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1           BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, reconvening at 9:34 a.m. on the 11th of  
6 January, 2010.

7  
8 BEFORE:     DWIGHT D. NODES, Assistant Chief  
              Administrative Law Judge

9  
10 APPEARANCES:

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1           MR. SULLIVAN: Just for the record, Your Honor,  
2 William Sullivan on behalf of the city. After I left  
3 yesterday, I understand -- Friday -- I understand that  
4 there was discussion about having a continuation of the  
5 hearing on Thursday and Friday. I happen to be leaving  
6 the country on Wednesday, so I will not be available.

7           I have talked with Staff, and they have agreed  
8 that Mr. Chaves will be their first witness today. My  
9 goal is to at least get cross-examination of Mr. Rigsby  
10 and Mr. Chaves in. I will have someone else from the  
11 office here available on Thursday and Friday. They are  
12 not going to be quite as prepared as I am, obviously,  
13 they haven't been monitoring the case fully. But we  
14 will accommodate everybody as best we can in that  
15 regard.

16           But I did want to make it clear what my time  
17 issues are. And before the close of today, if we can  
18 get a briefing schedule done so I know exactly what is  
19 expected in regard of closing briefs, I would appreciate  
20 that also.

21           ACALJ NODES: Well, as to the briefing schedule,  
22 it is really of no matter to me. If you just come to  
23 some agreement with all the parties, maybe at a break or  
24 lunch, everybody can get together and come up with some  
25 agreed upon schedule.

1           And, you know, as far as your schedule goes, you  
2 know, I tried to accommodate everyone as best we can. I  
3 don't think we expected to have to go past today, but if  
4 we do, we need to. And we will just have to, you know,  
5 we will have to make do. I guess you will have to make  
6 do the best you can, and hopefully you can take care of  
7 what you need to take care of today.

8           MR. SULLIVAN: I just wanted you to be aware of  
9 a little bit of a scheduling issue at the end. I do, I  
10 would like to try to accommodate getting those two  
11 witnesses at least through my cross. Thank you.

12           ACALJ NODES: Sure.

13           Mr. Wiley.

14           MR. WILEY: I was just going to say we have  
15 talked to Staff and Mr. Sullivan as well, we are not  
16 prepared to cross-examine Mr. Chaves or Mr. Manrique  
17 today. And so we have no problem with Staff putting  
18 their testimony in and having Mr. Sullivan cross them,  
19 but we will have to call them back on Thursday so we can  
20 prepare and get, you know, get exhibits prepared and  
21 everything like that. And I think Ms. Mitchell is okay  
22 with that, although she is shrugging at it. I believe  
23 Staff is okay with it.

24           ACALJ NODES: What were you going to do if we  
25 happened to zip through today and get to everybody?

1 MR. WILEY: I think we were safe to assume that  
2 we weren't going to zip through today judging upon how  
3 the hearing has gone so far.

4 ACALJ NODES: Okay. Ms. Mitchell, is Staff  
5 willing to accommodate Mr. Sullivan's request?

6 MS. MITCHELL: You know, I had the conversation  
7 with Mr. Sullivan this morning. And, you know, while it  
8 is a terrible inconvenience for Staff -- if I wasn't a  
9 compulsive e-mail checker, I never would have known that  
10 was the issue until I walked in this morning. And, you  
11 know, we had prepared our witnesses to -- you know, I  
12 had them go work on other things.

13 But having said that, it is an inconvenience for  
14 Staff, but Staff will be accommodating. And if  
15 necessary, we can offer Mr. Chaves this morning. I  
16 would like to say, you know, Staff resources are tight,  
17 and to have him testify today and then have him recalled  
18 is just a terrible inconvenience for Staff. But  
19 needless to say, as accommodating as Staff always is, we  
20 will be accommodating today.

21 ACALJ NODES: Okay. Well, you know, I don't  
22 know it is going to be this morning.

23 MS. MITCHELL: I guessed that.

24 ACALJ NODES: Okay, okay. And we also have  
25 Mr. Rigsby --

1 MS. MITCHELL: That's correct.

2 ACALJ NODES: -- to get on. So it probably will  
3 be later this afternoon, if I had to guess. Well, I  
4 appreciate your accommodation in that regard. And we  
5 will plan on that then, putting Mr. Chaves on after  
6 Mr. Rigsby just for the limited purpose of  
7 Mr. Sullivan's cross, and then we will, assuming we are  
8 done at that point, we will go back to Staff's original  
9 order of witnesses.

10 MS. MITCHELL: That's correct. So it will be  
11 Mr. Scott and then Mr. Manrique, and then Mr. Michlik.

12 ACALJ NODES: Okay. Everybody satisfied with  
13 that?

14 MR. SULLIVAN: And just for the record, I also  
15 want to express my appreciation to Staff for their  
16 accommodation --

17 ACALJ NODES: All right.

18 MR. SULLIVAN: -- and all the other parties.

19 ACALJ NODES: Ms. Wood, do you have a comment?

20 MS. WOOD: Just as long as Mr. Chaves is this  
21 afternoon, because I don't have his testimony with me.  
22 I wasn't planning on dealing with him this morning.

23 ACALJ NODES: I don't think you need to be  
24 prepared for him anyway; it sounds like the company is  
25 not going to be. So all we are going to do is put him

1 on for direct and Mr. Sullivan's cross, and then he will  
2 be taken off and we will go back to the beginning of  
3 Staff's original order.

4 MS. WOOD: Okay.

5 ACALJ NODES: So...

6 MR. SHAPIRO: Judge, just to answer the question  
7 that you asked when we came in, just so everybody is  
8 clear, not expecting to get to those gentlemen today, I  
9 gave my Staff the weekend off, which is why we have none  
10 of our materials.

11 ACALJ NODES: Okay. Doesn't really matter. I  
12 think your presumption was probably correct about  
13 getting to them.

14 Now, Thursday we are going to -- you know, it is  
15 still going to be 9:30, we are not going to start at  
16 9:00. But I always have to be cognizant of the  
17 Commission wanting to carry over the open meeting, if  
18 that would happen to occur. As you know, that sometimes  
19 does happen.

20 And Friday would be limited as far as hearing  
21 time. We may have early morning. I need a chunk of  
22 time in the middle on both sides of lunch, and then we  
23 would have to come back in the afternoon if it goes to  
24 that point. But one way or the other, we will finish up  
25 this week. If we have to go late even, we will do that.

1           Okay. Let's get the ball rolling. And I think  
2 we are continuing with cross by you, Mr. Wiley. So go  
3 ahead.

4           And Mr. Rowell, I remind you you are still under  
5 oath, and welcome back.

6           MR. ROWELL: Thank you.

7           MR. WILEY: Thank you, Judge.

8

9

MATTHEW ROWELL,

10 a witness on behalf of RUCO, having been previously duly  
11 sworn by the Certified Reporter to speak the truth and  
12 nothing but the truth, was further examined and  
13 testified as follows:

14

15

CROSS-EXAMINATION CONTINUED

16 BY MR. WILEY:

17 Q. Good morning, Mr. Rowell.

18 A. Good morning.

19 Q. Mr. Rowell, you are an economist by education  
20 and training, correct?

21 A. That's correct.

22 Q. And you are not a licensed contractor, correct?

23 A. That's correct.

24 Q. And you have never constructed a wastewater  
25 treatment plant, agreed?

1 A. I agree.

2 Q. Okay. And you have never operated or worked at  
3 a wastewater treatment plant, fair?

4 A. That's a fair statement, yes.

5 Q. And you are not certified as a qualified  
6 operator for a wastewater treatment plant?

7 A. That's correct.

8 Q. And you have never actually visited the Palm  
9 Valley water reclamation facility, correct?

10 A. That's correct.

11 Q. In other words, you have never gone to the plant  
12 and conducted an inspection tour or anything of that  
13 nature, right?

14 A. That's correct.

15 Q. Okay. And you have not looked at any of the  
16 design plans related to the Palm Valley facility,  
17 including the initial construction or the 2007, 2008  
18 upgrades, correct?

19 A. No, I don't believe I have looked at the design  
20 plans.

21 Q. So yes, that's correct, right? There is a  
22 double negative there, I think.

23 A. I haven't looked at the design plans.

24 Q. And you haven't talked to any of the engineers  
25 who were involved with the design of the original plant

1 or the 2007, 2008 upgrades, right?

2 A. That's true.

3 Q. So in other words, you never went and talked to  
4 PACE/PERC about their design assumptions or anything of  
5 that nature, agreed?

6 A. Agreed.

7 Q. And you never talked to anyone with McBride  
8 Engineering about the 2007, 2008 upgrades or why the  
9 upgrades were necessary or why they were undertaken,  
10 fair?

11 A. Well, I was present during Mr. McBride's  
12 cross-examination.

13 Q. But you never actually contacted Mr. McBride and  
14 asked him any questions to investigate why the 2007,  
15 2008 upgrades were undertaken, fair?

16 A. That's fair.

17 Q. Okay. And you are not a registered engineer,  
18 correct?

19 A. I believe I have stated that previously.

20 Q. And given that you are not a certified engineer,  
21 licensed contractor, or certified operator of a sewer  
22 plant, you don't have any qualifications to give  
23 opinions regarding the presence of design or  
24 construction errors at the Palm Valley plant, correct?

25 A. Well, as I stated previously, I relied on the

1 information contained in Mr. Sorensen's direct testimony  
2 and the McBride Engineering report that we have looked  
3 through. That along with just the magnitude of the work  
4 that was necessary to bring the plant to an acceptable  
5 level of operation all indicated that some sort of  
6 problem was there.

7 Q. Mr. Rowell, I am not sure that answered my  
8 question. My question was: Given that you are not a  
9 certified engineer, you are not a licensed contractor,  
10 and you are not a certified operator for a wastewater  
11 treatment plant, you are not qualified to render any  
12 independent opinions about the presence of design or  
13 construction errors at the Palm Valley plant, agreed?

14 A. Well, I don't know. I don't believe I have, you  
15 know, I have reviewed any standards by which the  
16 qualifications of someone, you know, doing that are laid  
17 out.

18 Q. Do you have Exhibit A-28 there, which I think is  
19 your deposition?

20 A. I have it, yes.

21 Q. Last Friday we introduced that as an exhibit  
22 during the earlier portion of your cross-examination.  
23 You recall that, correct?

24 A. I do.

25 Q. And you have testified that you had read and

1 reviewed your deposition transcript, and that you didn't  
2 have any changes to the testimony you gave under oath at  
3 the deposition on November 30, 2009, correct?

4 A. Well, I do have to say that I wasn't aware that  
5 I would have an opportunity to make any changes, but I  
6 did review it.

7 Q. And did you make any changes?

8 A. Again, I wasn't reviewing it under the  
9 expectation that I would have the opportunity to make  
10 any changes.

11 Q. Do you want to make any changes?

12 A. Well, at this time, I think it is a little late.

13 Q. I am asking you now if you have any changes to  
14 your deposition testimony.

15 A. I can't think of any, no.

16 Q. Okay. Turn to page 14 of your deposition,  
17 please. And starting with line 20, okay, you see -- are  
18 you on line 20, page 14?

19 A. Not yet, no. You mean page 14 of the small  
20 pages?

21 Q. Yes, yes.

22 A. Line 20?

23 Q. Yes. Are you there?

24 A. Yes.

25 Q. Okay. The question there was: And you haven't

1 formed any independent opinions of your own with respect  
2 to any design or construction problems at the plant,  
3 agreed? Do you see that question?

4 A. I do see it.

5 Q. And your answer was: That's true, yes.  
6 Correct?

7 A. Correct.

8 Q. And that's still true today, right?

9 A. Yes.

10 Q. Okay. And the next question starting on line 24  
11 was: And in fact, you wouldn't have any qualifications  
12 to render any opinions about design or construction  
13 problems at the plant, agreed? And your answer was:  
14 Agreed, yes. Do you see that?

15 A. Yes.

16 Q. And you gave that answer under oath, correct?

17 A. Correct.

18 Q. All right. And then there was a follow-up  
19 question that said: And that's because you are an  
20 accountant and not a contractor, engineer, or operator  
21 of a wastewater treatment plant, fair? And your answer  
22 was: That's fair enough, yes. That was your answer at  
23 the time under oath there, correct?

24 A. Correct.

25 Q. Okay. So as we sit here today, Mr. Rowell, you

1 haven't formed any independent opinions about the  
2 presence of design or construction problems at the Palm  
3 Valley plant, correct?

4 A. Correct.

5 Q. Okay. And in fact, you are not qualified to  
6 render any independent opinions about the presence of  
7 design or construction errors at the Palm Valley plant  
8 as originally constructed, correct?

9 A. I am not an engineer.

10 Q. So that's correct, right?

11 A. That's correct.

12 Q. Okay. Now, what you have done in your direct  
13 and surrebuttal testimony, Mr. Rowell, is that you have  
14 relied on the McBride and Sorensen -- or you have relied  
15 on the Sorensen testimony for your conclusion that there  
16 were design errors at the plant, agreed?

17 A. Along with the McBride Engineering report.

18 Q. Yes, I wasn't going to cut it off, I was just  
19 separating it out. You eventually relied on two things.  
20 One was Mr. Sorensen's testimony and the second one was  
21 the McBride draft evaluation report, correct?

22 A. That was the basis for the direct testimony,  
23 yes.

24 Q. Okay. And the surrebuttal testimony, right?

25 A. Well, the surrebuttal testimony also was based

1 on the rebuttal testimony of Mr. Sorensen and  
2 Mr. McBride.

3 Q. And what you did in your surrebuttal testimony  
4 is you simply didn't believe Mr. McBride and  
5 Mr. Sorensen in their rebuttal testimonies that there  
6 weren't design errors at the plant, correct?

7 A. Well, I believe I point out that there were  
8 certain unanswered questions that we thought needed to  
9 be resolved.

10 Q. And we went through all of the four unanswered  
11 questions you had in your surrebuttal testimony on  
12 Friday, correct?

13 A. I remember we went through some of them.

14 Q. Were you aware -- let me rephrase that.

15 You understand, Mr. Rowell, that the McBride  
16 report was a draft report, correct?

17 A. It is marked draft, yes.

18 Q. And it was never completed, which is what  
19 Mr. McBride said in his testimony earlier last week,  
20 correct?

21 A. Well, that's true. But the company did rely on  
22 it.

23 Q. How did the company rely on it?

24 A. I believe Mr. McBride testified that after the  
25 draft was presented, they were ready to move forward

1 with the upgrades. So it -- I mean I interpreted his  
2 testimony to be that the company relied on the draft  
3 report in their decision to start the upgrades, and that  
4 because of that, there was no need to finish the report  
5 and finalize it.

6 Q. All right. Do you know if the company had any  
7 additional discussions with Mr. McBride about the design  
8 and engineering for the 2007 and 2008 upgrades after  
9 that draft evaluation report was issued?

10 A. I imagine they would have.

11 Q. And you are also aware that the draft evaluation  
12 report was not stamped by a registered engineer, right?

13 A. I don't recall seeing a stamp.

14 Q. Okay. Now, we went over this on Friday, but I  
15 want to recap it real quick just so I have it straight.  
16 You agree, Mr. Rowell, and both Mr. Sorensen and  
17 Mr. McBride have testified in this hearing, that there  
18 were no design errors at the Palm Valley plant as  
19 originally constructed, correct?

20 A. I believe they did testify to that, yes.

21 Q. And you don't have any independent evidence as  
22 we sit here today to dispute that testimony, agreed?

23 A. Well, the magnitude of the work that was  
24 necessary would indicate that the original design of the  
25 plant was problematic.

1 Q. Okay. Show me what independent evidence you  
2 have that indicates that there were any design errors or  
3 problems at the plant as originally constructed.

4 A. Excuse me. I didn't -- show you what?

5 Q. Show me what independent evidence you have which  
6 indicates there were design errors at the Palm Valley  
7 plant as originally constructed in 2002.

8 A. Well, like I said, the magnitude of the work  
9 that was necessary on its face seems to indicate that as  
10 the plant was originally designed, it wasn't that -- in  
11 its design and construction there were problems.

12 Q. Is that something you are making up today,  
13 Mr. Rowell? Where is that statement corroborated by any  
14 evidence in the record?

15 A. I believe the magnitude of the upgrades is in  
16 the record.

17 Q. Okay. And so how does the magnitude of the  
18 upgrades indicate there were design errors in the plant,  
19 when the engineer for the upgrades has testified that  
20 there were no design errors?

21 A. Again, the size of the, you know, the expense  
22 associated with those upgrades, you know, \$7 million on  
23 a plant that is, or at the time was, a few years old,  
24 the plant cost between, what, 14, 16 million to build,  
25 and it required a \$7 million upgrade not long after

1 that, I mean, on its face, that raises serious  
2 questions.

3 Q. Mr. Rowell, you testified at your deposition  
4 that if those upgrades had been installed with the  
5 original plant in 2002, you would have no issues with  
6 the inclusion of the upgrades in rate base. Do you  
7 recall that testimony?

8 A. Can you point me to it?

9 Q. Yes.

10 A. Okay.

11 Q. Look at page 38 and page 39 of your deposition.

12 A. I am there.

13 Q. Actually it is at the top of page 39. At the  
14 top of page 39, starting with line 1, the question says:  
15 Based upon what you just said, if the upgrades were  
16 included in the original plant construction, the plant  
17 would be included in rate base in its entirety, fair?  
18 Your answer was: That's fair, yes. Do you see that  
19 testimony?

20 A. Yes.

21 Q. So, in other words, Mr. Rowell, you agree that  
22 if the \$7 million in upgrades had been installed with  
23 the original plant in 2002, the entire amount of the  
24 construction, which would be 18 million plus seven,  
25 would be included in rate base, which is what you said

1 under oath at this deposition, agreed?

2 A. No, that is not accurate. Actually if you look  
3 just at the next question I mentioned that depreciation  
4 would be an issue. Also there is -- I didn't mention in  
5 the deposition, but there is also inflation that should  
6 be taken into account.

7 Q. Okay. Before we talk about depreciation and  
8 inflation, that would come out -- well, you had  
9 indicated that that might be a potential harm to  
10 ratepayers because they didn't get the benefit of  
11 depreciation on the plant if the plant had been put in  
12 in 2002 and the company had come in for a rate case in  
13 2008, correct?

14 A. That's correct.

15 Q. Okay. But you would have included the original  
16 \$25 million of the plant in rate base, you are just  
17 suggesting that the rate base would be reduced by  
18 depreciation over a number of years, agreed?

19 A. Well, that along with the -- you would also have  
20 to account for inflation in order to get through your  
21 hypothetical. In other words, the value of the plant  
22 in -- or the same plant in '03 would be cheaper than it  
23 would be in '07, just because of inflation.

24 Q. On that issue, Mr. Rowell, you heard Mr. McBride  
25 say that this plant was actually constructed below what

1 would typically be the cost per gallon of treatment  
2 capacity; do you recall that testimony?

3 A. I did recall that, yes.

4 Q. So Mr. McBride testified that this plant, with  
5 the upgrades, was constructed at a price that was cost  
6 efficient and below market values for that type of  
7 plant, agreed?

8 A. I don't believe he mentioned market values. Or  
9 I don't recall him mentioning market values. But I did  
10 recall him testifying that the plant as originally built  
11 was on the low end in cost. And I honestly don't recall  
12 exactly what he said about the upgrades, but it was  
13 something to the effect that, had the upgrades been made  
14 at the time that the plant was originally constructed,  
15 then the plant would have cost more.

16 Q. Okay. Now, with respect to the inflation issue  
17 what you are talking about there, Mr. Rowell, your  
18 supposition that the upgrades may have cost less back in  
19 2002 compared to 2007 and 2008, that's what you are  
20 talking about, correct?

21 A. That is correct.

22 Q. Okay. And at deposition I asked whether you had  
23 undertaken any analysis of any cost differences and you  
24 couldn't cite me to any numbers, correct?

25 A. I did testify to that at the deposition, yes.

1 Q. So in other words, you don't have a number for  
2 any cost differences in the 2007, 2008 upgrades had they  
3 been installed in 2002, as we sit here today, agreed?

4 A. No. At the time of the deposition I didn't, but  
5 since then I did undertake an analysis.

6 Q. Okay. Where is your analysis?

7 A. It is right here in front of me.

8 Q. Okay. So what is your analysis?

9 A. Back out inflation.

10 Q. What?

11 A. \$7 million in '07 dollars comes to just over  
12 6.6 million in '03 dollars. And assuming a .033 percent  
13 depreciation rate, which is the depreciation rate on  
14 structures and improvements or, you know, the standard  
15 Commission approved depreciation rate, if you were to  
16 depreciate the 6.6 million from '03 up to '07, it would  
17 come to 5.77 million.

18 Q. Okay. Let's talk about inflation for a minute.  
19 I think what you just said is that it is your view that,  
20 had the upgrades been installed in 2002, they would have  
21 cost 6.5 million, did you say?

22 A. 6.6.

23 Q. \$6.6 million, is that correct?

24 A. Yes.

25 Q. So essentially they would have been \$400,000

1 cheaper had they been installed in 2002 versus 2008,  
2 agreed?

3 A. Well, I did it to '03, not '02, but that's fine.

4 Q. You also understand that had those upgrades been  
5 installed in 2002, the Aerisa ion odor control system  
6 was not available; you understand that, correct?

7 A. Well, yes, I understand that. But I want to  
8 clarify that the analysis isn't that the upgrades would  
9 have cost this amount in '02 or '03. It is that  
10 \$7 million, 7 million 2007 dollars equals 6.6 2003  
11 dollars. So what the upgrades would actually have cost  
12 is, I mean it is unknown.

13 But to answer your question, yes, you are right,  
14 the specific odor control technology you mentioned  
15 wasn't available at that time.

16 Q. So if you assume that there is some \$400,000  
17 differential in inflation adjusted dollars, putting  
18 those upgrades in in 2007 to 2008 actually saved  
19 a million dollars in plant costs, which is the  
20 difference between the \$1.5 million that Mr. McBride  
21 testified would have been required for odor controls in  
22 2002 versus the \$500,000 that was what was paid for the  
23 Aerisa system installed in 2008, correct?

24 A. I am sorry, can you repeat that or --

25 Q. Sure. I will try to be break it out for you.

1 You recall Mr. McBride testifying that the Aerisa  
2 control system cost \$500,000, correct?

3 A. Honestly, I don't remember the exact sitting  
4 here. I don't remember the exact number, but I will  
5 accept that.

6 Q. Okay. And he also testified that the engineer's  
7 estimate for the original odor control system was  
8 \$1.5 million, correct? Do you recall that testimony?

9 A. I honestly don't. But when you say original  
10 system, is that the original system that was actually  
11 installed, or was that some other hypothetical system  
12 that could have been installed?

13 Q. What Mr. McBride was saying, Mr. Rowell, was  
14 that if the Aerisa ion control odor system was not  
15 available, then they would have had to have put in an  
16 original mechanical scrubber unit which he said would  
17 have cost \$1.5 million in 2002. Do you remember?

18 A. So it is not the original system, it was an  
19 alternative to the Aerisa system for the '07, '08  
20 upgrades. Yes, I do. I don't recall the exact number,  
21 but I do recall him saying there was another alternative  
22 available that was more expensive.

23 Q. If Mr. McBride's testimony demonstrated that  
24 there was a \$1 million cost savings as a result of  
25 installing the Aerisa odor control system in 2008, did

1 you consider that in your analysis of the inflation and  
2 depreciation rates that you were just giving?

3 A. I did not consider that in this analysis.

4 Q. You would also agree, Mr. Rowell, that none of  
5 the Palm Valley plant has been put in rate base,  
6 correct?

7 A. That's correct. There has been no rate case  
8 since.

9 Q. So ratepayers have not had to pay any increased  
10 rates for service from the original plant or the 2008  
11 upgrades, correct?

12 A. That's correct.

13 Q. Okay. And there has been no recovery for  
14 depreciation expense in any of the company's sewer rates  
15 for the last seven years, agreed?

16 A. Well, depreciation expense related to the PVWRF,  
17 that's correct.

18 Q. And ratepayers have also benefited from uses of  
19 the plant for the last seven years, agreed?

20 A. Well, they have used the plant, yes.

21 Q. Okay. And LPSCO has incurred the carrying  
22 costs, the financial carrying costs for that plant since  
23 2002, agreed?

24 A. That's true, yes.

25 Q. Mr. Sorensen has slipped me a note. It is a

1 mechanical scrubber or chemical scrubber, the original  
2 odor control, and not a mechanical scrubber. I will  
3 clarify I misstated the original scrubber unit so...

4 A. Mechanical didn't sound familiar to me.

5 Q. At your deposition, Mr. Rowell, you gave  
6 testimony essentially saying that utilities have an  
7 obligation to build a plant that doesn't lead to  
8 excessive costs in the future. Do you recall that?

9 A. Can you point me to it?

10 Q. No. I don't want to search through the  
11 deposition, but that's the gist --

12 A. Okay.

13 Q. -- of your testimony in this case, right, is  
14 that LPSCO had an obligation to build a plant that  
15 didn't lead to excessive costs?

16 A. That's correct, yes.

17 Q. As we sit here today, Mr. Rowell, you can't  
18 identify any excessive costs associated with the 2007,  
19 2008 upgrades, agreed?

20 A. Well, as I stated before, you know, on its face,  
21 a \$7 million upgrade associated with a 14 to \$16 million  
22 plant after only a few years of operations, that seems  
23 like an excessive amount of work that needs to be done  
24 on a plant of that vintage.

25 Q. But if the engineers that are involved in this

1 case all say that those upgrades in 2007 and 2008 were  
2 necessary to meet reliability and redundancy  
3 requirements and capabilities, how does the fact that  
4 those upgrades were installed five years after the  
5 original plant make a difference to ratepayers?

6 A. Well, I think the point is it shouldn't be  
7 necessary to undertake such a massive overhaul within a  
8 few years of the plant being opened in order for the  
9 plant to meet necessary reliability and redundancy  
10 standards.

11 Q. But that plant, you agree, Mr. Rowell, that that  
12 plant as originally constructed met all regulatory and  
13 design standards when that plant was constructed,  
14 agreed?

15 A. I believe there might be some question over  
16 that.

17 Q. Really? How so?

18 A. Well, I believe Mr. McBride testified that the  
19 NFPA code wasn't met for some of the electrical  
20 equipment.

21 Q. The NFPA code that relates to the electrical  
22 work in the headroom, right?

23 A. It was the headroom, and I believe there was one  
24 other room. It was the headroom and it may have also  
25 been the solids handling room.

1 Q. But you recall Mr. McBride also saying that that  
2 plant, when it was originally designed and constructed,  
3 was inspected and approved by DEQ, correct?

4 A. I recall him saying it was approved. I don't  
5 recall him saying inspected.

6 Q. Okay. And do you recall that he said it was  
7 inspected and approved by the county?

8 A. Again, I recall him saying it was approved.

9 Q. Is it your understanding, Mr. Rowell, that DEQ  
10 and the county don't inspect sewer plants when they  
11 issue their approvals?

12 A. I am not sure that they do or not.

13 Q. Okay. Do you know whether DEQ and the county  
14 reviews the design plans for construction of the plant?

15 A. I am not sure whether they do or not.

16 Q. It would be pretty reasonable to assume that DEQ  
17 and the county would review the design plans and  
18 actually inspect the plant before they issue approvals  
19 for it, wouldn't it?

20 MS. WOOD: Objection; asked and answered.

21 ACALJ NODES: Overruled.

22 THE WITNESS: Well, you would think that they  
23 would, but that doesn't mean that they do.

24 BY MR. WILEY:

25 Q. Do you know what the NFPA is, Mr. Rowell?

1 A. That's the National Fire Protection Association  
2 code.

3 Q. And the city inspects codes for projects such as  
4 sewer plants, correct?

5 A. I don't know if that's true or not.

6 Q. Okay. So as we sit here today you don't know  
7 whether the City of Goodyear inspected the plant as  
8 constructed and approved it?

9 A. No, I did not know.

10 MR. WILEY: Okay.

11

12

EXAMINATION

13 BY ACALJ NODES:

14 Q. Mr. Rowell, just to follow up on that line, I  
15 mean is it really your testimony that this plant as  
16 originally constructed, before it was allowed to  
17 operate, was not inspected, that there is any  
18 possibility that prior to giving the various regulatory  
19 approvals that there were no, there was no review of any  
20 of the engineering plans or any inspections of the  
21 actual construction prior to giving the relevant  
22 approvals by the various agencies?

23 A. Well, Judge, all I can say is I don't know what  
24 sort of inspections were undertaken by the regulatory  
25 agencies.

1 Q. But just as a matter of common sense, do you  
2 believe that someone would affix their name as approving  
3 a piece of plant like a wastewater treatment plant  
4 without having conducted a review and inspection prior  
5 to checking off or approving?

6 MS. WOOD: Judge, if I may interject, it is  
7 going to be an objection about calls for a legal  
8 conclusion. And the reason why is -- and I will say  
9 that we are coming, kind of backstroking through this --  
10 is that, one, I don't think Mr. Rowell knows the answer,  
11 but, two, what we have recently come to know is that  
12 some cities either rely on, some counties rely on the  
13 state fire marshal, which we don't know what occurred,  
14 and some cities allow third-party engineers to submit  
15 stamped documents as a means of approval.

16 We haven't researched to see what the city in  
17 which this plant was located does. So I don't think  
18 Mr. Rowell knows the answer to your question, period.  
19 But --

20 ACALJ NODES: So --

21 MS. WOOD: -- that has come to light in the last  
22 two days, trying --

23 ACALJ NODES: -- are you planning to take the  
24 witness stand in this case?

25 MS. WOOD: I am not, Your Honor. I am --

1 ACALJ NODES: Well, do you think that's a proper  
2 speaking objection, to essentially offer testimony in  
3 the form of an objection as to what you have now  
4 discovered many months after your witness' testimony was  
5 filed?

6 MS. WOOD: I am only objecting that it calls for  
7 a legal conclusion to which we may not know the answer.  
8 I apologize if I didn't speak clearly. I apologize.

9 BY ACALJ NODES:

10 Q. Well, let me see if I can understand. So you  
11 think that the county, the city, and DEQ conduct -- that  
12 there is a chance they conducted no inspections and  
13 relied entirely on the stamped engineering drawings of  
14 some third party prior to granting their respective  
15 approvals of the plant as originally constructed? Do  
16 you think that that's possibly what occurred in this  
17 case?

18 A. Well, Judge, I have to say I don't know what  
19 sort of inspection they undertook. But if you are  
20 asking me if that's possible, I have got -- I mean it is  
21 possible.

22 Q. Okay. But you don't know one way or the other  
23 what was done by any of the regulatory agencies?

24 A. That's correct.

25 Q. Now, if I understand it, the basis, the

1 underlying basis of your analysis and conclusion in this  
2 case is based entirely on essentially a lay supposition  
3 that just because of the magnitude of the upgrade costs  
4 relative to the original construction costs, that there  
5 must have been design defects that would then cause a,  
6 should cause a disallowance in rate base in this  
7 proceeding?

8 A. Well, it is the size and the expense of the  
9 upgrades along with, you know, the description of what  
10 was actually done.

11 Q. Okay. And when you say the description of what  
12 was actually done, what do you mean by that?

13 A. Well, there was the descriptions included in  
14 Exhibit R-3 where Mr. McBride detailed out the work that  
15 was necessary, and then along with the, I guess,  
16 Mr. McBride's description of why the work was necessary,  
17 which was included in the draft report.

18 Q. Okay. But in reviewing those descriptions, you  
19 were reviewing them effectively as a lay witness,  
20 correct?

21 A. That's correct.

22 Q. And so you don't in any way claim that you  
23 somehow have expertise when having read those  
24 descriptions that should be given more credibility than  
25 the engineering witness who was responsible for those

1 upgrades, correct?

2 A. Well, I suppose that's correct in terms of the  
3 engineering questions, yes.

4 Q. Okay. So the only basis upon which the  
5 Commission could rely on your testimony for purposes of  
6 understanding whether there should be a disallowance in  
7 this case is, number one, the magnitude of the upgrades  
8 as far as the costs, and, number two, your lay reading  
9 of descriptions of what actually constituted the  
10 upgrades, is that it?

11 A. And what constituted the problems.

12 MR. WILEY: I guess I am not sure what the  
13 protocol is there, Judge, but that sounded like a  
14 question that called for a legal conclusion by the  
15 witness if you are asking him to speculate on the only  
16 grounds that the Commission could reach an ultimate  
17 result in this case.

18 ACALJ NODES: Okay. Well, perhaps it was worded  
19 poorly.

20 BY ACALJ NODES:

21 Q. It is those two bases alone upon which you are  
22 recommending that the Commission make the disallowance  
23 that you have offered in this proceeding?

24 A. Well, those two bases as well as of the  
25 descriptions of the problems that were included in the

1 draft report.

2 Q. Well, the descriptions was my second one.

3 A. Okay, then I misunderstood. I am sorry.

4 Q. It was the magnitude, overall magnitude of the  
5 upgrades from a cost perspective relative to the  
6 original cost, and number two, which was the  
7 descriptions that you read as a lay witness for  
8 engineering purposes that led you to the conclusion that  
9 you believe the Commission should disallow a portion of  
10 those upgrade costs?

11 A. That's correct, yes.

12 Q. Okay. And nothing, nothing more? You would say  
13 in a nutshell that was a fair and complete synopsis of  
14 the underlying basis for your recommendation in this  
15 case?

16 A. That's a fair statement.

17 ACALJ NODES: Okay. Go ahead, Mr. Wiley.

18

19 CROSS-EXAMINATION CONTINUED

20 BY MR. WILEY:

21 Q. On the magnitude of the upgrades in terms of  
22 cost, Mr. Rowell, we talked about this earlier, but you  
23 recall Mr. McBride saying that the cost as constructed  
24 including the upgrades was for a fair and reasonable  
25 price, agreed?

1       A.       I don't know if he used the words fair and  
2 reasonable, but he indicated that the overall cost was  
3 in line with what he has seen before, I guess.

4       Q.       And he also testified both at the hearing and in  
5 his prefiled rebuttal testimony that it is not unusual  
6 for sewer treatment plants to have upgrades and  
7 modifications to it in the ordinary course of plant  
8 operations, correct?

9       A.       That's correct. But when asked to provide any  
10 specific examples of other instances similar to the  
11 PVWRF, Mr. McBride did decline to offer any specific  
12 examples.

13       Q.       Okay. But you understand that the only  
14 testimony presented in this case is that it is not  
15 unusual for plants -- the only engineering testimony  
16 presented in this case and in this record is that it is  
17 not unusual for treatment plants to have modifications  
18 and additions and upgrades after the plant has been  
19 operated for a few years, which is what Mr. McBride  
20 testified to in his testimony?

21               MS. WOOD: Objection, Your Honor. We did pose a  
22 data request, which Mr. McBride acknowledged answering,  
23 in which we asked for specific examples in which he  
24 acknowledged he did not provide us with specific  
25 examples. And I think it is 8.1, and it is in the

1 record.

2 MR. WILEY: That has not nothing to do with the  
3 question, Judge.

4 ACALJ NODES: All right. Overruled.

5 You can answer if you can.

6 THE WITNESS: I am sorry, what was the question?

7 BY MR. WILEY:

8 Q. Okay. There is no testimony in this case,  
9 Mr. Rowell, that the magnitude of the upgrades were  
10 unusual or atypical for sewer plants, agreed?

11 A. I don't know that anyone has testified to that,  
12 no.

13 Q. Okay. And there has been no engineering  
14 testimony that has supported the notion that the  
15 upgrades were of such a magnitude that it would be  
16 unfair to ratepayers to make them pay for the cost of  
17 the upgrades, agreed?

18 A. I don't believe that any of the engineers or the  
19 one engineer who testified spoke to ratemaking issues at  
20 all.

21 Q. And the one engineer that testified would be the  
22 primary person with knowledge about the need for  
23 upgrades and modifications and the magnitude of costs  
24 associated with a sewer plant, agreed?

25 A. He was closer to this issue than any of the rest

1 of us.

2 Q. So you would agree with that, right?

3 A. Yes.

4 Q. Okay. Let me have you look at page 25 of your  
5 deposition, Mr. Rowell. I want to go back to this, to  
6 your testimony here today about the inspections and  
7 approvals by the county and DEQ. Look at page 25,  
8 starting with line 23 of the deposition transcript. Are  
9 you there?

10 A. I am reading it.

11 Q. Okay. The question was: You understand that  
12 the plant as originally designed and constructed was  
13 reviewed by the Arizona Department of Environmental  
14 Quality and the Maricopa County Environmental Services  
15 Department, correct? And your answer was: That's  
16 correct. Right, that's what you said at the deposition,  
17 agreed?

18 A. Agreed.

19 Q. Okay. And the next question was: And both of  
20 these entities reviewed the engineering and the as-built  
21 construction of the plant, agreed? And your answer was:  
22 That's typical, yes. Do you recall that answer?

23 A. Yes.

24 Q. Okay. So now you are saying that you don't  
25 think they inspected and approved the plant as built?

1 A. I am saying I don't know.

2 Q. Okay. And so you are changing your testimony  
3 that you gave under oath at the deposition where you  
4 said it was typical that both of those entities review  
5 the engineering and as-built construction of the plant;  
6 is that what you are telling us here today?

7 A. Well, I will say this. I mean the honest answer  
8 at the time of this deposition, I believe, it was  
9 typical. And since then, with some conversations I have  
10 had, my knowledge about what the county and the DEQ do  
11 and the reviews has become less certain.

12 Q. Mr. Rowell, you agree that Algonquin acquired  
13 LPSCO after that plant had been constructed, correct?

14 A. That's correct.

15 Q. Okay. And you also agree that Algonquin didn't  
16 have any way of knowing that any upgrades would be  
17 necessary when that plant was built in 2002, agreed?

18 A. Well, no, I couldn't agree with that.

19 Q. Okay. Well, the plant was approved by DEQ, the  
20 county, and the city when it was originally constructed,  
21 correct?

22 A. It was approved by them?

23 Q. Yes.

24 A. Yes, it was.

25 Q. Okay. And the plant, the original plant design

1 has been reviewed by Mr. McBride, and he has concluded  
2 that there were no design or engineering errors with the  
3 original plant, correct?

4 A. Well, he also testified that it is often  
5 necessary to upgrade plants, so I don't know why  
6 Algonquin would think that this plant wouldn't need to  
7 be upgraded.

8 Q. Okay. So is it your testimony here today that  
9 LPSCO should have installed the \$7 million in 2002? Is  
10 that what you are telling us?

11 A. I don't believe I testified to that, no.

12 Q. Okay. Is it RUCO's position that companies like  
13 LPSCO should install a full, robust plant like  
14 \$25 million to cover as many possible contingencies for  
15 operations at a plant? Is that what you are telling us  
16 here today?

17 A. Well, I don't know what RUCO's position is on  
18 that issue. I am an outside consultant to RUCO, so I  
19 can't really speak to RUCO policy.

20 I mean I can say from a ratemaking perspective,  
21 though, that Mr. McBride also testified that plants that  
22 have lower plant costs initially tend to have higher  
23 operating costs down the road. And from a ratemaking  
24 perspective, from a customer protection perspective, it  
25 would make sense to spend more up front in order to have

1 lower operating costs down the road. In ratemaking  
2 proceedings we tend to argue about plant more, but  
3 operating costs actually are a larger part of the  
4 revenue requirement.

5 Q. But you would also agree that if a company  
6 hypothetically spends more for a plant up front and  
7 those additional capabilities and items with the plant  
8 are not used, then they would be subject to a potential  
9 excess capacity or not used and useful argument in the  
10 future rate case, agreed?

11 A. Well, I don't think Mr. McBride's, his  
12 discussion on the stand regarding the cost of a plant  
13 really spoke to a capacity issue. That's not how I  
14 interpreted it.

15 Q. It was certainly possible that the original  
16 plant would have never needed to be upgraded depending  
17 upon what type of flows and operational constraints  
18 ultimately happened at the plant, agreed?

19 A. Well, by type of flow, do you mean the size of  
20 the flow or the --

21 Q. I mean the quality of the flow in terms of  
22 content such as fats, oils, and grease, or BODs or  
23 other, you know, organic compounds that are typically  
24 within, in sewage.

25 A. Well, Mr. McBride did testify that the content

1 of the flow at least with respect to the FOGs was  
2 different than expected.

3 Q. Okay. So it is entirely possible that the  
4 original plant, had those sewage flows not been  
5 different than expected, could have worked at the plant,  
6 agreed?

7 A. Well, I don't know if Mr. McBride actually  
8 testified that, you know, 100 percent of the upgrades  
9 were attributable to the change or the -- not only the  
10 changed condition of the flows but the unexpected nature  
11 of them. So I would say, so I guess I would have to  
12 answer no to your question. If the quality of the flow  
13 was as anticipated, it may have prevented some of the  
14 upgrades, but I don't know that we heard testimony that  
15 it would prevent all of them.

16 Q. Mr. Rowell, you agree that the Palm Valley water  
17 reclamation facility as originally constructed was and  
18 is used and useful in providing utility service,  
19 correct?

20 A. It is providing utility service.

21 Q. So it is used and useful, correct?

22 A. Well, I haven't undertaken a review to determine  
23 100 percent of the plant is used and useful.

24 MR. WILEY: Can you read that answer back,  
25 Colette.

1           (The record was read by the reporter as  
2 requested.)

3 BY MR. WILEY:

4       Q.     Mr. Rowell, you also agree that the 2007 and  
5 2008 upgrades installed by LPSCO at the Palm Valley  
6 plant are used and useful, agreed?

7       A.     Well, the additional plant is being used to  
8 serve current customers, although again, I have to  
9 mention that the upgrade did include some retirements  
10 that weren't made. So those would not be used and  
11 useful.

12       Q.     But other than the retirement, the 2008 upgrades  
13 were used and useful, agreed?

14       A.     Well, some of the upgrades did increase, you  
15 know, the capacity of some pieces of the plant just to  
16 an extent. And I don't know if we have really gotten  
17 into whether those increases in capacity were necessary.

18       Q.     Do you think there is excess capacity at the  
19 Palm Valley plant?

20       A.     You know, I can't say.

21       Q.     Okay. You were here when Mr. McBride testified  
22 that the upgrades did not result in any increased  
23 treatment capacity for the plant, correct?

24       A.     Well, the plant as a whole, the capacity of the  
25 plant as a whole may not have increased, but the

1 individual components of the plant may have.

2 MS. WOOD: Your Honor, could we take a quick  
3 break?

4 ACALJ NODES: Sure. We will take a 10-minute  
5 break.

6 (A recess ensued from 10:34 a.m. to 10:52 a.m.)

7 ACALJ NODES: All right. Let's go back on the  
8 record.

9 Mr. Wiley.

10 MR. WILEY: Yes, thank you, Judge.

11 BY MR. WILEY:

12 Q. Mr. Rowell, were you aware that the zoning  
13 around the Palm Valley plant changed after the original  
14 plant was constructed in 2002? Are you aware of that  
15 fact, that's all I am asking.

16 A. The company has represented that, but I haven't  
17 seen official documents that would verify that.

18 Q. Did you know that there was a golf course and  
19 some commercial property around the plant which was  
20 subsequently changed to residential housing? Did you  
21 know that?

22 A. I believe the company represented that.

23 Q. Okay. And you don't have any evidence to  
24 dispute those representations by the company, agreed?

25 A. Agreed.

1 Q. Okay. Let's switch topics to affiliate costs.  
2 Mr. Rowell, you agree that a shared services model under  
3 which a parent company or affiliate of the regulated  
4 utility provides operating and support services for the  
5 regulated utility is beneficial in terms of lower costs  
6 in general, agreed?

7 A. Well, your question was limited to operations  
8 and support costs. And with respect to operations and  
9 support costs, I would say generally it makes more sense  
10 to have an operating company. You know, in the case  
11 where there is multiple utilities or multiple utilities  
12 that are co-owned, it makes sense to have an operating  
13 company and provide the operating services for the  
14 utility in most cases; although, that's a theoretical  
15 argument.

16 I think if you actually look at the operating  
17 costs of companies that employ the shared services model  
18 there is a wide variance in the operating costs. So the  
19 use of the shared services model isn't the only driver  
20 of operating costs, let's put it that way.

21 Q. Now, this is the first case that you have ever  
22 testified in with respect to affiliated cost  
23 allocations, agreed?

24 A. As far as I can remember, yes.

25 Q. Okay. And you haven't performed any studies or

1 analyses of the benefits of any affiliated allocation  
2 cost methodologies used by any utilities in Arizona  
3 other than LPSCO, correct?

4 A. That's correct.

5 Q. And as we sit here today, you don't have any  
6 studies upon which you relied in rendering your  
7 affiliate cost opinions in this case, correct?

8 A. Yes, my opinions were based on analysis of the  
9 information provided by LPSCO.

10 Q. And that's the only thing you looked at; you  
11 didn't go look at any industry studies on affiliate  
12 costs or apply any other guidelines which were  
13 available, agreed?

14 A. I have reviewed the NARUC guidelines.

15 Q. And when we took your deposition, I think I  
16 asked you whether you had used the NARUC affiliate cost  
17 guidelines in rendering your testimony, and your answer  
18 was that you did not because you were not aware of those  
19 guidelines when you submitted your direct testimony,  
20 correct?

21 A. That's true. But since that time I have  
22 reviewed those guidelines.

23 Q. Okay. Now, you have no objections to the shared  
24 services model used by LPSCO relating to affiliate costs  
25 from Algonquin Water Services doing business as Liberty

1 Water, agreed?

2 A. Yes, we do not object to those costs.

3 Q. Okay. And the issues you have with the cost  
4 allocation all relate to the costs allocated from  
5 Algonquin Power Trust, we are calling APT, right?

6 A. That's correct.

7 Q. Okay.

8 A. Although I should clarify that I limit my answer  
9 to with respect to the Algonquin Water Services and  
10 Liberty Water or doing business as Liberty Water,  
11 allocations, I would limit my acceptance of those to the  
12 allocations that actually ended up in the outside  
13 services other account. There were some Algonquin Water  
14 Services charges that ended up in other accounts that we  
15 did take issue with.

16 Q. Okay. So which ones?

17 A. There was the Airlink bill for the private jet.

18 Q. Okay. And the Airlink bill is the only one that  
19 you took issue with, correct?

20 A. As far as I know, yes.

21 Q. And essentially what you are talking about there  
22 is the Airlink bill for the alleged corporate jet was  
23 that those costs were allocated directly down to Liberty  
24 Water and not to APT or not to LPSCO from APT, correct?

25 A. Yes, they appear to have originated at Algonquin

1 Water Services, not APT.

2 Q. So in other words, they ended up being allocated  
3 to LPSCO through Liberty Water and not APT, agreed?

4 A. Yes.

5 Q. And other than the Airlink charges, you agree  
6 with all of the allocations to LPSCO from Liberty Water  
7 in this case, fair?

8 A. As far as I know. I wasn't really involved in  
9 the audit of the other expense accounts. So if there  
10 aren't any adjustments in Mrs. Rowell's testimony  
11 regarding those, then I would say yes.

12 Q. But as far as your testimony here today, the  
13 Airlink is the only issue you have with the Liberty  
14 Water allocations, fair?

15 A. That's the only specific one I can point to,  
16 but, you know.

17 Q. Now, you are essentially disallowing all of the  
18 allocation from APT, correct?

19 A. I believe I did allow a small portion of them.

20 Q. But it was very minimal, correct?

21 A. I don't remember the exact number, but it  
22 was -- I am looking for a surrebuttal testimony here.  
23 But it was, yes, quite small relative to the total  
24 amount.

25 Q. It was approximately \$1800 that you allowed in

1 the allocated to LPSCO from APT, wasn't it?

2 A. I believe it was -- 1800? No. I believe in  
3 my -- well, I am looking for my surrebuttal testimony  
4 here. I believe it was a larger number than that.

5 Q. I think it is R-23, if that helps.

6 A. That would help. Actually, I have some notes on  
7 that point which I don't have it now. Yes, on page 11  
8 of my surrebuttal testimony, which is R-23, at line 13,  
9 the recommended amount was about \$4,900 for the water  
10 and sewer, so a total of just under \$10,000.

11 Q. Okay. And what items did you include within  
12 that \$10,000, do you recall?

13 A. If you look at page 9 of the surrebuttal  
14 testimony, there is a table which indicates which items  
15 I thought should be allowable and which should not.

16 Q. So you allowed some items under tax services,  
17 correct?

18 A. Correct.

19 Q. And you allowed some items under other  
20 professional services, correct?

21 A. Correct.

22 Q. And then you allowed a portion of the rent to be  
23 allocated down to LPSCO, correct?

24 A. That's correct.

25 Q. Okay. Now, your position in your testimony is

1 that LPSCO has not shown that the services provided by  
2 APT are necessary for the provision of utility service,  
3 correct?

4 A. That sounds familiar, yes.

5 Q. Okay. But you understand that APT provides  
6 consolidated tax returns for all of the regulated  
7 utilities owned by APT, correct?

8 A. Yes. And specific to tax services, I could say  
9 if APT is providing these tax services to LPSCO, then  
10 certainly they should be allowed.

11 Q. Okay.

12 A. The reason why I did what I did was that in a  
13 review of the invoices to support the tax services,  
14 there were invoices in there that indicated that they  
15 were specifically for parts of the Algonquin operation  
16 other than LPSCO. So I couldn't determine that, you  
17 know, 100 percent of the cost that was put in the  
18 allocation cost pool for tax services was really proper  
19 to be allocated.

20 In other words, there were some invoices that  
21 specifically mentioned LPSCO. And I believe we talked  
22 about those a few days ago, the Grant Thornton invoices.  
23 There were some invoices where it wasn't clear whether  
24 LPSCO should or should not be included in that cost.  
25 And there were other invoices where it was clear that

1 LPSCO was not a part of the work that was undertaken by  
2 those vendors.

3 Q. Well, Mr. Rowell, isn't it true that APT retains  
4 a tax firm or an accountant to evaluate compliance with  
5 U.S. and Canadian tax provisions for all of the  
6 regulated utilities, including LPSCO?

7 A. I mean are you asking me whether they hire  
8 someone to look after their U.S. and Canadian tax  
9 issues? Well, yes.

10 Q. And wouldn't you agree with me that some portion  
11 of those tax services benefits LPSCO because that tax  
12 accountant is evaluating LPSCO's compliance with U.S.  
13 and Canadian tax provisions?

14 A. Well, certainly the U.S. tax provision. I am  
15 not so certain whether it is necessary to review the  
16 Canadian tax provisions in order for LPSCO to operate.

17 Q. But you understand that LPSCO is owned by a  
18 Canadian company, correct?

19 A. They are owned by the APIF, I believe, which is  
20 based in Canada.

21 Q. And that's a Canadian income fund, correct?

22 A. Correct.

23 Q. Okay. And you also understand that LPSCO  
24 obtains its financing from the Toronto Stock Exchange,  
25 which is a Canadian capital market, correct?

1 A. Well, no, that would not be 100 percent true.

2 Q. Where else -- well, okay, let me rephrase that  
3 then.

4 You understand that LPSCO obtains all of its  
5 equity financing, capital financing from sales of units  
6 in the income fund on the Toronto Stock Exchange,  
7 agreed?

8 A. As far as I know, LPSCO receives its equity  
9 financing from the fund, which receives money from the  
10 sale of units. I don't -- to be honest with you I  
11 haven't really looked into whether there is an  
12 additional source of equity financing. But yes, as far  
13 as I know it is the units that are sold on the Toronto  
14 Stock Exchange.

15 Q. So wouldn't it be fair to say that it is  
16 necessary, in order to get that capital funding from the  
17 Toronto Stock Exchange, that LPSCO and its affiliates  
18 comply with the Canadian tax provisions?

19 A. Well, you know, I am not versed in international  
20 tax law. But I don't understand why LPSCO as the  
21 stand-alone entity would be -- why it would be necessary  
22 for LPSCO, a stand-alone entity, to comply with the  
23 Canadian tax laws.

24 Q. Well, have you done any analysis of the type of  
25 what costs LPSCO would incur on a stand-alone basis for

1 taxes?

2 A. No, I have not.

3 Q. So as we sit here today, you don't know whether  
4 the stand-alone costs that LPSCO would incur for taxes  
5 would be more or less than what is allocated from APT,  
6 agreed?

7 A. Agreed.

8 Q. Okay. And the same would hold true for audit  
9 costs, correct?

10 A. I don't know what it would cost LPSCO to conduct  
11 its own audit.

12 Q. And in fact you don't even know what type of  
13 stand-alone audit requirements LPSCO has, correct?

14 A. I am not aware of the specific audit  
15 requirements for LPSCO. But I mean it is my position  
16 that to the extent that APT provides auditing services  
17 for LPSCO, they should be recoverable. I just couldn't  
18 determine whether the invoices provided to support the  
19 audit costs actually pertain to LPSCO or not. And then  
20 there is also an issue what the proper allocation  
21 methodology would be.

22 Q. Okay. On the proper allocation methodology,  
23 Mr. Rowell, you agree in general with the framework that  
24 LPSCO used for its allocation? And let me break that up  
25 for you.

1           You understand that the first step of LPSCO's  
2 allocation was to divide the number of regulated  
3 utilities into the number of facilities owned by the  
4 income fund, which is 17 out of 63, correct? That's  
5 your understanding of what they did, correct?

6       A.     That's what they did, yes.

7       Q.     Okay. And you agreed with a general framework  
8 for allocation. In other words, you agree that the  
9 number of facilities should be divided into the total  
10 number of facilities in order to determine an initial  
11 allocation percentage for the APT costs, correct?

12      A.     Well, in my direct and surrebuttal testimony I  
13 don't think I addressed that issue specifically. My  
14 focus was trying to figure out what, what the cost pool  
15 was and what went into it. And I didn't really address  
16 the allocation methodology, frankly, because I -- this  
17 other part of the analysis took up all of my time.

18           Since filing my testimony, actually earlier in  
19 the hearing, I believe Judge Nodes had some questions  
20 about the appropriateness of that initial allocation  
21 being based simply on the number of facilities as  
22 opposed to being based on a revenue number. And I did  
23 undertake some analysis in that regard. And if you look  
24 at the total revenue of the APIF fund, it is about  
25 213.7 million. And LPSCO's total revenue, both water

1 and wastewater, comes to about 13 million. So that's  
2 about 6.2 percent. So LPSCO's revenues are 6.2 percent  
3 of the APIF funds. But under the company's allocation  
4 method, LPSCO gets about 12 percent of the cost pool  
5 allocated to them.

6 So it appears under LPSCO's, or under, you know,  
7 the company's allocation method, LPSCO was allocated  
8 roughly twice what they would be allocated under an  
9 allocation methodology that was based solely on  
10 revenues.

11 Q. Mr. Rowell, as we sit here today, you haven't  
12 performed any analysis of whether revenue is an  
13 appropriate factor for determining an appropriate driver  
14 for determining cost used by regulated utilities,  
15 agreed?

16 A. Well, in looking at the APIF and all of its --  
17 all of the facilities that it owns, revenue was the only  
18 data point we have that would, we could -- that's  
19 relevant to the entire fund. In other words, there are  
20 other factors you could use to allocate the numbers, but  
21 we don't know what those factors are for the nonutility  
22 facilities.

23 Q. And as we sit here today, Mr. Rowell, you  
24 haven't done any analysis of other allocation drivers or  
25 factors, agreed?

1 A. I analyzed it based on the revenue.

2 Q. Okay. And you only did that after Judge Nodes  
3 raised some questions about revenue numbers in the  
4 earlier portions of this hearing, correct?

5 A. That's correct. Like I said, the focus of my  
6 testimony wasn't so much the allocation methodology as  
7 it was, you know, what the total cost pool allocated  
8 should be.

9 Q. And if you use the 6.2 percent or 6.5 percent  
10 revenue number that you gave, that would yield  
11 approximately \$320,000 in allocations to LPSCO from APT,  
12 agreed?

13 A. I haven't performed that calculation, so...

14 Q. There is \$4.9 million in the total central  
15 office cost pool for APT, agreed?

16 A. I don't have the -- I do have it in front of me,  
17 just not directly in front of me.

18 No, I believe 4.9 is not correct.

19 Q. What number do you have?

20 A. I am looking at -- this was Bourassa's rebuttal  
21 Schedule C-2. And he lists the number of 5.1 million.  
22 Okay. After the disallowance, after accepting Staff's  
23 disallowance, it does come to 4.9. Okay.

24 Q. And 4.9 million times 6.5 percent is roughly  
25 \$318,500, agreed? I can give you a calculator if you

1 don't want to take my representation on it.

2 A. Yes, that would be roughly half what was  
3 actually -- or not what actually was allocated, but what  
4 the company is proposing be allocated.

5 Q. Now, you agree that capital financing provided  
6 by APT benefits LPSCO, agreed?

7 A. Yes.

8 Q. Okay. And the services provided and costs  
9 incurred by APT in order to provide that capital  
10 financing from the Toronto Stock Exchange also benefits  
11 LPSCO, agreed?

12 A. I am sorry, what also benefits?

13 Q. Let me try to break it up for you, Mr. Rowell.  
14 You agree that the capital financing provided by APT  
15 benefits LPSCO, correct?

16 A. They do benefit from the equity, yes.

17 Q. And you understand that APT has to undertake  
18 certain services and incur certain costs in order to be  
19 able to sell shares or units of the income fund on the  
20 Toronto Stock Exchange; that's your understanding,  
21 correct?

22 A. There are expenses associated with being listed.

23 Q. Okay. And you would also agree that APT could  
24 not provide capital from the Toronto Stock Exchange  
25 unless it did all of those things, which include

1 licenses and fees for participation in the stock  
2 exchange, agreed?

3 A. Well, I don't think licenses and fees is the  
4 best example, given that most of the backup provided for  
5 the licenses and fees category really didn't pertain to  
6 obtaining licenses and fees.

7 Q. Well, can an income fund sell shares on the  
8 Toronto Stock Exchange if it doesn't pay the licenses  
9 and fees necessary to participate in the Toronto Stock  
10 Exchange?

11 A. Well, no. As I testified, there are expenses  
12 associated with being listed on a stock exchange.

13 Q. You agree that LPSCO should have strategic  
14 management for its utility services, fair?

15 A. Can you define strategic management.

16 Q. Sure. Decisions such as when and how to obtain  
17 capital financing for projects.

18 A. Yes, you do have to decide when you are going to  
19 obtain financing.

20 Q. Right. And in order to be a reputable and, you  
21 know, a utility that is a good citizen to the community,  
22 you want to have proper planning and management for  
23 capital projects and when and how to construct them and  
24 how to finance them, agreed?

25 A. Yes, somebody needs to undertake that analysis.

1 Q. And you are aware that there have been several  
2 stand-alone companies in Arizona that have suffered from  
3 that lack of strategic management and planning, correct?

4 A. I suppose you could characterize it that way,  
5 yes.

6 Q. And you were here in the testimony earlier in  
7 this hearing when we went through the Far West decision.  
8 Do you remember that?

9 A. Honestly, no, I don't recall the Far West  
10 discussion.

11 Q. Have you ever reviewed the Far West decision?

12 A. No, I have not.

13 Q. Okay. Were you aware that Far West is a  
14 stand-alone utility in Arizona?

15 A. I believe they are.

16 Q. Okay. Have you made any effort to compare LPSCO  
17 to any other stand-alone utilities in Arizona of  
18 comparable size?

19 A. No.

20 Q. As we sit here today are you aware of any other  
21 stand-alone utilities in Arizona that are of comparable  
22 size to LPSCO?

23 A. Most of the -- the utilities that I can think of  
24 that are LPSCO's size are not stand-alones, let's put it  
25 that way.

1 Q. Okay. And those have basically some sort of  
2 affiliate holding company type structure?

3 A. Some do. I don't know -- they are organized  
4 differently but, you know, some have separate utilities  
5 that are owned by an affiliate. I believe Arizona  
6 Water, Arizona-American are all one company, but they  
7 are separate systems run by the one company. So...

8 MR. WILEY: Judge, we are on A-29, correct?

9 ACALJ NODES: Yes.

10 (Brief pause.)

11 BY MR. WILEY:

12 Q. Mr. Rowell, what is marked as Exhibit 29 is a  
13 March 25, 2008 invoice from KPMG in an amount of  
14 \$161,308.35. Do you see that?

15 A. Yes.

16 Q. This was included in LPSCO's responses to data  
17 requests. Were you aware of that?

18 A. It looks familiar.

19 Q. Okay. This invoice says, quote, final billing  
20 with respect to the 2007 annual audit. Do you see that  
21 line?

22 A. Yes.

23 Q. Okay. Now, you are aware that in order to  
24 obtain capital financing from the Toronto Stock  
25 Exchange, that APT has to conduct annual audits of all

1 of the affiliates and utilities owned by the income  
2 fund, correct?

3 A. I am not aware that -- I am not aware one way or  
4 the other whether that is a requirement of the Toronto  
5 Stock Exchange.

6 Q. Doesn't this document tell you that this is a  
7 final billing with respect to the 2007 annual audit for  
8 the Algonquin Power Income Fund?

9 A. It is for an annual audit of something. But I  
10 don't -- I can't determine based on this what was  
11 audited.

12 Q. Did you ask the company?

13 A. No.

14 Q. Did you inquire with anyone employed by APT as  
15 to exactly what they were auditing?

16 A. No.

17 Q. Okay. So as we sit here today you don't know  
18 whether this type of audit invoice pertains to the  
19 annual audits of all the regulated utilities under the  
20 APT umbrella, agreed?

21 A. Yes. It is impossible to determine based on the  
22 records provided whether this was an audit for, you  
23 know, for LPSCO or for some other entities or for APT as  
24 a whole or --

25 Q. But it is not impossible to tell from the

1 documents provided if you would have asked the company  
2 what does this invoice pertain to, agreed?

3 A. Well, the original accounting records should  
4 have some notation as to what it was for.

5 Q. Let me have you look at Exhibit A-9, which is  
6 Gerald Tremblay's rejoinder testimony, please.

7 A. I have it.

8 Q. Okay. And I want you to turn to the exhibit  
9 attached to the testimony which is Exhibit GT-RJ1  
10 entitled Liberty Water affiliate cost allocation  
11 methodology. Do you have that document?

12 A. Yes.

13 Q. Okay. Turn to page 13. Tell me when you are  
14 there.

15 A. I am there.

16 Q. Okay. Page 13 has a description of the audit  
17 fees included in the cost allocations from APT, correct?

18 A. That's correct.

19 Q. Okay. And the description says, quote, audits  
20 are done on a yearly basis and reviews are performed  
21 quarterly on all facilities owned by APIF on an  
22 aggregate level, end quote. Do you see that line?

23 A. Yes.

24 Q. Okay. And it says audits are provided by KPMG.  
25 Do you see that?

1 A. Yes.

2 Q. Doesn't this document tell you what the KPMG  
3 invoices for annual audits are related to?

4 A. Well, the description of audits that I relied on  
5 was the original one provided. So if you don't mind, I  
6 would like to take a look at that. I believe I have it  
7 here with me.

8 Yes, this is a document that was provided in  
9 response to the Staff data request JMM 5.3. It  
10 describes the audit component of the APT cost pool as  
11 audit fees and quarterly reviews relating to the entire  
12 income fund. This is essential as we are publicly  
13 traded with access to capital markets.

14 Q. Mr. Rowell, doesn't the cost allocation  
15 methodology description included on the exhibit to  
16 Mr. Tremblay's testimony tell you what the audit fees  
17 are related to, agreed?

18 A. Well, as I read it closely, I am not sure. It  
19 says audits are done on a yearly basis and reviews are,  
20 and this is, I am reading from the exhibit to  
21 Mr. Tremblay's testimony, and it says audits are done on  
22 a quarterly basis and reviews are performed quarterly on  
23 all facilities owned by APIF on an aggregate level.

24 Now, that tells me that some sort of audit is  
25 done on a yearly basis, but it doesn't indicate that the

1 audit is done for all of the affiliates. With respect  
2 to the affiliates all it says is that reviews are  
3 performed on a quarterly basis.

4 Q. So your interpretation of that line is that the  
5 audits are done on a yearly basis for just APIF and  
6 reviews are performed on a quarterly basis for all of  
7 the facilities of APIF; is that what you are saying?

8 A. I believe it could be interpreted that way.

9 Q. Does that sound reasonable to you, Mr. Rowell?

10 A. Well, I mean my confusion was over were these  
11 audit fees associated with an audit of the APIF or were  
12 they audits of each of the affiliates.

13 Q. Okay.

14 A. And I don't believe the language is clear on  
15 that point.

16 Q. Okay.

17 A. So...

18 Q. Are you aware of whether the filings by the  
19 income fund to the Toronto Stock Exchange include  
20 audited financial statements for all of the facilities  
21 and utilities owned by the income fund?

22 A. I am not aware that that's true, no.

23 Q. Okay. So as we sit here today, you don't know  
24 whether APIF needs to provide consolidated audit  
25 statements for all of its utilities in order to obtain

1 funding from the Toronto Stock Exchange, fair?

2 A. Yes, I am not aware of the specific rules of the  
3 Toronto Stock Exchange regarding those issues.

4 Q. Are you a certified auditor?

5 A. No, I am not.

6 Q. Okay. Do you have any familiarity with the  
7 generally accepted auditing standards, otherwise known  
8 as GAAB, GASH, GAAS, G-A-A-S?

9 A. No, I have not reviewed that.

10 Q. And you are not a CPA, correct?

11 A. Correct.

12 (Brief pause.)

13 BY MR. WILEY:

14 Q. Mr. Rowell, what has been marked as Exhibit A-30  
15 is a July 31, 2008 invoice from Grant Thornton in the  
16 amount of \$7,715.40. Do you see this invoice?

17 A. Yes.

18 Q. And this was another invoice that was provided  
19 by LPSCO in response to data requests, correct?

20 A. It looks familiar.

21 Q. Okay. The invoice states, quote, rendered for  
22 the period to January -- to July 31, 2008 in connection  
23 with the review of June 30, 2008 second quarter Canadian  
24 and U.S. tax provisions, end quote. Do you see that?

25 A. Yes.

1 Q. Okay. Did you inquire with LPSCO as to what was  
2 being provided with these tax services under invoices  
3 like this?

4 A. Well, just to be clear, we are moving off of the  
5 audit category and into the tax category?

6 Q. Yes.

7 A. No, I did not.

8 Q. Okay. Do you know whether APT needs to incur  
9 tax reviews and filings as a requirement for  
10 participation in the Toronto Stock Exchange?

11 A. Well, I don't believe APT participates directly  
12 in the Toronto Stock Exchange.

13 Q. Are you aware that APT sells shares of the  
14 income fund on the Toronto Stock Exchange?

15 A. I thought APIF did that.

16 Q. Okay. I think APT is the operating arm of APIF  
17 that actually sells the shares. Were you aware of that?

18 A. That's my understanding, yes.

19 Q. So as we sit here today, Mr. Rowell, do you know  
20 whether APT needs to incur tax services, including  
21 review of Canadian and U.S. tax provisions, as a  
22 requirement for participation in the Toronto Stock  
23 Exchange?

24 A. I am not familiar with the rules of the Toronto  
25 Stock Exchange.

1 Q. You would agree that an auditor would not find  
2 it acceptable if the company audit failed to reply with  
3 all tax provisions, including U.S. and Canadian tax  
4 provisions, you would agree with that, correct?

5 A. Who would not find it acceptable?

6 Q. The auditor.

7 A. Yes, you would think an auditor would have an  
8 issue if you are not complying with the tax law.

9 Q. And so it would be fair to say that an auditor  
10 would want to look both at Canadian and U.S., you know,  
11 requirements for audits and tax provisions, fair?

12 A. An auditor of what?

13 Q. An auditor of LPSCO and other regulated  
14 utilities under the APT umbrella.

15 A. Well, I guess it is not clear to me that LPSCO  
16 is subject to the Canadian tax laws.

17 Q. Again, Mr. Rowell, you understand that LPSCO is  
18 owned by a Canadian company, correct?

19 A. But it is a U.S. company.

20 Q. That's true. But LPSCO is owned by a Canadian  
21 company, correct?

22 A. Yes.

23 Q. And the Canadian company is subject to the  
24 Canadian tax provisions, correct?

25 A. Yes.

1 Q. Wouldn't it be reasonable to assume that LPSCO  
2 would fall under the Canadian tax provisions, as it is  
3 owned by a Canadian company?

4 A. No, I wouldn't make that assumption.

5 MR. WILEY: Judge, before I forget, I would move  
6 A-29 and A-30 into evidence.

7 ACALJ NODES: All right. Any objections to  
8 those?

9 (No response.)

10 ACALJ NODES: No? All right, A-29 and 30 are  
11 admitted.

12 (Exhibits A-29 and A-30 were admitted into  
13 evidence.)

14 (Brief pause.)

15 BY MR. WILEY:

16 Q. Mr. Rowell, what has been marked as Exhibit A-31  
17 is an April 18, 2008 invoice from AccuSource, Inc. in  
18 the amount of \$6,048. Do you see that?

19 A. I do see this, yes.

20 Q. Now, in your direct and surrebuttal testimony  
21 you had some issues with the invoicing being provided by  
22 LPSCO for the APT allocations, correct?

23 A. I believe I did.

24 Q. And you didn't think it was detailed enough,  
25 right?

1 A. I don't know if I testified to that. Well, I  
2 mean that is an issue with some of these, but then there  
3 are other issues as well.

4 Q. I understand that. But one of your issues was  
5 that the invoices didn't tell you who or what was doing,  
6 you know, services was providing services for APT,  
7 correct?

8 A. Well, no, I believe my issue with detail wasn't  
9 so much who was providing the services, as to which APIF  
10 entities were receiving the benefits of the services.

11 For instance, we were just talking about audit  
12 and taxes. And based on the, you know, the  
13 documentation provided by the company, it is difficult  
14 to determine, you know, exactly what is being audited.  
15 I mean it is clear who the auditor is, like you say it  
16 is KPMG, but the issue was more exactly what sort of  
17 work was that auditor doing.

18 Q. And that was addressed in the exhibit provided  
19 with Mr. Tremblay's rejoinder testimony, correct?

20 A. You mean the cost allocation methodology  
21 document?

22 Q. Yes.

23 A. Well, we already talked about the audit issue.  
24 I am looking for when it mentioned where taxes are  
25 discussed or where the taxes are discussed. Here it is.

1 Well, yes, with respect to the tax services, if  
2 you look at page 13 of -- what was this marked --  
3 page 13 of the cost allocation methodology, under the  
4 description all it says is tax services expenses are  
5 incurred to ensure prudent tax filing, planning, and  
6 management, which doesn't really tell us, you know,  
7 whose taxes are really being done here, is it LPSCO's or  
8 some other entity's.

9 Q. But, of course, Mr. Rowell, the next line says,  
10 quote, taxes are paid on behalf of the regulated  
11 utilities at the parent level as part of a consolidated  
12 U.S., United States tax return. Tax services are  
13 provided by third parties, including KPMG, for tax  
14 planning and filing. You see that line, right?

15 A. Yes. Immediately -- this line is included in  
16 the table and the label of that row of the table is  
17 examples, which leads me to believe this is one of  
18 possibly many types of costs that are included under the  
19 tax category of the cost pool. And it does mention  
20 consolidated United States tax return, not a joint  
21 United States/Canadian filing.

22 Q. Let me have you go back to Exhibit A-31, please.  
23 The description of the services provided on the A-31  
24 invoice is, quote, service provided by Dianna Taylor for  
25 preparation relating to the certification of the

1 effectiveness of ICFR. Do you see that line?

2 A. I am sorry, I can't -- oh, here it is.

3 Q. It is the one-page invoice.

4 A. Yes.

5 Q. Do you see that line on the description?

6 A. Yes.

7 Q. Do you know what ICFR is?

8 A. No, I don't. I mean, can I ask if this is an  
9 invoice included in the audited tax category, or was it  
10 included in one of the other categories?

11 Q. I can't answer all that. All I can tell you is  
12 this was provided by LPSCO in response to data requests.

13 A. I would just like to state for the record that  
14 the invoices were provided and broken out by category.  
15 Again, on page 9 of my surrebuttal, there is a table  
16 that lists each of the categories. So...

17 Q. This one is most likely audit related?

18 A. Okay.

19 Q. My question for you, Mr. Rowell, is do you know  
20 what ICFR is.

21 A. No.

22 Q. So you didn't include this invoice in allowed  
23 allocations from APT to LPSCO, agreed?

24 A. That's true, yes.

25 Q. So you disallowed this invoice without even

1 determining what ICFR means, agreed?

2 A. That's true.

3 Q. Do you, were you -- and so I guess it would be  
4 fair to say that you were not aware that ICFR means  
5 internal control financial review, which is similar to  
6 the Sarbanes-Oxley requirements in the United States?  
7 You weren't aware of that, correct?

8 A. That's true.

9 Q. Do you know what Sarbanes-Oxley is?

10 A. In general terms, yes.

11 MR. WILEY: Okay. Judge, I would move in A-31.

12 ACALJ NODES: Any objection?

13 MS. WOOD: No, Your Honor.

14 ACALJ NODES: Okay. A-31 is admitted.

15 (Exhibit A-31 was admitted into evidence.)

16 (Brief pause.)

17 BY MR. WILEY:

18 Q. Mr. Rowell, what has been marked as Exhibit A-32  
19 is a July 1, 2008 invoice from Algonquin Power Property  
20 Limited Partnership as landlord to Algonquin Power Trust  
21 as tenant in the amount of \$25,889.59. Do you see that?

22 A. I see that, yes.

23 Q. Okay. Now, you agree that some portion of the  
24 rent should be allocated to LPSCO from APT, agreed?

25 A. I thought it was fair. It did -- well, under

1 the other professional services category, it did appear  
2 as if there were some actual work done at the APT  
3 location specifically for LPSCO, so I thought this was  
4 fair that some recovery be made of the rent expense as a  
5 result of that.

6           Although, I believe Mr. Tremblay testified that  
7 there is some joint ownership between the APIF and the  
8 landlord here, and I don't think he could say  
9 definitively that there was no profit included in the  
10 rent expense. And I believe the Staff attorney asked  
11 him that. So I just would say that that's problematic.

12       Q.     But you are not aware that there is any profit  
13 included in the rent as you sit here today, agreed?

14       A.     Yes, I don't know if there is or there isn't. I  
15 was just troubled by Mr. Tremblay's inability to be  
16 definitive on that issue.

17       Q.     Now, you said earlier in the testimony today  
18 that LPSCO benefits from capital funding through the  
19 sale of units of the income fund on the Toronto Stock  
20 Exchange, correct?

21       A.     That's correct.

22       Q.     And you also indicated that there were benefits  
23 to LPSCO for the tax and auditing services provided by  
24 APT, agreed?

25       A.     Well, for at least some of them there is.

1 Q. Okay. And you are also aware that the employees  
2 that provide that capital financing are employees of  
3 APT, agreed?

4 A. No, I believe the document we were just  
5 discussing, the cost allocation methodology documents,  
6 states that there are no APT employees.

7 Q. Fair enough. Fair enough.

8 But the services that are undertaken -- that's a  
9 fair question, Mr. Rowell. I should have rephrased the  
10 question. What I meant to say was that the capital  
11 funding provided by APT are provided through services  
12 provided through the auditing and tax services, correct?

13 A. I am sorry. I don't understand your question.

14 Q. Each method of providing debt or equity  
15 financing to a utility has its own costs, agreed?

16 A. That's fair enough, yes.

17 Q. If a utility obtains bond financing, there are  
18 costs to issue the bonds, correct?

19 A. That's correct.

20 Q. And you have to hire a bond underwriter or  
21 financing agent, agreed?

22 A. Agreed.

23 Q. And you have to hire a bond attorney, correct?

24 A. That's correct.

25 Q. And there are costs associated with issuance of

1 the bond, including bond reserves and financial interest  
2 and financing payments, agreed?

3 A. Agreed.

4 Q. Okay.

5 A. I would note that the company agreed to exclude  
6 those costs associated with its IDA bonds from the rate  
7 case.

8 Q. But you would acknowledge that a utility would  
9 incur all of those costs if it were to undertake bond  
10 financing for capital projects, fair?

11 A. Yes. I mean a utility or anyone else that  
12 undertook bond financing.

13 Q. And if a company were to go out and obtain loans  
14 for a capital project, they would incur costs associated  
15 with the loan, agreed?

16 A. Yes.

17 Q. And they would need to incur an attorney to  
18 review and perhaps draft the loan document, fair?

19 A. That's fair.

20 Q. Okay. And they would pay interest and financing  
21 charges associated with the loan, agreed?

22 A. Yes. There are -- loans have interest, yes.

23 Q. And there would be a recorded security interest  
24 against the utility's property as security for the loan,  
25 fair?

1 A. In most cases that would be the case.

2 Q. And they would need to get ACC approval for the  
3 financing and the secured interest against the utility's  
4 property, correct?

5 A. Yes.

6 Q. And that would require attorneys to file the ACC  
7 application for approval of the financing, agreed?

8 A. Yes, you would need an attorney for that, yes.

9 Q. As we sit here today, have you undertaken any  
10 comparison of the financing costs for getting a bond or  
11 a loan versus financing from the capital markets on the  
12 Toronto Stock Exchange?

13 A. Well, I can say that with respect to the IDA  
14 bonds that the company holds, the ratepayers will have  
15 no exposure to those costs, but beyond that I have done  
16 no analysis.

17 Q. I wasn't talking about the ratepayers,  
18 Mr. Rowell, I was talking about the company's costs for  
19 obtaining the financing. Have you performed any  
20 comparison of the relative costs of financing through  
21 bonds, loans, or capital provided through the Toronto  
22 Stock Exchange as we sit here today?

23 A. No.

24 MR. WILEY: Did I move in A-32, Judge?

25 ACALJ NODES: Not yet.

1 MR. WILEY: Then I would do so, please.

2 ACALJ NODES: All right. Any objection?

3 (No response.)

4 ACALJ NODES: Okay. A-32 is admitted.

5 (Exhibit A-32 was admitted into evidence.)

6 (Brief pause.)

7 BY MR. WILEY:

8 Q. Now, Mr. Rowell, you understand that the Income  
9 Fund is publicly traded on the Toronto Stock Exchange,  
10 correct?

11 A. That's correct.

12 Q. And would it be fair to say that it is also your  
13 understanding that in order to participate in capital  
14 markets as a publicly owned company, the company needs  
15 to have a board of trustees or board of directors? You  
16 would agree, correct?

17 A. Again, I am not familiar with the specific rules  
18 of the Toronto Stock Exchange, but in general, publicly  
19 traded companies are required to have a board.

20 Q. And for United States companies that are  
21 publicly traded on the stock exchange here, they have  
22 what is typically called a board of directors, correct?

23 A. That's correct.

24 Q. And the board of directors is required as a  
25 requirement -- let me rephrase that.

1           Boards of directors are required to participate  
2 in the stock exchange in order to manage and monitor the  
3 company's operations, correct?

4       A.     I don't know that they participate in the stock  
5 exchange to do that, but they -- yes, their function is  
6 to manage or oversee, probably a better word --

7       Q.     Right.

8       A.     -- the company's operations.

9       Q.     And in fact, you anticipated my next question.  
10 The purpose of a board of directors or board of trustees  
11 are management oversight of the publicly traded  
12 companies, correct?

13      A.     Yes, that's a fair characterization.

14      Q.     And that is a function of proper corporate  
15 governance of publicly traded companies, correct?

16      A.     Well, not just publicly traded companies. I  
17 mean some companies that are wholly owned -- well, you  
18 know, any corporation requires a board of directors,  
19 whether they are publicly traded or not. For instance,  
20 Liberty Water or Algonquin Water Resources does have a  
21 board, and there are costs associated with that.

22      Q.     But you would agree that the use of a board of  
23 trustees is for the purposes of proper corporate  
24 governance of companies whether publicly owned or not,  
25 correct?

1 A. That's correct.

2 Q. What I have marked as Exhibit A-33, Mr. Rowell,  
3 is an Algonquin Power Income Fund trustee fees  
4 description for the quarter ending March 31, 2008. Do  
5 you see that, that document?

6 A. Yes.

7 Q. Okay.

8 ACALJ NODES: Mr. Wiley, might I have a copy?

9 (Brief pause.)

10 MR. WILEY: Unfortunately, Judge, that leaves me  
11 without a copy. So can I take a minute and borrow one  
12 from Staff, perhaps?

13 ACALJ NODES: Does Staff have another one?

14 MS. MITCHELL: No. We will just go from memory.

15 BY MR. WILEY:

16 Q. Mr. Rowell, the invoice marked or the  
17 description marked as A-33 pertains to trustee fees  
18 performed by George Steeves as the Chairman of the audit  
19 committee, correct?

20 A. That's what the heading indicates, yes.

21 Q. Okay. Did you allow any fees to be allocated  
22 from APT to LPSCO for the boards of trustees?

23 A. No.

24 Q. Okay. But you understand that LPSCO needs to  
25 have a board of trustees in order to participate in the

1 Toronto Stock Exchange, agreed?

2 A. No. That's incorrect.

3 Q. Okay. Why is that incorrect?

4 A. Because LPSCO does not participate in the  
5 Toronto Stock Exchange.

6 Q. Okay. You are nitpicking me, but I will  
7 rephrase the question for you. You understand that APT  
8 needs to have a board of directors in order to  
9 participate or a board of trustees in order to  
10 participate in the Toronto Stock Exchange, correct?

11 A. Well, to further nitpick, it is Algonquin Power  
12 Income Fund, not APT. But to answer your question, yes.

13 Q. Okay. Are you aware that investors require  
14 publicly traded companies to have a board of trustees  
15 for management oversight in order to invest in the  
16 company? That's your understanding, correct?

17 A. Investors require it in order to --

18 Q. Yes.

19 A. Well, again, as I stated before, publicly traded  
20 entities or really any corporation, at least in the  
21 States, would need a board of directors. So yes, I  
22 guess it is fair to say investors would require it. It  
23 is really required by law, but it is a fair statement,  
24 yes.

25 Q. Right. And it is your understanding that

1 trustees have a duty to shareholders to ensure that the  
2 company is being operated in the shareholders'  
3 interests, agreed?

4 A. That is the point of a board, yes.

5 Q. And in fact, they have a fiduciary obligation to  
6 oversee the operation and management of the publicly  
7 traded company, agreed?

8 A. That's my understanding, yes.

9 Q. APT couldn't provide capital funding through  
10 sales of shares in the income fund to LPSCO without a  
11 board of trustees, could it?

12 A. Well, again, it is APIF that actually raises the  
13 cash on the stock exchange. And they certainly could  
14 not do that, you know, through an exchange, you know,  
15 without a board of directors or trustees in this case.

16 MR. WILEY: Judge, I would move A-33.

17 ACALJ NODES: Any objection?

18 (No response.)

19 ACALJ NODES: A-33 is admitted.

20 (Exhibit A-33 was admitted into evidence.)

21 MR. WILEY: For Staff, I will make a copy of  
22 that at the break and give you a copy.

23 BY MR. WILEY:

24 Q. Mr. Rowell, do you know what an ERP system does?

25 A. ERP?

1 Q. Yes.

2 A. I believe that's a system that manages data that  
3 needs to be stored.

4 Q. And you are aware that LPSCO uses the ERP system  
5 that's provided by APT for purposes of utility  
6 operations, correct?

7 A. That's correct. I believe the costs associated  
8 with the ERP system were included under other  
9 professional services, which I believe should be  
10 allocated to LPSCO.

11 Q. Okay.

12 A. And I should state, though, that another reason  
13 why I thought those services should be allocated down  
14 was that the payroll services were also. And really the  
15 principal reason why I believe that the other  
16 professional services should be allocated down were that  
17 the payroll services were included in that category as  
18 well. So I thought certainly if APT is providing  
19 payroll services to the utilities, then that's a fair  
20 expense to be allocated down.

21 However, in the new document, the cost  
22 calculation methodology document does not include  
23 payroll services in its description of that category.  
24 And I hope that's just an oversight, but if it turns out  
25 that that's -- that there really is a real discrepancy

1 between the allocation methodology document and the  
2 response to the DR, then I would have to rethink that.

3 Q. Now, Mr. Rowell, do you believe that investors  
4 in the Toronto Stock Exchange would buy shares of APIF  
5 if APIF did not communicate with its investors?

6 A. Well, no. Communicating with the investors is  
7 something the APIF needs to do.

8 Q. And in fact, you would agree that communication  
9 with investors and shareholders of the income fund is  
10 required to comply with the filing and regulatory  
11 requirements of the Toronto Stock Exchange, agreed?

12 A. Again, I am not specifically familiar with the  
13 rules of the Toronto Stock Exchange, but generally  
14 speaking, publicly traded companies are required to  
15 provide, you know, communications with their investors.

16 Q. And in the United States, the Securities and  
17 Exchange Commission requires publicly traded companies  
18 to communicate with their investors, agreed?

19 A. Agreed.

20 MR. WILEY: Judge, this might be a good time to  
21 break, and I might be able to confer and see if I have  
22 any additional questions over the break.

23 ACALJ NODES: Okay. Is Staff going to have any  
24 cross for Mr. Rowell?

25 MR. TORREY: Not at this time, Your Honor.

1 ACALJ NODES: All right. Okay. Well, why don't  
2 we take a lunch break then until 1:15.

3 (A recess ensued from 11:57 a.m. to 1:19 p.m.)

4 ACALJ NODES: Okay. Back on the record.

5 Mr. Wiley.

6 MR. WILEY: I have no more questions, Judge.

7 ACALJ NODES: Okay, thank you.

8 MR. WILEY: At this time.

9 ACALJ NODES: At this time, understood.

10 Ms. Mitchell, does Staff have any questions for  
11 Mr. Rowell?

12 MS. MITCHELL: I believe Mr. Torrey indicated  
13 before lunch that Staff would not have any questions, so  
14 no.

15 ACALJ NODES: Okay. Ms. Wood, redirect?  
16

17 REDIRECT EXAMINATION

18 BY MS. WOOD:

19 Q. Although you have not rendered an engineering  
20 opinion, you have given an opinion as an expert on  
21 ratemaking, correct?

22 A. That's correct.

23 Q. Do you think your opinion as an expert on  
24 ratemaking has as much validity as that of Mr. Sorensen?

25 A. Yes.

1 Q. Do you think it is fair for you to rely on the  
2 direct of Mr. Sorensen, even though he may have recanted  
3 or changed or clarified that opinion in subsequent  
4 testimony?

5 A. Yes.

6 Q. Okay. If Mrs. Rowell identified in her  
7 testimony other adjustments to Liberty Water's expenses,  
8 would you defer to her testimony?

9 A. Yes.

10 Q. Even if LPSCO has tax liability, has Algonquin,  
11 Liberty or LPSCO provided you any invoices demonstrating  
12 what costs Liberty would have incurred as on a  
13 stand-alone basis?

14 A. No.

15 Q. You had a deposition with Mr. Wiley and the  
16 company's representative?

17 A. Correct.

18 Q. Okay. And during that time there were several  
19 exhibits considered?

20 A. Yes.

21 MS. WOOD: Your Honor, may I approach with  
22 Exhibits R-25 and R-26?

23 ACALJ NODES: Sure.

24 (Brief pause.)

25 MS. WOOD: Your Honor, before I begin, by way of

1 explanation, I will ask Mr. Wiley if he concurs, but  
2 Mr. Wiley and I discussed the documents that were  
3 attached to the deposition and including them in this  
4 proceeding, because the A-28, the deposition, does not  
5 include those attachments. Some of those documents have  
6 already been included. And these are two which have  
7 not. There is one other which is referred to, the Palm  
8 Valley Phase 1 report, which Mr. Wiley has indicated he  
9 will be admitting later on this day.

10 MR. WILEY: That's the Phase 1 design report,  
11 correct?

12 MS. WOOD: Correct.

13 MR. WILEY: Actually I was not -- I was going to  
14 do that through Mr. Rowell, but I didn't do it. But I  
15 would stipulate to putting it in if you want to put it  
16 in the record.

17 MS. WOOD: Yes. And I think you indicated you  
18 copied it and have it available?

19 MR. WILEY: I have copies of that.

20 MS. WOOD: Can we do that? And I don't know if  
21 you want to mark it as one of your exhibits or  
22 whichever.

23 MR. WILEY: Sure. I think we are on A-34,  
24 Judge.

25 ACALJ NODES: Yes.

1 MR. WILEY: Judge and Ms. Wood, I don't know if  
2 we need to ask Mr. Rowell any questions about the  
3 Phase 1 design report. We are both amenable to  
4 introducing it as an exhibit as evidence in the case.

5 MS. WOOD: Would that also be true with R-25 and  
6 R-26, Mr. Wiley?

7 MR. WILEY: Yes.

8 MS. WOOD: Then, Your Honor, I guess we would  
9 stipulate to the admission of Exhibits R-25, R-26, and  
10 A-34 which are exhibits to the deposition.

11 ACALJ NODES: All right. Are there any  
12 objections to admission of any of those exhibits?

13 (No response.)

14 ACALJ NODES: Okay. R-25 and 26 as well as A-34  
15 are admitted.

16 (Exhibits R-25, R-26, and A-34 were admitted  
17 into evidence.)

18 MS. WOOD: I think I have no further questions  
19 at this time, Your Honor.

20 ACALJ NODES: All right. Mr. Wiley, anything  
21 further?

22 MR. WILEY: No, sir.

23 ACALJ NODES: Mr. Sullivan, anything?

24 MR. SULLIVAN: No, Your Honor.

25 ACALJ NODES: All right. And Ms. Mitchell.

1 MS. MITCHELL: No.

2 ACALJ NODES: Okay. All right. Mr. Rowell,  
3 thank you very much for your testimony. You are  
4 excused.

5 THE WITNESS: Thank you.

6 (Whereupon William A. Rigsby was duly sworn by  
7 the Certified Reporter.)

8 ACALJ NODES: All right. Ms. Wood, are you  
9 ready to call your next witness?

10 MS. WOOD: Yes, Your Honor. We call Mr. William  
11 Rigsby, please.

12 Your Honor, do you already have copies of  
13 Mr. Rigsby's prefiled?

14 ACALJ NODES: Yes, I do.

15 MS. WOOD: Okay. May I approach with Exhibits  
16 R-27 through R-29?

17 ACALJ NODES: Yes, you may.

18 (Brief pause.)

19

20

21

22

23

24

25

1 WILLIAM A. RIGSBY,  
2 called as a witness on behalf of RUCO, having been  
3 previously duly sworn by the Certified Reporter to speak  
4 the truth and nothing but the truth, was examined and  
5 testified as follows:

6

7 DIRECT EXAMINATION

8 BY MS. WOOD:

9 Q. Would you state your full name for the record  
10 and how you are employed, please.

11 A. My name is William A. Rigsby, and I am employed  
12 as a Public Utilities Analyst 5 at the Residential  
13 Utility Consumer Office.

14 Q. And what is your involvement in this case?

15 A. I provided testimony on analyses that I  
16 performed over the course of the case, and I filed three  
17 pieces of testimony.

18 Q. Can you look at what has been marked as R-27 and  
19 identify that for the record, please.

20 A. Yes. I have it in front of me.

21 Q. Did I say R-27?

22 A. R-27 is my direct testimony that was filed on  
23 November the 4th, 2009.

24 Q. Relating to?

25 A. This, related to excess capacity findings.

1 Q. Okay. Do you have any corrections or  
2 clarifications to that particular testimony?

3 A. Not for this piece of testimony, no.

4 Q. Okay. Can you look at what has been marked as  
5 Exhibit R-28.

6 A. Yes.

7 Q. And what is that, please?

8 A. Exhibit R-28 is a copy of my direct testimony on  
9 cost of capital which was also filed on November the  
10 4th, 2009.

11 Q. Do you have any corrections or clarifications to  
12 Exhibit R-28?

13 A. Yes. On the table of contents page on line 9,  
14 there is a typo there. It reads comments on BMSC's cost  
15 of equity capital testimony. That should read comments  
16 on LPSCO's cost of equity capital testimony.

17 Q. And would the same also be true on line 10?

18 A. Line 10 should be deleted.

19 Q. Okay. Are those all the corrections for  
20 Exhibit R-28?

21 A. For my direct testimony, yes.

22 Q. Can you look at now what has been marked as  
23 Exhibit R-29 and identify that for the record, please.

24 A. Yes. That is my surrebuttal testimony filed on  
25 December the 18th, 2009.

1 Q. Okay. And are there any corrections or --

2 A. Yes, just looks like there is two here that I  
3 would like to point out. First one appears on page 3,  
4 line 1. Let's see.

5 Oh, excuse me. Let me make sure. I am sorry, I  
6 apologize. I meant to say it should appear on -- it  
7 appears on page 4, line 1. There is a docket number  
8 there right now. It reads 01428A-09-0444. That should  
9 be an 06 instead of an 09. So the proper number should  
10 read 01428A-06-0444.

11 Q. And with that correction are there any others?

12 A. Just one other. And it is on page 5.

13 Q. Okay.

14 A. And it appears on line 11. The word  
15 hypothetical should be deleted. And right after the  
16 word cost, there is the word of. It should be deleted.  
17 It is spelled there twice.

18 Q. Okay.

19 A. So the proper sentence should read: Have you  
20 made any changes to your recommended cost of long-term  
21 debt?

22 Q. All right. Now, if I asked you the same  
23 questions as posed in Exhibits R-27, 28, and 29, would  
24 your answers be substantially similar?

25 A. Yes.

1 Q. And you prepared the testimony provided in R-27,  
2 28, and 29, correct?

3 A. Yes.

4 MS. WOOD: Okay. Move for the admission of  
5 Exhibits R-27, 28, and 29.

6 ACALJ NODES: All right. Any objections?

7 MR. SHAPIRO: No.

8 ACALJ NODES: R-27, 28, and 29 are admitted.

9 (Exhibits R-27, R-28, and R-29 were admitted  
10 into evidence.)

11 BY MS. WOOD:

12 Q. During the course of these proceedings, RUCO  
13 attempted to procure engineering reports related to the  
14 Palm Valley water reclamation facility, correct?

15 A. Yes.

16 Q. Were you able to procure what you needed from  
17 the company?

18 A. Not everything.

19 Q. No. Did you take, did RUCO take efforts to  
20 procure those engineering reports in the form of  
21 Exhibit R-3 from ADEQ?

22 A. Yes.

23 Q. Okay. Have you prepared an index of  
24 Exhibit R-3?

25 A. Yes, I have. Perhaps we could --

1 MS. WOOD: I am going to give you what has been  
2 marked as Exhibit R-30.

3 If I may approach, Your Honor.

4 ACALJ NODES: Yes.

5 (Brief pause.)

6 BY MS. WOOD:

7 Q. You have in front of you what is marked as  
8 Exhibit R-30. Can you identify that for the record?

9 A. Yes. This is an exhibit that I put together.  
10 It is a catalogue of the documents that are included in  
11 RUCO's Exhibit R-3. Last week during the hearing Judge  
12 Nodes had noted that it is a rather voluminous document,  
13 and so I thought perhaps we could put a catalogue of the  
14 documents together and that would make it a little  
15 easier for the parties to the case to find their way  
16 through the document.

17 Q. Now, RUCO made a public records request for  
18 these documents from ADEQ?

19 A. Yes, that's correct.

20 Q. Okay. And did you procure these documents from  
21 ADEQ?

22 A. Yes, I did.

23 Q. And who did you procure them from?

24 A. I obtained these documents from a gentleman --  
25 excuse me, I will give you his name here. I obtained

1 the documents from a gentleman by the name of Daniel  
2 Borns.

3 Q. Okay. And who is Mr. Borns?

4 A. Mr. Borns is the business manager for the  
5 Arizona Department of Environmental Quality, ADEQ.

6 Q. Is he also the custodian of records?

7 A. Yes, he is.

8 Q. Okay. Exhibit R-30 is a true and correct copy  
9 of the index you provided of the Exhibit R-3?

10 A. Yes.

11 MS. WOOD: Okay. Move for the admission of  
12 Exhibit R-30, please.

13 ACALJ NODES: All right. R-30 is admitted.

14 (Exhibit R-30 was admitted into evidence.)

15 BY MS. WOOD:

16 Q. And R-3, is that a true and correct copy of the  
17 documents you procured from ADEQ, from Mr. Borns?

18 A. Yes.

19 Q. And do you maintain a copy of those records in  
20 your files as well?

21 A. Yes.

22 MS. WOOD: Move for the admission of  
23 Exhibit R-3, Your Honor.

24 ACALJ NODES: Any objection to R-3?

25 (No response.)

1 ACALJ NODES: All right. R-3 is admitted.

2 (Exhibit R-3 was admitted into evidence.)

3 MS. WOOD: I am ready to tender the witness,

4 Your Honor.

5 ACALJ NODES: Okay. Mr. Sullivan.

6 MR. SULLIVAN: Thank you, Your Honor.

7

8

CROSS-EXAMINATION

9 BY MR. SULLIVAN:

10 Q. Good afternoon, Mr. Rigsby.

11 A. Good afternoon.

12 Q. As you know, my name is Bill Sullivan. I am  
13 here on behalf of the City of Litchfield Park.

14 As a certified rate of return analyst, is it  
15 your professional opinion that the allocation of the  
16 cost of capital does or does not involve subjectivity by  
17 the person performing the analysis?

18 A. I would agree with that, because it is not an  
19 exact science. There is a large degree of estimation  
20 involved.

21 Q. So when you say you agree, you would agree that  
22 it does involve subjectivity?

23 A. Yes.

24 Q. Okay. Does that subjectivity include the  
25 selection of the sample companies used in conducting the

1 analysis?

2 A. Yes.

3 Q. What are some of the other subjective decisions  
4 involved in conducting a cost of capital analysis?

5 A. Well, the choice of models, equity evaluation  
6 models that an analyst would decide to use, the various  
7 inputs that go into those models, analysts' reports,  
8 analysts' estimations, projected data, market data,  
9 various historic market data, those types of things.

10 Q. Any other major categories subject to  
11 subjectivity?

12 A. That pretty much covers it, I think. That's  
13 most of the broad points.

14 Q. In your surrebuttal testimony I believe you  
15 increased your recommendation related to the cost of  
16 capital from an 8.1 percent to a 9.0 percent  
17 recommendation, is that correct?

18 A. Yes.

19 Q. However, you have not revised your general  
20 opinion that the appropriate range of the cost of equity  
21 for LPSCO is between 5.25 percent and 9.94 percent, have  
22 you?

23 A. No. Those are the ranges that I obtained from  
24 both my capital asset pricing model and my discounted  
25 cash flow analysis.

1 Q. So is it a fair characterization of your  
2 testimony that, although you may have recommended a  
3 specific cost of equity of 9.0 percent, it would still  
4 be reasonable for the Commission to find LPSCO's cost of  
5 equity to be as low as 5.25 percent?

6 A. The Commission has wide discretion as far as  
7 setting rates, establishing rate of returns. So,  
8 certainly that was my range, you know. I would think  
9 what they would probably do is look at the various  
10 ranges of weighted average costs of capital that are  
11 being recommended.

12 Q. But again, a fair characterization of your  
13 testimony is that it would be reasonable for the  
14 Commission to find LPSCO's cost of equity to be as low  
15 as 5.25 percent?

16 A. If the Commission deemed that to be the case,  
17 yes.

18 Q. Okay. And isn't it your testimony that the only  
19 reason you increased your recommended cost of equity up  
20 to the 9 percent level was based upon the Value Line  
21 analysts and other reporting reports of an improving  
22 economic situation?

23 A. That and the fact that there have been some  
24 recent articles in The Wall Street Journal and  
25 mainstream financial press regarding a possible future

1 course of action that the Federal Reserve may take in  
2 regard to interest rates.

3 Q. Do you agree that the Arizona economy was hit  
4 harder and is recovering slower than most of the United  
5 States?

6 A. That's my understanding. It was California,  
7 Nevada and Arizona that have been hit the hardest.

8 Q. And the reports that you referenced regarding  
9 improving economy are talking about recovery of the  
10 economy of the United States generally and not of the  
11 State of Arizona specifically, correct?

12 A. That's correct.

13 Q. Do you --

14 A. And may I -- I just want to point out the fact  
15 that the reason for that is because the capital markets  
16 typically do not reflect the economic conditions of any  
17 one state. It is fairly broad, so... The company would  
18 have need for capital and the capital markets are  
19 nationwide, so...

20 Q. Do you agree that the Commission could take the  
21 economic state of Arizona or the economic condition of  
22 the State of Arizona into account in determining the  
23 cost of equity of LPSCO?

24 A. Yes.

25 Q. Do you agree that the Commission could take the

1 economic state of Arizona into account in determining a  
2 reasonable rate of return for LPSCO?

3 A. Yes.

4 MR. SHAPIRO: Mr. Sullivan, I assume you are  
5 asking his opinion, not as legal questions?

6 MR. SULLIVAN: Yes. This is an opinion as a  
7 certified rate of return analyst.

8 MR. SHAPIRO: Thank you.

9 ACALJ NODES: What is a certified rate of return  
10 analyst? I didn't know we had that.

11 BY MR. SULLIVAN:

12 Q. Do you want to --

13 A. Sure. That was a designation I got a couple  
14 years ago, Judge Nodes. There is a Society of Utility  
15 and Regulatory Financial Analysts, SURFA for short.  
16 They were established in 1972. And they offered an  
17 exam, certification exam.

18 ACALJ NODES: Oh.

19 THE WITNESS: And I sat for it, I think it was,  
20 going back about three years ago. As a matter of fact,  
21 Mr. Reiker from Arizona Water and I sat for the exam the  
22 same day.

23 They have, the SURFA has an annual financial  
24 forum conference at Georgetown University in Washington,  
25 D.C. annually, and they offer the exam the day before

1 the financial forum starts.

2 ACALJ NODES: Okay. All right.

3 BY MR. SULLIVAN:

4 Q. Isn't it your testimony at page 11, line 27 of  
5 your surrebuttal testimony --

6 And you are free to look at that if you would  
7 like.

8 A. Sure.

9 Q. -- the 9.0 percent cost of equity is actually  
10 generous?

11 A. Yeah, I believe it is. I believe it is a little  
12 generous, and I think it is also forward looking. The  
13 most recent Value Line update on the water utility  
14 industry indicated a long-term return on book common  
15 equity of about 7 and a half percent. And so my  
16 9 percent rate of return that I am -- 9 percent return  
17 on common equity that I am recommending is higher than  
18 that.

19 It actually falls within the high side of my  
20 range of estimates. I think -- let me just check real  
21 quick. I am pretty sure the high side was 9.34 percent.  
22 Let me just double-check and make sure.

23 Actually I was a little higher. I had, my  
24 average DCF estimate was 9.72, and the high side of that  
25 on the water company analysis was 9.94. But when you

1 look at the total range of estimates, I am -- the  
2 9 percent is on the high side.

3 Q. Would you briefly explain why your range for  
4 LPSCO's cost of equity is wider and starts lower than  
5 the range found by Staff witness Mr. Manrique?

6 MR. SHAPIRO: Objection. Can I speak to  
7 Mr. Manrique's testimony?

8 ACALJ NODES: He can offer his assessment of  
9 Mr. Manrique's testimony in offering his opinion.

10 MR. SHAPIRO: Okay, thank you.

11 THE WITNESS: To be honest with you, I did not  
12 look heavily at Mr. Manrique's recommendation. I didn't  
13 look heavily into his methodology.

14 BY MR. SULLIVAN:

15 Q. Okay.

16 A. You know, my -- I guess basically you would say  
17 our case is with the company, so I was more focused on  
18 Mr. Bourassa's testimony.

19 Q. Then could you please explain briefly why your  
20 range for LPSCO's cost of equity starts lower than the  
21 8.9 percent floor found by the company's witness,  
22 Mr. Bourassa?

23 A. Largely because Mr. Bourassa relied upon a  
24 current market risk premium in his CAPM analysis, which  
25 I believe is producing an extremely high result,

1 extremely high unreasonable results.

2           The difference between that and the CAPM  
3 analysis that I performed is that I rely more on an  
4 historical market risk premium, which takes into  
5 consideration data collected between 19 -- when was  
6 it -- 1926 and 2008. I think the past results are  
7 probably a better indicator of future results, given  
8 that it encompasses a wide range of economic and social  
9 activity that occurred here in the U.S. over that period  
10 of time. We are looking at the Great Depression, number  
11 of recessions, large scale wars like World War II,  
12 smaller wars, that sort of thing.

13       Q.     Thank you.

14           All Algonquin owned utility companies have the  
15 same source of equity, isn't that correct?

16       A.     That's my understanding. In this case, well,  
17 typically most of the Algonquin owned companies have  
18 come in, have proposed in those rate cases, the company  
19 proposed 100 percent equity capital structures. In this  
20 case, the company does have IDA bond debt that is part  
21 of their capital structure.

22       Q.     Let's turn to the capital structure there for a  
23 moment then. You are proposing a capital structure  
24 consisting of approximately 17.83 percent debt and  
25 82.17 percent common equity, correct?

1 A. Yes.

2 Q. In prior cases you have recommended a  
3 hypothetical cost of capital, is that correct, for  
4 Algonquin affiliates?

5 A. Yes, that's true. And as I noted earlier,  
6 that's mainly because of the absence, complete absence  
7 of debt in those capital structures.

8 Let me qualify that. I believe in Black  
9 Mountain Sewer there is some company debt. However, it  
10 is being treated as an operating expense, and it is not  
11 part of the company's capital structure. Other than  
12 that, the other Algonquin cases that I have been  
13 involved with for the most part involved capital  
14 structures that contain no debt.

15 (Brief pause.)

16 BY MR. SULLIVAN:

17 Q. I have handed you what has been marked as LP-6  
18 and 7 and ask if you recognize that as a portion of your  
19 direct testimony filed in the Gold Canyon Sewer case,  
20 Docket No. SW-02519A-06-0015, consisting of the cover  
21 page and pages 59 through 43 of that testimony.

22 A. Yes, LP-6 is pages 49 through 43, or 53, excuse  
23 me. And LP-7 looks like it is, yes, it is pages 7  
24 through 9.

25 Q. Of your surrebuttal of the same case?

1 A. Yes.

2 Q. And is LP-8 a copy of the -- of one of the  
3 decisions the Commission rendered in that case?

4 A. Yes.

5 Q. And does your testimony in that case reflect a  
6 recommendation of a hypothetical capital structure for  
7 Gold Canyon Sewer using a 60 percent equity and  
8 40 percent debt capital structure?

9 A. Yes.

10 Q. And if you would turn to your schedule WAR-9 to  
11 your direct testimony.

12 MR. SHAPIRO: Is that attached, Mr. Sullivan?

13 MR. SULLIVAN: No, it is part of his direct  
14 testimony. It was one of the items he marked.

15 MR. SHAPIRO: Oh, his direct in this case.

16 MR. SULLIVAN: Right, I am sorry, in this case.

17 MR. SHAPIRO: Thank you.

18 THE WITNESS: Mr. Sullivan.

19 BY MR. SULLIVAN:

20 Q. You got there?

21 A. Yes.

22 Q. Do you agree that that schedule reflects that  
23 the capital structures of the water and gas utility used  
24 in your cost of capital analysis average approximately  
25 47.8 percent long-term debt and 52.2 percent equity?

1 A. Yes, approximately on the water side.

2 Q. Do you agree that a water utility with a Capital  
3 structure with 47.8 percent long-term debt is generally  
4 deemed more risky than one with a capital structure  
5 containing less than 18 percent long-term debt?

6 A. Yes. Because it has a higher level of debt, it  
7 would tend to be perceived as having additional  
8 financial risk.

9 Q. In view of the fact that the capital structures  
10 of the water and gas utilities used in your cost of  
11 capital analysis averaged approximately 47.8 percent  
12 long-term debt and 52.2 percent equity, and the fact  
13 that the Commission Decision No. 70624, which is LP-8,  
14 accepted your recommendation of a hypothetical capital  
15 structure of 40 percent debt and 60 percent equity for  
16 Gold Canyon Sewer, wouldn't it be reasonable for the  
17 Commission to adopt a similar hypothetical capital  
18 structure for LPSCO?

19 MR. SHAPIRO: Objection, Your Honor. What  
20 Mr. Sullivan is attempting to do is set up a dispute  
21 between Mr. Rigsby's testimony in one case and  
22 Mr. Rigsby's testimony in another case. There is no  
23 witness advancing the position that Mr. Sullivan is now  
24 attempting to advance in this matter.

25 MR. SULLIVAN: I am going through

1 cross-examination. He is an expert witness. I  
2 certainly have a right to ask whether he would find that  
3 would be a reasonable hypothetical, it would be  
4 reasonable to use a hypothetical capital structure  
5 similar to what he recommended in a different case.

6 MR. SHAPIRO: If Mr. Rigsby felt it was  
7 reasonable, he could have made that recommendation here.  
8 He chose not to.

9 MR. SULLIVAN: He is subject to  
10 cross-examination.

11 ACALJ NODES: One at a time.

12 MR. SULLIVAN: I am sorry.

13 ACALJ NODES: Mr. Shapiro, how is it  
14 unreasonable for an attorney to use a witness' prior  
15 testimony and seek an explanation as to why his  
16 recommendation in this case was different in a prior  
17 case?

18 MR. SHAPIRO: That's not what he asked. What he  
19 asked was whether or not it would be reasonable to do  
20 something in this case based on what the Commission did  
21 in other cases. That's the part of the question that we  
22 object to.

23 ACALJ NODES: So if he said would it be  
24 unreasonable, would that satisfy your objection?

25 MR. SHAPIRO: No. I don't think that you can

1 ask Mr. Rigsby whether it would be reasonable to do  
2 something or unreasonable to do it in this case based on  
3 what Mr. Rigsby chose to do in another case. That's our  
4 objection.

5 Mr. Rigsby has adopted a position in this case;  
6 that's the position that he has taken in this case. And  
7 whether or not he did something in some other case that  
8 he has not intended to do in this case we think is  
9 irrelevant.

10 ACALJ NODES: Okay. Well, your objection is  
11 overruled.

12 BY MR. SULLIVAN:

13 Q. The bottom line is: Wouldn't it be reasonable  
14 for the Commission to adopt a similar hypothetical  
15 capital structure for LPSCO?

16 MR. SHAPIRO: I am going to object to that  
17 question on the basis that it calls for a legal  
18 conclusion. You can ask him if it is in his own  
19 opinion, but not what is reasonable for the Commission  
20 to do.

21 ACALJ NODES: Okay. Preface the question with  
22 in your opinion, Mr. Rigsby.

23 BY MR. SULLIVAN:

24 Q. In your opinion, Mr. Rigsby, wouldn't it be  
25 reasonable for the Commission to adopt a similar

1 hypothetical capital structure for LPSCO?

2 A. Yes. As I noted a little earlier, the  
3 Commission has broad discussions in these matters, and  
4 if they so choose to adopt a capital structure that  
5 differs from what myself or any of the other parties are  
6 recommending, I think that's entirely within their realm  
7 of authority.

8 Q. Were you present when Mr. Sorensen indicated  
9 that he felt a 20 percent debt, 80 percent equity  
10 capital structure was appropriate for LPSCO?

11 A. I recall hearing him say something to that  
12 effect.

13 Q. Do you agree with Mr. Sorensen that such a  
14 capital structure is an appropriate capital structure  
15 for a water or sewer utility in Arizona?

16 A. Well, absent any debt, typically what I will  
17 recommend is a 60/40 capital structure, as I did in Gold  
18 Canyon. Okay? And the reason for that is it provides  
19 the company with a little bit additional equity capital  
20 in the structure in order to help to alleviate any  
21 investor or any investor perceptions of business risk or  
22 risk that is unique to that particular company.

23 In this case, Litchfield Park, as I said, does  
24 have actual debt. And so when I was making my decisions  
25 on capital structure and so forth, typically what I do

1 is, if a company actually has legitimate debt, what I  
2 will do is I will typically go ahead and recommend that  
3 actual capital structure. Okay? Typically I don't  
4 recommend anything, I don't recommend any hypothetical  
5 capital structures unless we are looking at extremes, in  
6 other words, capital structures that are comprised  
7 entirely of common equity or, on the other hand,  
8 entirely debt.

9           In this case, I would not necessarily agree with  
10 Mr. Sorensen that that's typical, that this is a typical  
11 capital structure. Clearly it is a capital structure  
12 with much more equity. But as I say, they do have  
13 actual debt, and I don't have a problem recommending a  
14 capital structure with a higher level of equity given  
15 that fact. I think that also alleviates any problems  
16 that might be associated with investors' perceived risks  
17 regarding business risk or any other unique risks to  
18 LPSCO.

19       Q.     Do you believe that as a long-term goal that  
20 LPSCO should be moving toward a higher percentage of  
21 debt to equity?

22       A.     Yeah. I think that a company should strive to  
23 achieve a more balanced capital structure.

24       Q.     And is it your professional opinion that LPSCO  
25 should have considered securing long-term debt to fund

1 at least a portion of the arsenic improvements and  
2 approximately \$8 million spent on the Palm Valley  
3 wastewater facility that we have heard so much about the  
4 last few days?

5 A. Well, I think this goes back to what I was  
6 saying earlier and, you know, the findings that I --  
7 findings and recommendations that I made in the Gold  
8 Canyon case and in a number of other cases, where, you  
9 know, I believe that, you know, a balanced capital  
10 structure is desirable.

11 And so even though I didn't make a  
12 recommendation for a hypothetical capital structure in  
13 this case, certainly I think it would have been more  
14 desirable if the company would have considered the use  
15 of debt financing, since it is a lower cost form of  
16 financing compared to equity.

17 Q. And it has infused a lot of capital since its  
18 last rate case, a portion of which could have been debt,  
19 correct?

20 A. I would agree with that.

21 Q. Is it your professional opinion that in  
22 establishing a reasonable return for LPSCO, the  
23 Commission can consider LPSCO's failure to even examine  
24 debt financing as an option?

25 MR. SHAPIRO: Objection. There is no evidence

1 that LPSCO failed to consider debt financing as an  
2 option.

3 MR. SULLIVAN: I believe the testimony of  
4 Mr. Sorensen will indicate that he didn't look -- if you  
5 look at that, he testified that he did not, they did not  
6 even consider any debt financing.

7 ACALJ NODES: In the transcript, in the hearing  
8 or --

9 MR. SULLIVAN: In this proceeding, yes, during  
10 my cross-examination.

11 ACALJ NODES: During your cross-examination.

12 MR. SULLIVAN: Yes.

13 ACALJ NODES: Mr. Shapiro.

14 MR. SHAPIRO: We don't recall that testimony.  
15 And I will stand by my objection.

16 ACALJ NODES: Restate the question, if you  
17 would, Mr. Sullivan, without the assumption of the  
18 company not having considered the option at all.

19 BY MR. SULLIVAN:

20 Q. In your professional opinion, is it appropriate  
21 for the Commission to consider whether a company did or  
22 did not examine debt financing options when it  
23 establishes a reasonable rate of return for that  
24 company?

25 A. I would agree that debt is probably something

1 that the Commission should take into consideration.

2 Q. If the Commission were to consider such action  
3 or inaction, in your professional opinion, do you  
4 believe that would tend to reduce or increase the  
5 allowed return?

6 A. Well, as I mentioned earlier, debt tends to cost  
7 less than equity. And so if the Commission were to  
8 adopt a hypothetical capital structure with a higher  
9 percentage of debt in it, and if it were to use the  
10 current cost of debt, then certainly that would lower  
11 the weighted average cost of capital and result in a  
12 final lower rate of return for the company.

13 Q. In your professional opinion, do you deem it  
14 appropriate for the Commission to consider the magnitude  
15 of the rate increase and the effect of the rates upon  
16 LPSCO's customers in determining and establishing a  
17 reasonable rate of return and fair and reasonable rates?

18 A. And again, as I think I stated earlier, you  
19 know, the Commission does have broad discretion in these  
20 matters. And so if for, you know, whatever reason,  
21 public policy reason they believe that, you know, a  
22 lower rate of return is in the public interest, then  
23 certainly they have the authority to do that.

24 Q. Again, in your professional opinion, if there is  
25 an issue of rate shock in a proceeding, do you believe

1 that it would be appropriate to establish one rate of  
2 return as reasonable if the rates are phased and another  
3 rate of return if the rates are not phased?

4 MR. SHAPIRO: Objection; calls for a legal  
5 conclusion.

6 MR. SULLIVAN: I asked for his professional  
7 opinion.

8 MR. SHAPIRO: And I don't think he can offer a  
9 professional opinion in a legal opinion.

10 ACALJ NODES: Can I have the question read back,  
11 please.

12 (The record was read by the reporter as  
13 requested.)

14 MR. SHAPIRO: Same objection.

15 ACALJ NODES: Mr. Sullivan.

16 MR. SULLIVAN: It doesn't ask for a legal  
17 conclusion. He is a certified rate of return analyst,  
18 and I am asking him whether it would be reasonable,  
19 faced with rate shock, to have two different rates of  
20 return, in his professional opinion. They can argue the  
21 law all they want on brief whether it can or can't be  
22 done, but he can certainly render an opinion whether it  
23 is reasonable in his professional opinion.

24 ACALJ NODES: First of all, I am not sure that  
25 question has anything to do with his so-called certified

1 rate of return certification or whatever. But I will  
2 allow the question as long as it is understood he is  
3 not -- Mr. Rigsby is offering his own personal opinion  
4 as an expert witness in Commission proceedings and based  
5 on his experience, but not offering any attempt at a  
6 legal conclusion on the issue.

7 THE WITNESS: To be quite honest with you, I  
8 have never seen anything like that in the past since I  
9 have been working in the utilities regulation. The only  
10 thing that I could offer is perhaps if the company -- if  
11 the Commission were to adopt -- if the company were  
12 agreeable to phase-in rates, and the Commission were to  
13 adopt phase-in rates, I can see where they may tend to  
14 maybe possibly go with a slightly higher rate of return  
15 initially in order to compensate the utility for, you  
16 know, lost revenues during that initial phase. But  
17 whether they would actually do that or not, I couldn't  
18 say because, as I noted earlier, I am not familiar with  
19 any case where that actually occurred.

20 RUCO in the past has never made a recommendation  
21 for different rates of return to be applied in cases  
22 where we advocated phased-in rates. However, I would  
23 point out that RUCO has not -- the only time RUCO has  
24 ever recommended phased-in rates is when the company  
25 offered to implement phased-in rates. At least since I

1 have been working at RUCO, I think that's fair to say  
2 that has always been the case.

3 BY MR. SULLIVAN:

4 Q. But -- go ahead.

5 A. No, you are fine, please.

6 Q. But it is your testimony, is it not, the  
7 Commission should consider the magnitude of the rate  
8 increase and the effect of the rate upon LPSCO's  
9 customers in setting what is and is not a reasonable  
10 rate of return, correct?

11 MR. SHAPIRO: Again, that's based on your  
12 professional opinion.

13 MR. SULLIVAN: Based on --

14 THE WITNESS: Uh-huh. Again, and as I said, the  
15 Commission has broad authority, and if they feel that's  
16 in the public interest in this particular case, then  
17 certainly they have that authority to do that.

18 BY MR. SULLIVAN:

19 Q. Just a couple more questions on a slightly  
20 different line.

21 The company has chosen to file a number of rate  
22 cases within a short period of time in Arizona. And I  
23 believe your testimony was that all the Algonquin owned  
24 Arizona utility companies would have the same source of  
25 equity, is that correct?

1 MR. SHAPIRO: Just to clarify, when you say the  
2 company, you actually meant Liberty Water, correct?  
3 LPSCO only has one rate case pending.

4 MR. SULLIVAN: In this instance you are  
5 absolutely correct.

6 MR. SHAPIRO: Thank you.

7 MR. SULLIVAN: Talking about Liberty Water.

8 THE WITNESS: Well, they are all, they are --  
9 excuse me. They all are subsidiaries of the Algonquin  
10 Power Income Trust, which is the ultimate parent.  
11 That's the entity that does have access to the capital  
12 markets.

13 In terms of equity capital, yes, I mean, you  
14 know, they would all be receiving that from the same  
15 source. There are some differences in terms of, you  
16 know, perhaps debt financing, you know. There are some,  
17 some of the subsidiaries that they own, such as LPSCO,  
18 does actually have debt on its books.

19 However, in most cases, as I have said, they  
20 typically file seeking a 100 percent equity capital  
21 structure. They don't try to allocate any debt that may  
22 have been issued at the parent company level down to  
23 that local operating subsidiary.

24 BY MR. SULLIVAN:

25 Q. Do you believe that by Liberty Water's decision

1 to stagger the rate filing and use different test years  
2 for different affiliates that it has made it necessary  
3 for the company, RUCO, Staff, and intervenors to  
4 separately calculate and debate the cost of capital for  
5 each of the individual systems where that might not be  
6 necessary had they made joint filings?

7 MR. SHAPIRO: I am going to object to that  
8 question. It is irrelevant. It is immaterial. And the  
9 notion that somehow the company did something wrong by  
10 filing a rate case and asking for cost of capital is  
11 frankly just improper.

12 MR. SULLIVAN: I haven't suggested that the  
13 company has done anything wrong.

14 MR. SHAPIRO: Mr. Sullivan, you have throughout  
15 this case. And the question you repeatedly ask  
16 witnesses, who have made no opinion on consolidation,  
17 whether the company should have consolidated various  
18 aspects of its case. You have never once demonstrated  
19 that this Commission has ever done anything like that in  
20 any docket.

21 I think his questions are immaterial and  
22 irrelevant. This is this company's rate case that's  
23 before the Commission. If there are other pending  
24 dockets that happen to be before the Commission, they  
25 are not relevant to these issues.

1 ACALJ NODES: Well, I don't know. You know, one  
2 could make the argument that there would be some savings  
3 if there were, you know, more consolidation of rate  
4 case, for rate case expense purposes or other expenses.  
5 You know, I don't think it is totally irrelevant. He  
6 can, you know, he can offer his opinion, if he has one,  
7 to the extent that he can.

8 Go ahead, Mr. Rigsby.

9 THE WITNESS: Could I ask, could you repeat the  
10 question, please.

11 (The record was read by the reporter as  
12 requested.)

13 THE WITNESS: Oh, okay. I guess the simple  
14 answer to that, the answer would be yes. And that's  
15 only because of the fact that if you file separately,  
16 then, you know, we do have to conduct a separate cost of  
17 capital analysis. And, you know, economic conditions  
18 change. You know, things can occur that can cause cost  
19 of capital, cost of equity estimates to go up or down.

20 So, you know, yeah, when you take into  
21 consideration the timing of the filings and so forth,  
22 then I would say yes, that's probably, that's probably  
23 an accurate statement. On the other hand, if they were  
24 to file on a consolidated basis, at least in terms of  
25 cost of capital, it is reasonable that, you know, we

1 would be recommending the same cost of -- that would be  
2 applied to all the systems.

3 ACALJ NODES: Well, Mr. Rigsby, on the other  
4 hand, if that were the case, couldn't an argument also  
5 be made that if you somehow sort of artificially force a  
6 company to file all of its rate cases for all the  
7 systems at the same time, you perhaps have a  
8 disadvantage to the company in the sense -- and  
9 ultimately the ratepayers -- because there may be pieces  
10 of plant that are unique to each company that, if you  
11 force them to come in before that plant is completed,  
12 then the company, at least for the systems that had  
13 plant, significant plant after that rate case is over,  
14 they would have to refile again almost immediately once  
15 their individual plant is completed?

16 THE WITNESS: Yes, I wouldn't argue with that,  
17 Judge Nodes. I think that's, yeah, entirely correct. I  
18 was only speaking strictly in terms of the calculation  
19 of an equity estimate, cost of equity estimate.

20 ACALJ NODES: Right.

21 THE WITNESS: I wasn't, I wasn't referring to  
22 how that would be applied to the various rate bases of  
23 each individual system.

24 Again, what you raise is a timing issue again.  
25 Clearly if a company is ordered to come in, then it has

1 to file at that point in time, and it doesn't have the  
2 luxury of being able to wait until some project is  
3 completed that they could seek rate base treatment for.

4 ACALJ NODES: And it could ultimately be more  
5 costly to consumers to the extent that rate cases are --  
6 a rate case has to be filed more frequently for certain  
7 systems, because the customers would incur the rate case  
8 expense associated with those additional multiple  
9 filings, correct?

10 THE WITNESS: Yes, that's true also.

11 ACALJ NODES: And in addition, isn't it RUCO's  
12 position quite often, as well as perhaps the Commission,  
13 that companies control the timing of their rate cases  
14 and should not be heard to complain if the rate case  
15 test year does not coincide with the addition of plant?

16 THE WITNESS: Yes. That's true about a number  
17 of expense items, and not to mention plant, also, which  
18 I think your discussion has been pretty much based on.

19 ACALJ NODES: Okay. All right. Go ahead,  
20 Mr. Sullivan.

21 BY MR. SULLIVAN:

22 Q. And just to follow up, but having made that  
23 choice, it could, although there is other factors that  
24 are involved, could increase the rate case expense by  
25 having to -- collectively by having to relitigate the

1 cost of capital several times, correct?

2 A. Yes.

3 MR. SULLIVAN: No further questions.

4 ACALJ NODES: All right. Mr. Shapiro.

5 MR. SHAPIRO: Judge, Mr. Rigsby's prefiled  
6 testimony had two topics.

7 MR. SULLIVAN: Excuse me. I did not move for, I  
8 think it is, 6, 7.

9 ACALJ NODES: 6, 7, and 8.

10 MR. SULLIVAN: 6, 7, and 8.

11 MR. SHAPIRO: I think administrative notice  
12 could be taken on those documents rather than accepting  
13 them as exhibits. But we won't object to that.

14 ACALJ NODES: For evidentiary purposes I don't  
15 think there is any difference.

16 MR. SHAPIRO: Okay.

17 ACALJ NODES: And he has passed them out. We  
18 may as well go ahead and admit them for ease of  
19 reference. Okay, Exhibit LP-6, 7, and 8.

20 (Exhibits LP-6, LP-7, and LP-8 were admitted  
21 into evidence.)

22 ACALJ NODES: Now, Mr. Shapiro.

23 MR. SHAPIRO: I was just saying that Mr. Wiley  
24 and I actually have Mr. Rigsby's two topics separated,  
25 excess capacity and cost of capital, so I will go first

1 and hand the microphone over, if that's okay.

2 ACALJ NODES: That's fine. Let me ask you  
3 first, how much cross do you think you have on your  
4 topic?

5 MR. SHAPIRO: 10, 15 minutes, tops.

6 ACALJ NODES: Okay. And what about Mr. Wiley?

7 MR. WILEY: Half hour, 45 minutes at the most.

8 ACALJ NODES: All right. We will do Mr. Shapiro  
9 and then we will take a break.

10

11

CROSS-EXAMINATION

12 BY MR. SHAPIRO:

13 Q. Mr. Rigsby, did you do anything materially  
14 different to determine your recommended return on equity  
15 in this case than you did in the Black Mountain rate  
16 case in which I cross-examined you regarding cost of  
17 capital about two months ago, as far as the methodology  
18 goes?

19 A. Oh, as far as the -- well, again, in Black  
20 Mountain Sewer, I did recommend a hypothetical capital  
21 structure.

22 Q. Just on the ROE.

23 A. Oh, on return on equity? In that case, I  
24 believe I averaged the results of my CAPM and DCF  
25 analyses. And in this particular case, I did that same

1 thing originally in this case when I filed my direct  
2 testimony.

3           And then what had happened was I was working on  
4 another case, actually two other cases, and during that  
5 frame of time what had happened was I had become aware  
6 of some of these things that I had mentioned earlier  
7 regarding federal, possible federal reserve activity in  
8 the future and results, you know, government statistics  
9 that had been coming in on the economy in regards to GDP  
10 and so forth.

11           And so what I had done when I filed those other  
12 two pieces of testimony, I recommended a cost of common  
13 equity that was higher than what -- the results I had  
14 obtained through the averaging methodology. And because  
15 of that, I did not think it would be fair to some of the  
16 other pending cases that were going on at that time, I  
17 didn't consider it fair to continue to advocate the  
18 lower cost of equity that I had originally filed in my  
19 direct testimony.

20           And so when I filed my surrebuttal in those  
21 cases, LPSCO being one of them, I believe Global  
22 Utilities was the other, what I did was I applied the  
23 same 9 percent recommended cost of common equity on  
24 water that I had on that other case that I had filed  
25 for, which I believe was Rio Rico.

1 Q. To the extent that your recommendations in this  
2 case are supported by your use of the DCF, your  
3 methodology is the same in this case as it was in Black  
4 Mountain?

5 A. Yes, fair to say.

6 Q. Same inputs, same sample companies?

7 A. For the most part, yes.

8 Q. And is the same question true with respect to  
9 the CAPM, your methodology is the same in the two cases?

10 A. Yes.

11 Q. Did you consider whether any of your sample  
12 companies had recovered their allocated corporate costs  
13 in either the Black Mountain or this rate case?

14 A. I didn't consider that in terms of cost of  
15 equity, or, excuse me, cost of capital recommendation.  
16 And the reason for that was because I relied mostly on  
17 market data.

18 Q. Do you know whether the returns for the sample  
19 companies are before or after inclusion of those types  
20 of costs?

21 A. I am sorry, what was the question again?

22 Q. Yes. Do you know whether the returns that you  
23 use for the sample companies are before or after the  
24 inclusion of the types of corporate headquarter costs  
25 that they may incur?

1 A. I couldn't say, because I am sure that the rates  
2 of returns that are being reflected by those companies  
3 would have some -- there would be some investor  
4 influence -- let me back up a minute.

5 Q. Mr. Rigsby, let me ask this. They are net  
6 earnings numbers, right?

7 A. Yeah. What I was about to say, whatever actions  
8 the regulatory bodies that govern them, whatever actions  
9 they do, certainly that has an impact on their earnings.  
10 Okay? And that being the case, that would be reflected  
11 in the market data on those companies, if that answers  
12 your question.

13 Q. Do you believe that the Commission should set  
14 the cost of capital for a utility below the return that  
15 investors expect?

16 A. Well, again, that's why we do this analysis. I  
17 mean, you know, we basically come up with a figure that  
18 we think can be applied to a utility because we are  
19 using the sample companies that face similar risks and  
20 so forth. But as far as, you know, what this Commission  
21 ultimately does is up to this Commission. Okay?

22 Now, I would think that what they, you know,  
23 probably should do is to go with a figure that falls  
24 within the range of estimates that are provided by the  
25 analysts that provide testimony. But again, that's --

1 they are not bound to that.

2 Q. And you are aware of Mr. Sorensen's testimony  
3 that LPSCO has to compete for capital from APIF with all  
4 of the other APIF entities, both regulated and  
5 nonregulated, right?

6 A. Yeah, if you want to look at it from the  
7 standpoint that the company essentially is treating  
8 these holdings as they would stocks in a portfolio.

9 Q. Capital is not unlimited, right?

10 A. Well, yeah, I would tend to agree with that.  
11 And of course, you know, they do have an obligation to  
12 provide service. And so if, you know, if a Commission  
13 requires them to invest capital to provide adequate  
14 service, then certainly they would have to do that.

15 Q. You agree with me that we are setting rates for  
16 the future, correct?

17 A. Yes.

18 Q. And you would agree with me that there is no  
19 evidence in this record regarding the impact of adopting  
20 a hypothetical cost of capital structure on LPSCO,  
21 correct?

22 A. I am sorry, state the question again.

23 Q. There has been no evidence presented in this  
24 record by any of the parties concerning the impact on  
25 LPSCO of the potential adoption of a hypothetical

1 capital structure?

2 A. No. The parties in the case are essentially  
3 pretty much in agreement on capital structure.

4 Q. And you are aware that a financing application  
5 seeking approval for debt financing has been  
6 consolidated into this case, correct?

7 A. That's my understanding.

8 Q. And you are not -- you weren't suggesting in  
9 your earlier testimony that the Commission can lower a  
10 rate of return for policy reasons, were you?

11 A. Well, what I was saying was, you know, the  
12 Commission has discretion on the rate of return at which  
13 it is to award. So if for whatever reason, if it feels  
14 it is in the public interest to adopt a rate of return  
15 that is lower, then, or perhaps the average of what is  
16 being recommended or whatever, that's entirely up to  
17 them.

18 Q. Within the -- you would understand within the  
19 confines of their legal obligations, correct?

20 A. Yes, certainly.

21 MR. SULLIVAN: I am going to object to that  
22 because that's asking for a legal opinion.

23 MR. SHAPIRO: I think I was qualifying his many  
24 offered opinions as recognizing the Commission does have  
25 some legal constraints. I guess if Mr. Rigsby and

1 Mr. Sullivan disagree that the Commission has no legal  
2 constraints, then there is a basis for the objection.

3 MR. SULLIVAN: With that clarification, I will  
4 withdraw my objection.

5 ACALJ NODES: All right. In other words, you  
6 don't believe the Commission is all powerful.

7 THE WITNESS: I don't think they are omnipotent,  
8 no. Clearly it is a pretty well established fact that  
9 they do have to abide by the constitution and the laws  
10 of the State of Arizona, so... That's my nonlegal  
11 opinion.

12 ACALJ NODES: Mr. Rigsby, have you ever in your  
13 many years of appearing before the Commission and  
14 offering testimony, have you ever seen an instance where  
15 the Commission has forced an involuntary phase-in on a  
16 utility company?

17 THE WITNESS: No. In fact -- and again, I am  
18 just speaking personally here from some of the open  
19 meetings that I have been involved in -- I think it has  
20 always been my observation in fact that I believe the  
21 Commission Staff and chief legal counsel have very often  
22 tried to dissuade Commissioners from imposing phased-in  
23 rates.

24 ACALJ NODES: And if there were to be two  
25 separate rates of return set, one for a phase-in and one

1 without a phase-in, would that not effectively be an  
2 involuntary phase-in put upon the company?

3 THE WITNESS: Well, yes, I believe it would be.  
4 And again, that's why I was saying -- well, first of  
5 all, I am not aware anytime anything like that has ever  
6 happened. And this is the first time anyone has ever  
7 presented, proposed the questions to me as to whether or  
8 not separate rates of return should be applied in a case  
9 like that.

10 But, I, you know, again, I am not an attorney,  
11 but it is my understanding that, you know, when you get  
12 into this area of phased-in rates, there are some legal  
13 issues that have to be addressed. And so that's why in  
14 the case of RUCO, as I say, in the past, typically, you  
15 know, we have never recommended phased-in rates. We  
16 have only been agreeable to phased-in rates only if the  
17 company has offered to implement phased-in rates.

18 ACALJ NODES: Okay. Thank you.

19 Mr. Shapiro.

20 MR. SHAPIRO: Just a couple more.

21 BY MR. SHAPIRO:

22 Q. Mr. Rigsby, you are aware that three of the  
23 company's pending rate cases have been consolidated into  
24 one case, correct, that's the Val Vista, Sunrise,  
25 Sunrise matters?

1 A. That's pending before the Commission, yes.

2 Q. And you agree with me that those rate cases were  
3 ordered by the Commission using a particular test year?

4 A. Oh, subject to check I will take your word for  
5 that. I haven't gotten into the cases that heavily at  
6 this point.

7 Q. So at a minimum, in order for the company to  
8 match up LPSCO with those cases that are behind it,  
9 LPSCO would have had to wait even longer to file, to  
10 match test years?

11 A. Well, yes. Yes. I mean if those companies are  
12 filing under a Commission ordered test year, yes, that  
13 would be true.

14 Q. If the company were to have filed rate cases and  
15 asked them to be consolidated, what impact would that  
16 have had on the Commission's time clock?

17 A. Well, I think, I mean, they would be operating  
18 under the same time clock rules. It is just that you  
19 would have to conduct an audit and do an analysis on  
20 more systems during the same period of time.

21 Q. So that would have made the burden on Staff and  
22 RUCO to process those cases pretty heavy, because it  
23 would have been doing five all at once, correct?

24 A. Yes. But that hasn't been uncommon lately. In  
25 the past, it was more common for us to see just a

1 company file for, you know, with one system.

2 Q. But those kinds of situations have led to  
3 requests for extensions of the time clock by the parties  
4 before, haven't they?

5 A. Well, yes. I mean even in cases, yes, if I  
6 understood your question correctly, even cases where  
7 there was only a single system or district involved,  
8 there have been instances where we have had to, or where  
9 companies or Staff or some other party had, would have  
10 asked for an extension. It is not uncommon.

11 Q. I am sorry.

12 A. No, that's okay.

13 Q. Did I understand your testimony correctly that  
14 if all of the companies would have come in together, you  
15 would have given them all the same return on equity?

16 A. Well, okay. If we are talking about a group of  
17 companies that are subsidiaries of some larger entity,  
18 okay, typically that is the way I have done it. I don't  
19 calculate separate costs of equity for separate systems.

20 Now, we may, depending on the case, you know,  
21 you may have a situation where you may be calculating a  
22 cost of capital for a specific system. You probably  
23 apply the same estimated cost of equity, but you may  
24 apply different costs of debt that is unique to that  
25 particular system or district.

1 Q. So we could have had a situation where we had  
2 differing costs of debts, some companies that have  
3 Hamada adjustments, some that use proposed hypothetical,  
4 and some that you don't; could have had a mish-mash of  
5 those things, correct?

6 A. That could occur, conceivable.

7 MR. SHAPIRO: Your Honor, that's all I have on  
8 cost of capital, so if you want to take your break now.

9 ACALJ NODES: Okay. Very well. Let's take a  
10 10-minute break.

11 (A recess ensued from 2:35 p.m. to 2:49 p.m.)

12 ACALJ NODES: Let's go back on the record.

13 Mr. Wiley.

14 MR. WILEY: Thank you, Judge.

15

16

CROSS-EXAMINATION

17 BY MR. WILEY:

18 Q. Mr. Rigsby, you are not a licensed contractor,  
19 correct?

20 A. No.

21 Q. And you are not a registered engineer, agreed?

22 A. No.

23 Q. Okay. Agreed is yes?

24 A. Yes.

25 Q. We will try not to do the double negatives.

1           And you have never actually constructed or  
2 installed a wastewater treatment plant, agreed?

3       A.     Yes, I never have.

4       Q.     And would it also be fair to say that you have  
5 never applied for an aquifer protection permit for a  
6 wastewater treatment plant?

7       A.     Yes.

8       Q.     And you have never engineered or designed a  
9 wastewater treatment plant, agreed?

10      A.     Yes.

11      Q.     And you haven't talked to any engineers that  
12 were involved with the construction or design of the  
13 Palm Valley water reclamation facility, agreed?

14      A.     Yes.

15      Q.     Now, in your direct testimony and your  
16 surrebuttal testimony -- well, let me strike that.

17            Can you pull up your direct testimony, please.  
18 And specifically I want you to go to page 2, lines 20  
19 and 21.

20      A.     Okay. And just so we are clear -- okay, yes.

21      Q.     It is the rate base or the excess capacity  
22 one --

23      A.     Okay.

24      Q.     -- which I think is R-27.

25      A.     Yes.

1 Q. Okay. Are you on page 2?

2 A. Yes.

3 Q. Okay. On line 18 there is a question that says:  
4 What issues will you address in your testimony? And the  
5 answer is: I will address excess capacity issues  
6 associated with LPSCO's Palm Valley reclamation  
7 facility. Do you see that line?

8 A. Yes.

9 Q. Now, you agree, Mr. Rigsby there is no excess  
10 treatment capacity at the plant, correct?

11 A. Well, that's what has been testified to here at  
12 hearing. And I think I pointed out here in my  
13 surrebuttal testimony that basically what we were doing  
14 here was leaving ourselves, giving ourselves an  
15 opportunity to present any discovery or evidence that we  
16 may have uncovered after I filed this particular piece  
17 of testimony.

18 Q. Now, you were here for Mr. McBride's testimony,  
19 correct?

20 A. Yes.

21 Q. And he is the only registered engineer that has  
22 testified in this case, agreed?

23 A. Agreed.

24 Q. And he testified that the 2008 upgrades did not  
25 result in any additional treatment capacity for the

1 plant, correct?

2 A. That was my understanding.

3 Q. Okay. Do you have R-3 there?

4 A. Yes.

5 Q. Can you pull up page 219 of Exhibit R-3.

6 MS. WOOD: Was that 219 or 213?

7 THE WITNESS: I believe he said 219.

8 MS. WOOD: Thank you.

9 BY MR. WILEY:

10 Q. Tell me when you get to page 219, please.

11 A. I am looking at it now.

12 Q. Okay. 219 is a page from a report by Waterworks  
13 Engineers, agreed?

14 A. That's what it says.

15 Q. Okay. And you are aware that Waterworks  
16 Engineers is a separate engineering firm from McBride  
17 Engineering Services, correct?

18 A. Well, I am not personally familiar with them,  
19 but I will take your word for it. I don't see anything  
20 on the document that seems to connect or associate them  
21 with McBride.

22 Q. Okay. The very first paragraph of page '19  
23 says, quote, an improvements project is being carried  
24 out at the Palm Valley WRF primarily for providing  
25 greater redundancy and improved efficiency in various

1 unit processes. Do you see that line?

2 A. Yes.

3 Q. You don't have any basis for disputing that  
4 testimony, agreed?

5 A. No.

6 Q. The next line says the improvements will not  
7 result in a change of capacity at the plant, which  
8 remains at 4.1 million gallons per day. Do you see that  
9 line?

10 A. Yes.

11 Q. And you don't have any evidence to dispute that  
12 statement in the Waterworks report either, agreed?

13 A. I don't have any specific evidence. All I can  
14 say is the documents in Exhibit R-3 essentially speak  
15 for themselves.

16 (Brief pause.)

17 BY MR. WILEY:

18 Q. Mr. Rigsby, what has been marked as Exhibit A-35  
19 is an October 18, 2007 memorandum from Staff in the  
20 docket for the inquiry into the operational practices of  
21 Litchfield Park Service Company, Docket  
22 No. SW-01428A-07-0602, correct?

23 A. Yes.

24 Q. Okay. Have you reviewed this document before  
25 today?

1           A.       I believe this is the document that I referenced  
2 in my surrebuttal testimony. I believe it was on  
3 pages 3 and 4. And I think that was where I made my  
4 correction to that particular docket number. I think it  
5 is the same docket number. Let me --

6           Q.       Why don't you pull up your surrebuttal  
7 testimony, Mr. Rigsby, because I don't think what you  
8 just said is accurate.

9           A.       All right.

10          Q.       I think you referred to a different docket, so  
11 let me just give you a chance to clarify that.

12               MS. WOOD: Could I clarify, Mr. Wiley? Are you  
13 talking about the report listed in the memorandum on  
14 page 2 of the exhibit, which says 06-0444, or are you  
15 talking about the docket number on page 1 which says  
16 07-0602?

17               MR. WILEY: It is all included in the same  
18 docket, I think. But Ms. Wood is correct. There is an  
19 attached memorandum to A-35 which is dated October 18,  
20 2007 in Docket No. SW-01428A-06-0444.

21 BY MR. WILEY:

22          Q.       Do you see that on page 2 of that exhibit,  
23 Mr. Rigsby?

24          A.       Okay. I am on page -- could you point that out  
25 to me? I am on page 2.

1 Q. Are you on page 2 of the Exhibit A-35?

2 A. Yes.

3 Q. So, in other words, the second page of  
4 Exhibit A-35?

5 A. Oh, okay. The first page of the memorandum.

6 Q. Yes. There is an attached October 18, 2007  
7 memorandum from Staff in the 06-044 docket, correct?

8 A. Right. And that was the docket number that I  
9 was referring to. I think I corrected it. I had 09 in  
10 my testimony. And let me just -- could you give me just  
11 a second here?

12 Q. Sure.

13 A. I just want to read this Q and A.

14 ACALJ NODES: Is the docket number the 07-0602?  
15 Is that a typo? Have we been able to ascertain?

16 MS. MITCHELL: Can I interject? I can clear  
17 this up. There are two different dockets.

18 ACALJ NODES: Yes, please.

19 MS. MITCHELL: The 06-044 docket was a hookup  
20 fee tariff docket in which the Commission ordered Staff  
21 to do some investigation of LPSCO before it would  
22 implement the hookup fee tariff. And subsequent to the  
23 spills that occurred in, I think, June of or July of  
24 2007, Staff thought it would be wise to open up another  
25 docket to investigate the operational practices of

1 LPSCO, which was docket 07-0602. And so you will find  
2 some dual filings in each one of those dockets. As the  
3 Commission Staff updated the 06-044 docket, we also  
4 updated the 07-0602 docket. And so you will find some  
5 overlap in the reports in those two dockets.

6 MR. WILEY: And Judge, I think that's reflected  
7 on the very top, top page of A-35, there is a line there  
8 that says Staff feels that this report should also be  
9 docketed in the above-referenced docket. And so it is  
10 referring to the 07-0602 docket.

11 MS. WOOD: And I also point out on page 4 of  
12 Mr. Rigsby's surrebuttal testimony, this is the docket  
13 number he corrected as part of his testimony, 06-0444.

14 ACALJ NODES: Right. That part I got. Okay.

15 THE WITNESS: So to answer your question, I  
16 believe I did review this document. In fact, there is  
17 some language in here that looks very familiar to me.

18 BY MR. WILEY:

19 Q. Well, in your surrebuttal testimony on page 3  
20 you reference a compliance report by Staff dated  
21 March 21, 2008.

22 A. Okay. Which is a different date than what this  
23 document was filed on.

24 Q. Right. So as we sit here today, Mr. Rigsby, do  
25 you recall ever reviewing the October 18, 2007 Staff

1 report regarding the Palm Valley plant?

2 A. You know, I think I reviewed this compliance  
3 report dated March 21st, 2008. And I think, as  
4 Ms. Mitchell indicated, or noted, some of the language  
5 is similar or there is some overlap. Perhaps that  
6 explains why some of this language looks familiar to me  
7 regarding the spills.

8 Q. Well, let me have you look at page 5 --

9 A. Okay.

10 Q. -- of the Staff report.

11 A. Okay.

12 Q. You on page 5?

13 A. Yes.

14 Q. Okay. The third full paragraph, the very last  
15 sentence of the third full paragraph, there is a line  
16 that says this new project is being done in a number of  
17 phases and breaks down as follows, and then the  
18 subsequent lines reference Phases 1 through 10 of the  
19 upgrade project, correct?

20 A. Yes.

21 Q. Okay. And this document, the Staff report,  
22 describes all of those phases as upgrades or  
23 conversions, correct, at least for Phases 1 through 9,  
24 agreed?

25 A. Well, yes. According to this paragraph that I

1 am looking at here, it says according to MCESD, the  
2 company submitted a project involving a series of  
3 upgrades to Palm Valley water reclamation facility.

4 Q. Correct. And then there is a subsequent  
5 paragraph where there is an itemization of each phase of  
6 the project, agreed?

7 A. Agreed.

8 Q. Okay. If you go to the very next paragraph  
9 after that, the paragraph that starts with construction  
10 of Phases 1, 2, and 3 were approved by the MCESD in  
11 July 2007, and the work is currently in progress, do you  
12 see that line?

13 A. Yes.

14 Q. Okay. I wanted to ask you about the last two  
15 sentences in that paragraph. There is a line there that  
16 says, quote, most of the work being performed in  
17 Phases 1 through 10 is to increase reliability and add  
18 redundancy to the plant. Do you see that line?

19 A. Yes.

20 Q. And you don't have any testimony in this case to  
21 dispute that line from the Staff report, agreed?

22 A. No.

23 Q. Okay. The very next line says it should be  
24 noted that the plant's treatment capacity is not being  
25 increased by these improvements. Do you see that line?

1 A. Yes.

2 Q. So you would agree that Staff has concluded that  
3 the upgrades did not increase the Palm Valley plant's  
4 treatment capacity, correct?

5 A. According to this report.

6 Q. Right. And you don't have any basis to dispute  
7 this line in the testimony, do you?

8 A. No, I don't.

9 MR. WILEY: Judge, I would move in A-35.

10 ACALJ NODES: Any objection?

11 (No response.)

12 ACALJ NODES: Okay, A-35 is admitted.

13 (Exhibit A-35 was admitted into evidence.)

14 BY MR. WILEY:

15 Q. You agree that the company, LPSCO, should comply  
16 with rules, policies, and guidelines of ADEQ, agreed?

17 A. Yes.

18 Q. And you would also agree that the company should  
19 comply with policies, rules, or guidelines of the  
20 Maricopa County Environmental Services Department,  
21 agreed?

22 A. Agreed.

23 Q. And you were present for Mr. McBride's testimony  
24 earlier in this case, correct?

25 A. Yes.

1 Q. And you heard him say that when a treatment  
2 plant reaches 80 percent of its designed treatment  
3 capacity, that DEQ and the county require or recommend  
4 that the company begin planning and permitting for  
5 future phases or additions to the plant, correct?

6 A. I believe, yes, I believe that's what I heard.

7 Q. And you don't have any basis in the record in  
8 this case to dispute that testimony from Mr. McBride,  
9 agreed?

10 A. Agreed.

11 Q. Now, you reviewed the September 30, 2008 APP  
12 modification obtained by the company, correct?

13 A. If that document were included in Exhibit R-3, I  
14 would have reviewed it, yes, I would have looked at it.  
15 I did go through and review each of the documents in the  
16 exhibit.

17 Q. Can you pull up R-5?

18 A. I have it here.

19 Q. Okay. R-5 is the September 30, 2008 letter from  
20 Bob Manley of ADEQ to Matthew Garlick of Litchfield Park  
21 Service Company, correct?

22 A. Correct.

23 Q. And the opening line of that letter says, quote,  
24 enclosed is a signed copy of an APP amendment with fact  
25 sheet for the above-referenced facility. Do you see

1 that?

2 A. Yes.

3 Q. Okay. Is it your understanding that this APP  
4 other is the APP modification for the 2007, 2008  
5 upgrades?

6 A. That's my understanding, yes.

7 Q. Okay. Let me have you look at page 3 of the  
8 APP.

9 A. Okay, I am there.

10 Q. Okay. There is a line there, the second line of  
11 paragraph 2.2.1 says, quote, a WRF expansion to 8.2 MGD  
12 was designed and shall be constructed as per the design  
13 report prepared by Pacific Advanced Civil Engineers,  
14 Inc., dated August 2004. Do you see that?

15 A. Yes.

16 Q. That's the Phase 2 design report prepared by  
17 PACE, correct?

18 A. That's my understanding, yes.

19 Q. Okay. And that's the focus of the \$37,000 in  
20 design costs that you believe should be taken out of the  
21 rate base for LPSCO in this case, correct?

22 A. Correct.

23 Q. Okay. Now, Mr. Rigsby, you were here when  
24 Mr. McBride testified that that report was used to  
25 provide a site facility description in order to obtain

1 the APP modification to the upgrades, correct?

2 A. That's my understanding.

3 Q. And it is your understanding that that's  
4 required by DEQ's regulations and policies as well,  
5 agreed?

6 A. I would agree.

7 Q. And the same would be true for Maricopa County,  
8 correct?

9 A. Yes.

10 Q. Have you reviewed the actual flows for the plant  
11 during the test year?

12 A. No.

13 Q. Mr. Rigsby, I just have a few more questions.  
14 Give me a minute, I will find my exhibit.

15 (Brief pause.)

16 BY MR. WILEY:

17 Q. Mr. Rigsby, what is marked as Exhibit A-35 --  
18 ACALJ NODES: '6.

19 BY MR. WILEY:

20 Q. -- 36, sorry, is LPSCO's response to RUCO's data  
21 request MJR 5.4, correct?

22 A. Yes.

23 Q. Okay. And the question called for data relating  
24 to the actual total monthly sewage flow and sewage flow  
25 on peak day for the months in 2009 where the data is

1 available, correct?

2 A. That's what it is asking for.

3 Q. Turn to the second page, please. Are you on the  
4 second page?

5 A. Yes.

6 Q. Okay. The second page of the company's response  
7 provides the average monthly, the average monthly day  
8 flows per day for the month on the first line of that  
9 exhibit, correct?

10 A. Yes.

11 Q. And the second line says the peak day flow  
12 during each of the months from October of 2008 to  
13 September of 2009, correct?

14 A. Yes.

15 Q. And it also includes percentage capacity numbers  
16 for each of those months, correct?

17 A. Yes.

18 Q. And you see there the second line for November  
19 of 2008, the percent capacity for the average monthly  
20 flows per month, monthly day flows per month was over  
21 85 percent of the design flow capacity for the plant,  
22 agreed?

23 MS. WOOD: Objection. There is no indication on  
24 this document that that's what those percentages stand  
25 for. There is no clarification at all.

1 BY MR. WILEY:

2 Q. Well, let's refer back to the first page of the  
3 response, Mr. Rigsby. The company's response says,  
4 quote, notwithstanding its objection, please refer to  
5 the attached spreadsheet which shows monthly average day  
6 flows and peak day flows as of the end of the test year  
7 and percentage of 4.1 million gallons per day capacity,  
8 agreed?

9 A. Agreed.

10 Q. Okay. So it is pretty clear that the numbers on  
11 page 2 are the percentages of the actual flows at the  
12 plant on a monthly average day basis compared against  
13 the 4.1 treatment capacity at the plant, agreed?

14 A. Agreed.

15 Q. And those flows are as high as 85 percent,  
16 correct?

17 A. Yeah, that's what you have indicated here on the  
18 row designated maximum month, yes, November '08, 85.2.

19 Q. And you don't have any evidence to dispute the  
20 percentage flow numbers on Exhibit A-36, agreed?

21 A. No. Well, agreed.

22 MR. WILEY: Judge, I would move in A-36.

23 ACALJ NODES: Just out of curiosity, what ratio  
24 do the percentages reflect? Is it average MGD for the  
25 month compared to the capacity or the peak day flow? I

1 assume it is the former.

2 MR. WILEY: It is average MGD for the month,  
3 which is what I believe is required by the APP.

4 ACALJ NODES: The first line?

5 MR. WILEY: Yes. Essentially, Judge, 3.495  
6 divided by 4.1 is the 85.2 percent.

7 ACALJ NODES: Got you. All right. Any  
8 objection to A-36?

9 (No response.)

10 ACALJ NODES: All right. A-36 is admitted.

11 (Exhibit A-36 was admitted into evidence.)

12 MR. WILEY: Judge, I have no more questions.

13 ACALJ NODES: Mr. Torrey, Staff have any  
14 questions for Mr. Rigsby?

15 MR. TORREY: I just have one or two, Your Honor.

16

17 CROSS-EXAMINATION

18 BY MR. TORREY:

19 Q. Mr. Rigsby, a few minutes ago you were asked, or  
20 the proposition was given to you that LPSCO has to sort  
21 of compete for capital with other of the APIF  
22 subsidiaries. Do you recall that?

23 A. Yes.

24 Q. And in your estimation, do you believe that APIF  
25 has an interest in keeping LPSCO a healthy utility?

1 A. Oh, yes.

2 Q. And do you believe that the fact that LPSCO has  
3 to compete for capital with these other subsidiaries  
4 makes it more difficult for LPSCO to get capital from  
5 APIF?

6 A. I couldn't really say, because the company has a  
7 number of subsidiaries not only here in Arizona, but in  
8 other states, too. And so I didn't do any kind of an  
9 analysis on each one of those. So I couldn't really say  
10 for sure, you know, how LPSCO stacks up as far as those  
11 others. I mean we have done analyses on some of the  
12 other subsidiaries that they own here in Arizona, but --  
13 I guess that's the best response I can give you.

14 Q. In terms of determining an appropriate return on  
15 equity, there was some testimony given by Mr. Bourassa  
16 regarding the varying revenues of the water utility  
17 sample companies used in the proxy.

18 A. Yes.

19 Q. And some of those being many times over the  
20 revenues of LPSCO. Do you believe that Mr. Bourassa's  
21 comparison is an accurate reflection of the risk that  
22 LPSCO faces?

23 A. Not necessarily, because, you know, when we put  
24 these samples together, what we are really trying to do  
25 is we are trying to come up with a set of companies that

1 have similar operating characteristics and similar --  
2 they have similar operating characteristics and they  
3 face similar risks. Okay? So it doesn't necessarily  
4 matter, you know, the level of revenues that they  
5 generate, you know. The fact is is that, you know, they  
6 essentially all operate in a similar fashion and they  
7 essentially face the same types of risks.

8           In the case of some of the companies that I have  
9 used in my sample, like American States Water, Aqua  
10 America, and so forth, you have to remember that, you  
11 know, these companies are nothing but a collection of  
12 smaller operating systems, okay, which are really  
13 probably not all that much different from a company like  
14 LPSCO or any other of the Algonquin subsidiaries that  
15 operate here in Arizona.

16       Q.       There was also some discussion in Mr. Bourassa's  
17 testimony regarding the fact that certain of those  
18 subsidiaries operate in states other than Arizona. Do  
19 you believe that a utility operating in Arizona faces  
20 any more difficult challenges in terms of its regulatory  
21 environment than a utility operated in California?

22       A.       No, not really. It is a trade-off. I mean,  
23 obviously, Algonquin certainly had no problem acquiring  
24 these systems here in Arizona. And I believe there was  
25 some discussion on this. Certainly, you know, we are

1 talking about a very -- well, what we are talking about  
2 here is a large mutual fund. I am sure there is a very  
3 high level of sophistication with the management here as  
4 far as being able to study and analyze different  
5 properties. If they didn't think that Arizona was a  
6 good place to invest in, I don't think they would have  
7 invested here.

8 Now, you know, you can sit here and make an  
9 argument that maybe California allows for certain  
10 regulatory treatments of things that we may not allow  
11 here in Arizona. But, you know, there are other factors  
12 that you have to take into consideration, you know. You  
13 have to take into consideration things like taxes in  
14 California. You have to take things like labor in  
15 California. They have earthquakes in California. They  
16 had one just the other day. I was reading in the paper  
17 where apparently it did some damage to water and sewer  
18 lines up there, in an area north of San Francisco. And  
19 that's not something utilities face here in Arizona.

20 So, you know, it is essentially a trade-off.  
21 And the utilities that I have included in my sample,  
22 while it is true that, you know, some of them may have a  
23 large presence in Arizona, it is also true, like Aqua  
24 America, it is not entirely concentrated, its holdings  
25 are not entirely concentrated in Arizona -- or, excuse

1 me, in California I meant to say.

2 American States, I think the majority of their  
3 holdings are, but even American States has made the  
4 decision to invest here in Arizona when they purchased  
5 Chaparral City Water Company, and nobody twisted that  
6 company's arm to come in here and purchase that utility.  
7 And I am sure that they did their due diligence. And I  
8 am sure, as I am sure they did obviously, they came to a  
9 conclusion that Arizona is not a bad place to invest in.

10 Q. In Mr. Bourassa's direct on cost of capital he  
11 makes the statement that having less debt in its capital  
12 structure implies less financial risk than the water  
13 utility sample, which may offset the other factors that  
14 make LPSCO more risky than the sample group.

15 A. Yes, I don't --

16 MR. SHAPIRO: I am sorry, may I interpose an  
17 objection? I know that historically we do not allow  
18 parties to engage in lengthy friendly cross. If  
19 Mr. Rigsby wanted to respond to these things, he could  
20 have. And Staff is certainly willing to call its  
21 witness to disagree with Mr. Bourassa.

22 ACALJ NODES: Mr. Torrey.

23 MR. TORREY: I don't believe I am limited in the  
24 scope of my cross with Mr. Rigsby.

25 ACALJ NODES: You can do all the friendly cross

1 you want, rehabilitative cross?

2 MR. TORREY: I don't believe I am rehabilitating  
3 anything Mr. Rigsby said.

4 ACALJ NODES: So it is your view that parties  
5 should be able to do friendly cross of other parties?

6 MR. TORREY: If there are three parties,  
7 invariably, Your Honor, there is going to be some areas  
8 where the parties don't necessarily disagree, but I  
9 don't believe Mr. Rigsby specifically addressed that  
10 question.

11 ACALJ NODES: Well, the practice has been to  
12 allow pretty much anything here, but it is something  
13 that has kind of always troubled me as far as allowing  
14 friendly cross. But everybody else seems to do it all  
15 the time, so I will overrule the objection.

16 Do you recall the question, Mr. Rigsby?

17 THE WITNESS: Could we repeat it, please.

18 MR. TORREY: Colette, could I have that read  
19 back.

20 (The record was read by the reporter as  
21 requested as follows:

22 Question: In Mr. Bourassa's direct on cost  
23 of capital he makes the statement that having less  
24 debt in its capital structure implies less  
25 financial risk than the water utility sample which

1           may offset the other factors that make LPSCO more  
2           risky than the sample group.)

3           THE WITNESS: Okay. Well, it would be true that  
4 they would be perceived as having less financial risk by  
5 virtue of the fact that they have lower debt than the  
6 sample companies. I think I testified earlier here  
7 today on the stand that I believe that the fact that  
8 they had a capital structure that was comprised of more  
9 equity would probably offset any investor perceptions of  
10 increased business or unique risk to LPSCO.

11           MR. TORREY: That's all I have, Your Honor.

12           ACALJ NODES: All right. Thank you. We will  
13 just go ahead and do redirect and then come back around  
14 to everybody.

15           Ms. Wood.

16           MS. WOOD: Yes, Your Honor, thank you.

17

18                                   REDIRECT EXAMINATION

19 BY MS. WOOD:

20           Q.     Mr. Rigsby, can you turn to page 207 of R-3,  
21 please.

22           MR. WILEY: Ms. Wood, is that the APP or -- no,  
23 that's the big packet, correct?

24           MS. WOOD: Yes, R-3.

25           THE WITNESS: Page 207?

1 MS. WOOD: Yes.

2 THE WITNESS: I'm there.

3 MS. WOOD: Okay.

4 BY MS. WOOD:

5 Q. On page 207 under section 1.0, introduction,  
6 Mr. McBride has filed an upgrade approval to construct  
7 application which includes in this phase of the project  
8 to convert two digester tanks into one SBR tank to  
9 provide an additional .95 MGD of treatment capacity,  
10 correct?

11 A. Yes.

12 Q. And if you can now turn to the same exhibit,  
13 page 219.

14 A. Did you say 290?

15 Q. 219.

16 A. 219, excuse me. Okay. Now I'm there.

17 Q. This was part and parcel of the May 2008 request  
18 by the company to hydraulically -- if you look at the  
19 description on page 219, last paragraph, to increase the  
20 treatment capacity of the plant by the .95 that was  
21 previously discussed in Mr. McBride's report to the  
22 county, correct?

23 A. Yes.

24 Q. Okay. Do you know if the percentages that are  
25 produced in the company's Exhibit A-36 take into

1 consideration the additional treatment capacity?

2 MR. WILEY: Judge, the question that Ms. Wood  
3 here is misstating the evidence, because what  
4 Mr. McBride said was that that's redundant treatment  
5 capacity. And so I don't think she is probably  
6 characterizing these questions in terms of what  
7 Mr. McBride actually said.

8 ACALJ NODES: Ms. Wood.

9 MS. WOOD: I think the document speaks for  
10 itself, Your Honor. I will be happy to rephrase it.

11 ACALJ NODES: Well, wait a minute. That was  
12 your, that was your allegation initially. But then  
13 Mr. McBride appeared on the witness stand and didn't you  
14 cross-examine him on that, and he gave an explanation  
15 regarding the treatment capacity and indicated actually  
16 there was not an addition to --

17 MS. WOOD: And I asked him about that same  
18 sentence. And he said, well, yeah, it does, but it is  
19 not changing the rated, rating of the plant.

20 Now, I didn't ask about the rating of the plant.  
21 I asked about the treatment capacity of the plant. And  
22 just because the rating may remain at 4.1 doesn't mean  
23 that separate components can't be increased. And I also  
24 asked him that question and we went through in detail  
25 how several of the components have increased capacity.

1 ACALJ NODES: That's not what I recall, but...

2 Mr. Wiley.

3 MR. WILEY: I mean that's misstating what  
4 Mr. McBride said, Judge. What he said was, is that they  
5 converted the anoxic digester tank into a third SBR tank  
6 for redundancy purposes. And what he was talking about  
7 was adding a million gallons of tank capacity so that  
8 they could do maintenance on the other two SBR units. I  
9 mean that was his testimony on the SBR redundant  
10 treatment capacity. So this line of questioning is  
11 premised simply on facts that are not in evidence.

12 ACALJ NODES: Yes, I didn't remember exactly  
13 what Mr. Wiley just described, but I do recall  
14 specifically he said it does not increase not only the  
15 rated capacity, but the actual treatment capacity of the  
16 plant.

17 MS. WOOD: And he was cross-examined on his very  
18 words in the letter that I just pointed to, which I  
19 believe was page 207.

20 ACALJ NODES: I know. And isn't that what he  
21 said in response to those questions? I mean I recall  
22 that. I mean very specifically the question was posed,  
23 does this increase the actual treatment capacity, even  
24 if it doesn't increase the rated capacity. And he said  
25 no, it doesn't increase the overall treatment capacity,

1 that there was this redundancy that was going to be  
2 built in. And that's what he was -- that's what was  
3 being referred to there.

4 And in any event, you know, whatever he said  
5 will appear in the transcript. But I -- so what was  
6 your question again, whether --

7 MS. WOOD: You know what, Your Honor, I will  
8 just withdraw the request. I can make my own arguments  
9 based on the documents already admitted in the record,  
10 and I will use the transcript of Mr. McBride's words and  
11 won't have any confusion; I will be black and white.  
12 Okay?

13 Now, I am not going to have any further  
14 questions of Mr. Rigsby, Your Honor, but I will have an  
15 issue that I tried to resolve during the break.  
16 Algonquin, or Mr. McBride, provided us with a copy of  
17 cost data that Mr. McBride had produced and we had  
18 requested during the course of the hearing. And we had  
19 asked if we could have that admitted by stipulation.  
20 And Mr. Wiley indicated that would not be his  
21 preference.

22 RUCO would like to have the document admitted.  
23 And we are happy if we -- you know, Mr. McBride  
24 testified he would produce the documentation. So we  
25 would like to have this documentation admitted, whether

1 it is by recalling Mr. McBride and laying foundation  
2 that way or by stipulation of the parties or by through  
3 Mr. Rowell.

4 ACALJ NODES: Okay. Well, since no document has  
5 been presented, I have no idea what you are seeking to  
6 have.

7 MS. WOOD: Let me bring it up to you. What  
8 number are we on, Your Honor?

9 ACALJ NODES: Let's see. 31.

10 MS. WOOD: Okay.

11 (Brief pause.)

12 ACALJ NODES: Okay. Now, Ms. Wood, you want to  
13 move R-31 into evidence, is that right?

14 MS. WOOD: Yes. If you recall the line of  
15 questioning of Mr. McBride, we asked him what the costs  
16 would be comparing it to data that we had. He said no,  
17 that wouldn't be the true cost, there would be another  
18 cost. And I asked him if he had any costs. He said  
19 that he had engineering estimates.

20 ACALJ NODES: Okay. Mr. Wiley.

21 MR. WILEY: If you recall, Judge, the way this  
22 came up is this was the document that -- Ms. Wood is  
23 correct that this is the engineer's estimate from  
24 McBride, their last engineer's estimate. But this came  
25 up during, I think, discovery. This is the document

1 that they never actually asked for. And we had the  
2 discussion about their failure to ask for these  
3 documents during prehearing discovery. And she is now  
4 proposing to admit this as a document. She does not  
5 have a foundational witness to get this into evidence.

6 MS. WOOD: Your Honor, we made two data  
7 requests. One was MJR-8.8, one is MJR-6.9. I don't  
8 know, maybe they are inartfully worded, but I think they  
9 are pretty clear. It says please provide a construction  
10 budget for the 4.1 MGD Palm Valley sewer project. The  
11 second one says please provide a construction budget for  
12 the 8.2 Palm Valley sewer project.

13 We asked for both. And we did not get the data  
14 that you have in front of you.

15 MR. WILEY: And, Judge, this is the engineer's  
16 estimates for the upgrades, not the 4.2 million gallon  
17 per day construction estimate or the 8.2 million gallon  
18 per day construction estimate.

19 ACALJ NODES: Okay. Well, the basis of your  
20 objection is not in any way the authenticity, it is that  
21 it is not being introduced through a qualified witness?

22 MR. WILEY: Well, I didn't actually get a chance  
23 to finish. I might have a couple other objections. I  
24 also don't think it is relevant. Because if you recall  
25 what Mr. McBride said about the engineer's estimate, it

1 is an estimate. And he said that the costs can vary  
2 with, you know, with the actual project construction.

3 And my fear is, is that somehow they are going  
4 to put this document into evidence and then we are going  
5 to have some argument made in the closing briefs. And,  
6 you know, we are going to be arguing about the  
7 authenticity of this document in relation to the overall  
8 construction costs. Nobody has been questioned about  
9 this document and she had her chance with Mr. McBride.  
10 And, you know --

11 ACALJ NODES: Well, which she didn't have this  
12 particular exhibit available when he was on the stand.

13 You know, the thing is, he has testified to  
14 that. I mean I recall that testimony specifically. And  
15 it seems to me if that testimony is already in the  
16 record, then you have a solid basis for making the  
17 argument that even though these were the estimates,  
18 Mr. McBride said that the engineering estimates don't  
19 necessarily reflect what the actual contract costs end  
20 up being. So I think you have available grounds to make  
21 that argument. But I don't think it goes to not being  
22 relevant.

23 MR. WILEY: Could I ask for an explanation of  
24 what the purpose of introducing it is? I guess as an  
25 exhibit, in order to introduce evidence, I guess you

1 have to show relevance to some contested issue in the  
2 case, so I am really not sure why this document is  
3 getting admitted, I guess.

4 ACALJ NODES: Okay. Well, that's reasonable.

5 What is the purpose of your request for  
6 admission, Ms. Wood?

7 MS. WOOD: Our request for admission, Your  
8 Honor, is because we had asked initially for a  
9 construction budget and cost data related to any of the  
10 expansion of that plant. Whether they call it a 4.1  
11 million gallons per day or 8.2 million gallons per day  
12 plant, we asked for information. We can make our  
13 separate arguments about the weight and validity of  
14 that. But it doesn't undercut the notion that it is  
15 evidence that's relevant to the work that Mr. McBride  
16 did.

17 ACALJ NODES: All right. Yeah, I don't agree on  
18 relevance grounds, Mr. Wiley. It seems to me that there  
19 was adequate foundation laid for the document. So I am  
20 going to admit R-31 and the parties can make their  
21 arguments regarding it.

22 (Exhibit R-31 was admitted into evidence.)

23 MS. WOOD: That was sent out to the parties the  
24 second day, but I can get additional companies.

25 MS. MITCHELL: I couldn't remember.

1 MS. WOOD: Okay.

2 MR. WILEY: Actually, Ms. Wood, I don't think I  
3 gave that to anybody but you.

4 MS. MITCHELL: So Staff doesn't have a copy.

5 MS. WOOD: I thought I handed it to you. But if  
6 you don't have a copy, I can get you one.

7 I have no further questions of Mr. Rigsby at  
8 this time, Your Honor.

9 ACALJ NODES: Okay. And you will see that Staff  
10 gets a copy --

11 MS. WOOD: Yes, sir.

12 ACALJ NODES: -- during the break. Okay. We  
13 are going to come back for recross now.

14 Mr. Sullivan.

15 MR. SULLIVAN: I have none, Your Honor.

16 ACALJ NODES: All right. Mr. Shapiro.

17 MR. SHAPIRO: Yes, just one question.

18

19 RE CROSS-EXAMINATION

20 BY MR. SHAPIRO:

21 Q. Mr. Rigsby, Mr. Torrey asked you some questions  
22 about your disagreements with Mr. Bourassa. Do you  
23 recall that?

24 A. Yes.

25 Q. Fair to say that Mr. Bourassa has similar

1 disagreements with you regarding your positions?

2 A. Yes.

3 MR. SHAPIRO: Thank you.

4 ACALJ NODES: And, Mr. Wiley, anything further?

5 Mr. Torrey, any additional questions?

6 MR. TORREY: None, Your Honor.

7 ACALJ NODES: All right. Mr. Rigsby, thank you  
8 for your testimony. And you are excused.

9 All right. Let's go off the record.

10 (A recess ensued from 3:37 p.m. to 3:47 p.m.)

11 ACALJ NODES: Who is -- Ms. Mitchell or  
12 Mr. Torrey, which one?

13 MS. MITCHELL: I am the lucky one this  
14 afternoon.

15 ACALJ NODES: Okay.

16 MS. MITCHELL: Lucky me. Staff would call its  
17 first witness. We call Pedro Chaves.

18 ACALJ NODES: Mr. Chaves, thank you for agreeing  
19 to be taken out of turn. I am sure you probably didn't  
20 have a whole lot of input on the matter, but thank you  
21 anyway.

22 MR. CHAVES: My pleasure. Thank you, Your  
23 Honor.

24 ACALJ NODES: Go ahead.

25

1 PEDRO CHAVES,  
2 called as a witness on behalf of ACC Staff, having been  
3 first duly sworn by the Certified Reporter to speak the  
4 truth and nothing but the truth, was examined and  
5 testified as follows:

6

7

DIRECT EXAMINATION

8 BY MS. MITCHELL:

9 Q. Good afternoon. Mr. Chaves, could you please  
10 state your name and business address for the record.

11 A. Good afternoon, Ms. Mitchell. My name is Pedro  
12 Chaves, and my business address is 1200 West Washington  
13 Street, Phoenix, Arizona 85007.

14 Q. And by whom are you employed and in what  
15 capacity?

16 A. I am employed by the Arizona Corporation  
17 Commission as a public utilities analyst.

18 Q. And could you briefly describe your duties as a  
19 public utilities analyst.

20 A. As a public utilities analyst I oversee  
21 various -- well, at least I analyze financing  
22 applications, I have done rate design, revenue  
23 requirement, rate base. I have testified on cost of  
24 capital.

25 Q. And in the course of your employment were you

1 assigned to review and evaluate a request for a rate  
2 increase by LPSCO?

3 A. Yes.

4 Q. And did you prefile or prepare any testimony in  
5 this case?

6 A. Yes, I did.

7 Q. I believe you have in front of you what has been  
8 marked as Staff Exhibit S-2.

9 A. I do.

10 Q. Could you please identify that for the record.

11 A. Exhibit S-2 is a copy of my prefiled direct  
12 testimony.

13 Q. And do you have any additions, corrections, or  
14 modifications to make to S-2 at this time?

15 A. I do not.

16 Q. Do you adopt S-2 as your sworn testimony here  
17 today?

18 A. I do.

19 Q. I also believe you have what has been marked as  
20 Staff Exhibit S-3?

21 A. Yes, I do.

22 Q. Could you please identify that for the record.

23 A. Exhibit S-3 is a copy of my prefiled surrebuttal  
24 testimony.

25 Q. And do you have any additions, corrections, or

1 modifications to make to S-3?

2 A. I do not.

3 Q. And do you adopt S-3 as part of your sworn  
4 testimony here today?

5 A. I do.

6 MS. MITCHELL: Your Honor, at this time I would  
7 like to move for the admission of S-2 and S-3.

8 ACALJ NODES: Okay. Any objections?

9 (No response.)

10 ACALJ NODES: Okay. S-2 and 3 are admitted.

11 (Exhibits S-2 and S-3 were admitted into  
12 evidence.)

13 BY MS. MITCHELL:

14 Q. Mr. Chaves, there has been some discussion in  
15 the last couple of -- several days, it has been more  
16 than a couple -- several days about the concept in  
17 ratemaking of rate shock. Could you explain what your  
18 understanding is of rate shock.

19 A. Well, first I would like to say that each  
20 individual perhaps has his own definition of rate shock  
21 per se. It is a perception of that increase in rates  
22 that each customer may have. What our main concern is  
23 the rate impact that rates would cause to customers and  
24 customer classes.

25 Q. Thank you.

1           In response to the Chairman, could you discuss  
2 Staff's approach to phased-in rates.

3       A.     Well, of course each case stands by its own.  
4 What I have seen in the past is there has been various  
5 discussion about phased-in rates, but what I have seen  
6 for the most part is that the conclusion is that  
7 phased-in rates result in a higher increase in the long  
8 term for customers.

9       Q.     And why is that?

10      A.     When considering the return for the phase-in,  
11 customers will end up paying in the long term more than  
12 what they would be paying otherwise.

13      Q.     Have you had a chance to review the new proposed  
14 rate design that was introduced as a settlement between  
15 the City of Litchfield Park and the company?

16      A.     I did, with the time that I had.

17      Q.     And what was your perception of that proposed  
18 new rate design?

19      A.     I prepared a schedule to update, well, the  
20 numbers that resulted in the settlement between the  
21 company and the city. I don't have a copy of this.

22      Q.     I do, and I am going to come up and show that to  
23 you.

24           Mr. Chaves, I have given you what has been  
25 marked as Exhibit S-4. Can you identify this for the

1 record, please.

2 A. Yes. It is labeled Hearing Schedule PMC-1 and  
3 Hearing Schedule PMC-2.

4 Q. And could you describe what this represents.

5 A. It is the rate design for the water division.  
6 It is a summary of its present rates the company  
7 proposed and Staff recommended, and company proposed  
8 being the ones reached at the settlement with the City  
9 of -- with the city and the company.

10 ACALJ NODES: What is the exhibit number again?

11 I am sorry.

12 MS. MITCHELL: S-4. No -- yes, 4.

13 ACALJ NODES: Oh, I didn't get one.

14 MS. MITCHELL: Oh.

15 ACALJ NODES: Thank you.

16 BY MS. MITCHELL:

17 Q. Now I am all flustered because I have given the  
18 judge my copy and I can't remember my questions on this  
19 exhibit.

20 Does this exhibit represent a comparison of  
21 Staff's proposed rate design and the company's new rate  
22 design?

23 A. Correct.

24 Q. And do you also include a bill impact analysis?

25 A. The last page is a typical bill analysis for the

1 three-fourths inch residential, which most customers  
2 are.

3 MS. MITCHELL: At this time I would like to move  
4 for the admission of S-4.

5 ACALJ NODES: You are going to have to explain  
6 again. This is Staff's most -- this is Staff's updated  
7 rate design proposal?

8 THE WITNESS: Staff's rate design proposal has  
9 not changed. We are simply putting -- updating the  
10 company's proposed rates and putting Staff's recommended  
11 rates. Staff recommended rates have not changed and its  
12 rate design has not changed. But I thought it was  
13 important to show the differences, especially when you  
14 look at the discretionary gallon usage. And also  
15 perhaps you might not be as clear in this schedule, but  
16 I found that crossover, a crossover point between the  
17 three-fourths inch meter residential and the one-inch  
18 meter residential.

19 ACALJ NODES: Okay. I guess I am still  
20 confused. Is this the rate design based on Staff's  
21 updated revenue requirement?

22 THE WITNESS: It is the same rate design as in  
23 surrebuttal, yes, Your Honor. I don't believe Staff's  
24 revenue requirement has changed after surrebuttal.

25 ACALJ NODES: Okay. Well, okay. Then I am

1 still confused.

2 THE WITNESS: My apologies.

3 ACALJ NODES: Well, no, I am -- okay. Let's --  
4 the typical bill analysis, that's on the last page of  
5 the exhibit?

6 THE WITNESS: Yes, sir.

7 ACALJ NODES: And I am comparing that to your  
8 surrebuttal -- oh, no. Wait a minute. I think maybe it  
9 is me that's getting this wrong.

10 Okay. So look at, yes, the typical bill  
11 analysis that is presented in your surrebuttal  
12 testimony, what did that represent? Was that not for a  
13 three-quarter inch?

14 THE WITNESS: Correct. That is the same.  
15 However, notice that the company proposed numbers are  
16 different.

17 ACALJ NODES: Well, let's see. So is Staff's,  
18 isn't it?

19 THE WITNESS: No. Staff's recommended -- are  
20 you looking at the water division, Your Honor?

21 ACALJ NODES: Yes, I think. Let me see. Maybe  
22 I am not. It may have been where I am going wrong here.  
23 Okay. You are right. I must have been looking at  
24 wastewater. Okay. You are right. I apologize. My  
25 error.

1 Okay. Any objection to S-4?

2 (No response.)

3 ACALJ NODES: All right. S-4 is admitted.

4 (Exhibit S-4 was admitted into evidence.)

5 BY MS. MITCHELL:

6 Q. Did you have a chance to listen to the testimony  
7 of the city's witness, Darnall?

8 A. Not in its entirety, but for the most part.

9 Q. All right. He testified that it was his belief  
10 that Staff's rate design sought to keep residential  
11 rates low. Is that a Staff policy?

12 A. Not to my understanding, no.

13 MS. MITCHELL: All right. I don't have any  
14 other questions for Mr. Chaves on direct. He is  
15 available for cross-examination.

16 ACALJ NODES: All right. Mr. Sullivan.

17 MR. SULLIVAN: Thank you, Your Honor.

18 And thank you, Mr. Chaves, for accommodating my  
19 schedule.

20

21 CROSS-EXAMINATION

22 BY MR. SULLIVAN:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Would you agree that one of the functions of

1 rate design is to distribute the cost of providing  
2 service equitably between the various customer classes?

3 A. Can you specify what you mean, equitably?

4 Q. If you will, by that I mean fairly, equitably.

5 A. Fairly, certainly, yes.

6 Q. Okay. And isn't that in part done by the equal  
7 distribution of costs between customer class?

8 A. That is not, equal distribution, it does not  
9 equal fairness, I think. So I don't agree with that.

10 Q. Why doesn't equal distribution equal fairness?

11 A. Just to be clear, you said equal distribution  
12 of --

13 Q. Of the cost of service.

14 A. Meaning that the cost, that each cost of service  
15 came out to be what for your rate design? Well, there  
16 are different factors that you have to take into account  
17 also, like efficient use of water, gradualism and other  
18 factors that I mentioned in my surrebuttal testimony.

19 Q. And where in your surrebuttal are you speaking  
20 exactly?

21 A. I am speaking about surrebuttal testimony,  
22 page 4, lines 7 through 14.

23 Q. And so gradualism, promotion of efficient water  
24 usage, and uniformity of rates among customer classes,  
25 those are the three items that you listed there, is that

1 correct?

2 A. Right.

3 Q. And how does that -- but that's in addition to  
4 the results of a cost of service study, correct?

5 A. Correct.

6 Q. Okay. And basically the end result of a cost of  
7 service study is that it allocates costs among the  
8 various customer classes and shows what each customer  
9 class is returning as far as that customer class,  
10 correct, to the company?

11 A. Yes. As I indicated in my testimony, in simple  
12 terms a cost of service study is an estimation of cost  
13 causation by customer class.

14 Q. And that's the -- would you say that's the  
15 starting point in rate design?

16 A. Not generally.

17 Q. Okay.

18 A. I mean you can use it as a starting point, but  
19 you can develop rates without having a cost of service  
20 study.

21 Q. Is it the Staff's policy that rate design --  
22 that it doesn't matter what the cost of service is?

23 A. Well, that's not what I am saying. What I am  
24 saying is that rate design shouldn't be mistaken with  
25 the cost of service study. Rate design involves

1 developing the specific rates that generate the revenues  
2 from each customer class, taking into consideration the  
3 results of cost of service study.

4 Q. So what is the goal and objective when you  
5 design rates?

6 A. Fair and reasonable rates.

7 Q. Okay. And what is the criteria you use to  
8 determine whether something is fair and reasonable?

9 A. Again, we look at various factors. In the event  
10 that there is a cost of service study available, we look  
11 at that. We look at other factors like gradualism,  
12 promotion of efficient water usage, and uniformity of  
13 rates among customer classes.

14 Q. Okay. And when you say the promotion of  
15 efficient water usage, what do you mean by that term?

16 A. That water is used in an efficient manner by  
17 customers, when looking at this question or looking at  
18 what people, what people are going to use it for  
19 basically.

20 Q. Would you agree that the efficient use means the  
21 provision of a given level of utility service at the  
22 lowest possible social cost, including financial,  
23 environmental, resource, and other costs, assuming that  
24 customers are receiving the same type, same level of  
25 service?

1 A. Can you repeat that again, please.

2 Q. Sure. Would you agree that the efficient use of  
3 water means the provision of a given level of utility  
4 service at the lowest possible societal cost or social  
5 cost, including financial, environmental, resource, and  
6 other costs?

7 A. I think we are talking about two different  
8 things, then.

9 Q. Okay.

10 A. Well, we are talking about the promotion of  
11 efficient water usage. And you are telling me if it  
12 equates to the provision of human level utility at the  
13 lowest possible cost.

14 Q. I guess my question is -- or let's go forward.  
15 If that's not how you define it, then I am trying to  
16 find out how you define the efficient use of water  
17 resources.

18 A. Well, I think the definition is pretty  
19 self-explanatory, which means using water efficiently.

20 Q. Does that include the efficient use of the  
21 system itself in the sense of at a low cost to the  
22 system?

23 A. I would say the efficient use of water itself  
24 from a, let's say, customer point of view.

25 Q. So are you looking solely at conservation?

1 A. I don't believe I have looked at or I mentioned  
2 conservation. I am saying that customers use water  
3 efficiently.

4 Q. And I -- excuse me, I am just trying to  
5 understand.

6 A. I am trying, me too.

7 Q. I tried to give you my definition of what  
8 efficient use was and you didn't like it. So I am  
9 trying to get a clearer definition of how you use the  
10 term. And that's -- I don't mean to go around and  
11 around here. I have thrown out conservation and you  
12 said no, that's not what you mean. So what do you mean  
13 by efficient use of natural resources?

14 A. Well, and I don't mean to beat around the bush  
15 again, but what I mentioned to you already is that it is  
16 to use those resources in the most efficient manner.

17 Q. And again, what is your criteria to determine  
18 whether the resource has been used in the most efficient  
19 manner? What do you look at to determine that?

20 A. Well, can you restate the question or perhaps  
21 rephrase it, if you are so kind.

22 Q. I will try to rephrase it. You have indicated  
23 that, and correct me if I am wrong, that promoting the  
24 efficient use means you use the resource efficiently.

25 A. Correct.

1 Q. So I asked what is the criteria you use to  
2 determine whether someone has used the resource  
3 efficiently.

4 A. Well, I haven't performed any studies to  
5 determine this. However, we, or Staff has looked at the  
6 minimum or like the nondiscretionary use of water, which  
7 typically is 3,000 gallons, so what you need for your  
8 basic, most basic needs.

9 Q. So basically you have determined that 3,000  
10 gallons is, I think the term has been used in this  
11 proceeding before, a lifeline commodity, basically you  
12 need that to sustain life?

13 A. You could say that.

14 Q. And that means that at 3,000 gallons that's how  
15 much you need just to flush toilets and basically go  
16 about your normal business?

17 A. You know, without granularizing completely, yes.

18 Q. Okay. And so when Staff sets a 3,000 gallon  
19 tier, it is based solely on that factor, that that is  
20 the minimum amount of water needed to sustain a person  
21 or residence?

22 A. Yes.

23 Q. Okay. And it doesn't take any consideration of  
24 the unique character of a community or cost of service  
25 study?

1 A. It does.

2 Q. Okay. How does it do that? How does it take  
3 into consideration the unique character of the community  
4 or cost of service study?

5 A. Staff's rate design, you mean?

6 Q. The 3,000 gallons.

7 A. Okay. I thought you were asking that as a broad  
8 question.

9 Q. No, no. I am still on the 3,000 gallon first  
10 tier.

11 A. All right. Well, that's not part of the cost of  
12 service study.

13 Q. Okay. So again, as far as the 3,000 gallons,  
14 that's set no matter what the circumstances are as far  
15 as the average use of the system, the character of the  
16 community, or the cost of service study, is that  
17 correct?

18 A. Yes.

19 Q. Under what circumstances would Staff recommend  
20 something other than 3,000 gallons as its first tier?

21 A. Well, in this case we are recommending something  
22 lower than 3,000, the first tier, but for  
23 nonresidential. So we do recommend something higher  
24 than 3,000 when it is not residential.

25 Q. And would you agree that the use of a low first

1 tier tends to subsidize the low water user?

2 A. In what type of setting?

3 Q. In almost any setting. I mean if you use a  
4 3,000-gallon tier and that's the only tier you are going  
5 to look at, is your first tier, doesn't that first block  
6 end up being subsidized?

7 A. By whom? I am sorry, I just need some more  
8 information.

9 Q. By all the other customers, and even customers  
10 in the same class that use more water.

11 A. You could say that.

12 Q. And did you -- do you recall that the G schedule  
13 attached to the application for Mr. Bourassa reflected a  
14 cost of service study?

15 A. Yes.

16 Q. And Schedule G-8, page 3 -- and if you have it  
17 in front of you, that's great. I have a copy or you can  
18 just take it subject to check. It indicates that the  
19 demand cost related to a five-eighths inch meter for the  
20 LPSCO system is 41.63 per month.

21 A. If you have a copy close by.

22 Q. Sure.

23 A. If you may. Thank you.

24 ACALJ NODES: This is an exhibit to  
25 Mr. Bourassa's?

1 MR. SULLIVAN: This is part of the application,  
2 Your Honor, and part of his direct testimony. It is  
3 exhibit -- it is the G schedules.

4 ACALJ NODES: Yes, okay.

5 MR. SULLIVAN: And particularly Schedule G-8,  
6 page 3 --

7 ACALJ NODES: Okay.

8 MR. SULLIVAN: -- is what I am looking at.

9 MS. MITCHELL: What did you say, G?

10 MR. SULLIVAN: G-8, page 3.

11 BY MR. SULLIVAN:

12 Q. And the name of the schedule is computation of  
13 demand charge and commodity. Do you see in the lower  
14 right-hand corner the monthly minimums, and then  
15 five-eighths monthly minimum meter ratio and demand  
16 charge?

17 A. I do.

18 Q. Would you agree that that exhibit concluded from  
19 his cost of service study that the full demand charge  
20 for five-eighths inch meter costs 41.63?

21 A. I can see that that was one of his findings.

22 Q. Okay. And that would be, under a traditional  
23 cost of service, that would be what you would put in a  
24 monthly minimum charge, correct?

25 A. Not necessarily.

1 Q. Okay. What do you try to recover in your  
2 monthly minimum charge?

3 A. Well, typically, for example, if you were to  
4 look at perhaps a Schedule G-3, page 1 --

5 Q. Okay.

6 A. If you were to look at that Schedule G-3,  
7 page 1, lines 4 through 6, typically that's what you  
8 would put on your minimum charge or, you know, as you  
9 indicated.

10 Now, bear in mind that these numbers that you  
11 gave me or these schedules that you kindly provided to  
12 me derived significantly, well, derived from the numbers  
13 in the surrebuttal schedules. For example, the meter  
14 number is not negative; rather, it is around a million  
15 dollars. And the demand number that you were talking  
16 about awhile back ago, instead of being 34 million, it  
17 is somewhere around 31 million.

18 Q. Okay. But you don't, you then don't propose to  
19 put any of the demand charge in the monthly minimum?

20 A. Well --

21 Q. Demand cost, I should say.

22 A. Yes. And it is funny that you mention that,  
23 because you know, I did contemplate looking at and I  
24 have looked at these schedules, looking at the demand  
25 item. And although you could argue it appears to be

1 some type of a fixed cost, it depends on the commodity  
2 charge rather than on the fixed charge.

3 Q. Would you explain that?

4 A. Sure. As more customers create more demand for  
5 the system itself, the way to recover those revenues  
6 would be through the commodity charge, not through the  
7 discharge, just because there is more demand into a  
8 system for that.

9 Now, the company may have to incur those costs.  
10 Then those would be fixed costs to a company. But that  
11 doesn't mean that they wouldn't have to be put in the  
12 minimum charge to customers; rather, it would be more  
13 appropriate to put them in the commodity charge.

14 Q. Isn't it actually oftentimes the demand  
15 component divided to some extent between commodity and  
16 the monthly minimum?

17 A. It is treated that way sometimes, yes.

18 Q. And the demand charge reflects the subcosts of  
19 capital to serve the system, correct, the facilities  
20 that are already in place?

21 A. It may reflect that.

22 Q. And you allocate those costs in a cost of  
23 service study based upon some allocation factor such as  
24 the peak demand of the system, correct?

25 A. Yes.

1 Q. Okay. And so in trying to come up with a rate  
2 design, how did you utilize your -- the cost of service  
3 study that was presented by the company to come up with  
4 your Staff recommendation?

5 A. Certainly. And if you look, for example, and  
6 this schedule, since we are on G-3, for example, if you  
7 look at what you just mentioned, yes, there is high  
8 demand, there is all this. We did factor into account  
9 that there was a huge charge that we could put into a  
10 commodity charge.

11 Now, we did provide, and, you know, after we  
12 updated our rate design after surrebuttal, and again the  
13 cost of service study looks different from direct  
14 schedules, as the ones we are looking at right now to  
15 surrebuttal schedules, we provided them with enough  
16 money in the minimum charge and even for the  
17 residential, which was like around 40 percent from the  
18 base in the present rate design.

19 So, I mean we looked at it. Again, we used it  
20 as a guideline, but, you know, we took into account the  
21 other factors.

22 Q. The Staff's recommendation is a \$10 minimum,  
23 correct, for both three-quarters --

24 A. For both three-quarters --

25 Q. -- and five-eighths?

1 A. Yes, sir.

2 Q. And I guess I am asking exactly how did you get  
3 to that figure.

4 A. Okay. Now, keep in mind that for five-eighths  
5 and three-fourths inch meter there is less than  
6 60 customers in that customer meter class, if I am not  
7 mistaken. When we looked at the present rates and the  
8 rate impact this was going to have to its ratepayers,  
9 present rates were \$6.75 for the five-eighths,  
10 three-fourths inch meter for all classes, and the  
11 three-fourths inch meter for all classes was \$8.30.

12 We put both of the, for both meter classes \$10  
13 in the Staff recommended. And that, you know, was done  
14 perhaps as some type of a policy decision that was done.

15 Q. The \$10 reflects a policy decision?

16 A. Well, not just a policy decision, but reflects,  
17 takes into account the rate impact to both the  
18 three-fourths and the five-eighths.

19 Q. Wouldn't you agree that although the impact of  
20 the company and city's proposed rates may be a greater  
21 percentage in the average and median usage, that  
22 proposal actually spreads the cost of the increase among  
23 more customers than the Staff's or RUCO's rate design?

24 A. Well, again, this is why I prepared this  
25 schedule. Although I am glad the city and the company

1 reached an agreement, if you look at my typical bill  
2 analysis, for example, submitted as Schedule S-4, the  
3 increase for customers that use no water at all, it is  
4 128 percent. For people that use 1,000 or less, it is  
5 127 percent or more. For people that use 3,000 or less,  
6 it is over 127 percent again.

7           So to respond to your question I also think it  
8 is important to reiterate what I mentioned about the  
9 crossover points. Somebody, or a person that utilizes  
10 100,000 gallons that has a one-inch meter is going to  
11 pay less money than somebody who has a three-fourths  
12 inch meter on the residential side. So I don't see  
13 that's --

14       Q.     Explain that again. I am sorry, I missed -- say  
15 that again.

16       A.     After looking at the rates, somebody that were  
17 to use 100,000 gallons and has a one-inch meter  
18 customer, and it is a residential customer, is going to  
19 pay more for her or his bill than somebody that has a  
20 three-fourths inch meter and uses 100,000 gallons. So  
21 that's what typically Staff refers to as a crossover  
22 point.

23           ACALJ NODES: Mr. Chaves, Mr. Sullivan, can I  
24 interrupt?

25           MR. SULLIVAN: Certainly. I am having a hard

1 time following, so it will allow me --

2 ACALJ NODES: Okay.

3

4

EXAMINATION

5 BY ACALJ NODES:

6 Q. Mr. Chaves, you looked at the -- and let's just  
7 talk about the residential class.

8 A. Yes.

9 Q. You already stated you understand there were  
10 only somewhat less than 60 customers in the five-eighths  
11 by three-quarter inch meter size, correct?

12 A. Yes, Your Honor.

13 Q. And there were 8,000 some residential customers  
14 in the three-quarter inch class?

15 A. That is correct.

16 Q. And then there were another 5,000 some customers  
17 in the one-inch residential metered class, correct?

18 A. That's correct.

19 Q. Now, when you were designing your rates -- well,  
20 first of all let me ask. Is that typically what you see  
21 for residential customers in a water company's system?  
22 Do you typically see that many residential customers in  
23 the three-quarter inch and one-inch meter sizes?

24 A. Not to my experience.

25 Q. In fact, it is actually very unusual to have

1 that high of a percentage of residential customers in  
2 those two larger metered classes, correct?

3 A. That is correct, Your Honor.

4 Q. Okay. So when designing your rates -- well, let  
5 me ask, in this case did you take into consideration the  
6 unusual nature of the residential customer classes as  
7 far as meter sizes go to try to acknowledge that unique  
8 nature of the residential classes in this company's  
9 system in order to try to mitigate the impact on those  
10 larger size residential customers, larger meter size?

11 A. Yes, Your Honor. We had taken those  
12 considerations as well.

13 Q. Well, if that's the case, wouldn't it be more  
14 appropriate to -- as I understand your rate design, you  
15 have a one-inch meter rate that applies to residential,  
16 commercial, industrial, and irrigation. They all pay  
17 the same rate, correct?

18 A. That's correct.

19 Q. But given the number of one-inch meter size  
20 customers on this particular system, wouldn't it have  
21 been more appropriate to carve out a separate one-inch  
22 residential rate design that perhaps was more consistent  
23 with the design that you have created for, say, the  
24 three-quarter inch meter customers residential because  
25 of the different type of makeup of LPSCO's residential

1 water customers?

2 A. Your Honor, that seems like a very good idea.

3 Q. Okay.

4 A. But we didn't do it.

5 Q. No, I understand you didn't. And, you know,  
6 there are a lot of judgment calls --

7 A. Certainly.

8 Q. -- when you are trying to design rates. And I  
9 understand that. But let me ask you this. In your  
10 opinion, would it be reasonable if you had a rate for  
11 one-inch meter residential customers that was perhaps a  
12 lower monthly minimum as well as a three-tier commodity  
13 charge, but that was -- but at which were both breakover  
14 points and the monthly minimum charge perhaps a little  
15 bit more than the three-quarter inch residential  
16 customers, do you think that would be a reasonable  
17 outcome in this particular case, although it may not  
18 necessarily be appropriate in another case where you  
19 don't have the same number of residential customers with  
20 those larger meter sizes?

21 A. Well, in this particular case, I would have to  
22 agree with that, although there is similar  
23 considerations to be put into effect, like the meter  
24 capacity multipliers that we typically use, and those  
25 customers have the potential of using much more water

1 than, let's say, the five-eighths or the three-fourths.

2 Q. Okay.

3 A. But, you know, given the special situation of  
4 this residential one-inch class, that seems like a  
5 reasonable proposal --

6 Q. All right.

7 A. -- or alternative.

8 Q. So, for example, if, at a minimum, if you had a  
9 one-inch meter size, if you design something where your  
10 monthly minimum instead of \$25 were, say, \$15 for the  
11 one-inch residential, and then a three-tiered commodity  
12 rate that broke out something like zero to 5 and then 5  
13 to 15 and then 15 and over -- and I am just throwing  
14 this out as kind -- and in order to bring some fairness  
15 and perhaps mitigate rate shock and so forth, would  
16 something along those lines, do you believe would that  
17 be a reasonable approach? And then, of course, you  
18 would have to restructure in order to recover the  
19 revenue requirement some of the other rates, but at  
20 least for the residential customers, and it seems like  
21 the one-inch meters are the ones who would be most  
22 affected by the type of rate design that currently  
23 exists in your schedules.

24 A. Yes. And I can certainly see your concern, Your  
25 Honor. One of the bigger issues here, though, is that

1 92 percent of the Litchfield Park's customers are  
2 residential.

3 Q. Yes.

4 A. So if we were to make such a big switch on the  
5 one-inch, or if we were to make another one on the  
6 three-fourths, it would be a great rate impact even more  
7 so to --

8 Q. Right.

9 A. -- commercial or so on and so forth. Again, we,  
10 Staff tries to come up with the most reasonable rates as  
11 it can.

12 Q. Sure.

13 A. And I see that, that the alternative you  
14 proposed, it is something I didn't think of at the  
15 moment of doing it.

16 Q. No. And normally you wouldn't expect to have  
17 this makeup of customers. But it seems to me that in  
18 order to be -- because right now, it seems the gap  
19 between the three-quarter and one-inch meter sizes for  
20 residential is so broad, is so wide, that it really  
21 seems to put much more of the burden on the one-inch  
22 customers who may have a home, through no fault of their  
23 own, that just happens to have a one-inch meter, and  
24 they don't really have any control over that, but would  
25 still promote conservation through an inverted tier

1 structure.

2 Do you think that perhaps between now and the  
3 next time that you testify, would that give you enough  
4 time to try to come up with some kind of an alternative  
5 that -- and even if you have to even out the recovery  
6 between, you know, maybe make the three-quarter inch  
7 meter rates a little higher and the one-inch meter rates  
8 a little lower with a three-tier, maybe come up with  
9 something that you think is appropriate that still  
10 recovers the revenue requirement, just as an  
11 alternative?

12 A. I can try my best.

13 Q. Okay. And I know you are really busy and  
14 everybody on Staff is. But it just occurs to me that  
15 that may be a more equitable result in this particular  
16 circumstance.

17 A. Yes, Your Honor.

18 MS. MITCHELL: Excuse me, Judge Nodes. When was  
19 it that you were looking for Staff's alternative rate  
20 design?

21 ACALJ NODES: Well, I guess by Thursday.

22 MS. MITCHELL: Oh, okay. Why certainly, Your  
23 Honor.

24 ACALJ NODES: You know, I know it is difficult,  
25 given Staff resources, but it just seems to me we are

1 not going to have -- I would like to have an alternative  
2 Staff proposal that tries to somehow narrow that gap  
3 between, and giving recognition to the unique nature of  
4 this system, if possible. Okay? All right. Thank you.

5 Mr. Sullivan, I know you are not going to be  
6 here for that proposal. But, you know, we can only do  
7 so much.

8 MR. SULLIVAN: I appreciate that. My consultant  
9 will hopefully have an opportunity to look at it and go  
10 from there.

11

12 CROSS-EXAMINATION CONTINUED

13 BY MR. SULLIVAN:

14 Q. But Mr. Chaves, in looking at the company and  
15 city joint proposal, do you recognize that there is an  
16 effort to spread out the third tier so that it  
17 doesn't -- so that the conservation aspect of that is  
18 focused more on the large user?

19 A. Yes, against the spread, yes. And I can see,  
20 yes.

21 Q. Do you agree that there is more opportunity for  
22 conservation from the large user than, say, even a 5- or  
23 10,000 gallon user?

24 A. That is relative. I mean, if you are talking  
25 about a company that's 92 percent residential,

1 92 percent of its customers might not be using high  
2 levels like the commercial, or they might not be in the  
3 last two tiers.

4 Q. But just looking -- well, and I have the  
5 H schedules if we need to hand them out, but looking  
6 just at the three-quarter inch and the one-inch  
7 customers, wouldn't you agree that there is a  
8 significant additional amount of water use during the  
9 summertime, in other words, they go beyond the 50,000  
10 gallon limit in the summertime than they do in the  
11 wintertime?

12 A. Yes.

13 Q. Which would indicate that there is probably  
14 discretionary outside water?

15 A. Certainly.

16 Q. And are you familiar with the City of Litchfield  
17 Park?

18 A. I am not.

19 Q. Okay. If I were to indicate to you that it  
20 prides itself on having some greenery and trees, and it  
21 is a well established community that's one of the older  
22 communities in the valley, would you have any reason to  
23 disagree with that?

24 A. I have read that in the docket.

25 Q. Okay. Is it your -- is it Staff's intent to try

1 to change the basic makeup of the City of Litchfield  
2 Park?

3 A. No.

4 Q. Okay. So in designing rates, should we be  
5 looking at trying to find a fair level of cost that  
6 allows those customers that want to maintain that  
7 lifestyle to do so, while still encouraging  
8 conservation?

9 A. Some people may argue that those are mutually  
10 exclusive. But I think the purpose of rate design is to  
11 come up with fair and reasonable rates.

12 Q. Okay. And if you look at the Schedule H for the  
13 three-quarter and five-eighths, again, the summer usage  
14 is much greater, so the average -- when you deal with an  
15 average customer on an annual basis, it is really not  
16 looking at the seasonal use, correct, it is looking at  
17 the total number?

18 A. It is looking at the average.

19 Q. Right. And so if during the winter the average  
20 is 6,000, but it is 20,000 in the summer, where do you  
21 think you should be focusing your attention, at the  
22 higher average, the summer average, or on the winter  
23 average?

24 A. I would say the whole year average.

25 Q. Okay.

1 A. Finding a third way. I'm sorry.

2 Q. But again, does the company and the city's  
3 proposal attempt to find a medium that creates breaks  
4 that recognize that conservation at the high end is  
5 important and encourages conservation at that, at that  
6 break?

7 MS. MITCHELL: I need to object to that. I  
8 think the company and the city need to speak to what  
9 they intend their own rate design to do.

10 ACALJ NODES: Well --

11 MS. MITCHELL: Maybe you can rephrase it.

12 ACALJ NODES: Let me ask, are you familiar with  
13 the agreed rate schedule, the rate design that the city  
14 and the company entered into or that they agreed to?

15 MR. SULLIVAN: S-4 indicates that. That's what  
16 the company proposed is. It is actually the joint --

17 THE WITNESS: Right. I believe that's A-20 and  
18 A-21 or somewhere around that.

19 ACALJ NODES: Oh, you are right. Okay.

20 THE WITNESS: In order for me to do this  
21 Exhibit S-4, I had to rely on that --

22 ACALJ NODES: Right.

23 THE WITNESS: -- to an extent. I don't know it  
24 by heart.

25 ACALJ NODES: Let me ask you this. Have you

1 ever seen in your experience at the Commission that the  
2 Commission would approve a residential rate design that  
3 had blocks set at 15,000, 35,000 and 50,000 or 15,000,  
4 85,000, and 100,000? Have you ever seen any Commission  
5 approved rate designs anywhere remotely close to those  
6 levels of blocks?

7 THE WITNESS: For residential?

8 ACALJ NODES: For residential.

9 THE WITNESS: I have not.

10 ACALJ NODES: And in fact, typically what the  
11 Commission approves in the residential area are rate  
12 designs that are similar to what you have proposed,  
13 which is something like zero to 3,000 and then 9,000 or  
14 10,000 perhaps and above, and maybe going up, perhaps,  
15 to 5,000 to 15,000 at the most for the upper block of  
16 the residential class, correct?

17 THE WITNESS: Yes, Your Honor.

18 ACALJ NODES: And do you believe it is  
19 appropriate for the Commission to approve a rate design  
20 that includes a low commodity rate for usage in the  
21 35- to 50,000 and above level of usage for residential  
22 customers?

23 THE WITNESS: No, Your Honor.

24 ACALJ NODES: And based on your knowledge of the  
25 Commission's concerns as a matter of policy, is it your

1 understanding that the Commission has strongly  
2 discouraged the use of groundwater for purposes of turf  
3 irrigation, especially on golf courses?

4 THE WITNESS: Yes, Your Honor.

5 ACALJ NODES: And do you believe it is  
6 reasonable for the Commission to try to -- or not  
7 encourage residential customers to pour groundwater on  
8 their yards so that they can have yards that look like  
9 golf courses?

10 THE WITNESS: Yes, Your Honor.

11 ACALJ NODES: Okay.

12 THE WITNESS: It was a long question, so I lost  
13 track there for a little bit.

14 ACALJ NODES: Okay. All right. Go ahead,  
15 Mr. Sullivan.

16 BY MR. SULLIVAN:

17 Q. Is it your understanding that the focus of the  
18 Commission regarding turf has been new turf issues, not  
19 trying to change lifestyles of existing communities?

20 A. Can you repeat the question. I am sorry.

21 Q. I said, as far as the Commission's concern  
22 regarding new golf courses and large turf uses, hasn't  
23 the focus primarily been on new uses?

24 A. You can say that, and also not in the misuse of  
25 water.

1 Q. Okay. Is it your opinion and testimony that  
2 using water on lawns is a misuse of water?

3 A. It depends.

4 Q. How?

5 A. If there is no water whatsoever, I mean if you  
6 are in a hypothetical company that has no water  
7 whatsoever and you can only use so much, I don't think  
8 you will be, you know, putting water on your lawn, for  
9 example.

10 Q. Certainly there are curtailment situations where  
11 even the Commission rules clearly recognize the ability  
12 to preclude the use for outside watering. There is no  
13 evidence in this record or that you are aware of that  
14 LPSCO is running short of water to meet the needs of its  
15 customers, is there?

16 A. Not to my understanding. However, you have to  
17 remember that water is a limited resource.

18 Q. I understand. But at the same time, don't you  
19 believe that in designing rates that cost of service is  
20 a major factor that should be looked at in designing  
21 those rates?

22 A. It is a factor that we have looked at when  
23 designing the rates.

24 Q. I will show you a copy -- I think I have it  
25 here. I misplaced it. This is in Mr. Bourassa's

1 rejoinder testimony. It is Exhibit TJB-RJ3.

2 ACALJ NODES: Did you mark that?

3 MR. SULLIVAN: No. It is just for the  
4 convenience of the witness.

5 ACALJ NODES: Do you want to give a copy to the  
6 other parties so they know?

7 MR. SULLIVAN: No. I figured everybody else  
8 would have their testimony. But if they don't...

9 BY MR. SULLIVAN:

10 Q. Would you agree -- this was an analysis that  
11 Mr. Bourassa did relating to the Staff's proposed rates.  
12 Have you seen that in his rejoinder testimony?

13 A. I believe so. I read their rejoinder awhile  
14 back ago, but I believe it was in his testimony. I  
15 don't remember what attachment it was, but...

16 Q. Well, take it subject to check that it is  
17 Exhibit TJB-RJ3 to his rejoinder testimony. Does this  
18 reflect that the return on rate base derived for the  
19 three-quarter inch customers based upon the Staff's  
20 recommendation is only 2.3 percent?

21 A. That's what the schedule shows.

22 Q. Okay. And would you agree that no party to this  
23 proceeding has proposed that the company receive only a  
24 return on rate base of 2.3 percent?

25 A. Right.

1 Q. And would you also agree that the subsidization  
2 is even greater at the lower volumes of uses than it is  
3 for the class as a whole?

4 A. Can you repeat that, please.

5 Q. Would you agree that -- let me put it a  
6 different way. If the return, if you look at just the  
7 first 3,000 of usage, the return would even be lower  
8 than 2.3 percent?

9 A. All other things remaining equal, based on this  
10 schedule, yes.

11 Q. And do you think it is fair and equitable to the  
12 other customers to subsidize three-quarter inch meter  
13 customers in that way?

14 A. Well, it is part of taking into account rate  
15 impacts. That's, you know, as we just discussed. And,  
16 you know, and as I will be working on some three-tiered  
17 rates for the one-inch, you know, it has to come, you  
18 know, we have to design rates that are fair and  
19 reasonable to all and then -- and yes, so my answer will  
20 be yes.

21 Q. And when you look at percentages of increases,  
22 isn't it true that the lesser amount you pay today the  
23 lesser dollar increase makes a bigger percentage  
24 increase?

25 A. Can you repeat the question, please.

1 Q. If I am paying \$5 today, a \$10 rate would be  
2 100 percent increase, correct?

3 A. Right.

4 Q. But if I am paying \$100 today, a \$50 increase  
5 would only be a 50 percent increase, wouldn't it?

6 A. Sure.

7 Q. Okay. So the percentage doesn't really tell you  
8 the magnitude of the increase itself, does it?

9 A. True.

10 Q. It is really more the dollar issue than the  
11 percentage, isn't it?

12 A. Yes.

13 Q. And so when you are looking at larger user  
14 customers, they are paying a greater dollar amount  
15 today, and so the dollars that they are being asked to  
16 pay in addition may be a lesser percentage but far  
17 greater dollars, correct?

18 A. Yes.

19 Q. When you are looking at your rate design, one of  
20 the things that the city and the company rate design, I  
21 believe, was attempting to do was take that into  
22 consideration, is what is the actual dollar impact that  
23 you are looking at in the larger users, and trying to  
24 spread that impact not based upon dollars per se, I mean  
25 percentage per se, but upon dollar impacts. Do you

1 understand that?

2 A. I understand that.

3 Q. Okay. And so when you did your analysis in S-4,  
4 I mean, you are just looking basically at percentages?  
5 I mean, that's the focal point of what your end column  
6 was, right, just percentage?

7 A. Not necessarily either. I mean you have to  
8 understand also that when you are looking at dollar  
9 impacts, you have to see that for the people that may be  
10 using the three-fourths, one-inch residential, they are  
11 not using water as some type of resource for some  
12 business which they are going to get a return from.  
13 They are doing to live.

14 Q. Well, this company actually has a breakdown  
15 between residential and commercial meters regardless of  
16 size, correct? I mean, in other words, there are  
17 commercial customers who are on three-quarter inch  
18 meters, right?

19 A. Right.

20 Q. So the size of the meter doesn't reflect the  
21 type of use, per se?

22 A. Not necessarily.

23 Q. Right.

24 A. But the volume of usage does.

25 Q. Okay.

1 A. So if you look at our rate design, the more you  
2 use it, the more you will have to pay for it.

3 Q. But your rate design ends up with a relatively  
4 accelerated hitting the third tier, correct? I mean, in  
5 other words, the third breakpoint is hit fairly quickly,  
6 and so all the use thereafter has that same impact,  
7 correct?

8 A. It is not the same impact, but it is an  
9 incremental impact, yes.

10 Q. And again, would you agree that the city and the  
11 company has attempted to broaden that impact by moving  
12 the third tier as well as the first and second tier  
13 somewhat?

14 A. It is a result of what the company and the city  
15 did. I know what the intention was, but yes.

16 Q. And in fact, as far as the one-inch customer,  
17 they lowered the first block from 20,000 gallons to  
18 15,000 gallons, isn't that correct?

19 A. That's correct. Now, keep in mind the first  
20 tier is at 1.90, which is still higher than Staff's  
21 1.88.

22 Q. Right, by two cents.

23 A. There you go.

24 Q. But the second tier is less than Staff's second  
25 tier, and then there is a third tier that's much higher

1 than Staff's second tier, correct?

2 A. Correct.

3 Q. And wouldn't you agree that when you are dealing  
4 with a significant increase, that you are spreading --  
5 that one of the ways to ameliorate that is to broaden  
6 the rate tiers to minimize the adverse impact over a  
7 larger group of customers?

8 A. Yes.

9 Q. And you could think of this as stages, since we  
10 are dealing with a fairly large increase in this case,  
11 and possibly take something close to the company's and  
12 the city's proposed rate design with the focus of, in  
13 the next rate design, if the increase is less, to start  
14 moving more to a narrowing of those blocks or those  
15 tiers. Is that a legitimate way to deal with  
16 gradualism?

17 A. You could say that.

18 MR. SULLIVAN: Since I never got to use my  
19 notes, let me look. I think I covered most everything.

20 ACALJ NODES: Let me ask while you are looking.  
21 Mr. Chaves, from what you know of the Commission's  
22 actions in the past, at least as long as you have been  
23 here, do you believe the Commission would be inclined to  
24 encourage high use residential consumption through lower  
25 commodity rates than might otherwise be applicable, or

1 do you believe that the Commission is likely to be  
2 inclined to attempt to encourage conservation by making  
3 the blocks -- by making the cutover points lower so that  
4 high use residential customers pay a higher rate for  
5 that higher usage?

6 THE WITNESS: I would agree with the latter.

7 ACALJ NODES: Okay.

8 THE WITNESS: Meaning lower breakover points.  
9 That's in my experience in just over four years.

10 ACALJ NODES: Yes. That's what you have seen in  
11 Commission decisions?

12 THE WITNESS: Correct.

13 ACALJ NODES: As well as in discussions at the  
14 Commission open meetings regarding conservation efforts  
15 through inverted block rate design?

16 THE WITNESS: That is correct, Your Honor.

17 ACALJ NODES: All right.

18 BY MR. SULLIVAN:

19 Q. And maybe as a general statement that's true,  
20 but don't you believe, Mr. Chaves, that the Commission  
21 should take into consideration the character of the  
22 community that it is regulating as well as just the  
23 whole concept of conservation?

24 A. I think the Commission considers multiple,  
25 multiple factors, and I don't think they haven't

1 considered that factor in their decisions.

2 Q. Just going back to S-4 for a second, just to try  
3 and clarify, the percentage increases that you are  
4 spreading on the final page of that exhibit, is it  
5 correct that you are spreading the Staff's recommended  
6 rates for the Staff, on the Staff side, and then you are  
7 comparing it to the company's proposed rates on the  
8 other side, so the percentages are like two different  
9 revenue levels, you are collecting different revenues?

10 A. That's correct.

11 Q. Okay.

12 A. Yes.

13 Q. So if you were comparing the joint proposal to  
14 with Staff's recommended rates, the percentages would be  
15 different, correct?

16 A. Well, this is the joint proposal. The joint  
17 proposal shows the company's revenue requirement.

18 Q. Well --

19 A. So if you were to change the rate design, or not  
20 the rate design but the revenue requirement, the numbers  
21 would change. But is that what you are --

22 Q. Well, are you aware that the city's witness put  
23 on a rate design that was intended to reach the Staff's  
24 revenue level?

25 A. Right.

1 Q. And that the joint proposal isn't to reach a  
2 revenue level per se, but it is to deal with certain  
3 rate design principles that would be applied to any  
4 revenue level?

5 A. I can understand that.

6 Q. Okay.

7 A. Yes.

8 Q. So if you wanted to compare apples to apples,  
9 you could look at the proposed rate design with the  
10 Staff's recommended levels as well as the Staff's rates,  
11 correct? Because you have been providing --

12 A. I mean it could be done, yes. Certainly you  
13 could do it. But in the time frame I had, you know, I  
14 thought it would be more appropriate to show, since this  
15 is the company's proposed rate design, to use the  
16 company's proposed revenue requirement.

17 Q. But Litchfield Park provided testimony on rates  
18 that went to the Commission's revenue requirement,  
19 correct?

20 A. Initially, until it settled with the --

21 Q. No, no. Did you not look at Exhibit LP-4? I  
22 don't have an extra copy of it, but I will --

23 A. I just found it I think. It is the last one.

24 Q. There you go.

25 A. That's the way it always works.

1 Q. And LP-4 has a different set of monthly minimums  
2 and commodity rates than what you proposed as the  
3 company or as the joint numbers, right?

4 A. That's correct.

5 Q. And that's because it is seeking a different  
6 revenue level? It is trying to meet, it is trying to  
7 achieve the Staff's required revenue?

8 A. Correct.

9 Q. Okay. And again, if you utilized the city's  
10 proposed rate design, you get a little different  
11 percentages than what you have shown here on your  
12 schedule PMC-2W, correct?

13 A. That's correct.

14 Q. After you reached your \$10 minimum charge, how  
15 does Staff go about determining minimum charges for the  
16 other classes of customers or other meter sizes?

17 A. We place weight on the meter multiplier. It is  
18 the American Water Works meter capacity multiplier. We  
19 also look at what the company has proposed and try to,  
20 you know, try to get to a happy place, happy medium.

21 Q. Do you do an independent look at the cost of  
22 service at that point?

23 A. We have looked at, by then we have looked at the  
24 cost of service.

25 Q. But what I am asking is, after you have decided

1 to use the \$10 minimum, do you go back and look at the  
2 cost of service again to verify whether your spread  
3 based upon meter size and examination on what the  
4 company has proposed is consistent?

5 A. Yes. I mean in this particular case what we  
6 looked at is just very few customers percentage wise  
7 and, you know, number wise in the five-eighths and  
8 three-fourths inch.

9 Q. And that's why you used the same minimum for  
10 both five-eighths and three-quarters, correct?

11 A. There were multiple factors in that decision, so  
12 that's one of the factors.

13 Q. Okay. What other factors were in there?

14 A. Well, when we looked at how, and again I believe  
15 I have mentioned this before, but how the present rates  
16 work, present rates were like \$6.75 for the five-eighths  
17 and the three-fourths, whereas the three-fourths were  
18 \$8.30. So if you look at the difference between those  
19 two meters, it wasn't as big.

20 And I believe that's in your same schedule,  
21 LP-4. Yes, should be 6.75 for the five-eighths,  
22 three-fourths, and \$8.30 for the three-fourths inch. So  
23 we are not looking at a big difference in those meters  
24 either. So that's not a factor.

25 Q. Then after the three-quarter inch did you just

1 use the meter factor to ratchet up to the percentage?

2 A. Yes, we considered that. That was one of the  
3 factors we used.

4 Q. I am just asking did you do anything else other  
5 than that. Is that basically what you did?

6 A. No. As I mentioned before, also we tried to  
7 establish that at least a minimum of 30 to 40 percent in  
8 total for the whole residential comes from base or  
9 minimum charges so that they have revenue stability. So  
10 from 30 to 40 percent it would be considered reasonable.

11 Q. Okay. So from the minimum, from the minimum  
12 charge you are expecting to get 30 to 40 percent of the  
13 total company revenues?

14 A. Not by meter, not by meter class, but by, but  
15 let's say like residential. So residential at least  
16 has, from the residential you take a minimum of 30 to  
17 40 percent of base charges in your minimum charge.

18 Q. But if the overall revenue for that class is  
19 under -- is not coming up to the rate of return that you  
20 are proposing, doesn't that just perpetuate a subsidy  
21 again at the lower blocks in the lower usage?

22 A. Well, I didn't -- I would have to maybe like see  
23 if it perpetuates it. Can you ask me once again,  
24 please.

25 Q. Sure. If the total -- what I understood you to

1 say, and correct me if I am wrong, is that when you set  
2 the minimum you are not looking at the minimum revenues  
3 of the company, but you are looking within the total  
4 revenues for, say, the three-quarter inch residential  
5 class, correct?

6 A. Uh-huh.

7 Q. And if it is only recovering as a total class  
8 2.3 percent, then you are also going to have a lesser  
9 minimum, because you are only taking 30 to 40 percent of  
10 what is recovering a very small return.

11 A. No, not necessarily. Again, I don't do it, it  
12 is not done by meter size. What we try to do, for  
13 example, that as a whole -- and maybe I misstated what I  
14 intended to say -- that as a whole that the company  
15 would recover from 30 to 40 percent, and that's  
16 including all, like, residential, commercial, and  
17 irrigation, 30 to 40 percent from base charges as a  
18 total.

19 Now, I know that as far as residential, that is  
20 met. In this case it is just barely 30 percent, which  
21 is still within our reasonable level. And actually  
22 residential, it is a little bit more than that. And  
23 then as a whole, it is 30 percent from base charges  
24 under Staff's recommended rates.

25 MR. SULLIVAN: Okay. I understand. No further

1 questions.

2 ACALJ NODES: Are you going to have redirect  
3 based on Mr. Sullivan's cross?

4 MS. MITCHELL: Well, you know, I tried to be  
5 accommodating, but, you know, Mr. Chaves has to come  
6 back because the company is not ready to cross. And it  
7 is the company and the city's proposed rate design. So  
8 I don't know why I can't save my redirect until the  
9 company finishes its cross. It is late.

10 ACALJ NODES: Okay. All right. Well, we are  
11 going to adjourn until Thursday morning at 9:30. And at  
12 that point, I guess, Ms. Mitchell, we are going to go  
13 back to the original order of Mr. Scott, Mr. Manrique,  
14 and Mr. Michlik, and then finally Mr. Chaves will be  
15 recalled.

16 MS. MITCHELL: Yes.

17 ACALJ NODES: Okay. Well, if we don't finish  
18 Thursday, then we will plod on into Friday, I guess.  
19 All right. And again, of course you have to clear out  
20 everything tonight because of the Commission's open  
21 meeting.

22 All right. We will see you in a couple of days.

23 (The hearing recessed at 5:09 p.m.)

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1 STATE OF ARIZONA )  
 ) ss.  
 2 COUNTY OF MARICOPA )

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I, COLETTE E. ROSS, Certified Reporter  
 No. 50658 for the State of Arizona, do hereby certify  
 that the foregoing printed pages constitute a full, true  
 and accurate transcript of the proceedings had in the  
 foregoing matter, all done to the best of my skill and  
 ability.

WITNESS my hand this 13th day of January,  
 2010.




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COLETTE E. ROSS  
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