

12 A. That's my understanding in Kentucky.

13 Q. One last point, on this market portion,
14 the chunk of power that the customer says I want to
15 buy at market, we still don't know what the price is
16 going to be for energy. It changes daily, right?

17 A. That's correct. We have -- there won't
18 be any knowledge as to what the ultimate price that
19 the customers are required to pay because they have
20 to stay on it until June 30 under this RTP tariff.
21 It will be strictly a function of what the market
22 prices are. They are taking that risk.

23 Q. And they could -- they could be -- they
24 could lose money on that deal, couldn't they?

1 A. Yes, absolutely. If a customer like AK
2 Steel or Marathon agrees to participate for 12
3 months, lock themselves into taking market prices,
4 they are definitely taking risk, and they make that
5 evaluation.

6 Q. Now, the forward prices for energy would
7 indicate maybe it looks like it's going to be a good
8 deal but there's no guarantee whatsoever, is there?

9 A. That's correct. I mean, it was -- it's
10 assumed that the customer made the economic decision
11 that this is better than the alternative. I don't --
12 I don't think there is a dispute on that.

13 Q. And so instead of being a revenue
14 shortfall could be a windfall to the utility, so to
15 speak, if market -- if energy prices go the other
16 way?

17 A. If the market turns against the customer
18 in favor of the utility, then the utility would
19 receive the windfall.

20 Q. One last, would you agree that the
21 structure between the tariff and the rider are
22 absolute -- fundamentally different?

23 A. Yes, absolutely. And that's why there's
24 a CBL in the rider and there is no CBL and it was

1 clear in the Commission's order establishing it that
2 there was no CBL in the Kentucky Power tariff RTP.
3 That was going to be different from the constructs of
4 the other Kentucky utilities.

5 MR. KURTZ: Thank you, your Honor. No
6 more questions.

7 MR. OVERSTREET: I just have one
8 question.

9 - - -

10 RE-CROSS-EXAMINATION

11 By Mr. Overstreet:

12 Q. Mr. Baron, under the scenario you
13 describe where a commercial and industrial customer
14 is able to designate some portion, or in the case of
15 many of these customers, their entire load to be
16 priced at market based pricing, right?

17 A. Yeah. Oh, that scenario like that, yes.

18 Q. And this is what you've been describing.

19 A. Yes. Well, I've been describing-- I
20 don't know that we assumed that, but I can assume
21 that for you.

22 Q. Okay. Assume that and, in fact, that is
23 case for many of these customers.

24 A. Okay.

1 Q. And they're able to take their -- to buy
2 their electricity, if you will, at market based
3 prices, right?

4 A. Under -- under the provisions of tariff
5 RTP.

6 Q. Your understanding the way that tariff
7 works.

8 A. Yes.

9 Q. And those market based prices are less
10 than -- are less than the company's cost of service,
11 which we've been talking about here.

12 A. Okay. Let's assume that. I certain --
13 the company has said that for at least the first
14 couple of months. We don't know that for the rest
15 but let's assume that.

16 Q. And the customer shifts no load, okay?
17 Isn't it true that there's a multi-million dollar
18 benefit to these large industrial and commercial
19 customers without any offsetting or corresponding
20 benefit to Kentucky Power or its 100 and some odd
21 thousand other customers who don't have the ability
22 to take market based prices?

23 A. I have -- you would have to put
24 particular numbers in. The company has calculated

1 some numbers based on its forecast but I -- if -- if
2 you ask me a hypothetical that says the amount -- the
3 rates that -- the bills customers would pay under RTP
4 are lower than the company's embedded cost, then
5 there's going to be -- there will be a revenue loss.
6 What that is depends strictly on the LMP prices that
7 will actually materialize.

8 I will point out that if the customer
9 shifted load as the company contends is required,
10 then the revenue loss would be larger because, now,
11 Kentucky Power instead of getting LMPs at -- at 70 or
12 80 dollars a megawatt-hour, the on-peak, if the
13 customer shifted the load to the off-peak, they would
14 be getting LMPs at \$30 and so their revenue loss that
15 the company would experience would be even greater.

16 Q. Mr. Baron, if a -- if one of your
17 clients, the 10 customers that are taking service
18 under tariff RTP, take service under tariff RTP and
19 doesn't shift their load, you would agree with me,
20 sir, that there's no benefit to Kentucky Power or its
21 other customers, wouldn't you?

22 A. I would agree that there is -- that if
23 the load hasn't changed, there's certainly no load
24 characteristics impacted and so but to the extent

1 that this is an experimental tariff and it is
2 supposed to provide information about customer
3 behavior, that aspect would -- would not be affected
4 by it, but I would agree that if loads don't change,
5 then they don't change. That -- you're asking me to
6 assume that.

7 Q. And that information --

8 A. And I would say that, again, if the
9 customer shifted load, the revenue loss that
10 Mr. Wohnhas calculated, I think, would be much
11 greater.

12 Q. And in that information you just
13 identified the company would receive may wind up
14 costing the company \$20 million.

15 A. I -- that -- I don't know if that's true.
16 We don't know if that's true.

17 MR. OVERSTREET: No further questions.

18 MR. KURTZ: May I follow up just very
19 briefly?

20

21 FURTHER REDIRECT EXAMINATION

22 By Mr. Kurtz:

23 Q. Same hypothetical, customers put all
24 their load on the market-based portion of the tariff,

1 they don't shift any load, but it turns out they made
2 a bad business decision because the energy prices go
3 high. Does -- would it work in reverse where
4 Kentucky Power would get an unintended benefit, more
5 money than the cost based rate?

6 A. Yes, absolutely. The customer has no
7 ability under the terms of the tariff to say, oh,
8 gosh, I made a bad deal because the tariff requires
9 12 months of commitment.

10 Q. The customer's made a business decision
11 under the existing tariff, in your mind, it may turn
12 out good or bad for the individual customers but only
13 time will tell; is that fair?

14 A. Yes. And both parties took risks when
15 the -- when the tariff was agreed to in the
16 settlement to be extended both -- KIUC included that
17 as part of its overall negotiation package, and the
18 company agreed to it. So those were the risks that
19 were on the table and the market did what it did.

20 MR. KURTZ: Thank you, your Honor.

21 VICE CHAIR GARDNER: Questions?

22 MR. OVERSTREET: No questions.

23 VICE CHAIR GARDNER: Thank you,

24 Mr. Baron. You may step down.

1 THE WITNESS: Thank you, Commissioner.

2 VICE CHAIR GARDNER: Okay. We've got a
3 few data requests and what's an appropriate time for
4 responding to those?

5 MR. OVERSTREET: Let me -- may I ask my
6 client?

7 VICE CHAIR GARDNER: Sure, sure.

8 MR. OVERSTREET: Since they are the ones
9 who will be responding.

10 November 9, your Honor.

11 MS. BURNS: That's fine.

12 VICE CHAIR GARDNER: All right...
13 November 9. And, Kathy, when will the hearing be up
14 on the?

15 MS. GILLIUM: It will be on the web
16 within 24 hours and the CDs (inaudible) hearing
17 schedule so (inaudible) as soon as I can get it.

18 VICE CHAIR GARDNER: Pardon me? I
19 couldn't hear.

20 MS. GILLIUM: I said I can notify them as
21 soon as I can get it.

22 VICE CHAIR GARDNER: Do you have -- we're
23 trying to set a briefing date so can you give me a
24 rough approximation?

1 MS. GILLIUM: Well, let's see, we're not
2 going to be in on Tuesday. I have another hearing
3 next week, I am going to be out two more days at a
4 conference. I'll try my best to get it to you by
5 Wednesday.

6 VICE CHAIR GARDNER: Of next week?

7 MS. GILLIUM: Yeah.

8 VICE CHAIR GARDNER: A week from today?

9 MR. OVERSTREET: A week from yesterday.

10 MS. BURNS: The 7th? Are you talking
11 about the 7th?

12 MS. GILLIUM: No. I have got a hearing
13 on the 7th.

14 MS. BURNS: You mean the 14th?

15 VICE CHAIR GARDNER: Today is the 1st,
16 Kathy.

17 MS. BURNS: And, your Honor, the rider
18 RTP suspension ends November 30, just.

19 MS. GILLIUM: Maybe Monday afternoon
20 because we've got tomorrow and Monday and then we're
21 out Tuesday for election day. Okay.

22 VICE CHAIR GARDNER: So the following
23 Monday or this coming morning?

24 MS. GILLIUM: This coming Monday, I'll --

1 I'll do my best.

2 VICE CHAIR GARDNER: Thank you.

3 Go ahead.

4 MR. OVERSTREET: I was simply going to
5 propose that the briefs be due two weeks from today
6 which would be the 15th.

7 MR. KURTZ: Is that the Commission's
8 preference?

9 MR. OVERSTREET: That was my proposal.

10 VICE CHAIR GARDNER: (Inaudible.)

11 MR. KURTZ: Well, just the normal work of
12 business. If the Commission wants the 15th, we'll
13 meet the 15th. If you could give us a little bit
14 more.

15 VICE CHAIR GARDNER: What's the following
16 Friday?

17 MS. BURNS: The following Friday is the
18 Thanksgiving holiday, the 23rd.

19 MR. OVERSTREET: How about the Wednesday
20 before the Friday? Wednesday before Thanksgiving,
21 I'm sorry.

22 MS. BURNS: The 21st?

23 MR. OVERSTREET: Yeah. That's -- will
24 that work better, Mr. Kurtz?

1 MR. KURTZ: Yes.

2 MR. OVERSTREET: I'm not trying to jam
3 you.

4 MR. KURTZ: No, it's fine, whatever the
5 Commission's preference is.

6 VICE CHAIR GARDNER: Can we -- are we
7 here on the day before Thanksgiving?

8 MS. BURNS: Yes, we are.

9 VICE CHAIR GARDNER: So the day before
10 Thanksgiving, will that work?

11 MR. OVERSTREET: Yes.

12 MR. KURTZ: Yes.

13 MS. BURNS: 21st.

14 VICE CHAIR GARDNER: That date is what?

15 MS. BURNS: November 21.

16 MR. OVERSTREET: November 21.

17 VICE CHAIR GARDNER: November what?

18 MS. BURNS: 21.

19 MR. KURTZ: Simultaneous one brief close
20 of business electronic?

21 MR. OVERSTREET: Yeah.

22 MR. KURTZ: Okay.

23 VICE CHAIR GARDNER: Let me just say a
24 couple of things that -- some issues were raised that

1 I know you all will address anyway but let me just
2 bring out a couple of things that --

3 MR. OVERSTREET: Sure.

4 VICE CHAIR GARDNER: One would be talking
5 about are there circumstances under which the
6 Commission has the authority to revise a settlement.
7 You know, there's a paragraph 16 in the settlement
8 agreement that talks about continuing Commission
9 jurisdiction, you know, broad (inaudible) authority
10 of the Commission, so if you all could take a look at
11 that issue.

12 The -- Mr. Kurtz raised the Filed Rate
13 Doctrine. Is that applicable here? What does that
14 mean under these circumstances?

15 MR. OVERSTREET: Sure.

16 VICE CHAIR GARDNER: And then, you know,
17 we do -- we have -- we don't have copies of it yet.
18 We will see contracts with -- contract -- stated
19 contract law have any bearing on this in interpreting
20 the contracts. -

21 MR. OVERSTREET: Sure, sure.

22 VICE CHAIR GARDNER: Just issues to
23 address along (inaudible).

24 Anything else?

1 COMMISSIONER ARMSTRONG: Ask for a
2 clarification, the Filed Rate Doctrine, if the amount
3 exceeded that, is that where you were going?

4 MR. KURTZ: I was going really raising
5 that in the context of getting back billed, getting
6 a -- getting a charge from the company. And we
7 would --

8 COMMISSIONER ARMSTRONG: (Inaudible.)

9 MR. KURTZ: Yes, and we would assert that
10 the filed rate is the filed rate and that it can only
11 be changed going forward. It's the prohibition of
12 retroactive rate making. --

13 MR. OVERSTREET: And we can address that.

14 VICE CHAIR GARDNER: Anything else?

15 MR. OVERSTREET: Thank you.

16 VICE CHAIR GARDNER: This hearing is
17 adjourned.

18 (Thereupon, the hearing was concluded at
19 3:57 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
recorded by audiotape and transcribed by me in this
matter.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5606)

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