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1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4 TRANSCRIPT OF PROCEEDINGS

5 On-the-Record Presentation

6 February 9, 2006  
7 Jefferson City, Missouri  
8 Volume 7  
9

10 In the Matter of the Tariff Filing )  
11 of Aquila, Inc., to Implement a )  
12 General Rate Increase for Retail )  
Electric Service Provided to ) Case No. ER-2005-0436  
Customers in its MPS and L&P )  
Missouri Service Areas )

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15 MORRIS L. WOODRUFF, Presiding,  
16 SENIOR REGULATORY LAW JUDGE.

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18 JEFF DAVIS, Chairman,  
19 CONNIE MURRAY,  
STEVE GAW,  
ROBERT M. CLAYTON,  
LINWARD "LIN" APPLING,  
20 COMMISSIONERS.

21

22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
24 MIDWEST LITIGATION SERVICES

25

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20  
21 FOR: Staff of the Missouri Public  
Service Commission.

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Welcome everyone. We're  
3 here today in Case ER-2005-0436, which is the general rate  
4 increase of Aquila, Incorporated for its electric service.  
5 And we're here today for a question and answer session and  
6 on-the-record presentation concerning the Stipulation &  
7 Agreement that's been filed in this case. We'll begin  
8 today by taking entries of appearance, beginning with  
9 Aquila.

10 MR. SWEARENGEN: Thank you, your Honor.  
11 Let the record show the appearance of James C. Swearengen  
12 and Janet E. Wheeler on behalf of Aquila, Inc. Thank you.

13 JUDGE WOODRUFF: And for Staff?

14 MR. WILLIAMS: Nathan Williams, Senior  
15 Counsel, P.O. Box 360, Jefferson City, Missouri 65102.

16 JUDGE WOODRUFF: Thank you. And for Public  
17 Counsel?

18 MR. MILLS: Lewis Mills appearing on behalf  
19 of Office of the Public Counsel and the public. My  
20 address is Post Office Box 2230, Jefferson City, Missouri  
21 65102.

22 JUDGE WOODRUFF: Thank you. For AARP? I  
23 don't see Mr. Coffman here.

24 All right. We'll go on then to Ag  
25 Processing and Sedalia Industrial Energy Users.

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1                   MR. CONRAD: Your Honor, on behalf of those  
2 parties, please let the record reflect Stuart W. Conrad's  
3 appearance.

4                   JUDGE WOODRUFF: Thank you. Let me clarify  
5 something. Ag Processing is in the steam case only; is  
6 that right?

7                   MR. CONRAD: No. Your Honor, they  
8 intervened in the electric case also, but they did --  
9 SIEUA obviously is not in the steam case.

10                  JUDGE WOODRUFF: Okay. All right. Thank  
11 you. Anyone here for Calpine? I don't see anyone.

12                  City of Kansas City?

13                  MR. COMLEY: Judge Woodruff, let the record  
14 reflect the entry of appearance of Mark W. Comley, Newman,  
15 Comley & Ruth, 601 Monroe, Suite 301, Jefferson City,  
16 Missouri 65101 on behalf of the City of Kansas City.

17                  JUDGE WOODRUFF: Thank you. City of  
18 St. Joseph?

19                  MR. STEINMEIER: Thank you, your Honor.  
20 Let the record reflect the appearance of William D.  
21 Steinmeier and Mary Ann (Garr) Young of William D.  
22 Steinmeier, PC, on behalf of the City of St. Joseph.

23                  JUDGE WOODRUFF: For Empire District?

24                  MR. KEEVIL: Yes, Judge. Appearing on  
25 behalf of the Empire District, Jeffrey Keevil, law firm of

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1     Stewart & Keevil, LLC, address 4603 John Garry Drive,  
2     Suite 11, Columbia, Missouri 65203.

3                     JUDGE WOODRUFF:   For the Federal Executive  
4     Agencies?

5                     MAJOR PAULSON:   Appearing for the Federal  
6     Executive Agencies, Major Craig Paulson.   My address is as  
7     indicated in the record.

8                     JUDGE WOODRUFF:   And for the Department of  
9     Natural Resources?

10                    MS. WOODS:   Good morning, your Honor.  
11     Shelley A. Woods, Assistant Attorney General, Post Office  
12     Box 899, Jefferson City, Missouri 65102, appearing on  
13     behalf of the Missouri Department of Natural Resources.

14                    JUDGE WOODRUFF:   Thank you.   And  
15     Mr. Coffman has just arrived, so I'll give you a chance to  
16     enter your appearance.

17                    MR. COFFMAN:   John B. Coffman.   Address is  
18     871 Tuxedo Boulevard, St. Louis, Missouri 63119, appearing  
19     on behalf of AARP.

20                    JUDGE WOODRUFF:   All right.   Thank you.   I  
21     believe that's all the parties.   I don't have any  
22     Commissioners here at the moment.   Is there anything  
23     anyone wants to bring up before I go off the record to  
24     find the Commissioners?

25                    (No response.)

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1 JUDGE WOODRUFF: All right. With that,  
2 then, we will adjourn for 5 minutes, and we'll come back  
3 at 20 minutes 'til 10.

4 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

5 JUDGE WOODRUFF: We're back from break, and  
6 the purpose of today's proceeding, of course, is for the  
7 Commissioners to ask questions about the Stipulation &  
8 Agreement, so we'll begin with Chairman Davis. Do you  
9 have any questions, sir?

10 CHAIRMAN DAVIS: Okay. Mr. Swearengen,  
11 there are a few things that are in the stip and many  
12 things that are not in the stip. I guess this stip puts  
13 \$140 million worth of plant into rate base; is that  
14 correct?

15 MR. SWEARENGEN: I believe that's correct.

16 CHAIRMAN DAVIS: Does the stip say where  
17 that plant is?

18 MR. SWEARENGEN: It does not.

19 JUDGE WOODRUFF: Mr. Swearengen, if you'd  
20 use your microphone.

21 CHAIRMAN DAVIS: So if we approve this  
22 settlement, are we, in fact, approving the siting,  
23 construction and prudence of the South Harper peaking  
24 facility?

25 MR. SWEARENGEN: I do not believe so.

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1                   CHAIRMAN DAVIS: Do any of the other  
2 attorneys here have a view to the contrary? Feel free to  
3 raise your hand.

4                   JUDGE WOODRUFF: Mr. Coffman?

5                   MR. COFFMAN: I don't have a view to the  
6 contrary, but in fact I would like to point out that I  
7 think that the Commission would in fact be prohibited from  
8 approving the siting or prudence or reasonableness at this  
9 time, given the fact that the South Harper facility is  
10 under an injunction not to operate and that doing so would  
11 violate 393.135.

12                  CHAIRMAN DAVIS: So you're reassuring me  
13 that this is not prejudgment?

14                  MR. COFFMAN: Yeah, that's my opinion. I  
15 agree with Mr. Swearengen.

16                  CHAIRMAN DAVIS: Mr. Coffman, can a plant  
17 be used and useful when there's a court order to tear it  
18 down?

19                  MR. COFFMAN: I do not believe so.

20                  CHAIRMAN DAVIS: Isn't there a court order  
21 to tear this plant down?

22                  MR. COFFMAN: Yes.

23                  CHAIRMAN DAVIS: So if there's a -- so I  
24 guess explain this to me. Is the legal theory that at one  
25 time the plant was used and useful, therefore they're

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1 entitled to recover something in rate base, or can you  
2 explain how this thing is supposed to work?

3 MR. COFFMAN: I believe some of the  
4 language in the stipulation, which by the way I did not  
5 sign, but was present for some of the sausage making, at  
6 least some of the language refers to some accounting  
7 procedures and some numbers that will be calculated and  
8 put into certain accounts relating to the South Harper  
9 facility.

10 But it is my understanding that it is clear  
11 to the parties that this is a black-box settlement, and  
12 there is no agreement as to what exactly is in the rate  
13 base or in the revenue requirement, that this is a  
14 settlement for settlement purposes. I think there's some  
15 general agreement that \$140 million would be a reasonable  
16 amount of rate base for this utility to have, but that  
17 there is no agreement as to what is in that number.

18 CHAIRMAN DAVIS: So is this like free-range  
19 plant that they can move around to other parts of their  
20 territory?

21 MR. COFFMAN: Others may have a different  
22 way to describe it, but the way I understand it is that it  
23 is a generic rate base that will be on their books at this  
24 point in time, and if the issues relating to the current  
25 facility are litigated in the future, it would be -- every

1 argument would be fair game again.

2 CHAIRMAN DAVIS: Okay. Thank you,  
3 Mr. Coffman. It's going to take me a few moments to  
4 digest all this information on this.

5 Mr. Mills, you did not sign the  
6 Stipulation & Agreement either, did you?

7 MR. MILLS: That is correct.

8 CHAIRMAN DAVIS: Okay. Now, if --  
9 Mr. Swearingen, if I get into HC material here, please  
10 feel free to stop me at any time and we can maybe go  
11 in-camera for a short period.

12 But as part of the stipulation, Aquila has  
13 agreed to fund a pension liability that -- or I guess  
14 something that they -- they characterized it as an  
15 accounting error. You might have characterized it  
16 differently. Is that fair to say?

17 MR. MILLS: That's fair to say.  
18 Technically, though, I believe it's OPEBs rather than  
19 pensions, other post-employment benefits.

20 CHAIRMAN DAVIS: So it was other  
21 post-employment benefits, not pensions?

22 MR. MILLS: Right.

23 CHAIRMAN DAVIS: Okay. I appreciate you  
24 making that clarification to me. So if you're not signing  
25 onto this stip, but the stip has language in it that says,

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1 if this settlement's approved, then that complaint's going  
2 to go away; is that correct?

3 MR. MILLS: Well, if Aquila deposits an  
4 additional \$1.4 million into their trust fund for OPEBs,  
5 then we agree to dismiss our complaint that is Case  
6 No. EC-2006-0171.

7 CHAIRMAN DAVIS: Okay.

8 MR. MILLS: They have already funded  
9 7 million. There was a dispute among the parties, with  
10 Staff and the company believing that the total due was  
11 about 7 million. We calculated it differently, thought it  
12 was about 8.4. So this makes up the difference and  
13 deposits the entire amount that we felt was underfunded  
14 when we filed the complaint.

15 CHAIRMAN DAVIS: Mr. Swearengen, if  
16 somebody at Aquila makes an 8.4 million or a \$7 million  
17 mistake, what happens?

18 MR. SWEARENGEN: Beats me, Judge. You have  
19 to be a little more specific.

20 CHAIRMAN DAVIS: Well, I mean, you're  
21 paying \$7 million for pension or OPEB, other -- what do we  
22 call that?

23 MR. MILLS: Other post-employment benefits.

24 CHAIRMAN DAVIS: Other post-employment  
25 benefits. I mean, this is 7 or \$8 million of employee

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1     benefits that wasn't funded. I mean --

2                     MR. SWEARENGEN: Judge, I think our  
3     position on that is we responded or answered in the  
4     complaint case was that we believe that the statute was  
5     not violated, that the statute that the Public Counsel has  
6     cited has to do with setting up the fund, first of all,  
7     and then making payments from the fund. I think the  
8     question that we got into was the timing of contributions  
9     and how much those contributions should be.

10                    So that's -- that was the issue before the  
11     Commission, and is the issue before the Commission in the  
12     complaint case, and I think we have just come up with a  
13     way to resolve that. And the way Mr. Mills characterized  
14     it, if and when we make that additional payment, he's  
15     willing to dismiss the complaint. So I wouldn't  
16     characterize it as a mistake.

17                    CHAIRMAN DAVIS: Okay. All right. So  
18     you're not going to characterize it as a mistake. But  
19     ultimately, Mr. Mills, if this settlement gets approved,  
20     then you will withdraw your complaint on their -- they'll  
21     pay -- if this settlement is approved and they pay an  
22     additional 1.4 million, then you'll withdraw your  
23     complaint?

24                    MR. MILLS: Right, because at that point  
25     the only relief pending would be penalties, and we will

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1 have gotten all the monetary relief, all the money in the  
2 fund that we thought was due. So that's the reason we're  
3 willing to withdraw our complaint is the funding is  
4 complete.

5 CHAIRMAN DAVIS: All right.

6 Mr. Swearengen, this stipulation doesn't say anything  
7 about the employee bonuses that were recently, I guess,  
8 paid, announced, however you want to phrase it. Are the  
9 shareholders picking up the tab for all of those?

10 MR. SWEARENGEN: You know, I'm not aware  
11 that that was an issue in this proceeding. My  
12 recollection would be that that was something that would  
13 have occurred outside the test year in this case. I could  
14 be mistaken on that.

15 CHAIRMAN DAVIS: Were there any bonuses  
16 paid during the test year?

17 MR. SWEARENGEN: I'm sure that there were,  
18 and I can't tell you how they may have been handled in  
19 this for ratemaking purposes.

20 CHAIRMAN DAVIS: Mr. Coffman, Mr. Conrad,  
21 Mr. Mills, anyone want to take a -- do you have any  
22 thoughts? You know, are employee bonuses part of this  
23 stip? If so, when, what were they, were they paid, were  
24 they not paid, who's paying for them?

25 MR. MILLS: From my perspective -- and we

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1 didn't get as deeply into the revenue requirement -- if  
2 there were dollars included in the revenue requirement for  
3 any significant management bonuses, we would have been  
4 opposed to including those. I think when you're talking  
5 about a black-box settlement, you can't say there is X  
6 amount for bonuses, X amount for paper clips. It's all  
7 just a lump. But we certainly would not have supported  
8 paying out any management bonuses from ratepayer funds.

9 CHAIRMAN DAVIS: Okay. So let me just --  
10 so there's no real way of knowing for sure, but to the  
11 best of your knowledge, there are no ratepayer funds being  
12 spent on bonuses?

13 MR. MILLS: There is no explicit payment of  
14 funds for bonuses in the settlement that the signatory  
15 parties have arranged. As I said, there's no way of  
16 knowing what that money is spent on. They could tomorrow  
17 go out and fire half their work force and give the money  
18 to their management.

19 The dollars, as I understand the  
20 calculation, didn't include bonuses, but that doesn't mean  
21 that from Aquila's point of view that they are in there or  
22 from other parties' point of view that they're in there,  
23 because it's simply a dollar amount and Aquila can use  
24 that money to whatever -- within its discretion it  
25 chooses.

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1                   CHAIRMAN DAVIS: Mr. Mills, we've got part  
2 of the stip, there's \$140 million worth of plant that may  
3 or may not be South Harper. Are -- I'm trying to think of  
4 the way to phrase this here. So was South Harper within  
5 the -- was South Harper within the test year?

6                   MR. MILLS: The operational dates for the  
7 South Harper turbines I believe were met within the test  
8 year as updated.

9                   CHAIRMAN DAVIS: Does anybody have anything  
10 contrary to say to that?

11                   (No response.)

12                   CHAIRMAN DAVIS: Okay. So, Mr. Swearengen,  
13 do you have an opinion as to how good or how bad Aquila  
14 did in siting the location of the South Harper peaking  
15 facility?

16                   MR. SWEARENGEN: I think that the -- and of  
17 course, once again I need to be careful here because this  
18 will be an issue, I think, before the Commission in the  
19 certificate case that we filed a couple of weeks ago to  
20 certificate South Harper. But I think the evidence in  
21 that case will show that they were careful and did a good  
22 job in determining a location and a site for that plant.

23                   CHAIRMAN DAVIS: If the board of Aquila --  
24 Mr. Swearengen, if the board of Aquila is going to reward  
25 management with bonuses for good performance, should they

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1     punish management for bad performance?

2                   MR. SWEARENGEN:  I think they certainly are  
3     capable of doing that.  Whether they should or not would  
4     be a decision that they would have to make.

5                   CHAIRMAN DAVIS:  If they chose not to,  
6     should we as the Commission do something about it, if we  
7     feel there's bad management?

8                   MR. SWEARENGEN:  I think that within your  
9     statutory authority you can take whatever action you deem  
10    appropriate, based on the circumstances that are presented  
11    to you in a case.

12                  MR. MILLS:  Mr. Chairman, if I may?

13                  CHAIRMAN DAVIS:  Certainly, Mr. Mills.  
14    Feel free to chime in here.

15                  MR. MILLS:  I think -- and I'm a little  
16    leery about speaking about something that hasn't happened  
17    yet.  I have been working on and had hoped to file before  
18    today a request that the Commission initiate a management  
19    audit of Aquila.  I plan to file that, depending on how  
20    long we stay in here today, either tomorrow or early next  
21    week.  I think that will give the Commission the  
22    opportunity to explore in detail and in depth whether or  
23    not there are significant failings at Aquila's upper-level  
24    management.

25                  MR. SWEARENGEN:  And if I could add to

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1     that, I think there is some precedent for this Commission  
2     making what has sometimes been referred to as management  
3     efficiency adjustments, both positive and negative, in the  
4     context of rate cases based on evidence presented in those  
5     cases. So I would say that to that extent you certainly  
6     have some authority to do something in this general area.

7                     CHAIRMAN DAVIS: But not in this case if we  
8     approve this stip, do we?

9                     MR. SWEARENGEN: I would agree with that.

10                    CHAIRMAN DAVIS: Mr. Swearengen, this  
11     stipulation is silent as to fuel costs, correct?

12                    MR. SWEARENGEN: I believe that's true.

13                    CHAIRMAN DAVIS: So what -- help me  
14     understand what is the state of Aquila's fuel cost  
15     recovery today.

16                    MR. SWEARENGEN: Well, if this stipulation  
17     is approved, the interim energy charge will terminate.  
18     There will be a one-time credit of approximately a million  
19     dollars, I believe, for the St. Joe Light & Power  
20     customers, the L&P customers, and then they will be --  
21     they, Aquila, will recover its fuel costs through the base  
22     rates that would be approved in this case.

23                    CHAIRMAN DAVIS: And what are -- what are  
24     the base rates included?

25                    MR. SWEARENGEN: Well, once again, I think

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1   that this is a black-box settlement, so it will be unclear  
2   and subject to some discussion as to how much fuel costs  
3   are actually embedded in this case. But that's the reason  
4   that the company wants the opportunity to come back and  
5   file another case as early as July of this year, should  
6   this stipulation be approved, in order to recover what it  
7   anticipates will be escalating fuel costs in the future.

8                   CHAIRMAN DAVIS: Mr. Swearengen, would you  
9   be opposed or do you think your client would be opposed to  
10  sophisticated customers like those represented by  
11  Mr. Conrad just purchasing their own coal and having it  
12  delivered to the plant?

13                  MR. SWEARENGEN: I have no idea. I've  
14  never discussed that topic with them, so I don't know what  
15  their reaction to that would be.

16                  CHAIRMAN DAVIS: I know the industrial  
17  consumers are very concerned about their fuel costs, and I  
18  thought, well, maybe that would be one way that we could  
19  better manage it, if we would allow them to directly  
20  purchase their coal and have it delivered to the plant.

21                  MR. SWEARENGEN: It might be. Might be a  
22  good way to go. I don't know.

23                  CHAIRMAN DAVIS: So we don't know what the  
24  fuel costs, what the return on equity or anything other  
25  than what's in -- what's said in the stip here. Is that

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1     what people are going to tell me today?

2                     MR. SWEARENGEN:   That's what I would tell  
3     you, and I'm assuming that's what everyone else would tell  
4     you.   It is a black-box settlement.

5                     MR. WILLIAMS:   Chairman, the Staff can tell  
6     you the numbers it was relying on for entering into the  
7     Stipulation & Agreement.

8                     CHAIRMAN DAVIS:   Mr. Williams, please tell  
9     me the numbers that Staff was relying on entering into  
10    this agreement.

11                    MR. WILLIAMS:   I think Mr. Schallenberg  
12    would be the person to do that.

13                    CHAIRMAN DAVIS:   Okay.   We'll --

14                    JUDGE WOODRUFF:   Mr. Schallenberg, come  
15    forward, if you want to go ahead.

16                    CHAIRMAN DAVIS:   Yes.   Let's go ahead  
17    and -- let's go ahead and get Mr. Schallenberg up here.

18                    (Witness sworn.)

19                    JUDGE WOODRUFF:   You may ask your  
20    questions.

21    ROBERT SCHALLENBERG testified as follows:

22    QUESTIONS BY CHAIRMAN DAVIS:

23                    Q.     Mr. Schallenberg, what numbers did Staff  
24    rely on for fuel in recommending that this settlement be  
25    approved?

1           A.       The Staff would have used the preliminary  
2   numbers that were coming from its true-up as to the prices  
3   for -- and the big drivers for fuel was natural gas prices  
4   and purchased power.  It would have been using the prices  
5   that it would have seen through  
6   the -- I think it's October of this -- of 2005.  It would  
7   have relied on those prices to develop its cost of service  
8   estimate, which it did not finish in terms of the true-up,  
9   but it was developing that for this case at the time the  
10  Stipulation & Agreement was drafted.

11           Q.       So roughly what was the price of natural  
12  gas in October 2005?

13           A.       Well, there's the hurricane effect that was  
14  being discounted at the time the Staff was developing its  
15  case.  We would have been looking at gas prices in some  
16  cases, even hedged gas prices in excess of \$8 an MCF, and  
17  I think we were looking at some purchased power prices as  
18  high as -- I think there were some parties and some  
19  arguments for purchased power prices in excess of \$50 a  
20  megawatt hour.  And you need to look at both of those  
21  because --

22           Q.       Right.

23           A.       -- if purchased power is cheaper, it  
24  doesn't matter what the gas price is, you won't buy the  
25  gas and put it in the generator.  So it's the interaction

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1 of what Aquila can buy from the market and what the price  
2 is of natural gas, because it will take the cheaper of the  
3 two sources and that's what ends up in your fuel expense.

4 Q. And is this predicated on what kind of ROE?

5 A. The Staff's return on equity in its case up  
6 through its true-up, its high was 9.5 ROE. I think the  
7 low was in the 8s. The stipulation does have a provision  
8 in it regarding what they can book as an allowance for  
9 funds during construction in the period that it's agreed  
10 to, and in that calculation, the stipulation specifies  
11 they can use a 10 percent return on equity for calculation  
12 of AFDC to be added to construction projects while the  
13 Stipulation & Agreement is in effect.

14 Q. Mr. Schallenberg, do you recall what  
15 Aquila's ROE was in their recent -- I think it was Kansas  
16 that they had a rate case? Did they have a rate case in  
17 Kansas here in the last year or so?

18 A. They had a -- they've had a case in Kansas.  
19 I remember their fuel adjustment was an issue, and fuel  
20 purchasing. As I recall, the KCC awarded a return on  
21 equity. It was in the 10 to 10 and a half. I know it  
22 was -- it was 10 or greater. And I don't believe it was  
23 outside 10, though. So it would have been in the 10 to  
24 10 and a half range, as I recall.

25 Q. Mr. Schallenberg, do you think this

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1 settlement's a good deal for the ratepayers? Do you think  
2 it's a fair deal?

3 A. I think it's -- it's a fair settlement. I  
4 don't believe that ratepayers will perceive it as a good  
5 deal because I don't think they'll have all the  
6 information to evaluate all that went into arriving at it,  
7 but I believe it's a -- will result in just and reasonable  
8 rates, based on conditions as they exist today.

9 CHAIRMAN DAVIS: Okay. Judge, I don't have  
10 any questions of Mr. Schallenberg, but I think probably  
11 you ought to defer to my colleagues, in case they want to  
12 ask Mr. Schallenberg any questions while he's up here.

13 JUDGE WOODRUFF: Does anyone else want to  
14 ask any questions of Mr. Schallenberg? I'm sure he'll  
15 still be here.

16 COMMISSIONER MURRAY: I might ask one or  
17 two while he's here.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Mr. Schallenberg, in terms of Aquila's use  
20 of any fuel adjustment clause or ISRS clause, is that  
21 dealt with at all with the Stipulation & Agreement?

22 A. No. There have been no approvals or  
23 concessions made to Aquila as to fuel adjustment clause or  
24 any type of fuel recovery mechanism. The only thing the  
25 Stipulation & Agreement addresses is the termination of

1 the old interim energy charge, or old -- I mean, still in  
2 effect. It addresses the termination of that charge, and  
3 then the settlement of the potential refund obligation.

4 Q. And this leaves Aquila with all of their  
5 legal rights that they would otherwise have for either.  
6 The ISRS or the fuel adjustment clause in the future; is  
7 that correct?

8 A. It would for a fuel adjustment clause, the  
9 ISRS is usually for gas companies and water companies.

10 Q. That's right.

11 A. But the fuel --

12 Q. I get these confused.

13 A. There are a lot of -- but there's a lot of  
14 acronyms. But the fuel adjustment clause, Aquila has the  
15 same rights -- there's nothing in the agreement that  
16 either increases or decreases Aquila's rights regarding  
17 asking for any type of fuel recovery mechanism under  
18 SB 179.

19 Q. All right. And then what is your  
20 understanding of -- I believe it's paragraph of the  
21 Stipulation & Agreement that -- anyway, it's the one on  
22 fuel study, that Aquila agrees to do a study. It's  
23 No. 16.

24 A. Is that in the St. Joe, for the St. Joe?

25 Q. At the Sibley and Lake Road generating

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1 stations, will study the economics and operational issues  
2 associated with using the various fuels. How do you  
3 understand that will be done?

4 A. First, Aquila will -- because -- under the  
5 stip, will meet with everybody who declares themselves to  
6 be an interested party, and then will look at the  
7 economics which will be, in essence, the anticipated costs  
8 and benefits, as well as impact on the Sibley and Lake  
9 Road plants of utilizing these different sources as fuels  
10 at the power plant.

11 So the first part will be is, there will be  
12 a meeting with everybody that's -- declares themselves to  
13 be interested, and then a study will be conducted based on  
14 the scope that comes from that meeting, and then the  
15 results will be produced in a report.

16 Q. And do you have any kind of a time line for  
17 that?

18 A. There's none specified. I would -- I would  
19 say that with the input from interested parties, time line  
20 is usually one of the items that is discussed. As  
21 somebody who's done this a lot, there's what you think it  
22 will take, and then it usually takes something different  
23 from that, but the input will address the timeline, but  
24 there's none established as of today.

25 Q. Do you know when the first meeting will be?

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1           A.       No.

2                   COMMISSIONER MURRAY:  I believe that's all  
3  I have for you, at least right now.  Thank you.

4                   JUDGE WOODRUFF:  Any other Commissioners  
5  want to ask any?

6                   CHAIRMAN DAVIS:  I've got one more.

7  FURTHER QUESTIONS BY CHAIRMAN DAVIS:

8           Q.       What was the maximum fuel recovery  
9  permitted under the IEC in Aquila's last rate case?  Was  
10 it \$4.75 premium BTU; is that correct?

11          A.       I don't -- I don't remember the actual  
12 number per rate.  I know it was about 16 million for the  
13 MoPub district, and it's about 2.4 million per year on the  
14 St. Joe district.  That's about the amount of revenue.

15          Q.       Right.

16          A.       I don't recall the exact number, but we can  
17 get that.

18          Q.       Okay.  And what would the numbers be now?

19          A.       I think the growth, the growth that's  
20 occurred since our last settlement would probably be  
21 generating a couple of hundred thousand dollars greater  
22 than the numbers I just gave you.  So they're still  
23 producing revenues.  The IEC was producing revenues  
24 slightly a couple hundred thousand greater than the  
25 16 million and the 2.4 million.  That's the MoPub

0055

1 districts and St. Joe district respectively.

2 Q. What does this respective settlement do  
3 over and above that?

4 A. What this does is it eliminates that  
5 surcharge off the customers' bill, and then in lieu of  
6 that, they will raise the permanent rates on the bill by  
7 the amounts that are specified in here. For example, if  
8 you take just the MoPub district, the \$16-plus million  
9 that they're collecting from the surcharge will go away.

10 Q. Right.

11 A. And they will raise their permanent rates  
12 by 38.5 million. So customers will see basically a  
13 \$22 million increase in their bills from what exists today  
14 with the present IEC, or what some of us call is we're  
15 rolling the IEC into permanent rates and then adding about  
16 another \$22 million to the permanent rate increase.

17 So there's a difference between what the  
18 customers will actually see as out-of-pocket expense,  
19 which in the MoPub district is about 22 million, versus  
20 what we are actually raising the permanent rates to do,  
21 because the IEC will be an offset. The surcharge will be  
22 off their bills.

23 CHAIRMAN DAVIS: Okay. I think that's all  
24 the questions I've got for this witness, unless -- here we  
25 go.

1                   COMMISSIONER CLAYTON: I think I want to  
2 follow up.

3 QUESTIONS BY COMMISSIONER CLAYTON:

4           Q.       Mr. Schallenberg, I want to make sure I'm  
5 writing this down. You had as a fuel expense in the old  
6 MoPub district 16 million, and then the St. Joe district  
7 2 million. Did I hear you correctly?

8           A.       2.4.

9           Q.       2.4 million. And then what did you say in  
10 this case that the equivalent number would be?

11          A.       What's going to happen is, first of all,  
12 that's not fuel. That's what the IEC --

13          Q.       That's what the surcharge is?

14          A.       That's what the surcharge --

15          Q.       It's not a total fuel expense?

16          A.       Right. That's a part to recover a portion  
17 of their total fuel.

18          Q.       Do you recall what the total fuel expense  
19 was, including the surcharge, in the old case?

20          A.       I don't, but I know we could get that  
21 information today.

22          Q.       Well, I think you said it was -- you  
23 concluded your last statement with the Chairman by saying  
24 it was a \$22 million increase, I believe; is that correct?

25          A.       What I was saying is, of the increase

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1   that's in this Stipulation & Agreement, the customers, for  
2   example, in the MoPublic district will see an increase in  
3   their bills of \$22 million, which is they'll see the  
4   38.5 million increase that we will raise the permanent  
5   rates, but they will experience no longer paying the  
6   surcharge, which is generating somewhere in excess of  
7   16 million. So that's where the 22 million is the  
8   out-of-pocket additional cost to the consumers in the  
9   MoPub district.

10           Q.       Okay. That's just in the L&P district.  
11   What is the increase there?

12           A.       I think it's -- I probably should look that  
13   up. I think it's 6 something. According to --

14           Q.       An increase of 6 or a total of 6?

15           A.       I'm going to look and see what the --  
16   it's -- on page 2 of the Stipulation & Agreement, it says  
17   that they will be raising the permanent rates 6.3. So  
18   given that the IEC is 2.4, they'll see about an  
19   out-of-pocket additional cost of about \$4 million in the  
20   St. Joe district.

21           Q.       See, I'm confused here. That's the total  
22   increase. That's not just -- I thought you were talking  
23   about fuel and those other figures.

24           A.       No. All I was mentioning was that the IEC,  
25   which is a recovery of some portion of fuel, will in

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1 essence terminate.

2 Q. And you're rolling that figure into the  
3 overall base rates?

4 A. Rolling it into the overall increase that's  
5 being proposed in this Stipulation & Agreement. So the  
6 customer will not pay -- is already paying the surcharge,  
7 so the net cost to the consumer is the difference between  
8 those two items.

9 COMMISSIONER CLAYTON: Okay. I'll wait for  
10 the rest. Thank you.

11 JUDGE WOODRUFF: All right. Thank you,  
12 Mr. Schallenberg. You can step down.

13 MR. WILLIAMS: If I might?

14 JUDGE WOODRUFF: Okay.

15 MR. WILLIAMS: Commissioner Murray, you  
16 were asking about impacts of the agreement on fuel  
17 adjustment clauses. One potential impact is, if you would  
18 have to seek one in a general rate increase case, because  
19 there is a moratorium until July 1. I did want to point  
20 that out.

21 JUDGE WOODRUFF: All right. Chairman Davis  
22 has left the room for a moment. So we'll go on to  
23 Commissioner Murphy, if you want to go ahead and start  
24 asking your questions.

25 COMMISSIONER MURRAY: Thank you, Judge. My

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1 first question is for Ms. Woods, and I just want to  
2 clarify, DNR did sign the Stipulation & Agreement; is that  
3 correct?

4 MS. WOODS: That's correct.

5 COMMISSIONER MURRAY: The copy I have  
6 doesn't show your signature. And then my next question is  
7 for Mr. Conrad and Major Paulson, for both of you,  
8 regarding the class cost of service and rate design issue.  
9 And can you explain, can each of you explain -- and I  
10 don't care who goes first -- how close this comes to the  
11 treatment that you would prefer? Can you give me some  
12 idea?

13 MR. CONRAD: Well, let me take a stab at  
14 that. I think as is -- as is true with any compromise,  
15 it represents something of the middle ground. Otherwise  
16 it's -- you know, it's a concession or somebody just gives  
17 up and falls away.

18 We were not -- as we worked through this,  
19 we were not unsatisfied or dissatisfied with the shift. I  
20 think if you were to look at it -- and I don't want to  
21 perhaps go too far into it, Judge -- but I think it's  
22 probably in the middle of the shifts that we had -- had  
23 advocated something like about half, halfway.

24 But it -- that's obviously from -- from our  
25 perspective, and someone else's perspective is going to

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1     differ on how much that that movement is because we were  
2     starting in some instances from slightly different --  
3     slightly different bases.

4                   COMMISSIONER MURRAY:   Okay.

5                   MR. CONRAD:   I'm trying to be responsive,  
6     but without getting into the trade.   I mean, we're -- we  
7     were sufficiently satisfied with this that we felt it was  
8     appropriate to get on board with it.

9                   COMMISSIONER MURRAY:   And is it your  
10    position that this does move at least somewhat closer to  
11    actual cost of service?

12                   MR. CONRAD:   Yes.

13                   COMMISSIONER MURRAY:   Okay.   Thank you.  
14    Major Paulson?

15                   MAJOR PAULSON:   Yes, ma'am.   From our  
16    perspective, it's reasonable, and if you look at the  
17    settlement as a package, taking the whole thing as a  
18    package, we think it's a reasonable settlement, and we  
19    think it does move towards cost of service.   One of the  
20    things that we looked at was that, you know, it's not --  
21    you don't necessarily in a cost of service case get  
22    everything you want right away, so that was -- we thought  
23    this was a very good first step.

24                   COMMISSIONER MURRAY:   Okay.   Thank you  
25    both.   I don't think I have any other questions.   Thank

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1     you.

2                     JUDGE WOODRUFF:  We'll come back to

3     Chairman Davis then.

4                     CHAIRMAN DAVIS:  I apologize for that.

5     Maybe we can just get a show of hands here or something.

6     When Aquila was building gas-fired generation back in the

7     decade of the '90s or even the early 2000s, did anyone

8     here object and say maybe that's not such a good idea?  I

9     am -- wait.  Mr. Coffman?

10                    MR. COFFMAN:  I do recall resource planning

11     meetings during that time where there was some concern

12     voiced at that time.  I'm not speaking for AARP, but --

13                    CHAIRMAN DAVIS:  Right.  In your previous

14     capacity?

15                    MR. COFFMAN:  Yeah.  I do recall that there

16     was some discussion at that time, and it has increased

17     over time, and I am --

18                    CHAIRMAN DAVIS:  Certainly it's heightened

19     to a fever pitch now; is that correct?

20                    MR. COFFMAN:  And I can say, I am

21     authorized to say that AARP does share the concerns of

22     others about Aquila's resource planning over the last few

23     years and is concerned about whether they have become too

24     reliant on natural gas.  That is true, you know, and I

25     don't think this stipulation really resolves those issues

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1 one way or the other, but I think it is, again, fair and  
2 that it is supportable by the record and by any of the  
3 positions that AARP has taken in this case.

4 CHAIRMAN DAVIS: Is there any record of  
5 those IRP meetings that we could refer back to? I see  
6 Mr. Conrad wanting to get in on this action. Mr. Conrad,  
7 we'll get to you in just a second. I'm sorry. Go ahead,  
8 Mr. Conrad. I guess Mr. Coffman's done. I just wanted to  
9 give --

10 MR. CONRAD: I'll give John a breather.  
11 Judge, from our client's perspective to your question, we  
12 typically have not been -- and I intend no criticism by  
13 this, but we typically have not been invited to the party,  
14 the IRP party. It often is a proceeding that is done on  
15 submissions by the utility to the Staff, rather than a  
16 filing. No docket as such is initiated. There may be an  
17 EF or some kind of a tariff number or some tracking  
18 number, I guess is more proper under the EFIS system.

19 But we typically don't get notice of that  
20 and don't get involved at that level, and I'm learning to  
21 use the term granularity now.

22 The thing I think that we probably did  
23 observe from the 30,000-foot view over the period of time  
24 that you talked about is encompassed in your Honor's  
25 statement about, and some others, in the shift of this

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1 company's focus from being that of a provider to captive  
2 customers of the service territory to wishing to shift its  
3 focus into the competitive market as that was being  
4 perceived developing.

5                   And at that time, you know, we really  
6 didn't have control over those things. Obviously you  
7 can't put a pin in the calendar and say, ah-ha, if I had  
8 seen this coming, perhaps you would have run screaming and  
9 waving your arms. But we really didn't have the  
10 opportunity to do that. And I don't mean to be critical  
11 of that process. We're not uncomfortable with Staff, and  
12 I believe Public Counsel often participates in that  
13 process and quite rightly so.

14                   But there really has not been a forum  
15 provided for the other customers in most cases to have  
16 involvement in that. In more recent times, your Honor  
17 will recall the respective packages concerning Empire  
18 District and Kansas City Power & Light, in which the IRP  
19 process was expanded to include some other parties besides  
20 the Staff and Public Counsel.

21                   CHAIRMAN DAVIS: Okay. Thank you,  
22 Mr. Conrad. Mr. Steinmeier?

23                   MR. STEINMEIER: Well, your Honor, since  
24 you asked the question as generically as you did, I do  
25 want to just mention that on a national level in various

1 forums since the very early '90s, I personally have raised  
2 continuing concerns about over-reliance on natural gas as  
3 all that was going on in the '90s and into this decade.

4 Having said that, that is not directed to  
5 Aquila nor to the issues in this case nor to the matters  
6 reflected in this Stipulation & Agreement, and this would  
7 be the first Aquila matter to my recollection in which  
8 I've been involved.

9 CHAIRMAN DAVIS: Now, I'm sorry,  
10 Mr. Steinmeier, you're representing?

11 MR. STEINMEIER: The City of St. Joseph.

12 CHAIRMAN DAVIS: The City of St. Joseph.  
13 Mr. Comley, you're representing Cass County, correct?

14 MR. COMLEY: I'm representing the City of  
15 Kansas City.

16 CHAIRMAN DAVIS: Oh, you're representing  
17 the City of Kansas City. I apologize. I thought you were  
18 representing Cass County.

19 MR. COMLEY: I am familiar with that  
20 client.

21 CHAIRMAN DAVIS: But you're not here  
22 representing Cass County today?

23 MR. COMLEY: No, but I can tell you that  
24 the City of Kansas City, as many other parties are  
25 interested, too, would be making sure that Aquila is

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1   lawfully serving all of its customers with lawfully  
2   certificated plants and facilities.

3                   CHAIRMAN DAVIS:  Mr. Comley, is there  
4   anything unlawful in this stip?  Is there anything  
5   unlawful in this Stipulation & Agreement?

6                   MR. COMLEY:  I don't believe there is.

7                   CHAIRMAN DAVIS:  Okay.  Well --

8                   MR. COMLEY:  I think that -- you asked the  
9   question earlier about whether or not this stipulation  
10  would interfere or be a factor in other decisions the  
11  Commission may make in other cases.  I think that's the  
12  way it was.

13                  CHAIRMAN DAVIS:  Yes.

14                  MR. COMLEY:  Speaking then as a student of  
15  the stipulation, perhaps, I see this as a way of  
16  hypothetically creating a generation plant for the Staff,  
17  the company and all the other parties to review.  And this  
18  hypothetical plant has characteristics that resemble one  
19  that's very much involved in the press and in the Court of  
20  Appeals, but it is adopting or not accepting as lawful the  
21  construction and location of that plant.  That is how I  
22  view this stipulation.

23                  There are other provisions in the  
24  stipulation that I think they seem common, but I think  
25  it's paragraph 18, the Commission may want to take a look

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1 at more closely -- excuse me -- paragraph 19. Every  
2 stipulation that I have seen in this Commission contains a  
3 section of paragraphs on contingent waivers. The common  
4 waiver is that nothing in the Stipulation & Agreement will  
5 bind or prejudice the rights of the company or other  
6 parties by the terms of the stipulation.

7 And in this particular paragraph, there is  
8 specific mention that none of the parties are prejudiced  
9 or bound by the way the South Harper facility was treated  
10 in the stipulation. I think Mr. Coffman's also pointed  
11 out the provisions of Chapter 393, specifically 393.135  
12 and how it would play a factor in this stipulation.

13 CHAIRMAN DAVIS: Mr. Comley, let me follow  
14 up here. We have a statute on the books that requires  
15 plant to be used and useful, is that correct, before you  
16 put it in rate base?

17 MR. COMLEY: That's my understanding.

18 CHAIRMAN DAVIS: Okay. That's your  
19 understanding. So we're on the same page so far. So can  
20 we include the \$140 million in a stipulation for a, quote,  
21 hypothetical plant?

22 MR. COMLEY: My understanding is that I  
23 think you're authorized to approve the settlement on the  
24 terms that have been presented to you.

25 CHAIRMAN DAVIS: That doesn't make it

1     lawful, does it?

2                     MR. COMLEY:  I think you'd be authorized to  
3     approve the settlement on the terms that you have in front  
4     of you.

5                     CHAIRMAN DAVIS:  Mr. Coffman, do you want  
6     in on this action?

7                     MR. COFFMAN:  Yes.  I think it does deserve  
8     some discussion, because the wording of the stipulation is  
9     rather confusing, and I don't in fact blame the press for  
10    misunderstanding it.  But again, I don't believe that any  
11    of the parties nor the Commission would be bound in any  
12    way, as far as -- or agreeing or conceding or in any way  
13    addressing whether the South Harper facility is in this  
14    rate base or reflected in the revenue requirement or is  
15    sited in the proper place.

16                    And as to the wording of the statute, it  
17    specifically says that electric plant could not be  
18    included in rate base unless it was fully operational and  
19    used for service.  And so, again, I think that the intent  
20    of those who signed the stipulation, surely they were  
21    aware of this statute when they signed it and they knew  
22    that the Commission would not lawfully -- at that time  
23    they were aware of the current order from Judge Danderand  
24    in Cass County.

25                    However, AARP, and I think other parties,

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1 have been able to get to the bottom line, and if the  
2 revenue requirement and rate base numbers that are  
3 actually part of what would be approved in this  
4 stipulation, they've been able to get to those numbers  
5 even under the assumption that the South Harper plant is  
6 not in rate base. I understand that may be part of  
7 Staff's calculations or may be part of Aquila's  
8 calculations in supporting it.

9                   The beauty of a black-box settlement is  
10 that everybody is able to reach those numbers based on  
11 their own positions and their own numbers, and AARP's  
12 experts have run their calculations. And we have decided  
13 not to oppose the stipulation, not to object nor request a  
14 hearing because we think that, based on our position,  
15 including our position that the South Harper plant is not  
16 prudent or reasonable, we would still get to our  
17 recommended revenue requirement based on what we know now  
18 under what's in the record.

19                   And so although we may have wished for a  
20 different result or a longer moratorium or slightly  
21 different rate design, we think it's supportable and it  
22 would be a reasonable set of rates to approve.

23                   CHAIRMAN DAVIS: Mr. Coffman, in the  
24 tariffs that are part of this stip, there are what I would  
25 call some declining block rates, is that correct, where as

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1     you purchase more electricity, the price actually gets  
2     cheaper. Is that fair to say, or did I just misread that?

3                     MR. COFFMAN: I'm not sure if I would  
4     describe it that way.

5                     CHAIRMAN DAVIS: Okay. So -- and that's  
6     fine if you wouldn't describe it that way. Maybe they're  
7     recovering some of their administrative costs in the first  
8     block of rates that, you know, aren't in additional. I  
9     don't know.

10                    MR. COFFMAN: It's my understanding that  
11    the -- that the actual block structure that's now in place  
12    would not be changed. To the extent that that does occur,  
13    those relationships have not changed with the proposed  
14    tariff.

15                    CHAIRMAN DAVIS: Okay. Mr. Mills, did you  
16    want to add something there?

17                    MR. MILLS: Well, I think you're correct.  
18    There is -- there is -- for residential space heating,  
19    there is a declining block rate for the winter period.

20                    CHAIRMAN DAVIS: Okay.

21                    MR. MILLS: It's .0469 for the first hund--  
22    for the first thousand kilowatt hour blocks, and then  
23    .0336 for the usage over that mark.

24                    CHAIRMAN DAVIS: Mr. Mills, are you  
25    concerned at all that, you know, with -- obviously we're

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1   having one of the warmest winter heating seasons on record  
2   here, and we're very thankful for that, but if we were to  
3   have a really cold winter, could that declining block rate  
4   structure, you know, be a threat to Aquila's financial  
5   operations?

6                   MR. MILLS:   Well, that's not really for me  
7   to say.  I think from my point of view the declining block  
8   structure is beneficial to ratepayers who use space heat,  
9   electric space heat.  I can't imagine we'd be here today  
10  if Aquila thought that that was a significant danger to  
11  their well-being.

12                  CHAIRMAN DAVIS:  Okay.

13                  MR. MILLS:  And Mr. Chairman, if I may go  
14  back to one of your earlier questions about whether or not  
15  there's any documentation of parties challenging Aquila's  
16  reliance on natural gas generation, I can't say sitting  
17  here today that we have documentation of that.  I would be  
18  very surprised if the Office of Public Counsel didn't  
19  raise the issue in meetings and didn't have some  
20  documentation to show that that issue was raised and  
21  discussed, and I would be happy to search our files to see  
22  if we can come up with something to that if you wish.

23                  CHAIRMAN DAVIS:  Certainly.

24                  MR. MILLS:  Thank you.

25                  CHAIRMAN DAVIS:  Mr. Swearengen, I notice



1 of the stipulation, Item No. 5, Aquila will provide annual  
2 funding for energy efficiency and weatherization programs  
3 in the amount of \$193,000 annually. Is Aquila paying for  
4 that or are the ratepayers paying for that?

5 MS. WOODS: It's my understanding that  
6 Aquila is paying for that.

7 CHAIRMAN DAVIS: So that would be the  
8 shareholders of Aquila and not the ratepayers of Aquila?

9 MS. WOODS: That's my understanding.

10 CHAIRMAN DAVIS: Does anyone have an  
11 objection to that statement? Does anyone agree with that  
12 statement?

13 MR. MILLS: Well, now you got me. I  
14 certainly don't have an objection to that statement. I  
15 don't know that I can agree with it. This is a black-box  
16 settlement, as we discussed before, and you can't really  
17 say specifically that these -- that the bonuses that go to  
18 management are in the 38.5 million or they're not. You  
19 can't really say that this 139,000 is in the rates or not.  
20 There was not an explicit adjustment to the rates that the  
21 parties agreed to for this amount.

22 So I think you could certainly make the  
23 argument that it's not included in rates, and it certainly  
24 is not included explicitly in rates, but you can't say  
25 certainly, from this date forward, that this is not being

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1 recovered in rates.

2 MR. SWEARENGEN: Judge, if I could respond  
3 to that briefly on behalf of Aquila. I think if you look  
4 at paragraph 5 of the stipulation on page 4, certainly the  
5 intent and understanding of Aquila that that first  
6 sentence means what it says, that the agreed-to rate  
7 increases provide no rate recovery of any contribution for  
8 weatherization or any other programs proposed by Kansas  
9 City and/or MDNR, and that would be our position on that.  
10 I understand what Mr. Mills said and I understand his  
11 view. Thank you.

12 CHAIRMAN DAVIS: For, okay, no rate  
13 recovery of any contribution for weatherization or other  
14 programs. So essentially then you're saying that -- you  
15 infer that that statement means that the shareholders of  
16 Aquila are financing this program?

17 MR. SWEARENGEN: Yes, your Honor.

18 CHAIRMAN DAVIS: Okay. Now, that statement  
19 could be read to mean that, you know, Aquila could not  
20 seek a co-pay or contribution for -- from the  
21 beneficiaries of the weatherization program; is that  
22 correct?

23 MR. SWEARENGEN: I think you could read it  
24 that way, that's true.

25 CHAIRMAN DAVIS: Okay.

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1                   MR. SWEARENGEN: The rate increase doesn't  
2 provide for that. And I --

3                   CHAIRMAN DAVIS: The rate increase doesn't  
4 provide for that?

5                   MR. SWEARENGEN: That's correct. And I  
6 think, you know, Mr. Mills is correct. This is a  
7 black-box settlement, and nothing is binding except as  
8 provided herein. I don't think some of the parties would  
9 have agreed to this increase if they felt we were  
10 including these contributions in the revenue we're  
11 recovering. And it's not our belief that we are. It's  
12 our belief that the shareholders are picking up this  
13 \$193,000.

14                  CHAIRMAN DAVIS: Okay.

15                  MR. SWEARENGEN: And once again, if this  
16 issue would be litigated, the company's position would be  
17 that the shareholders should not pick up any of those  
18 dollars.

19                  CHAIRMAN DAVIS: Okay. Mr. Swearengen, as  
20 a matter of public policy, if Aquila pays to -- I mean,  
21 first of all, I guess, where does this weatherization  
22 money go?

23                  MR. SWEARENGEN: You know, I can't answer  
24 that.

25                  CHAIRMAN DAVIS: Ms. Woods?

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1 MS. WOODS: There are several local  
2 community action groups, and that's where the money goes.  
3 Primary among them is the City of Kansas City's group.

4 CHAIRMAN DAVIS: And so when it goes to the  
5 City of Kansas City's community action group and they  
6 disperse those funds, does that go to put new insulation  
7 in people's homes?

8 MS. WOODS: Frequently it depends on -- I  
9 think usually they go and they look at the home and they  
10 try to determine how to get that best to -- bang for the  
11 buck.

12 CHAIRMAN DAVIS: Uh-huh.

13 MS. WOODS: And oftentimes it is  
14 insulation. Sometimes it's -- there are a number of  
15 options.

16 CHAIRMAN DAVIS: They install new HVAC  
17 equipment at times?

18 MS. WOODS: Occasionally. Not often.  
19 That's -- there are certain federal guidelines that do  
20 apply. And again, as I said, it's kind of a where they  
21 get the most bang for their buck.

22 CHAIRMAN DAVIS: Do we have any estimate on  
23 what the utility is paying per average? I know there are  
24 waiting lists at all the community action agencies,  
25 correct?

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1 MS. WOODS: That's correct.

2 CHAIRMAN DAVIS: And I know that -- do you  
3 know what the average, you know, payment per customer that  
4 the utility makes or that, you know, that is expended by  
5 the community action agencies?

6 MS. WOODS: 2,050 per home is about an  
7 average.

8 CHAIRMAN DAVIS: And do we know what --  
9 what savings the customer realizes on average from that  
10 \$2,000 expenditure?

11 MS. WOODS: I'm advised it depends on  
12 whether it's natural gas or electric or some combination  
13 of the two, but there's about a 30 percent savings on  
14 average.

15 CHAIRMAN DAVIS: So, Ms. Woods, do you  
16 think these people who are receiving this benefit, that  
17 they ought to be paying a co-pay or anything, or do you  
18 think that they should just get all this weatherization  
19 for absolutely free?

20 MS. WOODS: You mean a co-pay or --

21 CHAIRMAN DAVIS: Uh-huh.

22 MS. WOODS: In terms of it coming out of  
23 the rates or a co-pay at the time that they obtain the  
24 service?

25 CHAIRMAN DAVIS: I'm -- well, obviously if

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1 they're receiving a \$2,000 -- approximately on average if  
2 they're receiving a \$2,000 benefit that, you know, could  
3 translate into them saving approximately 30 percent on  
4 their electric bill, don't you think they ought to be  
5 willing to maybe kick a dollar or two back to the  
6 community action agency for additional programs or  
7 something?

8 MS. WOODS: That's certainly something to  
9 look at. I really don't have an opinion. There are a  
10 number of arguments both ways. One is that by getting  
11 these homes weatherized, it's an overall benefit to  
12 everyone, including the utility, because people aren't  
13 incurring costs to collect the past due bills and the rest  
14 of the ratepayers aren't having to.

15 CHAIRMAN DAVIS: And it is important to  
16 remember that these are low-income families?

17 MS. WOODS: Yes. That is important to  
18 remember.

19 CHAIRMAN DAVIS: That I would -- is it safe  
20 to say that most of them are 150 percent of poverty level  
21 or below?

22 MS. WOODS: Yes, that is in fact part of  
23 the federal requirements.

24 CHAIRMAN DAVIS: That's part of the federal  
25 requirements?

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1 MS. WOODS: And this program is and will  
2 continue to be operated according to those requirements.

3 CHAIRMAN DAVIS: Now, Ms. Woods, you're  
4 here representing the Department of Natural Resources  
5 today, correct?

6 MS. WOODS: That's correct.

7 CHAIRMAN DAVIS: Okay. So Attorney General  
8 Jay Nixon's office has not sought to intervene in this  
9 case at all; is that correct?

10 MS. WOODS: That's correct.

11 CHAIRMAN DAVIS: Why?

12 MS. WOODS: I'm not privy to those  
13 discussions. I wouldn't know.

14 CHAIRMAN DAVIS: You would certainly agree  
15 with the statement that Attorney General Jay Nixon is  
16 capable of intervening in this case, wouldn't you?

17 MS. WOODS: Oh, yes, I would agree with  
18 that statement.

19 CHAIRMAN DAVIS: Are you aware that he has  
20 intervened or attempted to intervene in other cases  
21 involving utility customers in Cass County?

22 MS. WOODS: I can't say that I am.

23 CHAIRMAN DAVIS: Ms. Woods, you did not  
24 sign onto this agreement on behalf of your clients,  
25 correct?

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1 MS. WOODS: That's correct.

2 CHAIRMAN DAVIS: Why?

3 MS. WOODS: Basically because I was told  
4 not to by my office.

5 CHAIRMAN DAVIS: Your office directed you  
6 not to sign onto it?

7 MS. WOODS: That's correct.

8 CHAIRMAN DAVIS: Who is your client in this  
9 case?

10 MS. WOODS: The Department of Natural  
11 Resources.

12 CHAIRMAN DAVIS: And so are you  
13 representing the client or are you representing the  
14 Attorney General Jay Nixon in this case?

15 MS. WOODS: I'm representing the client.

16 CHAIRMAN DAVIS: And he's directed you not  
17 to sign onto this?

18 MS. WOODS: Well, I was directed not to  
19 sign onto this and to make arrangements so that the  
20 Department could sign onto it.

21 CHAIRMAN DAVIS: Did you attend these,  
22 quote, black-box settlement negotiations?

23 MS. WOODS: I attended some of them, yes.

24 CHAIRMAN DAVIS: Some but not all?

25 MS. WOODS: No, not all.

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1                   CHAIRMAN DAVIS: Were you present when they  
2 talked about fuel costs, return on equity?

3                   MS. WOODS: I confess, those were topics I  
4 attempted to avoid.

5                   CHAIRMAN DAVIS: Okay. So the Attorney  
6 General's Office was avoiding the issue of fuel costs and  
7 return on equity in this case?

8                   MS. WOODS: I, as representing the  
9 Department of Natural Resources, was avoiding those.

10                  CHAIRMAN DAVIS: So there was no one from  
11 the Attorney General's Office present at all representing  
12 the State, you know, in discussions about fuel costs,  
13 return on equity, the rates that the State of Missouri  
14 would be asked to pay in the Aquila territory; is that  
15 fair to say?

16                  MS. WOODS: That is fair to say.

17                  CHAIRMAN DAVIS: Ms. Woods, does silence  
18 constitute acceptance of this agreement?

19                  MS. WOODS: I would say that normally from  
20 a contract standpoint, there has to be some overt act, and  
21 that silence in and of itself would not be acceptance.

22                  CHAIRMAN DAVIS: Do you concur with that,  
23 Mr. Mills?

24                  MR. MILLS: Well, I think it depends on the  
25 context, as Ms. Woods pointed out. I think there are

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1 certainly situations in which silence can constitute  
2 acceptance, and I'm not sure in this particular context  
3 whose silence you're talking about and acceptance of what.

4 CHAIRMAN DAVIS: For instance, does the  
5 fact that the Office of Public Counsel and AARP and --  
6 does that, you know, implicit -- implicit in the fact that  
7 you're not objecting, is that acceptance of this proposed  
8 Stipulation & Agreement?

9 MR. MILLS: Acceptance perhaps. Agreement  
10 or support, certainly not. I'm certainly not speaking for  
11 AARP or anyone else. I'm speaking only for myself and my  
12 office.

13 CHAIRMAN DAVIS: Mr. Coffman?

14 MR. COFFMAN: Your Honor, my understanding  
15 of the Commission's rules regarding nonunanimous  
16 stipulations, 4 CSR 240-2.115, is that when a party does  
17 not sign but yet does not object and request a hearing on  
18 a nonunanimous stipulation, the Commission is then free to  
19 then treat that nonunanimous stipulation as unanimous for  
20 the purpose of not necessarily having a hearing and some  
21 of the procedural requirements, and that there is some  
22 distinction between actual consent and agreement in the  
23 signature.

24 So I think that certainly for procedural  
25 purposes, you can now treat this nonunanimous stipulation

1 as unanimous, but it's my understanding that neither AARP  
2 nor the Office of the Public Counsel have actually agreed  
3 with an affirmative signature on the document. Some  
4 subtle distinction.

5 CHAIRMAN DAVIS: Some.

6 MR. MILLS: As a practical matter, I  
7 understand that by not opposing it, pursuant to the  
8 Commission rules, that it's very likely to be adopted by  
9 the Commission and that I will have to live with the  
10 consequences of that. So in that sense, not signing it  
11 and not opposing it means that I'm willing to live with  
12 the agreement. In that sense, I accept that.

13 MR. COFFMAN: And I would say for AARP that  
14 we have satisfied ourself that this would not be an unjust  
15 or unreasonable result and that we are willing to live  
16 with the result if the Commission does adopt the  
17 stipulation.

18 CHAIRMAN DAVIS: So, Ms. Woods, is it fair  
19 to say that not signing but not applying to intervene in  
20 this case, not applying to object to the settlement in  
21 this case is an indication of the Attorney General's  
22 willingness to go along with the settlement in this case?

23 MS. WOODS: I really don't know. I don't  
24 know what the -- all I know is that the Attorney General's  
25 Office did not elect to intervene in this case. The

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1 Department of Natural Resources did.

2 CHAIRMAN DAVIS: Right. And refresh for my  
3 recollection that this was a case where Aquila was  
4 originally seeking to raise their rates by approximately,  
5 what was it, \$75 million; is that correct?

6 MS. WOODS: Somewhere -- somewhere in that  
7 range. The only thing that I specifically recall was, I  
8 believe that the MPS territory was something in the  
9 neighborhood of 69 million. I do recall that figure.

10 CHAIRMAN DAVIS: No further questions at  
11 this time, Judge.

12 JUDGE WOODRUFF: All right. Commissioner  
13 Murray, do you have anything further?

14 COMMISSIONER MURRAY: No, I don't.

15 JUDGE WOODRUFF: Commissioner Gaw?

16 COMMISSIONER GAW: Are we going to keep  
17 going?

18 JUDGE WOODRUFF: We can if you want to.

19 COMMISSIONER GAW: I'll need just a second.

20 JUDGE WOODRUFF: Okay. Let's go ahead and  
21 get started. Well --

22 CHAIRMAN DAVIS: We do want to break for  
23 lunch, don't we?

24 JUDGE WOODRUFF: Let's go ahead and get  
25 started.

1                   COMMISSIONER GAW: I just want to work  
2 through this stip sort of methodically. The first  
3 questions will have to do with rates, and I'm still a  
4 little unclear about the amount of the increase here.  
5 First of all -- and I don't care who answers these  
6 questions, as long as there's not disagreement. The  
7 increase for MPS is stated at \$38,500,000. Is that a  
8 gross amount or a net amount when considering the interim  
9 energy charge that was previously in place?

10                  MR. WILLIAMS: That would be the increase  
11 without considering the interim energy charge. So it's  
12 over base rates that currently exist.

13                  COMMISSIONER GAW: All right. And then if  
14 I take into consideration the elimination of the interim  
15 energy charge, albeit subject to refund, what amount of  
16 net would I have?

17                  MR. WILLIAMS: According to  
18 Mr. Schallenberg earlier, it's about 22 million.

19                  COMMISSIONER GAW: All right. Now, go to  
20 the L&P for me and tell me what that figure would be on  
21 the net, considering the interim energy charge's  
22 elimination.

23                  MR. WILLIAMS: I think it's about  
24 4 million, if I recall Mr. Schallenberg's testimony  
25 correctly.

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1                   COMMISSIONER GAW: I know this is a  
2 black-box settlement, but help me to understand what the  
3 principal drivers are from Staff's standpoint, that causes  
4 them to believe that the end result of an increase of  
5 \$38,500,000 in base rates is appropriate. What are the  
6 drivers that made you believe that that was an appropriate  
7 amount to settle the case on?

8                   MR. WILLIAMS: I think the short answer is  
9 primarily fuel and purchased power costs.

10                  COMMISSIONER GAW: Fuel and purchased  
11 power. So on that subject, just real quickly, if that's  
12 the primary driver, does that -- reconcile that with me  
13 with the -- what appears to be some credit, some degree of  
14 credit on the interim energy charge back from its set  
15 position in the last case where that was set.

16                  MR. WILLIAMS: You're referring to the  
17 \$1 million?

18                  COMMISSIONER GAW: Yes.

19                  MR. WILLIAMS: Based on the information  
20 that Staff had available to it, it believed that -- and  
21 still believes that the Aquila Networks - MPS customers  
22 will not get any refunds, and the Aquila Networks L&P  
23 customers were likely to be getting some refund post  
24 April 20th.

25                  COMMISSIONER GAW: Okay.

1                   MR. WILLIAMS: And the parties ultimately  
2 reached an agreement to do a refund in lieu of going all  
3 the -- well, first of all, you're going to have an early  
4 termination of the interim energy charge as a result of  
5 rates in this case, if they go into effect earlier than  
6 the set ending of the IEC. And the parties in lieu of  
7 going through the true-up process and agreeing -- reaching  
8 an agreement or bringing it in front of the Commission as  
9 to what the amount of the refund should be, agreed to a  
10 refund now that will go into effect when -- shortly after  
11 rates are set under this agreement.

12                   COMMISSIONER GAW: That refund amount was  
13 based upon some figure as of October of last year; is that  
14 correct or incorrect?

15                   MR. WILLIAMS: I think there's been  
16 tracking. There's, I know, a disagreement between Aquila  
17 and Staff as to how the IEC refund was -- or whether or  
18 not there was a refund, how it was to be calculated on  
19 whether it was to be by division or netted company-wide  
20 within Missouri.

21                   So what I'm saying is there was -- there  
22 were some disputes that were resolved as well, but under  
23 Staff's view, I think our number was something like  
24 1.4 million, but we recognized that that number had been  
25 dropping as time had passed because of what happened with

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1 fuel costs.

2 COMMISSIONER GAW: Okay. But was the time  
3 frame that you were looking at in coming up with your  
4 number through October of '05 or through some time in  
5 October of '05?

6 MR. WILLIAMS: I believe the most current  
7 number we have was at the end of October of '05.

8 COMMISSIONER GAW: And you're telling me  
9 that if the dates had been brought forward from that, that  
10 the number would have been smaller?

11 MR. WILLIAMS: That's what we were  
12 anticipating, certainly.

13 COMMISSIONER GAW: You didn't look at it,  
14 but you anticipated that; would that be accurate?

15 MR. WILLIAMS: Based on what was happening  
16 with fuel and purchased power cost, we anticipated, but  
17 no, we didn't come up with numbers.

18 COMMISSIONER GAW: In regard to the fuel  
19 costs issue, for MPS itself, was there some -- there was  
20 not a credit. Does that mean that there was some  
21 under-recovery prior to that time?

22 MR. WILLIAMS: You're referring to the IEC?

23 COMMISSIONER GAW: Yes, only the IEC.

24 MR. WILLIAMS: According to the information  
25 Staff had, Staff believed there would never be a refund to

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1 the customers of the MPS area.

2 COMMISSIONER GAW: Okay. And the reason  
3 why there would be for L&P and not MPS, does that have to  
4 do with fuel mix or something else?

5 MR. WILLIAMS: I would have to defer to  
6 someone on Staff to answer that. I don't know offhand.  
7 Probably Mr. Featherstone could provide that answer.

8 COMMISSIONER GAW: Whoever's available.

9 JUDGE WOODRUFF: Mr. Featherstone, if you'd  
10 like to come forward.

11 (Witness sworn.)

12 JUDGE WOODRUFF: You may be seated. You  
13 can answer the Commissioner's questions if you know it.  
14 CARY FEATHERSTONE testified as follows:

15 QUESTIONS BY COMMISSIONER GAW:

16 Q. What do you do, Mr. Featherstone?

17 A. I work in the audit department out of the  
18 Kansas City office.

19 Q. For who?

20 A. With the Public Service Commission.

21 Q. How long have you done that, approximately?

22 A. About 26 years.

23 Q. All right. Did you have opportunity to  
24 look at the -- at the issue of fuel costs in this case?

25 A. I did.

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1           Q.       All right. Now, back to my question, give  
2 me some perspective on why it would look like there was a  
3 refund perhaps due under the IEC for the St. Joe customers  
4 and not for MPS. Tell me what the driver is with those --  
5 with that difference.

6           A.       They are two distinctively different  
7 systems, and they have two different fuel mixes with  
8 different generators.

9           Q.       So it would be accurate to say that the  
10 distinction or the difference in the fact that L&P appears  
11 to have been owed a refund was due to the difference in  
12 fuel mix between both systems?

13          A.       Yes.

14          Q.       And is that -- would it be also accurate to  
15 say that the difference in fuel mix between L&P and MPS is  
16 that L&P has a greater percentage of base load or not?

17          A.       L&P has a greater percentage of base load.

18          Q.       Generation, I mean?

19          A.       Generation. And MPS relies on more gas.

20          Q.       So L&P has greater percentage of coal  
21 generation as compared to MPS?

22          A.       Yes.

23          Q.       I suppose there could be some distinction  
24 because of differences in load, but would you say the  
25 driver is still generally the difference in generation

0090

1 fuel mix?

2 A. Yes.

3 Q. Okay. So if MPS were in a better position  
4 in regard to the amount of base load generation that it  
5 had, there might be a different result in regard to the  
6 costs of fuel in that system?

7 A. Yes. There were for MPS, however, some  
8 what we, I think, point in our testimony as unusual events  
9 that occurred that affected the MPS system in greater  
10 amount than the L&P system.

11 Q. Do you want to give me some basic view --  
12 overview of that?

13 A. There was an issue with regard to a Sibley  
14 outage that occurred just shortly after the rates went  
15 into effect in the last case. And in fact, the -- the  
16 outage actually occurred at the time the rates were in  
17 effect, but there was an extension of the outage that  
18 caused a greater reliance on purchased power and also gas  
19 generation.

20 Q. I see.

21 A. That put them almost from day one of the  
22 new rates in the IEC to be under-recovering because there  
23 was a greater cost than was anticipated.

24 Q. Sibley is what? What is Sibley?

25 A. Sibley is a coal-fired generating unit that

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1 is owned by Missouri Public Service.

2 Q. Okay.

3 A. MPS.

4 Q. All right. And that unit was out for how  
5 long, approximately?

6 A. I'm going from memory, but I believe it was  
7 in excess of eight weeks. The original outage was  
8 scheduled for three, I believe.

9 Q. Okay.

10 A. The other event that I think was a  
11 significant factor was the breach of a coal contract by a  
12 supplier -- it's referred to as CW Mining -- and that  
13 resulted in some under-recovery, substantial underrecovery  
14 of the IEC on the MPS side.

15 Q. How so?

16 A. The replacement coal was substantially  
17 greater, almost double the price. I believe these are  
18 highly confidential numbers, so I won't get into the  
19 amounts.

20 Q. I won't ask you right now what those are.

21 A. But they were significantly greater than  
22 the original contract provided.

23 Q. You say this was a breach of the contract?

24 A. I believe it is Aquila's position -- they  
25 can speak to this -- that they had a contract, it was

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1 negotiated with their supplier, and their supplier ceased  
2 to provide or perform, and there is a suit pending in the  
3 state of Utah.

4 Q. The results of that suit will not have any  
5 impact on this settlement; is that correct?

6 A. That is correct.

7 Q. Would you tell me whether or not if Aquila  
8 were successful, would be successful in that lawsuit,  
9 would it have changed the numbers in regard to the interim  
10 energy charge sufficiently to have generated a refund or  
11 credit potentially to MPS customers?

12 A. Staff did not believe so, and I think that  
13 the information that we have been receiving on a monthly  
14 basis since the last case was also provided to other  
15 parties, and without going into a lot of details behind  
16 the settlement, I think there was a consensus that there  
17 was a belief that there wasn't really anything that was  
18 going to create the opportunity for a refund under the MPS  
19 system.

20 Q. All right.

21 A. I would point out --

22 Q. Go ahead.

23 A. I don't know if it went to your question or  
24 not, but the settlement, the global settlement, not just  
25 the IEC piece of it, but the global settlement, the

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1     \$38.5 million and the \$6.3 million for L&P -- because CW  
2     Mining relates to also the L&P system -- there's no amount  
3     that was called for or put in those numbers. So the CW  
4     Mining contract did not affect the settlement at all.

5             Q.       Okay. In regard to the setting of rates  
6     going forward on fuel costs, I think there was earlier  
7     some indication that the fuel costs amounts were  
8     considered to be certain amounts by Staff in their  
9     analysis of whether or not to sign off on this agreement.  
10    Can you refresh my memory a bit about that?

11            A.       We, of course, during our audit when we  
12    presented our direct case in October, we had certain  
13    amounts in for gas and coal and purchased power. As we  
14    then went through the negotiations with the company and  
15    the settlement process and even post filing in the  
16    prehearing process, you're always making adjustments to  
17    those amounts.

18                    In addition, we had started doing some  
19    preliminary work on the true-up that was to be done  
20    post-hearing, and those amounts were coming in at for gas  
21    probably in the 7.50, the \$7.50 per MCF or MMBtu range.  
22    Purchased power was -- spot purchased power was  
23    approximately \$49 in our direct filing, and it had gone up  
24    significantly. I believe it was probably closer to the  
25    high 50s or 60s, low 60s.

1                   We had a significant increase for a freight  
2     rate on one of the coal suppliers, that was to a -- I  
3     believe taken to effect on September 1. So that that was  
4     another amount that Staff considered in its -- in its  
5     analysis.

6           Q.       Okay. So are you telling me that there was  
7     a range that you were looking at in deciding the  
8     reasonableness of the settlement rather than the specific  
9     figures?

10          A.       We had specific figures that we used for  
11     our direct filing. During the prehearing conference, some  
12     additional information was provided to us that we took  
13     into account, in consideration, so those numbers changed  
14     from the direct filing. As we started to do the true-up,  
15     we were moving the direct filings based upon June 30th as  
16     our update, and as we started to do the true-up, then, the  
17     numbers were coming in as of the end of October, which was  
18     the true-up date of 2005, I should say.

19          Q.       All right. So was it a range or are there  
20     updated figures that caused you to believe this portion of  
21     the settlement was reasonable?

22          A.       The number that we used for the true-up --  
23     again, I must add that it was a work in process, it wasn't  
24     finished -- generated -- that the true-up would have  
25     generated specific numbers. Our gas price for the true-up

0095

1     probably was in -- I think, going from memory, I believe  
2     it was \$7.60, 65 cents per MMBtu. I believe the spot  
3     price was about \$61 per megawatt hour.

4             Q.       Okay. Where are you getting the spot  
5     price, by the way? What is your source?

6             A.       The energy department, the Staff witness  
7     David Elliott did -- he does a pretty comprehensive and  
8     extensive analysis. He performed the analysis for the  
9     direct case as of June, and then for the true-up, then he  
10    would have moved that to October 31.

11            Q.       And these were spot prices that were  
12    utilized?

13            A.       Yes.

14            Q.       So they did not take into account any known  
15    figures on bilateral contracts or other things that might  
16    have been in place?

17            A.       They have some contracts, and when he does  
18    his analysis, he separates the analysis from the spot  
19    market versus the contract market, the capacity agreements  
20    that they have.

21            Q.       All right. But the actual amount that was  
22    utilized in Staff's analysis of this settlement was the  
23    spot price?

24            A.       No, he uses both.

25            Q.       He uses both. Can you tell me how he

1 weighs those together?

2 A. No, I really can't.

3 Q. All right. That's okay. In this case,  
4 Staff is supporting putting the rates charged for fuel and  
5 everything back into base rates and not going forward with  
6 an interim energy charge. Can you tell me why that is --  
7 whether Staff believes that is more appropriate in this  
8 case?

9 A. I think the long answer is, through  
10 negotiations, the parties reached that determination. It  
11 was -- I know you're probably going to get tired of  
12 hearing that it was a black-box settlement, but it was, or  
13 is. The company had made an offer sometime in probably  
14 November of 2005, and the parties were evaluating that  
15 offer with additional information that was requested. As  
16 they went through the remaining part of the year and the  
17 first of this year, the parties -- and it was primarily  
18 given by the customer groups, not the Staff -- made a  
19 proposal, two proposals to the company. One was with an  
20 IEC and one was without.

21 Q. Okay.

22 A. And the company was really given the  
23 option. They made that determination that they would take  
24 the proposal without, and I can't go to really why they  
25 did that or chose -- chose that.

1           Q.       Okay. And I don't want to get too much  
2 into your negotiation, but you're telling me the option,  
3 the offer that was extended by Staff; is that correct?

4           A.       No. It was really -- we were present, and  
5 we were involved in the negotiations, but it was really  
6 the customer groups who made the determination as to the  
7 amount, and they made the presentation to Aquila.

8           Q.       Has Staff taken any position in regard to  
9 the appropriateness of Aquila's fuel mix in MPS currently,  
10 or do you know that?

11          A.       We did not challenge it in this case. We  
12 certainly have encouraged them to, one, build generation.  
13 We certainly have taken positions in prior cases and this  
14 case with that regard, to have ownership as opposed to  
15 purchasing and being at the mercy of the market. That  
16 doesn't really address the fuel mix question.

17                   The fuel mix is obviously something that  
18 several utilities need to look at, and the Staff has  
19 encouraged those utilities to look more at base load  
20 generation, and Aquila has certainly been encouraged to do  
21 that. And I must say that they are involved in the  
22 Iatan 2 project, as I'm sure you're aware of.

23          Q.       Does Staff believe that MPS is currently  
24 short on base load generation in comparison to their load  
25 needs?

0098

1           A.       I'm not sure I'm the one that would  
2 answer -- best answer that question.

3           Q.       That's okay. That's okay if you don't.  
4 That's fine.

5                   This settlement is -- I think,  
6 Mr. Featherstone, that's probably all I have right now.  
7 Maybe someone else might have some questions for you.

8           JUDGE WOODRUFF: Do any of the other  
9 Commissioners have questions for Mr. Featherstone?

10                   (No response.)

11           JUDGE WOODRUFF: All right. Then,  
12 Mr. Featherstone, you can step down.

13           COMMISSIONER GAW: I may need some more,  
14 but I don't have it right now.

15                   Staff, back on this question about time of  
16 this -- of this rate case, I'm having a little difficulty  
17 understanding again the rationale behind what appears to  
18 be pretty mainly an agreement that another rate case is  
19 going to be filed in just a couple months, and I'm not  
20 sure how that all fits together with this particular  
21 settlement. Can you explain this to me?

22           MR. WILLIAMS: I'm not quite sure what you  
23 mean. There's an agreement that Aquila will not file  
24 before July 1 of this year, and there's a requirement that  
25 they will file within two years of when rates become

0099

1 effective.

2 COMMISSIONER GAW: What is the reason that  
3 we're dealing with the possibility of an additional rate  
4 case within just a few months of this agreement?

5 MR. WILLIAMS: I think from, and I --  
6 Aquila can correct me if I'm misspeaking, but I think  
7 their interest was -- and I think Mr. Swearengen may have  
8 stated it before -- concern with fuel costs, and I think  
9 probably also the possibility of a fuel clause adjustment  
10 becoming available to them.

11 COMMISSIONER GAW: Mr. Swearengen, you want  
12 to revisit that?

13 MR. SWEARENGEN: I'll be glad to, your  
14 Honor. I think the first point we'd like to make is that  
15 we had hoped that, in the context of this case, the one we  
16 have in front of you now, we could get a fuel adjustment  
17 clause. We found that the interim energy charge  
18 mechanism, we've tried it and we just don't find that to  
19 be satisfactory.

20 Through the course of the discussions with  
21 the other parties in this case, I think we concluded that  
22 the question of whether or not we could get a fuel  
23 adjustment clause in this case would lead to litigation  
24 and litigation risk which we could not stand. And as a  
25 result, we decided to capture our fuel costs in base

0100

1 rates.

2 But because of the potential for increasing  
3 fuel costs in the immediate future, we couldn't close the  
4 door to come back as early as July 1 with another rate  
5 case. So it's simply the desire to protect ourselves in  
6 the event of the anticipated increase in fuel costs. And  
7 hopefully in that next rate case we can get a fuel  
8 adjustment clause.

9 COMMISSIONER GAW: And the concern about  
10 the availability of the fuel adjustment clause was what  
11 again? What's the specific concern from a legal  
12 standpoint?

13 MR. SWEARENGEN: The argument that was  
14 presented to us by others in the context of this case was  
15 that until this Commission promulgates rules for a fuel  
16 adjustment clause, that we would not be entitled to one,  
17 and should we have brought that issue to the Commission  
18 and litigated it and prevailed, we face litigation risk  
19 and those dollars that we are recovering through that fuel  
20 clause tied up pending that litigation. So that's  
21 something that this company and probably any other utility  
22 company in this state could not stand.

23 COMMISSIONER GAW: Did you -- did your  
24 client agree with that position in regard to whether or  
25 not that fuel adjustment surcharge was available?

0101

1                   MR. SWEARENGEN: I think it's our view that  
2 it was available, and that perhaps the Commission could  
3 authorize it, but because of the position taken by other  
4 parties --

5                   COMMISSIONER GAW: I understand the  
6 litigation risk issue. I'm just really asking about  
7 whether you had a different position from a legal argument  
8 standpoint.

9                   MR. SWEARENGEN: Well, the statute says  
10 that if it's effective January 1 of this year, and it also  
11 says that the Commission shall promulgate rules, and those  
12 haven't been promulgated, so there is the issue.

13                  COMMISSIONER GAW: Okay. Regarding the  
14 fuel price, did Aquila have some particular fuel price  
15 figures in mind when it entered into this settlement  
16 agreement?

17                  MR. SWEARENGEN: Well, I think I would ask  
18 you to defer that, if you would, please, to one of the  
19 company representatives. I mean, we would have had a  
20 litigation position, obviously, if we had tried that issue  
21 as to what those fuel costs would have been, but because  
22 this is a black-box settlement, I just don't think you can  
23 dig into it to find out what those numbers are.

24                  COMMISSIONER GAW: So are you telling me I  
25 should ask them whether there was some figure, or are you

0102

1 telling me it's a useless waste of time for me to ask?

2 MR. SWEARENGEN: What I'm telling you is  
3 you may be able to get more out of them than you can get  
4 out of me.

5 COMMISSIONER GAW: That's normally the  
6 case. Well, let me try one of them. Let's see. After  
7 hearing your remarks, I suspect it is a useless waste of  
8 time, after they heard the remarks.

9 JUDGE WOODRUFF: Do you wish to call a  
10 witness?

11 COMMISSIONER GAW: Who is it that knows  
12 that?

13 MR. SWEARENGEN: Either Mr. Williams or  
14 Mr. Clemmens probably.

15 COMMISSIONER GAW: Let me try Mr. Clemmens.  
16 I might have other questions for Mr. Williams about  
17 whether he's gotten any recent memos or e-mails that he  
18 hasn't opened.

19 (Witness sworn.)

20 JUDGE WOODRUFF: You may be seated. You  
21 can ask your questions.

22 GARY CLEMMENS testified as follows:

23 QUESTIONS BY CHAIRMAN GAW:

24 Q. I'll just get right on with it here. I'm  
25 not even going to try to qualify, but you might tell me

0103

1     who you work for.

2             A.       Gary Clemmens.  I work for Aquila, director  
3     of regulatory for Missouri.

4             Q.       Okay.  Do you know anything about this fuel  
5     mix issue?

6             A.       Yes, I'm acquainted with it.

7             Q.       How are you familiar with it?

8             A.       I provided some of the information that  
9     Mr. Featherstone referred to on the IEC calculations  
10    mostly.

11            Q.       Okay.  And how do you have to do with that  
12    as director of regulatory affairs or whatever your  
13    position is?

14            A.       We report reporting -- the requirements to  
15    the Staff.  We provide those.

16            Q.       Okay.  Do you calculate them?

17            A.       Under my supervision.

18            Q.       Okay.  So when you-all entered into this  
19    settlement, did you have some fuel numbers in mind in  
20    believing -- to come to the conclusion that the settlement  
21    was reasonable?

22            A.       We had hedged gas prices of about \$8.42 for  
23    about two-thirds of our gas for 2006.

24            Q.       Okay.

25            A.       Purchased power price was for spot in the

0104

1 60 to \$70 range.

2 Q. Okay. Were those the figures you were  
3 relying on in entering into this agreement?

4 A. Yes, sir.

5 CHAIRMAN DAVIS: I'm sorry. Could you have  
6 the witness state that one more time, Commissioner?

7 COMMISSIONER GAW: Sure.

8 BY COMMISSIONER GAW:

9 Q. Go ahead.

10 A. We have hedged about two-thirds of our gas  
11 for 2006 at about \$8.42, approximately, and that was --

12 Q. And then you utilized the figure of 60 to  
13 \$70 on purchased power?

14 A. Purchased power.

15 Q. Is that pure spot or did that include --

16 A. That was the spot price. I don't have the  
17 average price of what we have under contract.

18 Q. Okay. What is the fuel mix right now  
19 percentages -- I can't recall off the top of my head -- in  
20 MPS from coal and gas and whatever else that's there?

21 A. We have about -- these are, again,  
22 estimates, around 600 megawatts of base load.

23 Q. Is that all coal?

24 A. That's coal. That's between MPS and  
25 Jeffrey.

0105

1 Q. Okay.

2 A. For MPS. And then we have probably a  
3 couple hundred megawatts of intermediate, and the rest  
4 would be peaking. We peak at about 1200 megawatts  
5 annually.

6 Q. And how much peaking then would that be, do  
7 you think?

8 A. About 400, 4 to 500.

9 Q. So about half of what you have is base load  
10 and the other half is intermediate and peaking?

11 A. Peaking.

12 Q. And is the intermediate gas?

13 A. Yes. Some of those are purchased power  
14 contracts. They're not all owned.

15 Q. Does that include the South Harper facility  
16 in those numbers?

17 A. Yes. Or at 300 peaking, it does right now.  
18 Currently, it would include that 300 megawatts.

19 Q. The 400 includes the 300-some-odd?

20 A. Right.

21 COMMISSIONER GAW: Okay. Thank you, sir.

22 Anybody else have any questions of this witness while he's  
23 here?

24 JUDGE WOODRUFF: Anyone else have any  
25 questions for this witness?

0106

1                   CHAIRMAN DAVIS:   Okay.

2   QUESTIONS BY CHAIRMAN DAVIS:

3           Q.       You've got two-thirds of 2006 hedged at  
4   that 8.62?

5           A.       8.42.

6           Q.       8.42.   And are you just month to month on  
7   the rest of it or --

8           A.       Yeah.   We would buy spot, spot gas.

9           Q.       Spot gas.   Do you think that's -- I mean, I  
10   understand that, you know, when I last checked yesterday,  
11   I believe the NYMEX exchange March contracts were in the  
12   7.75 to \$8 range.   Is that roughly correct?

13          A.       My knowledge is in that range, yeah.

14          Q.       But, you know, I've seen -- I have seen  
15   projections from EIA and others that predict that gas is  
16   going to be in the \$9 range this year.   Don't you think it  
17   would be prudent to lock in a little more of that natural  
18   gas or do you think you can purchase power more cheaply?  
19   I'm just -- you know, I mean, if we're -- if this  
20   agreement's only going to give you \$8.42 per MMBtu, I  
21   would think you'd want to lock in as much as you can at or  
22   below that rate.   But you tell me if I'm wrong.

23          A.       You're a little bit out of my expertise on  
24   the policies that we have for hedging, and I probably have  
25   to defer to someone else that would have that policy.

0107

1 Q. And who might that someone else be?

2 A. No one -- we didn't bring that person down  
3 with us.

4 CHAIRMAN DAVIS: All right. I see  
5 Mr. Conrad with his hands up back there. I think he's  
6 volunteering to help you. He takes it back. All right.  
7 I don't have any questions else for this witness right  
8 now.

9 JUDGE WOODRUFF: All right. You can step  
10 down, sir.

11 I'm sorry. Do you have any more questions  
12 for this witness?

13 COMMISSIONER GAW: Just one, I think.

14 FURTHER QUESTIONS BY COMMISSIONER GAW:

15 Q. And that is, you said you have about 1,200  
16 peaking load. And if I -- if I just round these numbers  
17 that you gave me, you've got 1,200 megawatts of capacity?

18 A. That's our annual peak, around 1,200.

19 Q. That gives you no additional reserve  
20 margin?

21 A. We have a 15 percent reserve margin.  
22 Again, I was using round numbers.

23 Q. So it actually would be a little greater --

24 A. Right.

25 Q. -- than the numbers you gave me on the

0108

1 generation capacity you have?

2 A. Right. With the contracts, yes.

3 Q. Including the contracts?

4 A. Yes.

5 Q. How much of that total 1,200 in generation  
6 was off of contract?

7 A. Currently we have a 275 megawatts would be  
8 under contract.

9 Q. And that is what kind of generation?

10 A. 75 is base load with NPPD contract, and  
11 200 is with Calpine, which is -- energy would be peaking.

12 Q. Is that the -- is that the Calpine  
13 intermediate facility -- no, that's not that facility.

14 A. Yes, it's that facility, but it's --

15 Q. In Cass County?

16 A. Yes,

17 Q. So that's running currently?

18 A. That is available for us for this summer.

19 Q. It is available?

20 A. End of the current contract. Now, whether  
21 that's -- with the situation with their legal  
22 difficulties, if that's going to be fulfilled, but at this  
23 point it is.

24 MR. SWEARENGEN: Judge, if I could just  
25 interject at this point. I'm not sure whether these

0109

1 numbers we're getting into are part of the contracts that  
2 are highly confidential or not.

3 BY COMMISSIONER GAW:

4 Q. That's a possibility. So I don't know the  
5 answer to that, obviously. We'll try to avoid the actual  
6 numbers, but the Calpine facility is contemplated to be a  
7 part of your generation mix for the summer?

8 A. For the summer, correct.

9 COMMISSIONER GAW: Okay. Thank you.  
10 That's all I have right now of this witness.

11 JUDGE WOODRUFF: All right. You may step  
12 down.

13 (Witness excused.)

14 COMMISSIONER GAW: In regard to -- well,  
15 let me go on to rate design, then I'll come back to this  
16 question. The rate design numbers here that have been  
17 signed off have percentages attached to them without any  
18 additional revenue increase. I'm not sure whether that --  
19 I'm not sure if it matters on the percentages once you add  
20 in the revenue increase, but I'm looking for the figures  
21 on what the average consumer is going to pay when I  
22 include rate design shifts on top of the rate increases,  
23 and I want to start with residential customers and then  
24 work through the other classes. Could somebody give me  
25 these numbers?

0110

1                   MR. WILLIAMS: I think -- I think James  
2     Watkins probably can do that.

3                   JUDGE WOODRUFF: If Mr. Watkins could come  
4     forward.

5                   (Witness sworn.)

6                   JUDGE WOODRUFF: You may be seated.

7     JAMES C. WATKINS testified as follows:

8     QUESTIONS BY COMMISSIONER GAW:

9           Q.     State your name, please.

10          A.     My name is James C. Watkins.

11          Q.     What do you do, Mr. Watkins?

12          A.     I'm the manager of economic analysis in the  
13     energy department.

14          Q.     All right. And how long have you held that  
15     position?

16          A.     A couple of years. Been with the  
17     Commission for 23.

18          Q.     That's great. Okay. Now, tell me what  
19     your -- how long have you been dealing with this case?

20     Never mind. Strike that.

21                   You're familiar with this case, aren't you?  
22     Mr. Watkins, you're familiar with this case?

23          A.     Yes, I am.

24          Q.     Let me ask you this, then. If you've got  
25     the figures, give me -- give me the rate impact to

0111

1 residential customers as a result of this stipulation.

2 A. For the Light & Power division, we're  
3 calculating that the impact on residential customers would  
4 be an increase of 6.26 percent.

5 Q. 6.26 percent?

6 A. Yes. And for the Missouri Public Service  
7 division, it would be 8.82 percent.

8 Q. 8.82 percent. Now, is that including or  
9 excluding the interim energy charge?

10 A. That's from what they will be paying if the  
11 Stipulation & Agreement is approved to what they are  
12 currently paying, including the interim energy charge.

13 Q. Including. So if I -- what's the  
14 percentage of increase in base rates, excluding the  
15 interim energy charge?

16 A. I believe that's 8.72 percent for Light &  
17 Power.

18 Q. 8.72. And for MPS?

19 A. 13.49.

20 Q. 13.49 percent. Okay. And give me, if you  
21 could, the average customer dollar figures of before and  
22 after.

23 A. I don't have that one handy.

24 Q. Did you calculate it?

25 A. I did not.

0112

1 Q. Could you provide it for us later?

2 A. Yes, we will.

3 Q. And do both for me, if you would.

4 A. Both Light & Power and MPS for residential?

5 Q. And both including and excluding the IEC.

6 A. We will do that.

7 Q. All right. And then if you would please go  
8 on to whatever the next category you want to go on to, and  
9 go through the list for me.

10 A. Category being?

11 Q. Of customers.

12 A. For Light & Power, the increase considering  
13 the IEC, the overall impact will be 3.91.

14 Q. To whom?

15 A. Small general service.

16 Q. Thank you.

17 A. Light & Power.

18 Q. Small general service. Okay. Go ahead.

19 A. 3.91 percent.

20 Q. 3.91. All right.

21 A. It will be more convenient for me if I can  
22 tell you -- the order to tell you would be what the total  
23 increase is in permanent rates for the small general  
24 service class of Light & Power next. Is that all right?

25 Q. That's fine. We just need to catch up with

0113

1     you. Small general. I thought that's what you just gave  
2     me actually.

3             A.       I gave you small general service for  
4     Light & Power, the bill impact of 3.91 percent.

5             Q.       Okay.

6             A.       Which includes the effects of the IEC.

7             Q.       All right.

8             A.       The 6.35 percent is the actual increase in  
9     the tariffed rates or permanent rates.

10            Q.       Okay. Now I'm following you. That's L&P  
11     for small general service. Okay. Go ahead.

12            A.       For L&P large general service --

13            Q.       Large general service. Okay.

14            A.       -- the corresponding numbers for the total  
15     increase in the bill, the one that includes the IEC and  
16     the one that they would get after the Stipulation &  
17     Agreement goes into effect, that increase would be  
18     2.64 percent.

19            Q.       Okay.

20            A.       The actual increase to the permanent rate  
21     levels is 6.35 percent.

22            Q.       All right.

23            A.       For the large power service customers at  
24     Light & Power, the net effect on the bill would be a  
25     reduction of .59 percent.

0114

1 Q. Minus 5.9 percent?

2 A. No. Minus 0.59. And the actual increase  
3 in the permanent rate is 2.10 percent.

4 Q. All right.

5 A. For the remaining customers, lighting and  
6 other, the bill impact is 4.58 percent. The actual  
7 increase in the permanent rates would be 6.35 percent.

8 Q. Okay.

9 A. Now, if we switch back down to the Missouri  
10 Public Service division --

11 Q. All right. Go ahead.

12 A. Beginning with SGS, the bill impact would  
13 be an increase of 5.97 percent. The actual increase to  
14 permanent rate would be 11.27 percent. For the large  
15 general service class, the bill impact would be  
16 1.46 percent. The actual increase to the permanent rate  
17 levels would be 7.85 percent. For the large power class,  
18 the bill impact would be an increase of .52 percent.  
19 That's 0.52.

20 Q. Okay.

21 A. The actual increase to the permanent rate  
22 levels would be 6.82 percent. For lighting and other, the  
23 bill impact would be 7.57 percent increase. The actual  
24 increase to the permanent rates would be 11.27 percent.

25 COMMISSIONER GAW: Okay.

0115

1 JUDGE WOODRUFF: Does anyone else have any  
2 questions?

3 QUESTIONS BY CHAIRMAN DAVIS:

4 Q. Mr. Watkins -- I'm sorry. I was going to  
5 call you Proctor, but I apologize. Which one of those  
6 categories is the State of Missouri in, in terms of if we  
7 have office buildings in Aquila's territory? Would you  
8 speculate?

9 A. I would have to speculate. I do not know  
10 all of the buildings that they have. I would guess that  
11 predominantly they would be large general service.  
12 There's a possibility they could have some buildings that  
13 would qualify for the large power service, but I do not  
14 know for sure.

15 CHAIRMAN DAVIS: Okay. Thank you,  
16 Mr. Watkins.

17 COMMISSIONER MURRAY: Just one.

18 JUDGE WOODRUFF: Commissioner Murray?

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Mr. Watkins, you may have answered this  
21 when I was out of the room just a short while, but did you  
22 go into the residential class?

23 A. I'm not sure.

24 Q. The impact?

25 A. Oh, I'm sorry. Yes, I did.

0116

1           Q.       Would you mind just -- you don't have to  
2     give the actual increase, if you'd just give the impact to  
3     the residential in each area.

4           A.       Certainly. The bill impact for the Light &  
5     Power division would be 6.26 percent. The bill impact for  
6     the Missouri Public Service division would be  
7     8.82 percent.

8                   COMMISSIONER MURRAY: Thank you. That's  
9     all, Judge.

10                   JUDGE WOODRUFF: Commissioner Clayton?

11     QUESTIONS BY COMMISSIONER CLAYTON:

12           Q.       Mr. Watkins, I wanted to verify the  
13     information that you're going to report back to  
14     Commissioner Gaw. I believe he asked for a computation of  
15     what these percentages mean, at the very least for  
16     residential customers; is that correct?

17           A.       That's correct, in terms of dollars, rather  
18     than as a percentage.

19           Q.       And how are you going to compile that? Is  
20     that based on an average usage per month basis, or what is  
21     your plan?

22           A.       I plan to have the people that normally do  
23     that do that. I believe that both the company and the  
24     Staff have agreed on what they will use for a typical  
25     customer, and that has a certain amount of usage in each

0117

1 month and an annual equivalent. So that when we say it  
2 will be one thing, it's equivalent to when -- underlying  
3 customers the same, so that when they're talking about  
4 that customer and we're talking about that customer, we're  
5 talking about the same one. So we will use that customer  
6 and his bill, apply these percentages and convert it to  
7 dollars.

8 Q. Do the people that do that, who normally do  
9 that, do that also for all the different customer classes  
10 or is it normally just done for residential?

11 A. It's normally done for residential because  
12 the press release that accompanies the rate filings are  
13 typically including, here's what happens to the typical  
14 residential customer from this rate increase request. And  
15 I don't believe that that normally includes what's  
16 happening to other customer classes.

17 In part that's because it's even more  
18 difficult for other customer classes to determine what a  
19 typical customer is, and plenty hard enough within  
20 residential.

21 Q. Well, do you know if the people who  
22 normally do these calculations, who know how to do these  
23 calculations on what the actual dollar impact would be on  
24 a particular customer, would it indicate on those classes  
25 of customers where there is a -- where there's a decrease

0118

1 in rates, would it be a decrease in dollars?

2 Let me try to clarify. Large general  
3 service operators, I think in MPS you said was a negative  
4 .5 percent or decrease of .5 percent, that that would  
5 equate with a dollar reduction in what they normally pay  
6 for their power service. Is that what that means?

7 A. That would be large power service at  
8 Light & Power.

9 Q. I squeezed all these numbers into a tiny  
10 little margin and it makes absolutely no sense, so --

11 A. I --

12 Q. There were two of them that had negative  
13 amounts. There were two of them that had negative  
14 amounts. I'm interested to know if those negative amounts  
15 actually reflect a reduction in actual dollars on  
16 projected bills.

17 A. Yes.

18 Q. They do?

19 A. Yes.

20 Q. And that would be large general service  
21 customers under L&P?

22 A. Large power service.

23 Q. Large power service, and what does that  
24 mean, large power service?

25 A. Typically your larger industrial customers.

0119

1 Q. And that's under L&P and MPS?

2 A. I only show decreases for the large power  
3 customers in the Light & Power division. The large power  
4 customers in the MPS division have about a half percent  
5 increase.

6 Q. That was the .52 percent increase?

7 A. Yes, that was an increase.

8 Q. But there were two negatives. There was  
9 one other, or maybe I am mistaken. The only decrease is  
10 for large general service -- excuse me -- large power  
11 service in L&P?

12 A. That's correct.

13 Q. Even though they have a 2.1 percent  
14 increase in what their tariffed base rates would be?

15 A. That's correct. I would clarify that I  
16 understood Commissioner Gaw's question to be to convert  
17 the percentage amounts to dollars for only the residential  
18 class. We do have a concept of what the typical  
19 residential customer means, but not for the other classes.  
20 But yes, the percentages do convert to dollars.

21 Q. I'm having difficulty reading my writing,  
22 and I just wrote it. When you do these calculations, do  
23 you do a calculation or do you have a figure or a chart  
24 that shows revenue impact on these on these amounts by  
25 class?

0120

1 A. No.

2 Q. You don't do that. Okay. Do you have any  
3 idea of what that .05 percent reduction for large power --  
4 large power service customers in L&P, what that  
5 .05 percent actually means in total dollars reduced in  
6 that class?

7 A. Yes.

8 Q. Hallelujah. What have you got?

9 A. That's \$167,179.

10 Q. 166?

11 A. 167,179.

12 Q. 179. Okay. And that's in L&P, correct?

13 A. Uh-huh.

14 Q. And do you know the total amount of  
15 revenue -- well, if I -- that amount is .05 percent of  
16 what the total amount of, what revenue is generated  
17 through gas?

18 A. Yep, including the IEC.

19 Q. Okay. I was told there would be no math,  
20 but that's okay. Thank you.

21 JUDGE WOODRUFF: Let me ask a clarifying  
22 question. This is probably for Staff counsel. This  
23 additional information about average customer effects, is  
24 that something that can be provided this afternoon or is  
25 that something that has to be filed later?

0121

1                   MR. WILLIAMS:  Actually, that's probably  
2   better directed to the witness.

3                   JUDGE WOODRUFF:  All right.  Mr. Watkins?

4                   THE WITNESS:  I would think that would be  
5   available today.  I'm not sure what you meant by this  
6   afternoon, but -- okay.

7                   JUDGE WOODRUFF:  Well, eventually we're  
8   going to take a break here.  Okay.  That's my only  
9   question.  That's my only question.  Commissioner Gaw, we  
10  are approaching lunch time.

11                  COMMISSIONER GAW:  You told me you didn't  
12  want to break.

13                  JUDGE WOODRUFF:  Do you want to break for  
14  lunch?

15                  COMMISSIONER GAW:  I don't care.  I just --  
16  yeah.  I don't care.

17                  JUDGE WOODRUFF:  I know you have something  
18  later in the afternoon.  Should we take a short break,  
19  45-minute break?

20                  We'll take a break for lunch now and come  
21  back at one o'clock.

22                  (A BREAK WAS TAKEN.)

23                  JUDGE WOODRUFF:  We've had our lunch break  
24  and we're ready to go back on the record.  Mr. Williams,  
25  did you have something you wanted to offer?

1 (EXHIBIT A WAS MARKED FOR IDENTIFICATION BY  
2 THE REPORTER.)

3 MR. WILLIAMS: Yes. Mr. Watkins provided  
4 some numbers. What I have -- that's been marked as  
5 Exhibit A is a sheet that includes a table that has all  
6 those numbers. And for purposes of this on the record on  
7 the Stipulation & Agreement, the Staff would offer  
8 Exhibit A.

9 JUDGE WOODRUFF: All right. I believe  
10 other counsel have had an opportunity to see this also.  
11 Exhibit A has been offered into evidence. Any objection  
12 to its receipt?

13 (No response.)

14 JUDGE WOODRUFF: Hearing none, it will be  
15 received into evidence.

16 (EXHIBIT A WAS RECEIVED INTO EVIDENCE.)

17 JUDGE WOODRUFF: And when we left off,  
18 Commissioner Gaw, you were asking questions, so I'll come  
19 back to you.

20 COMMISSIONER GAW: Thank you, Judge.

21 In regard to the weatherization program,  
22 can somebody enlighten me on what, if anything, Aquila had  
23 been contributing prior to this case for any  
24 weatherization, conservation or efficiency efforts?

25 MR. SWEARENGEN: We'll see if we can get

0123

1     that number.

2                   MS. WOODS:  I actually believe I have that  
3     number.  Aquila prior to -- prior to this case was  
4     contributing I believe it was 93.5, \$93,500 for energy  
5     efficiency programs.  And I believe it was 50,000 of that  
6     was going directly to low-income weatherization,  
7     specifically to the City of Kansas City.

8                   COMMISSIONER GAW:  Okay.  And is this  
9     amount that's contained in the stipulation in addition to  
10    that amount or does it replace that amount?

11                  MS. WOODS:  It replaces that amount.  It  
12    includes that amount and adds about another, I think it  
13    comes to 99, something like that, thousand.

14                  COMMISSIONER GAW:  Was there a Change a  
15    Light program in the previous rate case?

16                  MS. WOODS:  That's where some of the money  
17    did go, yes.

18                  COMMISSIONER GAW:  Okay.  And these  
19    commercial audits, is that something new or --

20                  MS. WOODS:  No.  We had the commercial  
21    audit, just not funded at quite this level.

22                  COMMISSIONER GAW:  Okay.  Can you break the  
23    numbers down for me and provide them so that they match  
24    the categories that you have in this stip and just provide  
25    it sometime today or tomorrow, perhaps?

0124

1 MS. WOODS: You mean the numbers that --

2 COMMISSIONER GAW: The categories,  
3 weatherization, commercial audits, Change a Light.

4 MS. WOODS: And what you're asking for is  
5 what Aquila was spending prior to?

6 COMMISSIONER GAW: Yes, what they were  
7 spending prior to the implementation of this stip, if it's  
8 adopted.

9 MS. WOODS: As I said, I know the 50,000  
10 was specifically earmarked for low-income weatherization.

11 COMMISSIONER GAW: That's why I'm asking  
12 you to do it afterwards, since you don't have the  
13 information currently.

14 MR. WILLIAMS: Commissioner Gaw, I believe  
15 Staff may be able to provide that information.

16 COMMISSIONER GAW: That's fine.

17 MR. WILLIAMS: In the rebuttal testimony of  
18 Lena Mantle, on page 1, it reflects that the "Change a  
19 Light, Change the World" program was being funded at  
20 20,000 annually.

21 COMMISSIONER GAW: Okay.

22 MR. WILLIAMS: I don't see the current  
23 commercial audit.

24 MS. WOODS: Would that leave 23,500 for the  
25 commercial audit?



0126

1     you, Mr. Williams. What impact does this portion of the  
2     stipulation have on the depreciation accounts of Aquila?

3                     MR. WILLIAMS: That's -- I can't answer  
4     that question.

5                     COMMISSIONER GAW: I thought I'd just give  
6     you a chance at it, if you want it. If not, should I ask  
7     Mr. Schallenberg?

8                     MR. WILLIAMS: I'm hopeful that he'll be  
9     able to provide those.

10                    COMMISSIONER GAW: I suspect he'll have  
11     some insight about that.

12                    JUDGE WOODRUFF: He's coming forward like  
13     he knows the answer.

14                    And you're previously sworn, so you're  
15     under oath.

16                    THE WITNESS: Yes.

17     ROBERT SCHALLENBERG testified as follows:

18     QUESTIONS BY CHAIRMAN GAW:

19             Q.     Did you hear that question,  
20     Mr. Schallenberg?

21             A.     Yes. On Aquila's books is the South Harper  
22     facility, which is rated at 315 megawatts, and it is in  
23     accounts in the generation function that have prescribed  
24     depreciation rates. So that amount, there is an amount on  
25     the books. The number in the stipulation, the

0127

1 140 million --

2 Q. Yes.

3 A. -- there are agre-- there are conditions in  
4 the Stipulation & Agreement that that number will go  
5 through and be trued up as to what ultimately will be  
6 allowed to remain in those accounts for the South Harper  
7 facility.

8 COMMISSIONER GAW: Okay. I want to go -- I  
9 want to ask you some more questions about that, but there  
10 was a little bit of a confusing statement to me in the  
11 stipulation. Mr. Williams, you may want to answer this  
12 for me. I thought that I saw in one place in the  
13 stipulation where it said there would be no true-up, but  
14 then in the other part of the stipulation dealing with  
15 this facility, it contemplates a true-up in a narrow  
16 sense.

17 And I guess I'm -- just from the standpoint  
18 of clarity, is there a contradiction of sorts in the way  
19 the stip is written?

20 MR. WILLIAMS: I think the contemplation  
21 was that there would be no further true-up proceedings in  
22 this rate case, but there is contemplation of a true-up  
23 with regard to the numbers that are going to be attributed  
24 to the 315 megawatt -- megawatts of power that are -- and  
25 Staff used as a proxy the South Harper facility to obtain

0128

1 the numbers that it's used for that 315 megawatts, which  
2 in Staff's view is why there's a reference to South Harper  
3 in there.

4 COMMISSIONER GAW: Okay. So in essence,  
5 the way that the stip is drafted in regard to no further  
6 true-up you think is accurate? It's not -- it's not a  
7 contradiction?

8 MR. WILLIAMS: Correct. I mean, the  
9 true-up is not for purposes of the rates in this case.

10 COMMISSIONER GAW: I can't remember where  
11 that particular provision is. And I'm only raising it  
12 just for the sake of clarification.

13 MR. SWEARENGEN: Judge, it's paragraph 7 on  
14 page 5.

15 COMMISSIONER GAW: It says, there shall  
16 be no true-up of any items in this case, and that's why  
17 I'm -- that's why I'm a little troubled by the wording. I  
18 don't think you-all are in disagreement in regard to what  
19 you mean, but --

20 MR. SWEARENGEN: Well, it says other than  
21 as provided in paragraph 6.

22 COMMISSIONER GAW: I see. I didn't read  
23 far enough. Thank you. My confusion is now resolved.  
24 Thank you.

25 BY COMMISSIONER GAW:

1           Q.       All right.  So Mr. Schallenberg, let me go  
2 back then.  The 315 megawatts are placed on the books of  
3 Aquila to be depreciated out at what amounts of  
4 provisional cost?

5           A.       Right now, they will have booked the  
6 amounts that they've closed to the work order, which is  
7 the South Harper facility, on their books.  That amount at  
8 the time the stipulation was being prepared, the best  
9 estimate of what we thought the number was was  
10 \$140 million.  With the -- the Staff and the Office of  
11 Public Counsel are the only two entities I know that are  
12 doing an active audit of all the specific charges, looking  
13 for any legal fees, any costs for additional property.

14                   I know landscaping is looked at and other  
15 charges up through, I think the agreement specifies  
16 through October 1st.  There's an AFDC test power agreement  
17 that's in the stip, and it will be trued up for that.  So  
18 we will do all of those things.

19                   Then in the -- in that 140 million is also  
20 an evaluation agreement as to the turbines that we  
21 inherited.  I know there should be a more technical term  
22 from the non-regulated operations, and then that will  
23 afford Aquila the opportunity to write off the portion of  
24 the costs that aren't included in the true-up.

25                   But the amounts that will be on their books

0130

1 will be in that account, and I think -- I can't recall  
2 exactly the depreciation rate, but it's in the schedule of  
3 the rates for this case, and the Commission's approved  
4 rate won't be the rate it will be depreciated on their  
5 books.

6 Q. Okay. So isn't it -- it is pretty clear,  
7 then, that this stipulation results in the South Harper  
8 facility going into the recognized books, recognized by  
9 the Commission from the standpoint of generation and  
10 future ratemaking purposes. Is that true or not?

11 A. There's a couple pieces to that question.

12 Q. That's true. Go ahead and break it down.

13 A. Right now under our Uniform System of  
14 Accounts --

15 Q. Okay.

16 A. -- they would be able to have and did book  
17 any generating facility that they built into the plant  
18 accounts. Now, their booking does not give them any  
19 assurance that the amounts they book can be recovered in  
20 rates or any guarantee, nor does it guarantee them that  
21 the facility and the expenditures will be deemed prudent.

22 And then you have another threshold in  
23 electric, and if it's found not to be fully operational  
24 and used for service, even though the expenditures are  
25 those dollar amounts and they were prudent expenditures,

0131

1     you can't prove it right.

2                     So there's a disconnect between just what  
3     they could do in their books and what will happen in  
4     rates. There's a lot of other steps before you can get it  
5     in rates. The agreement in the language you're looking at  
6     is addressing what they'll do on their books.

7             Q.        Okay.

8             A.        But there is also a commitment on Aquila's  
9     behalf that in future ratemaking proceedings, regarding  
10    this 315 megawatt facility, the amount that they will seek  
11    recovery on will be this trued up amount plus any  
12    additions, construction additions done to that facility  
13    after I think it's October 31st of 2005. But that puts a  
14    limit on what Aquila will ask for in a future proceeding  
15    for rate recovery. It doesn't assure rate recovery for  
16    that amount.

17            Q.        Okay. Now, it's difficult for me to  
18    understand exactly what this portion of the agreement does  
19    from Staff's viewpoint in arriving at the bottom line  
20    rates in this black-box settlement. So what from Staff's  
21    standpoint is contained in rates that relate to this  
22    315-megawatt generating facility?

23            A.        Staff's case was predicated and remains  
24    today on the premise that the building of the 315-megawatt  
25    facility was inadequate and that it should have been built

0132

1 at an amount -- I think Staff's case says  
2 525 megawatts. And so to create the amount of money the  
3 Staff put in its case, it had to look at what would it  
4 have cost to build a 525-megawatt facility.

5 We had a model to use, which is the South  
6 Harper construction facility, because it in essence is  
7 315, and so from that we used those cost numbers to  
8 construct a cost estimate that we included in our case for  
9 525 megawatts. Now, we didn't include market-based  
10 purchased power agreements. So our case is predicated on  
11 the assertion that the prudent course for Aquila to have  
12 taken was to have built its own generation in the amount  
13 of 525 megawatts.

14 Q. Of gas?

15 A. It's combined cycle, yes.

16 Q. Combined cycle or --

17 A. Excuse me. CTs.

18 Q. Okay. Combustion turbines?

19 A. Yes.

20 Q. Is Staff suggesting that it would have been  
21 prudent for Aquila to have added 500 megawatts of -- over  
22 500 megawatts of gas combustion turbines, as opposed to  
23 adding additional base load generation?

24 A. Well, yes. At the time the option for  
25 Aquila to have added 500 megawatts of base load capacity

0133

1 was not an option that was available to Aquila within this  
2 time frame.

3 Q. Because they had not done anything about  
4 putting in any base load generation early enough to have  
5 had it up and running by the date that this particular  
6 combustion turbine could have been placed up and running?

7 A. That -- that is true in part. But it's  
8 also, Aquila's size is such that when you say a base load  
9 unit, you can build small coal units. That gives you base  
10 load capacity, but their efficiency and their use is, at  
11 least in Staff's review, they don't justify the  
12 expenditures.

13 Aquila had in their plans or the MoPub  
14 district had always looked at participation in Iatan 2,  
15 and in the '90s Iatan 2 was projected to be in by the end  
16 of the '90s or 2000. And without the Iatan 2 project  
17 going forward, of which Aquila does not control the site  
18 and cannot initiate on their own, they did not have that  
19 opportunity.

20 Now, there have been discussions of them  
21 building another coal facility, but they'd have to find a  
22 new site to build a coal facility. They don't have an  
23 existing site that has the multi-unit expansion capability  
24 today. So the Staff's case is not based on accepting that  
25 they had a reasonable opportunity to build a coal facility

0134

1 to replace the expiration of the purchased power agreement  
2 with the Aries unit.

3 Q. It's based on what set of assumptions then?

4 A. It's based on the assumption that Aquila at  
5 the end of the five-year period for the Aries contract  
6 should have ownership of generation to replace that  
7 capacity, and the option that was within their control was  
8 to build 525 megawatts, and you can get a different  
9 configuration depending on what type of generation you buy  
10 of CT capacity.

11 Q. Mr. Schallenberg, I understand where your  
12 starting point is, but I'm not sure that I can stomach  
13 starting at the same place. If there were decisions that  
14 were not made by Aquila earlier in time and the decisions  
15 that were not made or decisions that might have been made  
16 placed them in a predicament, ratepayers I don't believe  
17 should be responsible for that predicament.

18 So I guess I'm asking you whether or not  
19 this particular recommendation that you have and the way  
20 you calculated it was based upon a thorough analysis of  
21 the prudence of Aquila's decisions for the years leading  
22 up to this episode, and not just the months or -- the  
23 months they might have had to respond, the couple of years  
24 they might have had to have responded to the ending of the  
25 combined cycle access at the Aries plant.

1           A.       And the answer to that is, in the IRP  
2 process with Aquila, other than the Iatan 2 project, the  
3 only other -- there had been discussions at various times  
4 in the '90s of a coal unit -- if it isn't Iatan 2, a coal  
5 unit as early as 2008. Now, I do not have and I'm not  
6 aware there was a practical option.

7                   Now, when I say that, if you don't -- if  
8 you -- depending how active you are finding sites and  
9 working on it can limit what options you study. I can  
10 make that a self-fulfilling prophecy, and I know that in  
11 the Staff's efforts especially with other companies and  
12 Aquila, we have -- emphasis is probably a gentle term --  
13 pushed for more exploration of options.

14                   But I do not -- I am not aware of a  
15 practical option that was under their control to build a  
16 coal unit that would have been efficient. Now, you can  
17 build small ones, but that would cause a whole new host of  
18 problems. I'm not aware that there was an option that  
19 they could have exercised to have built coal, independent  
20 of partners.

21                   On the western side of the state, we do  
22 not -- we are not served by any IOU that is large enough  
23 to build a coal project on their own. Even KCP&L isn't  
24 big enough to do that. AmerenUE is the only entity that  
25 serves Missouri that is big enough, in terms of its size,

1 to decide to build a coal unit independent of partners.

2 One other thing I will add to that. I am  
3 aware that they do seek and at times have had  
4 opportunities for purchased power agreements that are base  
5 load, and they do have some of those now, and we don't  
6 discourage that, but those have finite dates and will  
7 expire at various times.

8 I think Mr. Clemmens mentioned a  
9 75-megawatt purchased power contract that they have with  
10 Nebraska Public Power District, and there usually is  
11 access to base load capacity on a short-term basis, and  
12 that can be up to five -- five years, unless you have an  
13 existing one, especially up in Nebraska and Iowa.

14 And with the new units being built in Iowa,  
15 there may be some more opportunities in the near future,  
16 but those aren't long-term solutions. Those are only  
17 short-term solutions.

18 Q. So are you telling me Staff is currently  
19 satisfied with the generation mix, fuel mix of Aquila?

20 A. I would say no. I mean, I would say we are  
21 encouraging -- we are encouraging more diversification in  
22 their fuel mix towards other sources than gas.

23 Q. And you -- is there a documented -- has  
24 there been documented to Staff all of the activity that  
25 Aquila has engaged in to attempt to deal with what has at

0137

1    least in some opinions expressed has been a shortage of  
2    base load generation in its MPS system?

3           A.       I'm trying to -- the answer to your  
4    question, I'm trying to remember -- are you asking me how  
5    much -- do we have all the data that was created at Aquila  
6    under our control? Is that what you're asking me?

7           Q.       I'm asking whether or not you have access  
8    to significant amounts of data that show all of the  
9    efforts that Aquila has been making to try to address what  
10   is perceived to be a shortfall in their base load  
11   generation portfolio in the MPS system?

12          A.       I would say we have enough to know what was  
13   going on. Aquila in the MoPub district probably beginning  
14   in the late '90s made a decision not to invest in  
15   generation, and actually the Aries unit is in essence a  
16   unit that they didn't own as a regulated unit. So they  
17   weren't looking at owning any type of generation, base  
18   load, peaker or combined cycle unit, until the current  
19   facility was built, for at least five years.

20          Q.       And you know the reason that was stated by  
21   Aquila for not looking at owning additional generation to  
22   meet their load needs?

23          A.       I've heard multiple reasons.

24          Q.       Well, why don't you give me the top ones,  
25   if you could.

1           A.       Well, one was they believed there was going  
2   to be restructuring, and that with restructuring they felt  
3   that any addition to the generation fleet only raised the  
4   probability of stranded costs, which when they were  
5   talking about restructuring stranded costs was one of the  
6   topics within that general area. I've heard that it's  
7   more economic not to build. And then I've heard the one  
8   that we don't have those options.

9           Q.       Okay. Do you agree with the second one,  
10 that it's more economic?

11          A.       To build?

12          Q.       To not build?

13          A.       No, not at all. And I say that, and I mean  
14 in the long run. There are purchased power opportunities  
15 that you can get that are economic, but as a matter of  
16 just general course, I have not seen where an energy  
17 provider does not keep control of the fixed assets that  
18 meets their load. And in our meetings even with IPPs, we  
19 had several with Calpine, even when we looked at  
20 non-regulated providers, they held the same philosophy  
21 that they did not run the risk of divorcing the load from  
22 having physical generation to serve that load.

23          Q.       Okay. Is it -- is part of the reason that  
24 Staff believed that they need -- that Aquila needed  
25 520 megawatts of additional generation, as opposed to just

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1 315 megawatts, because of the expiration of the contract  
2 dealing with the Aries plant?

3 A. Yes.

4 Q. Is that the reason?

5 A. Yes. I mean, because you had -- at peak  
6 you had approximately 500 megawatts of capacity under  
7 contract to meet the MoPub district's system peak  
8 requirements, and with its expiration, it was -- it was  
9 the Staff's position that you should have built and have  
10 under control a fixed asset versus relying on purchased  
11 power contracts.

12 Q. All right. Who owns legal title currently  
13 to the South Harper facility, if you know?

14 A. I guess my answer would depend on how you  
15 view the status of the Chapter 100 financing and under  
16 Chapter 100 financing who owns title. I've heard both  
17 answers even under Chapter 100 financing, whether the  
18 governmental entity that's involved with the -- with the  
19 Chapter 100 owns the facility or whether the utility owns  
20 it. And --

21 Q. Well, okay. That's a legal question,  
22 correct?

23 A. Yes.

24 Q. Legal question. I guess my -- what I'm  
25 really asking you about is, if you know if there's been

0140

1 any late-breaking news about the current ownership of that  
2 facility since the bonds that were issued on that facility  
3 were determined to be void. Do you know whether or not  
4 there's been any change in status of that facility?

5 A. No. And the 156 case that had the turbine  
6 valuation in it and the Chapter 100 financing, I'm not  
7 aware that we're addressing that issue actively right now.  
8 I mean, I will say that the certificate case is probably  
9 going to draw -- be treated as a higher priority right now  
10 than the Chapter 100 financing will be.

11 Q. Okay. Now, I'm going to go back to what I  
12 started out with here in regard to this depreciation. Is  
13 there any way for me to see in this stipulation how much  
14 of the rates are impacted by any allowed depreciation for  
15 this 315-megawatt facility in the rates that are -- that  
16 are resulting from this stipulation?

17 A. When you're saying rates, you mean the  
18 customer's rates or depreciation rates?

19 Q. The customer rates now.

20 A. The Staff's cost of service will have in it  
21 numbers somewhat earlier of the depreciation expense from  
22 the plant accounts that had South Harper investments in  
23 it. And on their books they will continue to depreciate  
24 any balance in those accounts until there's an official  
25 retirement on their books.

0141

1           Q.       But in these rates that you-all have agreed  
2   to, is there any way for me to understand whether -- let  
3   me say whether Staff was taking into account some  
4   depreciation in coming to the conclusion that the rates  
5   were just and reasonable in this stipulation?

6           A.       Staff took into account in it arriving to  
7   accepting the 38.5 -- because that's the MoPub district  
8   and that's where the South Harper facility is --

9           Q.       Yes.

10          A.       -- it took into account its depreciation  
11   estimate of its 525-megawatt unit.

12          Q.       All right.

13          A.       Now, on their books, when these rates  
14   are -- assuming the Commission approves these rates, they  
15   will book the revenues from the 38.5, but if the South  
16   Harper facility is not retired, they will book  
17   depreciation based on the investment that is booked in  
18   those accounts, which will be trued up under this  
19   \$140 million we discussed earlier in your rates. That's  
20   the amount of depreciation that they will charge against  
21   the rates that are in the stipulation that will be charged  
22   to customers.

23          Q.       Okay.

24          A.       Because there's two levels of depreciation.  
25   There's what will be on their books --

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1 Q. Okay.

2 A. -- and there's what was in the Staff's cost  
3 of service for the Staff to say that the amount that's in  
4 here is going to result in just and reasonable rates. We  
5 had much more depreciation in our number than they did.

6 Q. Okay. Comparing those two things, one with  
7 the Staff's 520-megawatt scenario and one if you just  
8 assume that there really was a South Harper facility that  
9 really was up and running and that really had been  
10 approved by courts of competent jurisdiction, which we can  
11 do more than assume on a couple of those, but not all of  
12 them, which produces the highest rates, if everything else  
13 is the same?

14 A. The highest?

15 Q. Rates to customers.

16 A. Oh. I guess I'm still missing -- the  
17 highest rates to customers in the short run?

18 Q. Okay.

19 A. In the short run, in this case?

20 Q. Yes.

21 A. Would probably be -- from taking the  
22 Staff's case, you would probably get a lower cost of  
23 service if you put depreciation on a 315-megawatt unit  
24 trued up for legal costs and landscaping and whatever.

25 Q. Yes.

1           A.       And took what has currently been set for  
2   the capacity to meet the other 200-megawatt shortfall by  
3   buying a one-year market contract. That will give you a  
4   lower cost of service in this case than it would to have  
5   the 525-megawatt facility that the Staff has in its case.

6           Q.       Yes. In the short run, Staff actually gave  
7   more credit over to Aquila than the 315-megawatt scenario  
8   in determining what rates were just and reasonable?

9           A.       Yes. Our cost of service has more cost in  
10  it at this time because of the selection of the assertions  
11  that it was prudent to build a facility than Aquila will  
12  incur in 2006.

13          Q.       Yes. And, in fact, this stipulation does  
14  call for the potential for a brand-new rate case to be  
15  filed in June, which is a very short time away from now,  
16  correct?

17          A.       It allows them to file, I think it was  
18  July.

19          Q.       July?

20          A.       July 1.

21          Q.       I'll stand corrected.

22          A.       But it allows them to file, but it requires  
23  them to file in two years, and that's the fuel issue is,  
24  they have the protection that they don't have to stay out  
25  any longer than July, but they don't have to file. But

0144

1 the other -- the other back side protection is, even if  
2 fuel prices decline and no one files a complaint, they  
3 have to file a case in two years.

4 Q. I understand. But in regard to just this  
5 particular narrow issue --

6 A. Okay.

7 Q. -- the turn-around here is pretty short,  
8 you know, especially if a rate case were filed in July.

9 A. Yes.

10 Q. So short-term can be pretty important in  
11 this case because of that, in part because of that?

12 A. Yes. But I would say in that time frame  
13 they only have under contract capacity for 2006 summer.  
14 They will have to contract for capacity for 2007 and  
15 beyond sometime before that summer hits.

16 Q. They have not done that yet, to your  
17 knowledge?

18 A. To my knowledge, and to the Staff's  
19 knowledge, they have not done it. That doesn't mean they  
20 haven't.

21 Q. I understand. Is it -- is it accurate to  
22 say that the amount of money that Aquila intends to pay to  
23 its affiliates for the purchase of the three generating  
24 units that are currently located at the South Harper  
25 facility is, as a practical matter, zero?

0145

1           A.       Yes, in the sense if you're asking me will  
2   there be a cash transfer from one account to another.

3           Q.       Yes, that's what I'm asking.

4           A.       The answer is yes.  There's no -- it's done  
5   on their books because the amounts are commingled.

6           Q.       Okay.  I'm going to give you a scenario,  
7   and this may be a little convoluted, so if you need me to  
8   repeat it, that would be fine.

9                    If Staff had used an assumption that this  
10   additional 315-megawatt capacity were available from an  
11   affiliate of Aquila under an agreement that allowed them  
12   to access that power and capacity at incremental cost,  
13   what would that have done if that were the Staff's  
14   position in regard to the bottom line, just and  
15   reasonableness of the settlement?

16          A.       When you say incremental cost, is it  
17   Aquila's incremental -- the MoPub district's incremental  
18   cost or the affiliate's incremental cost?

19          Q.       The affiliate's incremental cost of that  
20   generator.

21          A.       That would result in a purchased power  
22   agreement that would be cheaper than owning the facility  
23   in the first year.

24          Q.       And again, Staff did not look at it from  
25   that standpoint in reaching its conclusion whether or not

0146

1    this result is just and reasonable that they've entered  
2    into, correct?

3           A.       That's correct.  Staff's case is predicated  
4    on ownership, with the understanding that ownership  
5    usually is expensive in the first two to five years, but  
6    then in giving -- I think our life on the units is about  
7    25 years.

8           Q.       Okay.

9           A.       But then you look at -- and units are  
10   living longer than we depreciate, the life we give them.  
11   You're looking at 20-plus years where it will be cheaper.  
12   So in order to take that position, we have to pay the  
13   up-front cost for the four or five years to enjoy the  
14   benefits for the 20-plus years.

15          Q.       And in essence, the way Staff figured the  
16   just and reasonableness of this settlements does exactly  
17   that?

18          A.       Yes.  And I would expect that in this next  
19   case that you asked me about a few minutes ago, Staff will  
20   still include that facility, but it will be depreciated  
21   with a couple of years and have deferred taxes on it, so  
22   it will already be in a cost decline from what was  
23   included in Staff's case in this case.

24          Q.       And again, currently -- I think it's  
25   already been made clear, currently there is an Order to

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1     tear this facility down in the next two months or so; is  
2     that correct?

3             A.       As I understand, the Order states that they  
4     cannot produce electricity out of the facility right now.

5             Q.       Okay.

6             A.       Out of the South Harper facility. And if  
7     they don't have the certificate either from one of two  
8     sources, which I believe is the County or the Commission,  
9     then I believe at May 31st the facility is -- is to be  
10    removed.

11            Q.       Dismantled or removed?

12            A.       Yes. That's my understanding of the Order  
13    that's applicable today.

14            Q.       Okay. And when we're talking about this  
15    facility, if I didn't say it in the question, we're  
16    referring to the South Harper facility?

17            A.       Yes.

18            Q.       All right.

19                    CHAIRMAN DAVIS: Commissioner, that's not  
20    the hypothetical South Harper facility, that's the real  
21    South Harper facility, correct?

22                    COMMISSIONER GAW: I think it's the South  
23    Harper facility that's hypothetically included in this  
24    case. I think that's what it is.

25                    CHAIRMAN DAVIS: Thank you.

1 BY COMMISSIONER GAW:

2 Q. Let me ask you on another topic,  
3 Mr. Schallenberg, did you-all examine whether or not  
4 Aquila's pension funds are currently adequately funded?

5 A. The answer would be yes. When you -- when  
6 you say there's an ERISA minimum calculation that talks  
7 about what the minimum amount that has to be funded to  
8 meet that threshold.

9 Q. Yes.

10 A. We look at that as a matter of course in  
11 every rate case.

12 Q. Yes.

13 A. And that is examined and that is always  
14 considered by the Staff in terms of determining how much  
15 pension expense is used in its case, and then we also look  
16 at, as mentioned earlier, even in OPEBs we make sure that  
17 the funds are actually being put in the fund, in the  
18 related pension funds.

19 But Mr. Traxler did that area. I know he's  
20 here if you want additional --

21 Q. I just wanted to get feedback from you in a  
22 general sense, that there were no issues that you saw in  
23 regard to there being adequate funding of the pensions  
24 that Aquila has.

25 A. That's correct. At this juncture, we have

1 no outstanding issue with Aquila regarding the function of  
2 its pension obligations.

3 Q. And I'm going to have to apologize that I  
4 have to cut this short here. One other thing. Explain to  
5 me what the Accounting Authority Order does in this case.

6 A. Is this the mark to market piece?

7 Q. Yes, I think it is. It's in Section 17 of  
8 the stip, page 10. It is the mark to market.

9 A. What that does, there is an -- in  
10 accounting terms it's called FASB 133. If you buy a  
11 financial instrument related to a commodity, between the  
12 time you buy it and the time it closes or settles, you are  
13 required to adjust it on your books as to its market  
14 value, unless it is tied to a physical transaction. In  
15 fact, we call FASB 133, it's related to speculation.  
16 You're buying financial instruments without having  
17 physical transactions just hoping that the thing will  
18 settle in the money or you'll sell it while it's in the  
19 money. So you're just speculating on a financial  
20 transaction without any physical control.

21 Our utilities, and that would include not  
22 only electrics but natural gas, under risk management that  
23 I'm aware of, they tie the financial transaction to the  
24 physical transaction, so that if they've agreed to buy a  
25 certain amount of gas at a certain time, they have gone

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1 and gotten a financial transaction to hedge that to a  
2 price certain, not that the physical price will fluctuate,  
3 but when you look at that and combine it with the  
4 financial transaction, it will result in a price that's  
5 fixed.

6 By making that connection, and that's what  
7 this portion of the stipulation is, they do not have to  
8 adjust their books based on the market value fluctuations  
9 of that financial instrument. And so it was designed to,  
10 one, allow Aquila to use what's called FASB 171, which is  
11 a regulatory one, so they no longer have to do a mark to  
12 market, and it also makes the connection between the  
13 physical transaction and the financial transaction for  
14 fuel expense more definite, so it can actually be booked  
15 as fuel expense.

16 Q. And that's being done as an Accounting  
17 Authority Order. Again, why is that mechanism needed to  
18 accomplish the result that you're trying to accomplish?

19 A. Generally speaking, I'd say probably the  
20 main cause for the need is that their external auditor  
21 claims that they needed more documentation than we have.  
22 The reason you won't normally see it is, most of the other  
23 utilities' external auditors have not insisted on an  
24 Accounting Authority Order.

25 Now, the practice that's reflected in this

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1 agreement is consistent with the practice that's taking  
2 place in our other utilities. It's just that their  
3 external auditors have not insisted on language in a  
4 Commission Order to the same extent that Aquila has a  
5 requirement.

6 Q. Is that because of the -- that the external  
7 auditor has that particular requirement of all the  
8 utilities it serves, if you know, or is it because we're  
9 dealing with Aquila itself? Is it attributable to Aquila  
10 or attributable to the external auditor that this is being  
11 made?

12 A. It's attributable to the external auditor.  
13 Now, whether the external auditor would have a different  
14 opinion if it's a different company --

15 Q. Yes.

16 A. -- I don't know that.

17 Q. That's what I'm asking.

18 A. But I will tell you, we get different  
19 issues from the same external auditor for the same company  
20 case after case. I mean, from different cases. So I  
21 can't tell you whether it's an Aquila financial condition  
22 issue or it's just the individual auditor.

23 Q. Okay.

24 A. But I also want to point out, though, this  
25 agreement has the benefit of tying the financial

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1 instrument as fuel expense so -- and without that, they  
2 would actually book the financial instrument in another  
3 account, and you would susceptible to the argument that  
4 the financial instrument and the gain could be separated  
5 from fuel expense.

6 COMMISSIONER GAW: Thank you,  
7 Mr. Schallenberg. Thank you, Judge.

8 JUDGE WOODRUFF: Before we go to questions  
9 from Commissioner Clayton, Mr. Williams, you just brought  
10 up another document. Do you want to tell us what this is?

11 MR. WILLIAMS: Commissioner Gaw earlier  
12 asked that the Staff, if it would -- if it could to  
13 provide what the rate impact would be on a typical  
14 residential customer, and what I've distributed is what  
15 Staff's calculated for that.

16 JUDGE WOODRUFF: Okay. Do you want to mark  
17 this as an exhibit again?

18 MR. WILLIAMS: Sure.

19 JUDGE WOODRUFF: We'll make it B. Do you  
20 wish to offer it into evidence?

21 MR. WILLIAMS: Yes.

22 JUDGE WOODRUFF: Exhibit B has been offered  
23 into evidence. Any objection to its receipt?

24 MR. COFFMAN: If you find this appropriate,  
25 I would like to ask -- no, actually as I look at it, I

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1 think it tells me what I need to know. Never mind.

2 JUDGE WOODRUFF: Okay.

3 MR. COFFMAN: No objection.

4 JUDGE WOODRUFF: All right. Well, hearing  
5 no objections, then the exhibit will be admitted into  
6 evidence.

7 (EXHIBIT B WAS RECEIVED INTO EVIDENCE.)

8 JUDGE WOODRUFF: Commissioner Clayton, if  
9 you have questions.

10 COMMISSIONER CLAYTON: Mr. Coffman, was  
11 that no objection or were you remaining silent on this,  
12 too?

13 MR. COFFMAN: No objection.

14 MS. WOODS: Judge Woodruff?

15 JUDGE WOODRUFF: Yes.

16 MS. WOODS: I think I have the answer to a  
17 question that Commissioner Gaw had asked about how the  
18 93,500 was allocated or spent by Aquila. Would this be an  
19 appropriate time or would you rather wait until later?

20 JUDGE WOODRUFF: Let's go ahead and take  
21 care of it now.

22 MS. WOODS: Okay. This is in Anita  
23 Randolph's direct testimony at page 20, lines 11 through  
24 21, and it's based on information provided by Aquila in  
25 response to some discovery requests from the Department.

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1 The residential low-income weatherization was funded at  
2 \$50,000 annually. Residential lighting program or the  
3 Change a Light program was funded at \$20,000 annually.  
4 And the commercial and industrial energy audits was funded  
5 at \$23,500 annually.

6 And excuse me for interrupting,  
7 Commissioner Clayton.

8 JUDGE WOODRUFF: Thank you. Commissioner  
9 Clayton?

10 COMMISSIONER CLAYTON: Anything else?

11 JUDGE WOODRUFF: I think we're ready for  
12 you.

13 COMMISSIONER CLAYTON: Is it Ms. Woods,  
14 Wood, Woods?

15 MS. WOODS: Woods.

16 COMMISSIONER CLAYTON: Woods, plural.

17 Since you've given us this information, I may start with  
18 you and ask you a couple of questions regarding these  
19 programs.

20 First of all, is the amount of funding for  
21 these programs in this stipulation at a similar level for  
22 this size utility as it would be for other utilities in  
23 this state or is it greater or lesser?

24 MS. WOODS: Well, to be perfectly honest,  
25 we really haven't been doing that for -- for very long.

0155

1 But yes, we think it's about -- most of them have resulted  
2 in about 5 cents, if you look at it from ratepayers -- let  
3 me back up here.

4 Yes, we think it's about at this point --

5 COMMISSIONER CLAYTON: The ratepayers  
6 aren't paying for it, so we can't do it by ratepayer  
7 comparison?

8 MS. WOODS: No. But it is -- if you looked  
9 at the ratepayer comparison for the number of people that  
10 Aquila serves.

11 COMMISSIONER CLAYTON: So it is compared.  
12 Let me ask you the question this way. One of the  
13 Commissioners asked earlier what the average cost per home  
14 would be for weatherization, and I believe you or somebody  
15 responded that it was approximately \$2,000. Does that  
16 sound close?

17 MS. WOODS: That sounds very close.

18 COMMISSIONER CLAYTON: So basically this  
19 weatherization budget would weatherize about 54 homes?

20 MS. WOODS: Yes.

21 COMMISSIONER CLAYTON: How many homes  
22 within the MPS district are beneath -- that would be  
23 eligible, how many homes are eligible in this MPS  
24 territory?

25 MS. WOODS: I believe that's in

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1 Ms. Randolph's direct testimony, but it's going to take me  
2 a little time to find it.

3 COMMISSIONER CLAYTON: If you don't know,  
4 you don't know. I didn't bring the testimony with me.

5 MS. WOODS: I can't tell you that right off  
6 the top of my head. I know there are a number of people  
7 who are eligible and a number of people who are on the  
8 waiting list, but that's all I can -- without going  
9 through the testimony.

10 With the additional amount, it would be  
11 about 108 homes that would be weather -- yeah, that would  
12 get weatherization.

13 COMMISSIONER CLAYTON: There's a match from  
14 the City of Kansas City; is that correct?

15 MR. COMLEY: I think the federal government  
16 matches what the utility has, and through the City of  
17 Kansas City, certain administrative costs are deducted,  
18 but I know that the City does itself make a contribution  
19 to that.

20 COMMISSIONER CLAYTON: How much of the City  
21 of Kansas City is actually within -- I guess what  
22 percentage of Kansas City is served by MPS? Do you know?

23 MR. COMLEY: It's really not that much.  
24 It's just that Kansas City represents a fairly large local  
25 community center, and it has control over a several-county

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1 area for weatherization. So even though -- it can go well  
2 into Aquila's service area to do its job.

3 COMMISSIONER CLAYTON: I guess the answer  
4 is that it doesn't matter because the City of Kansas City  
5 serves areas other than Kansas City?

6 MR. COMLEY: Exactly, with respect to this  
7 program.

8 COMMISSIONER CLAYTON: Okay.

9 ROBERT SCHALLENBERG testified as follows:

10 QUESTIONS BY COMMISSIONER CLAYTON:

11 Q. Before you fall asleep up here,  
12 Mr. Schallenberg, I'll go straight to you and go back to  
13 this South Harper facility, and then perhaps you can go so  
14 you can get off the hot seat.

15 I am having difficulty understanding the  
16 treatment for this facility, this hypothetical facility,  
17 and how it and the costs associated with it are being  
18 included in rates. You stated earlier that keeping books,  
19 and in the future the numbers that are kept within those  
20 books and those accounts may or may not be included in  
21 rates, and that's up to future ratemaking cases, but  
22 there -- this case, this stipulation places this  
23 \$140 million into the rate base, does it not?

24 A. No.

25 Q. It does not?

0158

1           A.       No.

2           Q.       Explain to me why not.

3           A.       The 140 million is in essence addressing --  
4   in this case, it addresses what they have authority from  
5   this Commission to do for bookkeeping purposes, and it  
6   will address in a future rate case what Aquila can  
7   request, as kind of a cap on what Aquila can request  
8   related to this facility in a future rate case.

9           Q.       Is it the nature of this case because it is  
10   a black-box settlement that there's not an established  
11   rate base?

12          A.       Yes.   And the other piece is that while the  
13   rates are in effect, there will be certain things that  
14   will be recorded on their books as expenses that will  
15   dictate what they record as profit or the level of profit  
16   during the period these rates are in effect.

17                    This item, this 140 million will address  
18   what they have to book as depreciation expense and what  
19   they will have to -- or what they can include as plant in  
20   service during the period these rates are in effect.

21          Q.       Is it identifiable the amount of expenses  
22   that are included in this settlement that have monies that  
23   have been spent to date in association with the South  
24   Harper plant?

25          A.       There's two -- there is no amount in the

0159

1 settlement that you can tie a South Harper dollar to the  
2 38.5. And I'm only talking about the MoPub district  
3 because that's the only piece South Harper affects. There  
4 is data in this case regarding how much cost had been  
5 booked for the South Harper facility at various times. I  
6 don't believe there's an October 31st date balance, but I  
7 know there are balances in the filings as of June as to  
8 what's booked for the South Harper facility.

9 Q. Well, all the expenses, all the capital  
10 expenses would be booked, all the construction costs  
11 developing the land, those would be booked, correct?

12 A. Yes. They would be charged to the -- they  
13 would be charged to plant, yes.

14 Q. Charged to plant. How about, say, for  
15 example, legal expenses associated with all the  
16 difficulties in getting the plant constructed, are they  
17 part of this?

18 A. My understanding is that there are some  
19 legal expenses that were booked for the movement from  
20 Cap Ranch to South Harper and some other legal expenses  
21 for some of the activities to get the South Harper  
22 facility built. As to the -- all the legal expenses that  
23 -- like in the court proceedings and things like that,  
24 it's my understanding that those have not been booked to  
25 the costs of South Harper and have been booked as legal

0160

1 expenses, but in this true-up that's taking place --

2 Q. Before you move on, those legal expenses  
3 would be an expense not part of any rate base calculation?

4 A. That's correct.

5 Q. And would be elsewhere. Okay. And then  
6 I'm sorry, go ahead and finish.

7 A. But to ensure that that is -- that my  
8 understanding is what is actually going to be in the  
9 ultimate number, the Staff is going through all of the  
10 charges that are booked for this facility. And one of the  
11 items it specifically is looking for is any legal fees  
12 charged to the cost of the facility for removal.

13 Q. If we make assumption on May 31st that not  
14 enough action is taken and the judge requires the plant to  
15 be dismantled, what happens regarding the terms associated  
16 with this paragraph?

17 A. Well, it won't change the terms in the  
18 paragraph if the plant's dismantled. If the plant's  
19 dismantled, what would happen is, on their books, they  
20 would have to make a choice as to whether they're going to  
21 make a physical retirement to remove all of the South  
22 Harper facility off of their books or -- and my  
23 understanding is that at least the probable assumption is  
24 that they will be moving the facility to another location,  
25 so that what -- you know, and I'm not sure that they're

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1 actually going to book a retirement or they'll move it to  
2 another facility and then record any incremental costs.

3 That would be the -- if South Harper is  
4 moved, one of the scenarios would be it would be retired  
5 off their books because it doesn't exist any longer, and  
6 then if they built the costs in and moved it to another  
7 site, then those costs would be accumulated. Then when it  
8 went into service, that would be added to plant in  
9 service.

10 Q. Is there a cost of removing built into the  
11 depreciation rate?

12 A. I believe there is a nominal amount  
13 regarding the operation of a generating facility. There  
14 is not a cost of removal estimate to do final or terminal  
15 net salvage for any generating unit, including South  
16 Harper.

17 Q. Are any of the other non-legal expenses  
18 associated with the South Harper facility included within  
19 this amount, or have any specific treatments, specifically  
20 the expenditures that have occurred on the ground or with  
21 the neighbors of the plant in Cass County, whether it be  
22 house buyouts or any other activity?

23 A. Probably before -- to clarify another  
24 point, you asked me about that paragraph. If they did  
25 move it, there is within -- the argument about the 140,

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1     that paragraph, there's a portion that says that covers  
2     the 315-megawatt facility up until October 31st for any  
3     liabilities or costs. Assuming one interprets that the  
4     legal actions that caused it to be moved and dismantled  
5     was a liability that existed before that, that paragraph  
6     would limit Aquila's ability to come in and ask for any  
7     additional costs caused by the move.

8                     And then on the second thing that you asked  
9     me, we are looking at the cost of -- I'll call it the  
10    premiums paid for housing outside the plant's borders, and  
11    it is my understanding -- well, the representation that we  
12    have to date is that that is not booked in any of the  
13    regulated accounts. It's booked as non-reg -- non-utility  
14    property.

15                    The landscaping, which includes the berm  
16    and the trees and stuff onsite, and there's a question  
17    about whether the plant includes any landscaping outside  
18    the plant boundaries on individuals' property. That is  
19    being looked at and is being examined in this true-up  
20    process that's mentioned in that paragraph.

21                    And what I say is we get -- one, we get a  
22    representation from the company as to how those costs are  
23    booked, but the work order is being examined by all  
24    charges to make sure that that representation, even if  
25    made, that it's not there, is not included in the cost.

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1 And the Office of Public Counsel is participating in that  
2 examination, because I think there is at least some  
3 difference of opinion regarding how much of the  
4 landscaping and trees should be allowed as the cost of the  
5 facility and how much should be disallowed.

6 Q. Mr. Schallenberg, what is the most  
7 important provision or can you point to an item within  
8 this stipulation that would be the highest priority or the  
9 best example of what represents Staff's position? Do you  
10 understand the question?

11 A. Yes. I'm trying to think of a provision  
12 that the Staff --

13 Q. Well, did Staff get anything it wanted out  
14 of this deal?

15 A. I can't -- I'm thinking, because in Staff's  
16 view, all we've done is terminated this case with an  
17 expectation that exists is we're going to be starting up  
18 again in another couple months. So, you know, it just  
19 defers a lot of our issues that were pending in the case.

20 I can't think of -- I can't think of  
21 something that in this agreement made it one that the  
22 Staff, you know, said, this is the one or the two items  
23 that made this deal so good that we had to sign and push  
24 for it. I don't -- this is not that type of a  
25 stipulation.

1           Q.       So just not wasting time with a case that  
2   will really only have an effect for the next six months,  
3   it wasn't important to fight for certain issues that you  
4   would fight for in -- I guess in a rate case under  
5   different circumstances?

6           A.       I'd say if you were -- the main value to  
7   the Staff probably is that in the next -- we probably have  
8   gained about a three to four-month window to handle our  
9   other assignments, which we just had two new cases filed  
10   and we have other investigations and other things. We've  
11   gained the diversion of those resources to take care of  
12   those matters before Aquila fi-- or can file the next rate  
13   case to take advantage of trying to get a fuel adjustment  
14   clause.

15          Q.       Well, in that next rate case, will there be  
16   more issues than just the fuel adjustment clause or will  
17   that be the only issue that will be in dispute?

18          A.       I would suspect that the issue that we've  
19   talked, the building of a 500-megawatt facility versus the  
20   315, even if South Harper stays at its present location,  
21   would be another issue, even though in terms of the total  
22   cost of service, I think that that issue will be worth a  
23   decreasing amount, maybe 3 million or so.

24                   And then I suspect rate of return will be  
25   another issue that will linger going forward. So those

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1 are the issues that I can recall, plus fuel. Those will  
2 be the issues I think you would be -- have a high  
3 probability of existing in the next case, and if we had to  
4 design a fuel adjustment clause, that will be a new one.

5 Q. When does the 11 months -- what is the  
6 effective date of the tariffs under consideration right  
7 now? When is the 11 month run? Anyone know?

8 MR. MILLS: It's approximately April 22nd,  
9 give or take a few days.

10 COMMISSIONER CLAYTON: Thank you,  
11 Mr. Mills.

12 BY COMMISSIONER CLAYTON:

13 Q. Mr. Schallenberg, can you -- and if I ask  
14 you questions that are out of your expertise, which there  
15 probably aren't any, but --

16 A. There's a lot.

17 Q. There's a section in this stipulation  
18 referencing transition costs associated with the merger  
19 and the acquisition of St. Joe Light & Power. Are you  
20 familiar with that provision?

21 A. Yes.

22 Q. I believe those transition costs are  
23 holdovers from a prior case; is that correct? That amount  
24 was identified in a previous case and it continues to be  
25 amortized; is that a correct characterization?

1           A.       I think it's amortized. That's the  
2 bookkeeping. I would say it continues to come up in rate  
3 cases going forward.

4           Q.       And is that a -- is that a net cost? When  
5 I say net, I mean have the identifiable savings of the  
6 merger been deducted from those transition costs?

7           A.       I think that's part of the issue that comes  
8 up whenever the issue is brought up in a rate case is  
9 whether it reflects all of the savings or whether the  
10 savings have been, in essence, recorded separately from  
11 the costs that are in this amount. So there's been an  
12 issue regarding not only the nature of it being a  
13 legitimate cost of service item, but as to the amount, and  
14 that's one of those issues.

15          Q.       Do you recall when the financial closing of  
16 this acquisition occurred? I know that there was legal  
17 wrangling that went on for some time. But can you  
18 identify the time period of when the merger or the  
19 acquisition was completed?

20          A.       I don't recall. I know we can get it very  
21 shortly. I don't recall that right now.

22          Q.       Are you aware of whether -- and I suppose  
23 this is what's the subject of this provision, but are  
24 there -- were there savings identified on the whole or  
25 actual increased costs associated with the merger now that

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1 four or five years have passed? I'm not sure how long  
2 it's past.

3 A. I'd have to say, I think there would be a  
4 difference of opinion as to whether there were savings  
5 from that merger.

6 Q. What is Staff's opinion?

7 A. And I think there's a difference of opinion  
8 even within Staff.

9 Q. What is your opinion? And if you have a  
10 conflict, you need to get help.

11 A. Well, I have conflicts so I guess I need  
12 help. I -- my personal opinion --

13 Q. Not speaking for the Staff?

14 A. -- not speaking for the Staff, would be is  
15 I believe that the merger ended up costing the St. Joe  
16 district more money. That's my personal opinion. Now, if  
17 you look at overhead and do allocations at various times  
18 and look at joint dispatch, you probably come up -- you  
19 could come up with different answers. You could use that  
20 same data to support my personal conclusion.

21 So I would say at this stage, I think it's  
22 inconclusive whether the merger was a -- produced net  
23 benefits or net costs to the St. Joe district.

24 To the MoPub districts, the answer may be  
25 different. I believe that the MoPub district has

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1 benefited from its affiliation with the St. Joe district  
2 because of the way the power is -- the MoPub district has  
3 access to the St. Joe district's power, whenever it's not  
4 needed to meet the  
5 St. Joe district's load requirements, and that's probably  
6 resulted in an overall benefit to the MoPub district.

7 Q. Regarding the pension and other  
8 post-employment benefits, it was the -- was the Staff  
9 position adopted on this part of the stipulation or --

10 A. As I recall that issue is the Staff was  
11 aware of the funding issue and the amount is funded as to  
12 an amount that's acceptable to the Staff and the Office of  
13 Public Counsel. I think there was a difference between  
14 the Office of Public Counsel and the Staff as to what that  
15 amount needed to be or should be, but the stipulation will  
16 address the Staff's concerns.

17 COMMISSIONER CLAYTON: Okay. I don't think  
18 I have any other questions for Mr. Schallenberg.

19 JUDGE WOODRUFF: Any other questions for  
20 Mr. Schallenberg?

21 COMMISSIONER APPLING: Mr. Schallenberg,  
22 two questions, very simple and very quickly.

23 QUESTIONS BY COMMISSIONER APPLING:

24 Q. I think I've heard you say this morning you  
25 support this stipulation?

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1           A.       Yes, I do.

2           Q.       Okay.  Second question, would you describe  
3   for me, if you know, for the State of Missouri, how do  
4   Aquila's rates for services compare to the rest of the  
5   utilities in the state?  Do you have any knowledge of  
6   that?  Is it high or low?

7           A.       What I would say is at this stage Aquila's  
8   rates -- and you have to use the MoPub district versus the  
9   St. Joe district because the St. Joe district is cheaper.  
10   The MoPub district rates are -- and it would depend on  
11   where Empire is in a rate increase.  Probably with this,  
12   the MoPub district will probably be at or very close to  
13   being the highest in the state.  St. Joe will probably  
14   still be less than Empire's rates.  So that would be the  
15   rate comparison.

16                   COMMISSIONER APPLING:  Okay.  Thank you  
17   very much.

18                   JUDGE WOODRUFF:  Mr. Schallenberg, you can  
19   step down.

20                   CHAIRMAN DAVIS:  Can I ask Mr. Schallenberg  
21   a couple more questions?

22   FURTHER QUESTIONS BY CHAIRMAN DAVIS:

23           Q.       How would those rates compare to outside  
24   the state, Mr. Schallenberg?  Can you give us any idea on  
25   that?

1           A.       I think our rates at the highest level,  
2    which as I mentioned earlier either at the Empire or the  
3    MoPub district, are approaching or starting to exceed the  
4    national average. So by that, it would mean that you'd  
5    still have everybody above the national average, we'd  
6    still be lower than all of those locations in the United  
7    States, even at the --

8           Q.       MoPub rate?

9           A.       -- at the MoPub rate.

10           CHAIRMAN DAVIS: Okay. Thank you.

11           MR. WILLIAMS: Judge, if I might ask a few  
12    clarifying questions.

13           JUDGE WOODRUFF: Go right ahead.

14    QUESTIONS BY MR. WILLIAMS:

15           Q.       Mr. Schallenberg, you referenced in  
16    response to or on follow-up of your response that Aquila  
17    had indicated that it didn't want to build capacity  
18    something about restructuring or electric restructuring.  
19    Can you explain that a little bit, what you meant by those  
20    terms?

21           A.       Yes. In the mid '90s, and continuing I  
22    think mostly through the rest of the '90s, there was  
23    discussion of separating generation, and the production of  
24    electricity from the distribution and retail sale of  
25    electricity versus the vertically integrated model that

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1 exists today and existed prior to that time in Missouri.

2                   There was discussion of legislation. Some  
3 states actually did it. Here in Missouri, while there was  
4 some legislative attempts to do it, there were also some  
5 regulatory cases to do it under the current regulatory  
6 scheme as to physically allow the generation to be moved  
7 into a separate subsidiary, and that's what I was  
8 referring to.

9           Q.       And there was also reference today to the  
10 IRP process. Is that the IRP process under the  
11 Commission's rules or something different, and if it's  
12 different, is it something more formal or less?

13           A.       Well, the integrated resource plan, or the  
14 IRP process, is covered by the Commission's rules, but  
15 there had been a waiver granted that in essence did not  
16 require the filings that are specified in the rules, but  
17 allowed or required as a condition of the waiver a  
18 twice-a-year meeting regarding the specifics of load  
19 forecasting, capacity supply or supply.

20                   And there was -- there was discussions of  
21 any demand-side management programs in those meetings with  
22 the utilities that took place about every six months, but  
23 they were informal meetings.

24           Q.       And when was the waiver put into place,  
25 approximately, if you don't know definitively, for

1 engaging in that process?

2 A. I would say approximately it's five years  
3 ago, because the waiver is just expiring for Ameren, which  
4 was Union Electric before. And UE just filed -- made an  
5 IRP filing. Now, I want to say, in the prior Aquila case,  
6 there's a stipulation has some requirements for Aquila to  
7 make certain types of information available by virtue of  
8 the condition in that stipulation closer to what the rule  
9 required than what the waiver allowed.

10 Q. And would it sound right to you if I told  
11 you that I've been informed that I think it was then  
12 UtiliCorp's acquisition of St. Joseph Light & Power  
13 company closed in December of 2000?

14 A. Yes.

15 Q. And you testified pretty extensively here  
16 today, but I don't think anyone ever asked you any of your  
17 qualifications or your position with the Commission.  
18 Would you briefly cover that?

19 A. Let's see. My position with the Commission  
20 is I am the director of the utility services division. My  
21 qualifications would be I'm a certified public accountant.  
22 I have worked for two regulatory bodies since 1976. Most  
23 of that time has been with the Missouri Public Service  
24 Commission. I had a brief stint with the Kansas  
25 Corporation Commission. I worked primarily in the areas

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1 of cost of service, prudence, contract evaluation. I did  
2 some work for the Commission before the Federal Energy  
3 Regulatory Commission, and I probably have worked on  
4 probably close to 50 cases in my almost 30 years. And  
5 someone reminded me, I've taken somewhere around  
6 20 depositions, so that's what they used to say is my  
7 experience.

8 Q. And I think I'll raise one more topic.  
9 Early on I believe it was the Chairman was asking about  
10 Aquila and bonuses to executives. What do you know about  
11 what bonuses that the Staff would have included in its  
12 case that was used for determining whether or not to enter  
13 into the Nonunanimous Stipulation & Agreement?

14 A. There are specific bonuses that have been  
15 mentioned in the fairly recent media regarding bonuses  
16 that Aquila is paying its executives for the sales -- for  
17 at least completing the sale process. That -- none of  
18 those amounts were recorded in any of the cost of service  
19 numbers generated by the Staff. So we would not have any  
20 consideration of those amounts because they were never in  
21 any of our cost of service runs or analysis.

22 As a matter of course, bonuses and  
23 incentive comp is always looked at in every rate case, and  
24 unless there is a direct benefit to the consumer, they are  
25 normally excluded from the adjusted from the Staff's cost

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1 of service recommendations.

2 MR. WILLIAMS: I don't have any further  
3 questions.

4 JUDGE WOODRUFF: All right. You may step  
5 down, Mr. Schallenberg.

6 (Witness excused.)

7 JUDGE WOODRUFF: Back to Commissioner  
8 Clayton.

9 COMMISSIONER APPLING: You've got a  
10 question there.

11 MR. COFFMAN: There were a couple of quick  
12 points I was hoping to make primarily with regard to the  
13 transition costs. I could make them later, but I was  
14 hoping to have an opportunity to --

15 JUDGE WOODRUFF: You mean with  
16 Mr. Schallenberg?

17 MR. COFFMAN: No, not with  
18 Mr. Schallenberg, but just on the record.

19 JUDGE WOODRUFF: Okay. We'll give you a  
20 chance later.

21 COMMISSIONER CLAYTON: Is everyone  
22 comfortable with Mr. Schallenberg's credentials? Anyone  
23 want to raise an objection?

24 MR. CONRAD: I would offer to stipulate to  
25 Mr. Schallenberg is well qualified as an expert.

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1                   COMMISSIONER CLAYTON: Office of Public  
2 Counsel, Mr. Mills, what is the value that OPC takes out  
3 of this stipulation? What is your most important  
4 provision if you can identify one or two, if any?

5                   MR. MILLS: Frankly, we're not a party to  
6 this stipulation.

7                   COMMISSIONER CLAYTON: So is there anything  
8 in here that you like?

9                   MR. MILLS: There are some things in here  
10 that trouble us less than other things. There's --

11                  COMMISSIONER CLAYTON: So the answer would  
12 be, no, there's nothing in this that you like?

13                  MR. MILLS: No. No. I won't say that.  
14 There are some things in here I like. I think it's a good  
15 resolution of our complaint about the trust, the funding  
16 of the OPEBs. That is one provision in here that I do  
17 like. I think that's a good resolution. It gets the --  
18 gets all the money into those trusts that we think needs  
19 to be there.

20                  COMMISSIONER CLAYTON: What does VEBA stand  
21 for?

22                  MR. MILLS: Voluntary Employee Benefits  
23 Association or something close to that, Beneficiary  
24 Association.

25                  COMMISSIONER CLAYTON: And when was that

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1 complaint case filed?

2 MR. MILLS: The case number is  
3 EC-2006-0171, so it would have been September or October,  
4 I believe. I don't recall the exact date it was filed.

5 COMMISSIONER CLAYTON: And --

6 MR. MILLS: Of 2005.

7 COMMISSIONER CLAYTON: And you are  
8 satisfied with the treatment of those accounts the way  
9 they're dealt with in this stipulation?

10 MR. MILLS: Yes.

11 COMMISSIONER CLAYTON: Now, what is most  
12 offensive to you in this stipulation? And if you answer  
13 it by saying the things we like the least, it's going to  
14 be very difficult to follow you.

15 MR. MILLS: It's hard to say because  
16 there's so many -- in any negotiation, you play off this  
17 demand for that demand and you settle for somewhere in the  
18 middle. To me, it's really -- it's the interplay of the  
19 amount of the rate increases, the short amount of time  
20 between when the rate increase is granted and when Aquila  
21 can ask for more, and the fact that the parties have  
22 agreed to try and get this particular rate increase put in  
23 place quicker than the operation of law date.

24 So all of those three things together to me  
25 add up to be not such a great deal for ratepayers.

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1 COMMISSIONER CLAYTON: So why not object?

2 MR. MILLS: Well, the one --

3 COMMISSIONER CLAYTON: Those are all  
4 significant points that you bring up.

5 MR. MILLS: They are, but -- and I can tell  
6 you why we didn't object.

7 COMMISSIONER CLAYTON: Did Staff -- is it  
8 resources, like what Staff says, we don't have enough  
9 time?

10 MR. MILLS: A lot of it is that. The one  
11 thing that, frankly, we went through, the thing that sort  
12 of broke this camel's back was the moratorium. When we  
13 got to the point where we couldn't get a stay-out period  
14 any longer than July 1, that's when I decided I couldn't  
15 possibly agree to this agreement as a whole, and that's  
16 not something that I can get through litigation. I can  
17 object to the Stipulation & Agreement, but I can't go to  
18 the Commission and say, you've got to issue an Order that  
19 prohibits Aquila for asking for rate relief because you  
20 can't do that. That's something you can only achieve  
21 through a negotiation.

22 And so it wouldn't do me any good to object  
23 to the Stipulation & Agreement on that grounds and hope to  
24 try to go hearing and try to achieve a better result on  
25 that, because it's not possible. In terms of --

4 MR. MILLS: Exactly. I was just addressing  
5 that specific issue. I couldn't do better on that issue  
6 by litigating than I could -- than what's in this  
7 agreement.

16                   What the Commission would have ultimately  
17   decided based on the evidence, I don't know, but there  
18   certainly would have been evidence presented to justify  
19   higher numbers. So trying to go to hearing just on the  
20   number has a fair amount of litigation risk.

23 MR. MILLS: Because I don't like it. It's  
24 not that -- I'm not sure I can.

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1 problem but I've got to vote one way or the other, you  
2 know, up or down. Some of us don't have that option, but  
3 it sends a mixed message. It's saying, you know, I don't  
4 like some things, I like some other things. That's the  
5 nature of compromise. And I'm going to ask the same  
6 questions of Mr. Coffman back there.

7 I understand your frustration with  
8 different provisions, not being satisfied with those, but  
9 from the position of the consumer, I mean, is it your  
10 position that this is in their best interest to vote for  
11 this?

12 MR. MILLS: Well, if I thought there was  
13 some way I could get Aquila to stay out for a longer  
14 period of time, then I would say yes.

15 COMMISSIONER CLAYTON: So if you would have  
16 changed the moratorium date, you would have signed on this  
17 stipulation?

18 MR. MILLS: Very likely. If nothing else  
19 changed and we got them to stay out for a year, then I  
20 probably would have signed on to it. And as I said,  
21 that's just not something that I can achieve or that  
22 you-all can achieve without Aquila being willing to go  
23 along with it.

24 COMMISSIONER CLAYTON: Now, what level of  
25 analysis did your staff do in this case? I know that

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1 Office of Public Counsel has to use a lot of the resources  
2 of the Staff or take a lot of data from the Staff because  
3 there's more staff, they've got more people, everything  
4 else. Is Office of Public Counsel or are you, Public  
5 Counsel, satisfied with the legitimacy of the numbers that  
6 have been presented? What level of analysis did your  
7 office do?

8 MR. MILLS: A fair amount. We have one of  
9 our two accountants who spent a significant portion of his  
10 time throughout this period on this case solely. We hired  
11 a consultant to do a rate of return analysis. One of our  
12 economists spent a significant amount of time looking at  
13 the rate design. So as short-staffed as we are, we gave  
14 as much resources to this case as historically we have to  
15 almost any rate case.

16 I mean, two people almost full-time and a  
17 consultant is for us a fairly significant commitment, and  
18 I think with that kind of commitment, we have a high  
19 degree of confidence in the numbers and our ability to  
20 analyze the numbers and get comfortable with, if that  
21 answers your question.

22 COMMISSIONER CLAYTON: Are you focusing on  
23 the rate design portion? Obviously the stipulation does  
24 not reflect the position of Public Counsel in the rate  
25 design case.

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1 MR. MILLS: That's true.

2 COMMISSIONER CLAYTON: Is Public Counsel,  
3 are you satisfied that at least this rate design as set  
4 out in the stipulation is at least supportable with some  
5 data or some of the information that's been provided?

6 MR. MILLS: Yeah. I think if you look at  
7 the evidence presented in the rate design case, there is  
8 evidence from the industrials and the federal agencies and  
9 Aquila that would support much higher shifts than this.  
10 There's evidence from Staff and Public Counsel that would  
11 support lower shifts than this. I think as Mr. Conrad, I  
12 believe, pointed out earlier, this is fairly close to the  
13 middle ground.

14 And frankly, I think -- again, from my  
15 point of view, you have to analyze litigation. I think  
16 there was a chance, had we delivered this to the  
17 Commission, that we could have done much worse than that.

18 COMMISSIONER CLAYTON: So do you agree with  
19 that statement from Mr. Conrad? And I'm not sure what  
20 class of customer his clients fall into, but the large  
21 general customers got a reduction as part of the -- a  
22 .05 percent reduction, and one large power class of  
23 customers in MPS got a .52 increase. You believe those  
24 figures are middle of the road in terms of overall  
25 make-up?

1                   MR. MILLS: In terms of the evidence that's  
2 presented to the Commission in this case and the rate  
3 design case, yes.

4                   COMMISSIONER CLAYTON: Were you satisfied  
5 with -- satisfied with the low-income programs which are  
6 part of this stipulation, the level of funding?

7                   MR. MILLS: Yes.

8                   COMMISSIONER CLAYTON: Or was that  
9 something that you looked at? I'm not sure how you rate  
10 your issues.

11                  MR. MILLS: It is something that we do look  
12 at, and we did look at it. In general we look at it, and  
13 we did look at it specifically in this case. Yeah, I  
14 think it's more than a doubling of the amount that was  
15 spent before this case, and I think that's a reasonable  
16 amount to spend. So yes, we're satisfied with that  
17 amount.

18                  COMMISSIONER CLAYTON: Does Public Counsel  
19 have any objection to any of the provisions which relate  
20 to the South Harper facility or the treatments of any  
21 accounting principles associated -- with associated  
22 generating units?

23                  MR. MILLS: No, although as  
24 Mr. Schallenberg pointed out, we're evaluating the costs  
25 to true them up through October 31st, but in terms of the

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1 principles that are in the Stipulation & Agreement, we  
2 don't have any objection to those.

3 COMMISSIONER CLAYTON: Okay. Mr. Coffman?

4 MR. COFFMAN: Yes, sir.

5 COMMISSIONER CLAYTON: Did you sign on to  
6 the stipulation?

7 MR. COFFMAN: No, sir.

8 COMMISSIONER CLAYTON: Who do you represent  
9 here?

10 MR. COFFMAN: AARP.

11 COMMISSIONER CLAYTON: Okay. And what is  
12 AARP?

13 MR. COFFMAN: That is the name of the  
14 organization. We've been through this. They no longer  
15 use that acronym to refer to an organization of retired  
16 persons. They prefer to simply go by the four letters  
17 AARP.

18 JUDGE WOODRUFF: We had this conversation a  
19 couple weeks ago.

20 COMMISSIONER CLAYTON: Sounds like the  
21 artist formerly known as Prince.

22 MR. COFFMAN: Well, they represent so many  
23 people that are not retired that --

24 COMMISSIONER CLAYTON: Do you have a card  
25 for AARP?

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1                   MR. COFFMAN:  They keep lowering the age,  
2   but I am not quite eligible, not quite.

3                   COMMISSIONER CLAYTON:  I was going to make  
4   a comment.

5                   MR. COFFMAN:  I think there are many here  
6   who are.

7                   COMMISSIONER CLAYTON:  I feel in the  
8   minority.

9                   Coffman, what is -- did you get anything  
10  out of this deal?  I know you didn't sign on to it.

11                  MR. COFFMAN:  I think that the organization  
12  I represent is of the opinion very similar to that which  
13  you heard from Public Counsel Lewis Mills.  We did not  
14  feel comfortable signing a document that would very likely  
15  not give us a reprieve but for just a few months, and then  
16  we might all be back in here again.

17                  COMMISSIONER CLAYTON:  Would you have  
18  signed on if the moratorium had been longer?

19                  MR. COFFMAN:  Perhaps.

20                  COMMISSIONER CLAYTON:  What else would it  
21  have taken for you to sign on to this deal?

22                  MR. COFFMAN:  The rate increase is  
23  sizeable, and there is a --

24                  COMMISSIONER CLAYTON:  Is it warranted?  Do  
25  you believe it's a warranted or justifiable increase?

1                   MR. COFFMAN: That's what I'm getting to.  
2 Even though it is a rate increase that is not going to be  
3 welcome by most ratepayers, when we looked at the evidence  
4 and we even looked at what would likely happen, even  
5 assuming AARP were to win all of the issues that it was  
6 prepared to litigate, we were not convinced that we would  
7 receive a result as favorable as this. And I perhaps --  
8 you know, I can't speak as to Aquila's strategy, but they  
9 may -- or very likely will be back in here again within  
10 the year. But based on the evidence before us, and fuel  
11 cost is a big part of it, you know, based on what we  
12 had -- what we know about fuel costs right now, this is  
13 not an unjust or unreasonable rate increase.

14                  COMMISSIONER CLAYTON: So then why not sign  
15 on to it?

16                  MR. COFFMAN: Because we did not feel  
17 comfortable with it.

18                  COMMISSIONER CLAYTON: What causes you  
19 discomfort?

20                  MR. COFFMAN: The size of the increase, the  
21 rate design shift, the lack of a moratorium of any length  
22 of period that would really -- the moratorium not only  
23 provides stability and predictability but also provides  
24 that lag, which is the real incentive that sends the right  
25 signal to a regulated monopoly that they need to cut

1 costs, and we're not convinced that this is really a long  
2 enough period.

3                   We did have -- we did spend a great deal of  
4 time. AARP has hired an expert in this case, as well as a  
5 couple of utility analysts in Washington, D.C. And they  
6 did go over this quite a bit before coming to the decision  
7 to not request a hearing. We did weigh our options quite  
8 a bit before we decided not to do that.

9                   But we think we are satisfied with it,  
10 and -- and I guess in addition, there are -- there is  
11 language that is obviously confusing in here, both  
12 relating to the hypothetical 350-megawatt proxy facility  
13 and also as to transition costs, which I guess now that I  
14 have seen the Staff's suggestions and heard  
15 representations today from Aquila, I think I am more  
16 comfortable with it.

17                   But I think it bears repeating yet again,  
18 with regard to the rate base amount, that no one here is  
19 agreeing that any specific power plant is in the rate  
20 base. If the Commission approves this, it is not an  
21 agreement that the South Harper facility is included in  
22 any way whatsoever or that it is prudent or reasonable to  
23 have built it, to have built it where it is or to have  
24 implemented it in the way they did, and that is still an  
25 open question.

1                   The three references in the documents are  
2   for accounting purposes or for book making purposes. They  
3   still leave open these issues, perhaps to be litigated in  
4   the future and likely to be litigated in the future.

5                   As to the transition costs, I would point  
6   out that that sentence on -- in paragraph 12 binds only  
7   Aquila and perhaps binds the Staff, but there's no  
8   agreement that any transition costs are included in the  
9   black-box revenue requirement settlement.

10                  The agreement is simply that Aquila will  
11   not seek in the future transition costs above a certain  
12   amount that was agreed between it and Staff. And this is  
13   an issue that AARP was prepared to litigate legally, but  
14   there are several substantive reasons, policy reasons and  
15   legal reasons why these costs should not be in the rates.

16                  And that, as I understand, was simply an  
17   agreement between Staff and Aquila and simply binds them  
18   not to request something above a certain amount in a  
19   future case, but does not affect the black-box nature of  
20   the revenue requirements. In my understanding of the  
21   stipulation, there is no agreement that there are any  
22   transition costs in this Stipulation & Agreement.

23                  COMMISSIONER CLAYTON: In all seriousness,  
24   you say that AARP doesn't stand for anything or doesn't --  
25   I don't know what, I don't know what that means. What is

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1 the mission of AARP?

2 MR. COFFMAN: I don't have the mission  
3 statement in front of me, but it is essentially to  
4 promote, to work for the benefit of older Americans over  
5 50 years old, and to try to make their lives better. And  
6 one of the ways they do that, they have a multitude of  
7 services, and within the state of Missouri over 750,000  
8 members, but one way that they do that is through various  
9 types of advocacy.

10 COMMISSIONER CLAYTON: How many members of  
11 AARP are customers of Aquila?

12 MR. COFFMAN: I don't know the exact  
13 number. At one point we were trying to guess that, but I  
14 believe it would be -- I think it was under 100,000, but I  
15 don't know that we ever came up with a good estimate. But  
16 a significant number. I think they also serve AARP  
17 headquarters as well, which is in Kansas City.

18 COMMISSIONER CLAYTON: So Aquila does serve  
19 part of the Kansas City --

20 MR. COFFMAN: Part of the Kansas City area.

21 COMMISSIONER CLAYTON: -- area.

22 If we approve this stipulation and grant  
23 this rate increase for residential customers, which it is,  
24 what is AARP going to explain to those 100,000 customers  
25 or ratepayers living in this territory?

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1                   MR. COFFMAN: That this is a fair result,  
2   that we have analyzed it and that it is possibly better  
3   than the result that would have come through litigation.  
4   We obviously don't know, but that it is -- that it is  
5   supportable by evidence in the record.

6                   And I might point out that as to the rate  
7   design shift, you know, we -- there is going to be  
8   somewhat of a longer reprieve on that. This does put  
9   things to bed at least for now and I guess the next rate  
10  case.

11                  COMMISSIONER CLAYTON: You say that AARP  
12  headquarters are in the MPS territory?

13                  MR. COFFMAN: I'm not positive of that.

14                  COMMISSIONER CLAYTON: Are they one of the  
15  large general customers?

16                  MR. COFFMAN: No.

17                  COMMISSIONER CLAYTON: Getting a reduction  
18  in cost of service?

19                  MR. COFFMAN: I do not believe so.

20                  COMMISSIONER CLAYTON: Ms. Woods, who is  
21  the -- at DNR, who is your client, who is your liaison,  
22  your person that you work with, work for?

23                  MS. WOODS: Well, most of the time it's  
24  Brenda Wilbers, but Anita Randolph, who's the director of  
25  the energy center, I also work with her. And then there

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1 are a couple of other staff members, John Buchanan and Ron  
2 Weiss.

3 COMMISSIONER CLAYTON: And what was DNR's  
4 position with regard to the low-income provisions of this  
5 settlement?

6 MS. WOODS: We're certainly in support of  
7 them.

8 COMMISSIONER CLAYTON: But what was your  
9 position prior to settlement, were they for higher  
10 figures?

11 MS. WOODS: Yes, they were.

12 COMMISSIONER CLAYTON: How much higher?

13 MS. WOODS: I think the total was something  
14 like 223,000 that we had asked for.

15 COMMISSIONER CLAYTON: So you're 30,000  
16 short?

17 MS. WOODS: I'm sorry. Low-income  
18 weatherization, we got what we asked for. The other  
19 energy efficiency programs we had asked for 223,000, I  
20 think so, yes, about.

21 COMMISSIONER CLAYTON: Were you involved in  
22 any other issues?

23 MS. WOODS: No, not really.

24 COMMISSIONER CLAYTON: Not really or no?

25 MS. WOODS: Well, the idea of looking at

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1 the alternative fuel sources, particularly the waste tire,  
2 we were in support of that, but that was the --

3 COMMISSIONER CLAYTON: Okay.

4 MS. WOODS: -- extent of it.

5 COMMISSIONER CLAYTON: Thank you.

6 Mr. Conrad, did you get everything you wanted out of this  
7 deal?

8 MR. CONRAD: Oh, no. You could always  
9 bless me with some more.

10 COMMISSIONER CLAYTON: Which section are  
11 you least happy with?

12 MR. CONRAD: You know, I was thinking you  
13 might ask me that, so I flipped ahead to paragraph 20,  
14 where it talks about how the terms are interdependent, and  
15 that suggests to me that I really have to kind of look at  
16 it as a whole, and I can't cherry pick and say, well, I'm  
17 particularly enamored of this section, but this other part  
18 I don't like too much. You just kind of have to look at  
19 it as a whole. It becomes --

20 COMMISSIONER CLAYTON: Settlement  
21 negotiations are confidential.

22 MR. CONRAD: It becomes an evolving process  
23 and you get to the end and say, you know, is it good  
24 enough? And you say yes, no. And we said yes.

25 And I do think -- I think it's probably

1 appropriate to say for the benefit of the record that I  
2 think the process that we went through here, we tried to  
3 do things maybe a little differently. I don't know  
4 whether it proved successful or not, but in the sense of  
5 just the procedure of trying to get parties put together,  
6 I think it has resulted in a package that is both  
7 reasonable and would result in reasonable and just rates  
8 if it were to be approved by your Honors.

9 COMMISSIONER CLAYTON: Okay. As much as I  
10 want to cause Mr. Swearengen some grief, we'll see him in  
11 six months, so I'll wait 'til then. No further questions.

12 JUDGE WOODRUFF: I believe --

13 CHAIRMAN DAVIS: I believe Commissioner  
14 Appling said that he had to run upstairs for a phone call  
15 but that he would be back in about ten minutes.

16 JUDGE WOODRUFF: Okay. Let's go ahead and  
17 take a break.

18 CHAIRMAN DAVIS: Judge, I'm going to have  
19 to leave here in a minute. I have someone waiting for me  
20 upstairs.

21 JUDGE WOODRUFF: Go right ahead.

22 CHAIRMAN DAVIS: Is there anything that  
23 anyone here thinks it's important that I know that hasn't  
24 been made already apparent here in these proceedings?  
25 This is the open-ended question where you get a chance to

1 say whatever's on your minds, counsel, so --

2 MR. CONRAD: I'll take that bait. The  
3 question has come up in some of the earlier discussions as  
4 to the disposition of EO-2002-384. It was not  
5 contemplated that we would do -- that's the cost of  
6 service case. It was not contemplated, I think, or really  
7 discussed by the parties in resolving or seeking  
8 resolution of this that we would do another stipulation,  
9 but that there would just be an understanding by the  
10 parties to the 384 docket, and I believe, Judge Woodruff,  
11 are you not also --

12 JUDGE WOODRUFF: I am, yes.

13 MR. CONRAD: So it's probably appropriate,  
14 you know whereof I speak, that there's not an identity of  
15 parties. So I had thought that possibly what this might  
16 be is a motion to dismiss that, since that does not have  
17 an operation of law date associated with it and it had  
18 been taken, really at the instigation of my clients, in a  
19 case of a rate case about two cases, maybe now three ago,  
20 but was spun off by virtue of a stipulation in that prior  
21 docket. So it might be appropriate to at least give some  
22 thought to that so that the docket, the Commission's  
23 calendar can be cleared of that.

24 It certainly was not the intent if this is  
25 acceptable and approved that that case continue. Now, I

1 would -- I would leave it to your Honor's sound discretion  
2 to suggest to us any mechanism that would be appropriate  
3 to do that, but obviously that would be contingent on the  
4 acceptance of this package.

5 JUDGE WOODRUFF: When this -- or assuming  
6 that this case is -- this Stipulation & Agreement is  
7 approved, I'll make a further order in the EO case dealing  
8 with it at that time.

9 MR. CONRAD: Show cause or something.

10 COMMISSIONER CLAYTON: I was going to  
11 comment, wouldn't it be more prudent if a hearing was held  
12 to consolidate, getting a final Report and Order out of  
13 this case rather than just disposing of all that other  
14 evidence that's been compiled? Maybe it didn't make any  
15 difference. You-all worked awfully hard, and I hate to --

16 MR. MILLS: Public Counsel certainly would  
17 have no objection to consolidation of the two cases.

18 MR. WILLIAMS: And as the Commission may  
19 recall, the Staff sought consolidation.

20 MR. CONRAD: And as the Commission may  
21 recall, I think that was opposed successfully by my  
22 client. So let me reflect on that, but clearly the lines,  
23 while once moving parallel, now at least have moved to a  
24 point of convergence, Judge, so in that sense, your point  
25 is perhaps well taken, and we would certainly look at

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1     that.

2                   JUDGE WOODRUFF:  Well, we don't need to  
3     make any ruling on it today, so we'll wait for further  
4     guidance on that.

5                   MR. CONRAD:  I don't know if that was  
6     responsive to the Chairman's question, but I thought we  
7     maybe ought to at least broach that topic briefly.  Thank  
8     you.

9                   CHAIRMAN DAVIS:  I want to just ask  
10    Mr. Coffman and Mr. Mills, your -- well, first I guess Mr.  
11    Coffman, your clients are largely individuals over the age  
12    of 50 who aren't interested in any rate increases.  Is  
13    that a fair statement?

14                  MR. COFFMAN:  I think that would be fair.

15                  CHAIRMAN DAVIS:  Okay.  Mr. Mills, your  
16    clients are?

17                  MR. COFFMAN:  Those clients and more.

18                  CHAIRMAN DAVIS:  You have all of those  
19    clients, plus you have -- essentially have everyone living  
20    within the Aquila service territory between the ages of  
21    zero and infinity.  The customer that you -- the customers  
22    that you are representing equally probably don't ever  
23    approve of any rate increase.  Would that be a fair  
24    statement?

25                  MR. MILLS:  We occasionally hear from

1 customers at local public hearings that they think some  
2 small rate increase may be justified, but in the main, I  
3 think you're correct. There is no great sentiment that  
4 rate increases are a good thing.

5 CHAIRMAN DAVIS: All right. And is it fair  
6 to say when those customers do come to local public  
7 hearings and testify and say that they are in support of a  
8 rate increase, that they're often shareholders of those  
9 companies?

10 MR. MILLS: The ones who are most loud in  
11 support are almost invariably shareholders, yes.

12 CHAIRMAN DAVIS: Thank you, Mr. Mills. No  
13 further questions.

14 JUDGE WOODRUFF: All right.

15 I'm sorry. Mr. Steinmeier?

16 MR. STEINMEIER: I had a moment ago in  
17 response to your inquiry, your Honor, and I would just  
18 like to take the opportunity, since you invited it, to  
19 strongly encourage the Commission to approve the  
20 Stipulation & Agreement in this case. Of course, as has  
21 been alluded to, nobody likes rate increases. Never once  
22 as a member of the Commission did I receive a thank-you  
23 note from a consumer thanking me for voting in favor of a  
24 rate increase. We all know that sometimes comes with the  
25 territory.

1                   But the parties to this case have worked  
2   very, very diligently toward this resolution of a long  
3   list of very complex and sometimes highly controversial  
4   issues, and I am comfortable and confident that this  
5   Stipulation & Agreement represents a very just and  
6   reasonable resolution of those issues and I commend it to  
7   the Commission.

8                   JUDGE WOODRUFF:   Thank you.

9                   CHAIRMAN DAVIS:   Judge, just a couple more.  
10   4 CSR 40-2.115 says that each party -- roughly, this is  
11   paraphrasing -- each party shall have seven days from the  
12   date of filing of a Nonunanimous Stip & Agreement to file  
13   an objection to that agreement.

14                  For the record, no party -- first of all,  
15   for the record, Mr. Swearengen, you filed the Stip &  
16   Agreement on January 31st; is that correct?

17                  MR. SWEARENGEN:   I believe that's correct,  
18   your Honor.

19                  CHAIRMAN DAVIS:   And has anyone filed any  
20   objections to the Nonunanimous Stip & Agreement?

21                  MR. SWEARENGEN:   Not to my knowledge.

22                  CHAIRMAN DAVIS:   Is anybody here to voice  
23   any objections?

24                  (No response.)

25                  CHAIRMAN DAVIS:   And that seven-day time

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1 period has passed, has it not, Mr. Swearengen?

2 MR. SWEARENGEN: It has, your Honor.

3 CHAIRMAN DAVIS: So we can treat this as  
4 a -- the Commission has the discretion to treat this as a  
5 Unanimous Stipulation & Agreement, doesn't it?

6 MR. SWEARENGEN: Under the rule, you may.

7 CHAIRMAN DAVIS: No further questions at  
8 this time, Judge.

9 JUDGE WOODRUFF: All right. Thank you. I  
10 just sent an e-mail up to Commissioner Appling to see if  
11 he wanted to come down and ask questions. I haven't heard  
12 back from him yet. Let's go ahead and take a five-minute  
13 break. I'll go up and see if he wants to come down and  
14 ask any questions. If not, we'll come back on the record  
15 and adjourn at that time.

16 (A BREAK WAS TAKEN.)

17 JUDGE WOODRUFF: Commissioner Appling, did  
18 you have any questions?

19 COMMISSIONER APPLING: I know it's going to  
20 surprise everybody, Judge. I have no further questions.  
21 You can be excused. Thank you.

22 JUDGE WOODRUFF: All right. Thank you.  
23 With that, then, we are adjourned.

24 WHEREUPON, the hearing of this case was  
25 concluded.

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EXHIBITS INDEX

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EXHIBIT A

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