

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 August 6, 1997
8 Jefferson City, Missouri
9 Volume V
10

11 In the Matter of an Missouri)
12 Public Service's Tariff)
13 Revisions to be Reviewed in) Case No. GR-95-273
14 Its 1994-1995 Actual Cost)
15 Adjustment.)

16 BEFORE:

17 L. ANNE WICKLIFFE, Presiding,
18 DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE.
19 CONNIE MURRAY,
20 SHEILA LUMPE,
21 COMMISSIONERS.

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1 I N - C A M E R A P R O C E E D I N G S

2 ALJ WICKLIFFE: We are in camera for this
3 correction. We are now in camera.

4 PHILIP S. LOCK testified as follows:

5 THE WITNESS: The second correction is, like
6 I said, on my direct testimony, Schedule II. On the
7 heading it says, "Panhandle contract 18,832, that
8 should be 13,382. That's all.

9 ALJ WICKLIFFE: Anything else?

10 That concludes the in-camera portion.

11 WHEREUPON, this in-camera portion of
12 Philip S. Lock's testimony was concluded.

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

2 DIRECT EXAMINATION (CONTINUED) BY MS. McGOWAN:

3 Q. With the exception of the changes you just
4 made, if I were to ask you the questions contained in
5 these exhibits today, would your answers be the same
6 as are contained in these exhibits?

7 A. Yes, they would.

8 Q. And the answers contained in these exhibits
9 are true and accurate to the best of your belief and
10 knowledge?

11 A. Yes.

12 Q. And is it your intention to offer these
13 exhibits as your direct and surrebuttal testimony?

14 A. Yes.

15 MS. McGOWAN: Then I now offer Exhibits 12,
16 12-HC, 13 and 13-HC for the record, and tender the
17 witness for cross-examination.

18 ALJ WICKLIFFE: Any objections to any of
19 these exhibits?

20 (No response.)

21 ALJ WICKLIFFE: Hearing none, Exhibits 12,
22 12-HC, 13 and 13-HC are received into the record.

23 (EXHIBIT NOS. 12, 12-HC, 13 AND 13-HC WERE
24 RECEIVED INTO EVIDENCE.)

25 ALJ WICKLIFFE: Cross examination,

1 Mr. Micheel?

2 MR. MICHEEL: I have none for this witness,
3 your Honor.

4 ALJ WICKLIFFE: Mr. Cooper?

5 MR. COOPER: Yes.

6 CROSS-EXAMINATION BY MR. COOPER:

7 Q. Mr. Lock, do you have any business
8 experience which is not mentioned in your testimony?

9 A. Are you referring to prior job history
10 before I came to the Commission?

11 Q. Exactly.

12 A. I have had approximately three to four years
13 working with state government.

14 Q. You don't have any experience negotiating
15 pipeline contracts, do you?

16 A. Not negotiating pipeline contracts. I've
17 had a lot of experience reviewing contracts in and of
18 itself. That's part of my job.

19 Q. But when you're reviewing a contract, it's
20 not possible, is it, to detect what might have been
21 given or gotten during the negotiation process, is it?
22 You only see the final -- the final contract.

23 Correct?

24 A. That's correct.

25 Q. Can you turn to Page 2 of your surrebuttal

1 testimony?

2 A. (Witness complied.)

3 Q. There at the bottom and going onto the top
4 of Page 3 I believe you indicate that Utilicorp could
5 have negotiated for a lower capacity amount with the
6 start of service for the Eastern District, don't you?

7 A. I believe if you are referring to the last
8 sentence of Page 2 and continuing on to Page 3 --

9 Q. Yes.

10 A. -- yeah.

11 Q. Now, if it were demonstrated to you that
12 Utilicorp, I guess in this case MPS, could not have
13 contracted for a lower quantity than that, it would
14 change your testimony, wouldn't it?

15 A. Yes, it would.

16 Q. If the Company's original customer
17 conversion projection had in reality been correct, you
18 wouldn't be recommending a disallowance, would you?

19 A. That -- if the -- if the actual growth had
20 met projected growth as indicated in your feasibility
21 study, I believe that would be correct.

22 Q. And that's because the contract amount which
23 is in dispute in your testimony would have been needed
24 to serve those customers. Correct?

25 A. That's correct.

1 Q. Can you tell us what your -- what your
2 standard is that you're using to recommend this
3 disallowance?

4 A. The standard that we're using for this
5 disallowance is based on actual growth versus
6 projected growth when we're talking about customer
7 growth.

8 Q. Let me ask that a different way. Do you
9 believe that the amount should be disallowed if the
10 Company was imprudent in negotiating its contracts
11 originally, or do you believe that this amount should
12 be disallowed just -- just if the Company was wrong
13 about its projections?

14 A. In this -- in this case, it becomes an issue
15 of -- it becomes more of a policy issue, and Staff
16 believes that there was a business risk associated
17 when this application was approved that Missouri
18 Public Service would accept all business risk
19 associated with this project.

20 Q. Okay. So your disallowance is based upon
21 what you believe to be the standard established in the
22 certificate case. Correct?

23 A. Yes. That's -- that's basically where it
24 originates from. Right.

25 Q. And not the sort of standard that you would

1 have used historically in any other ACA proceeding?

2 A. I would not necessarily agree with that.

3 Q. Well, tell me why not.

4 A. I think we used the same standards for all
5 certificated cases. We look at the feasibility study
6 and we compare -- we check the feasibility study to
7 ascertain that those numbers are -- are -- are, we
8 feel, reasonable at the time. When we come in and do
9 our ACA audit, we look at the actuals, compare those
10 with the projected, and we base our results off of
11 that.

12 Q. So then nothing in your process was changed
13 by this particular certificate case, the Rolla
14 certificate case? Your process in this ACA review
15 was the same as it would have been in any other
16 case?

17 A. Any other certificated case that we look at
18 is the -- the logic that was used here would have been
19 no different.

20 Q. So if you had found MPS's original customer
21 conversion projections to be reasonable, that would
22 have changed your recommendation?

23 A. Certainly.

24 MR. COOPER: That's all of the questions I
25 have.

1 QUESTIONS BY ALJ WICKLIFFE:

2 Q. On Page 6 of your direct testimony, around
3 Line 20, you discuss the load-factor aspect. Would
4 you explain why load factor is so important in
5 determining projected needs?

6 A. I think that's probably more intended for
7 Warren's testimony because I think he did the load-
8 factor analysis. I basically re-emphasize the fact
9 that they did not use a load-factor analysis.

10 Basically, what load factor does is it
11 compares your average usage to peak usage, and to the
12 extent that you have a lower load factor, this would
13 affect your peak-day requirements. In other words,
14 if you have a 25 percent load factor as opposed to a
15 30 percent load factor, your peak-day usage would be
16 geared off that load factor, so you would have a
17 different -- you would have a different -- I'm sorry.
18 You would have a different peak-day requirement based
19 on what that load factor is.

20 Q. Is the load factor the element that makes
21 the average through-put not a good reliable estimator?

22 A. I believe that that's -- I think that's what
23 we're implying here, and I think that's what Company
24 did, is they just used an average through-put, yeah.

25 Q. Okay. This is just to clarify some language

1 for me. Page 5 of your direct, Line 11, file costs.
2 What do you mean by "file costs"? Do you mean what's
3 included in this filing, the ACA filing?

4 A. Yes, these are the costs that the Company
5 allocated to the Eastern District in the 1994-95 ACA
6 filing, yes.

7 Q. Regarding the cross-subsidization issue, is
8 that -- is that the issue that's been resolved in
9 terms of the Company agreeing to change the allocation
10 from the Northern District to the Eastern District?

11 A. I think that -- think that took care of that
12 aspect of it. There were some circumstances that
13 occurred during this period where the Northern
14 District was -- were having deliveries off of the
15 contract that was intended for the Eastern District.
16 There were problems with that, and I think that was --
17 the Company is aware of those.

18 And the other aspect of it was the fact that
19 they did allocate a good portion of those costs, the
20 contract for the Eastern District, they portioned a
21 lot of those costs to the Northern District, and we
22 have agreed that those costs should not be allocated
23 to the Northern District. They should be allocated to
24 the Eastern District.

25 Q. So cross-subsidization is no longer an

1 issue?

2 A. Right.

3 Q. On Page 9, Lines 11 and 12, you were
4 discussing that the savings provided to Eastern
5 District gas customers during this ACA period would be
6 \$1,831. This is for that yearly period, correct, on
7 an average?

8 A. This was a figure that was developed by the
9 Company in response to one of my data requests for
10 that 199405 ACA period, yeah.

11 Q. Okay. You make the statement, "When an
12 additional \$118,495 is allocated to these customers,
13 the price of natural gas becomes much greater than
14 propane and, thus, becomes non-competitive."

15 If you subtract \$296.60 from \$1,831,
16 wouldn't that still leave a significant savings?

17 A. I think we're comparing apples and oranges
18 there.

19 Q. Okay. Well, explain this to me.

20 A. Okay. The 1,831 is really the bottom line.
21 That applies to all customers. That's for the total
22 Eastern District.

23 Okay. The \$296 that I was implying in my --
24 in my schedule would be the cost per customer.

25 Q. Oh. Tell me again what that \$1,831 refers

1 to.

2 A. The \$1,831 is -- is -- the Company provided
3 a worksheet which developed a comparison between the
4 cost of propane versus the cost of natural gas. And
5 they determined that as an end result that the cost of
6 natural gas was \$1,831 less than the cost of propane
7 based on their projections.

8 Q. Per customer?

9 A. No. This is the per -- this is for the
10 total district.

11 Q. Okay. Thank you.

12 A. Uh-huh.

13 Q. One of your concerns was that -- this is all
14 on the same page, Page 9, at the bottom. "The Company
15 did not attempt to revise its Panhandle capacity based
16 on actual needs."

17 Given what we've heard about the rationing
18 provision, is there any way they could have, to your
19 knowledge, revised the contract downwards based on
20 actual needs?

21 A. Yes, I think they could have, and I will go
22 back to one item that -- if you read further into the
23 testimony, I believe they could have contracted for an
24 amount less than 1,000 initially.

25 Q. Well, my question is, could they have

1 revised the contract after the initial determination
2 of their needs?

3 A. You mean the contract with Panhandle?

4 Q. Uh-huh.

5 A. I don't know if it would have been possible
6 to reduce that capacity with Panhandle after they had
7 contracted for the thousand dekatherms, but I'm not
8 sure of that.

9 Q. Okay. On Page 10 you discuss the fact that
10 "Initial capacity levels for the Eastern District were
11 inconsistent between Panhandle and MoPipe." Can you
12 explain what your concern is about that and what it
13 indicates to you?

14 A. Okay. This -- a lot of this is HC, so I'll
15 try to be careful on how I --

16 Q. We can go in camera. That's no problem.

17 A. Okay. That will make it easier.

18 ALJ WICKLIFFE: All right. Off the record.

19 (A discussion off the record.)

20 (REPORTER'S NOTE: At this time, an
21 in-camera session was held, which is contained in
22 Volume No. V, Pages 237 through 242, of the
23 transcript.)

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1 I N - C A M E R A P R O C E E D I N G S

2 ALJ WICKLIFFE: We are on the record in
3 camera.

4 PHILIP S. LOCK testified as follows:

5 QUESTIONS BY ALJ WICKLIFFE:

6 Q. My question to Mr. Lock was about his
7 concerns regarding inconsistencies between the initial
8 capacity levels between the Panhandle and MoPipe
9 contracts.

10 A. Okay. Okay. There is two pipelines that
11 serve the Eastern District. There is Panhandle, the
12 upstream pipeline, and then there is Missouri
13 Pipeline. Okay. On their Panhandle Pipeline they
14 contracted for 1,000 dekatherms capacity for the
15 Eastern District. On the Missouri Pipeline they
16 contracted for 500 dekatherms of capacity.

17 And I had asked a data request asking why
18 there was the differences, and the responses from the
19 Company -- basically they stated that there were no
20 contractual differences between the two pipelines.
21 And it's my understanding that they could have
22 contracted for 500 dekatherms capacity on the
23 Panhandle as well as they could have on Missouri
24 Pipeline when -- in the initial months of operation.

25 Q. Anything that went to the Eastern District

1 from Panhandle had to go through MoPipe. Correct?

2 A. That's correct, yes.

3 ALJ WICKLIFFE: Okay. Off the record.

4 (A discussion off the record.)

5 ALJ WICKLIFFE: Back on the record.

6 We are still in camera.

7 Mr. Cooper, do you have redirect on the in

8 camera questions I asked?

9 MR. COOPER: I have a re-cross.

10 MS. MCGOWAN: I have a redirect.

11 ALJ WICKLIFFE: I'm sorry. We have to go to

12 redirect first.

13 Ms. McGowan?

14 MS. MCGOWAN: Okay. This relates to the

15 questions you were just asking. I'm going to go up

16 here and see if I make sense of this. I may need

17 technical support.

18 ALJ WICKLIFFE: Off the record.

19 (A discussion off the record.)

20 ALJ WICKLIFFE: On the record.

21 MS. MCGOWAN: I'll see if this makes sense.

22 Can everybody in the group see the diagram?

23 REDIRECT EXAMINATION BY MS. MCGOWAN:

24 Q. All right. It's our understanding in

25 talking about the two contracts earlier, that Missouri

1 Public Service reserved 1,000 units on Panhandle and
2 only 500 on MoPipe --
3 A. That's correct.
4 Q. -- to serve Rolla?
5 A. That's correct.
6 Q. So upstream from MoPipe they say they need a
7 thousand -- a thousand units of capacity.
8 A. That's correct.
9 Q. However, at a maximum of that thousand they
10 can -- actually, they say they need a thousand units
11 for Rolla.
12 A. Right.
13 Q. However, they have only got enough capacity
14 to transport 500 of that thousand to Rolla; is that
15 correct?
16 A. That would be correct. They would have to
17 transport it over Missouri Pipeline.
18 Q. So the maximum of that 500 -- or thousand
19 units that they say could be used for Rolla is
20 actually 500 without incurring some type of penalty
21 for overcapacity on the --
22 A. Well, I think there is a rationing provision
23 included in the Missouri Pipeline contract. If they
24 do exceed the 500, then the contract automatically
25 renews itself. And it works a little bit differently

1 on Panhandle. They do have the ability to ratchet
2 that up also in much the same way as they do on
3 Missouri Pipeline, but they can -- it automatically
4 ratchets up from Missouri Pipeline if the volume
5 exceeds what they -- if a new peak is met, basically.

6 Q. Maybe in your own words, then, you could
7 explain how that kind of Staff concern, when they say
8 they need 500 units and only -- or a thousand, and
9 they only have 500 capacity to transport?

10 A. Well, the problem with the way the contracts
11 are set up is that the thousand dekatherms of capacity
12 that they have with Panhandle is really -- given the
13 flexibility in the contract, they could have -- they
14 could have started out at a level of 500 and ratcheted
15 up.

16 Instead, right now, they are paying for a
17 thousand dekatherms of capacity which is well over and
18 above what they -- what they actually needed given
19 what they've -- what they've developed for their
20 Missouri Pipeline system. There is some major
21 inconsistencies there, and we feel -- we feel with the
22 ratcheting provision in the Panhandle contract that
23 they could have -- they could have started at a lower
24 level.

25 MS. MCGOWAN: All right. Staff would put

1 this in as an exhibit so the Commissioners who aren't
2 here can understand what we're talking about. I
3 marked it HC.

4 ALJ WICKLIFFE: All right. We'll mark that
5 Exhibit 23-HC.

6 MS. MCGOWAN: Of course, it may not work for
7 me. My computer doesn't.

8 ALJ WICKLIFFE: Off the record.

9 (A discussion off the record.)

10 ALJ WICKLIFFE: Back on the record.

11 MS. MCGOWAN: Staff has no further redirect
12 in camera.

13 ALJ WICKLIFFE: Re-cross, Mr. Cooper?

14 I'm sorry. Mr. Micheel?

15 MR. MICHEEL: I don't have any.

16 ALJ WICKLIFFE: Mr. Cooper?

17 RE-CROSS-EXAMINATION BY MR. COOPER:

18 Q. You were talking about the differences
19 between the Panhandle Eastern contract and MoPipe
20 contracts a few minutes ago. Isn't it true that on
21 the Panhandle Eastern contract that the Company must
22 indicate the higher amount before -- before it's hit.
23 Otherwise, there are penalties involved?

24 For instance, if we start with a 1,000, if
25 you're going to need 1,500, you've got to indicate

1 that before you get to 1,500, not after. Correct?

2 A. That's correct.

3 Q. And if you don't do that beforehand and you
4 go over the 1,000, there are penalties involved.
5 Correct?

6 A. I believe there are provisions for penalties
7 in the Panhandle tariffs, yes.

8 Q. And to illustrate the difference with the
9 MoPipe contract, if you indicate 500, make no change
10 in that 500, but you go to 1,000, there are no
11 penalties involved in that case. Correct?

12 A. It's my understanding that that contract has
13 an automatic ratchet provision, so if any new level is
14 reached, demand level is reached, then that contract
15 is automatically adjusted to that level.

16 Q. Okay. Without penalty. Correct?

17 A. That's my understanding, yeah.

18 MR. COOPER: That's all of the questions I
19 have.

20 ALJ WICKLIFFE: That concludes the in camera
21 portion.

22 Off the record.

23 (A discussion off the record.)

24 WHEREUPON, this in-camera portion of
25 Philip S. Lock's testimony was concluded.

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

2 ALJ WICKLIFFE: Back on the record. This is
3 the non-camera portion.

4 QUESTIONS (CONTINUED) BY ALJ WICKLIFFE:

5 Q. Mr. Lock, you stated on Page 4 of your
6 surrebuttal testimony, "Utilicorp accepted the risk of
7 any excess transportation costs when the application
8 was approved." What do you base that statement on?

9 A. Okay. Exactly where are you at, what line?

10 Q. Line 18.

11 A. What do I base that off of?

12 Q. Yes.

13 A. I think if you read through the Commission's
14 order in the Rolla case and also in the Salem case,
15 they mention in the Rolla case, and I quote, "MPS
16 bears most of the risk if it has underestimated the
17 economic feasibility of the project."

18 And then it further goes on in the Salem
19 case to say that, "Expansion will be allowed, but
20 solely at the risk of the shareholders of Utilicorp,"
21 and my interpretation of that is that there is a
22 business risk associated with the undertaking of this
23 new certificated case and that would include excess
24 capacity costs.

25 Q. Okay. At the time when this ACA period

1 began, there was not Salem case. Correct?

2 A. That's correct.

3 Q. The only certificate that applied was the
4 Rolla certificate?

5 A. That's right. Rolla was first, and then
6 Salem.

7 Q. And the language you were quoting is on
8 Page 6 of the Report and Order in Case No. GA-94-325.
9 Correct?

10 A. Subject to check, yes.

11 Q. All right. So when you say that Utilicorp
12 accepted the risk, you're not necessarily implying
13 that they eagerly ran forward to grasp it, but that it
14 was ordered by the Commission? Is that what you're
15 saying?

16 A. That's what I'm saying, yes.

17 Q. On Page 4 of your direct testimony,
18 Line 7 -- that may not be the correct line. Ignore my
19 reference to the specific place. I can't find it now.

20 What information -- Staff has alleged that
21 Utilicorp, MPS, could have developed a peak-day study
22 given the information that was available. What
23 specific information did they have that they could
24 have used for a peak-day study?

25 A. I think a lot of that was highlighted on

1 Mr. Wood's testimony, and some of the items, I think,
2 that he had -- he had referenced in his testimony were
3 load-factor data, weather normalization. I think we
4 used some customer numbers from the Company's
5 feasibility study. There were various factors that
6 were used.

7 Q. And you're saying all of that information
8 was available to them at the time they made their
9 initial projections?

10 A. That's correct.

11 Q. Do you know what the current rate of
12 conversion is to natural gas in the Rolla district?

13 A. I could tell you during the 1994-95 period,
14 but I don't know what it is currently.

15 Q. You have no information after the 1994-95
16 period?

17 A. I had it up through the last ACA period, but
18 it wouldn't be current.

19 ALJ WICKLIFFE: All right. Questions,
20 Commissioner Murray, for this witness?

21 COMMISSIONER MURRAY: No.

22 ALJ WICKLIFFE: Commissioner Lumpe?

23 COMMISSIONER LUMPE: No.

24 ALJ WICKLIFFE: Redirect based on questions
25 from the Bench?

1 MR. MICHEEL: I have one or two.

2 ALJ WICKLIFFE: Okay. Wait a minute.

3 Redirect goes first.

4 MR. MICHEEL: Oh, I'm sorry.

5 MS. MCGOWAN: I just have one question.

6 REDIRECT EXAMINATION BY MS. MCGOWAN:

7 Q. Is it your understanding that if a company

8 operates under a certificate that they accept the

9 Commission mandates and conditions contained in that

10 certificate?

11 A. Yes, they do.

12 MS. MCGOWAN: No further questions.

13 ALJ WICKLIFFE: Now, re-cross. Mr. Micheel?

14 RECROSS-EXAMINATION BY MR. MICHEEL:

15 Q. Judge Wickliffe asked you about the Rolla

16 certification case. Do you recall those questions,

17 Mr. Lock?

18 A. Yes, I do.

19 Q. And it was my understanding in that case

20 that the Staff disputed the Company's gas conversion

21 numbers. Is that correct?

22 A. I think there was concerns about the

23 Company's projected customer growth in that case, yes.

24 Q. And could you tell me what those concerns

25 were? Were they concerns that the Company had

1 projected too much conversion, too little conversion?

2 A. I wasn't involved in the case, but from what
3 I've read, it indicated to me that the Staff had
4 concerns about the Company overstating its customer
5 growth requirements.

6 Q. Okay. So Staff's concerns about the
7 customer conversion projections isn't the first the
8 Company has heard about those concerns, is it?

9 A. No. No. There were certainly concerns at
10 the time of that application case about the economic
11 feasibility of the -- of the -- of the project, yes.

12 MR. MICHEEL: That's all I have, your Honor.

13 ALJ WICKLIFFE: Thank you.

14 Mr. Cooper?

15 MR. COOPER. Yes, your Honor.

16 RECROSS-EXAMINATION BY MR. COOPER:

17 Q. Mr. Lock, earlier you were asked about a --
18 oh, a portion of your testimony where you quoted from
19 the Rolla case. Do you remember that?

20 A. I believe, yes.

21 Q. Let me hand you a document. I want you to
22 take a look at it first and see if you recognize it.

23 A. Okay.

24 MS. MCGOWAN: Can I ask what document that
25 is?

1 MR. COOPER: It is the Report and Order from
2 the Rolla case.

3 ALJ WICKLIFFE: Off the record.

4 (A discussion off the record.)

5 ALJ WICKLIFFE: On the record.

6 BY MR. COOPER.

7 Q. Have you had the opportunity to look through
8 that?

9 A. Yeah, I have read through it.

10 Q. And you're familiar with that Report and
11 Order. Correct?

12 A. I am generally familiar with it, yes.

13 Q. Okay. And on Page 6 there, do you see the
14 portion of that order that you had quoted in your
15 testimony, the bears the risk? I believe it's
16 highlighted, about the middle of the page.

17 A. Yes, uh-huh.

18 Q. Okay. And that's just -- just about half of
19 the sentence, isn't it? It's the second half of the
20 sentence?

21 A. Right. Right.

22 Q. Could you read that full sentence for us?

23 A. It says, "The Commission finds that
24 Company's estimates are as reasonable as Staff's, and
25 since MPS bears most of the risk if it has

1 underestimated the economic feasibility of the
2 project, the public benefit outweighs the potential
3 for underestimating these costs."

4 Q. Now, just to clarify one other thing, there
5 was some mention of the Salem case.

6 A. Uh-huh.

7 Q. Let me get this back from you.

8 The Salem -- none of the Salem costs are a
9 part of this proceeding. Correct?

10 A. That's correct.

11 Q. Okay. Earlier you were discussing a figure
12 in your testimony that purported to be the savings, I
13 guess, between natural gas and propane. Do you
14 remember that?

15 A. Yes, I do.

16 Q. Now, that -- that figure does not include
17 other aspects, such as economic development, that
18 would flow to a community as a result of natural gas,
19 does it?

20 A. Well, there is always intangible aspects of
21 it. This is just the cost associated with the
22 project. Right.

23 Q. So those intangible benefits would be -- if
24 there were any, would be above and beyond that mere
25 dollar cost savings. Correct?

1 A. Well, I mean, there is always intangible
2 benefits to it, and I think that was one of the things
3 that the Commission considered when this application
4 was approved, yes.

5 Q. Were you involved in the Rolla case at all,
6 the Rolla certificate case?

7 A. No, I was not.

8 Q. Okay. Do you happen to remember from your
9 research whether the City of Rolla supported that
10 case?

11 A. I don't recall.

12 Q. Now, you had some questions about the peak-
13 day method and various aspects of the peak-day method,
14 I think. What we're really talking about here,
15 though, is the difference in the customer conversion
16 projections. Correct? No matter --

17 Go ahead.

18 A. Right. I think that is a major component in
19 the peak-day requirement. Right.

20 Q. So if you utilize the Company's original
21 projections, even if you use the peak-day method,
22 their contract amount would not be an overshoot, I
23 guess. It would have been a reasonable contract
24 amount. Correct?

25 A. I'm not sure I understand your question.

1 Q. That's not surprising.

2 Well, did you have testimony as to what you
3 would have projected for the Rolla service area had
4 you utilized the Company's customer conversion
5 projections?

6 A. I did not perform that analysis. That was
7 Mr. Wood.

8 Q. Okay. Did you ever -- did you ever do any
9 work along those lines?

10 A. In this particular case, no.

11 Q. Okay. Well, let's back up then to a
12 question I had asked you earlier. It's a little
13 simpler. That is, I believe you said that had the
14 Company's customer conversion projections been
15 correct, you wouldn't be recommending a disallowance.
16 Correct?

17 A. I believe that's what was projected on the
18 Company's feasibility study, I believe that would have
19 been correct, yes.

20 MR. COOPER: That's all of the questions I
21 have.

22 ALJ WICKLIFFE: Off the record.

23 (A discussion off the record.)

24 (Witness excused.)

25 (A recess was taken.)

1 (EXHIBIT NO. 23-HC WAS MARKED FOR
2 IDENTIFICATION BY THE COURT REPORTER.)

3 (Witness sworn.)

4 ALJ WICKLIFFE: On the record.

5 Ms. McGowan?

6 MS. MCGOWAN: The Staff would like at this
7 time to offer Highly Confidential Exhibit 23.

8 ALJ WICKLIFFE: Any objections?

9 (No response.)

10 ALJ WICKLIFFE: Hearing none, Exhibit 23-HC
11 is received into evidence.

12 (EXHIBIT NO. 23-HC WAS RECEIVED INTO
13 EVIDENCE.)

14 MS. MCGOWAN: Staff calls Mike Wallis.

15 MICHAEL J. WALLIS testified as follows:

16 DIRECT EXAMINATION BY MS. MCGOWAN:

17 Q. Please state your full name and business
18 address for the record.

19 A. Michael J. Wallis, P.O. Box 360, Jefferson
20 City, Missouri, 65102.

21 Q. Are you the same Mike Wallis who was
22 prepared and caused to be pre-filed direct and
23 surrebuttal testimony in this proceeding?

24 A. Yes, I am.

25 Q. And is this your direct and surrebuttal

1 testimony now marked Exhibits 14, 14-HC, 15 and 15-HC
2 respectively?

3 A. Yes, it is.

4 Q. Do you have any changes or corrections to
5 these exhibits?

6 A. No, I do not.

7 Q. And the answers contained in these exhibits
8 are true and accurate to the best of your belief and
9 knowledge?

10 A. They are.

11 Q. And is it your intention to offer these
12 exhibits as your direct and surrebuttal testimony?

13 A. Yes.

14 MS. MCGOWAN: Then I now offer Exhibits 14,
15 14-HC, 15 and 15-HC into the record, and tender the
16 witness for cross-examination.

17 ALJ WICKLIFFE: On the record.

18 (A discussion off the record.)

19 BY MS. MCGOWAN:

20 Q. Mr. Wallis, I will ask again, since it
21 appears that we have had some discussions on the
22 subject, are there any corrections you would like to
23 make to these exhibits?

24 A. Yes.

25 Q. Page 3, Line 12, of your direct?

1 A. Yes. On Page 3, Line 12, "charges," that
2 should be "charges assessed to the end-user
3 customers."

4 Q. And is that terminology also used on Page 5,
5 Line 21, of your direct testimony?

6 A. That's correct.

7 Q. And so it should also be replaced there?

8 A. Yes.

9 Q. Okay. So with the exception of the changes
10 you've just made, if I were to ask you the questions
11 contained in these exhibits today, would your answers
12 be the same?

13 A. Yes.

14 Q. And the answers contained therein are true
15 and accurate to the best of your belief and knowledge.

16 A. Yes.

17 Q. And it is your intention to offer these
18 exhibits as your direct and surrebuttal testimony?

19 A. Yes.

20 MS. MCGOWAN: Then I now offer Exhibits 14,
21 14-HC, 15 and 15-HC for the record, and tender the
22 witness for cross-examination.

23 ALJ WICKLIFFE: Off the record.

24 (A discussion off the record.)

25 ALJ WICKLIFFE: On the record.

1 BY MS. MCGOWAN:

2 Q. Mr. Wallis, is it your intention to offer
3 Exhibits 14, 14-HC and 15 as your direct and
4 surrebuttal testimony?

5 ALJ WICKLIFFE: There is no 14-HC.

6 MS. MCGOWAN: You didn't file highly
7 confidential?

8 ALJ WICKLIFFE: Off the record.

9 (A discussion off the record.)

10 ALJ WICKLIFFE: On the record.

11 BY MS. MCGOWAN:

12 Q. Is it your intention to offer Exhibits 14
13 and 15 as your direct and surrebuttal testimony?

14 A. Yes.

15 MS. MCGOWAN: Then I now offer Exhibits 14
16 and 15 for the record, and tender the witness for
17 cross-examination.

18 ALJ WICKLIFFE: Would you like to also offer
19 Exhibit 15-HC.

20 MS. MCGOWAN: Offer 15-HC. I thought she
21 said she didn't have 15-HC.

22 ALJ WICKLIFFE: Are there any objections to
23 Exhibits 14, 15 and 15-HC?

24 (No response.)

25 ALJ WICKLIFFE: Hearing none, Exhibits 14,

1 15 and 15-HC are received into the record.

2 (EXHIBITS 14, 15 AND 15-HC WERE RECEIVED
3 INTO EVIDENCE.)

4 MS. MCGOWAN: I thought you had highly
5 confidential testimony. That's what was confusing.

6 ALJ WICKLIFFE: Cross-examination,
7 Mr. Micheel?

8 MR. MICHEEL: I have none for Mr. Wallis
9 today.

10 ALJ WICKLIFFE: Mr. Cooper?

11 MR. COOPER: Yes.

12 CROSS-EXAMINATION BY MR. COOPER:

13 Q. It's true that the credit mechanism for
14 capacity release that you're proposing in this case
15 has never before been proposed in Missouri, isn't it?

16 A. That's correct. This is the first time that
17 this -- that this has really surfaced in an ACA case
18 or any case that I'm aware of.

19 Q. Now, you've stated in your testimony that
20 your analysis and recommendation does not consider and
21 is not concerned with what the actual market for
22 capacity release reflects, haven't you?

23 A. That's correct.

24 Q. Okay. Would you look at your surrebuttal
25 testimony on Page 2, and I'll refer you to Lines 9

1 through 20.

2 A. Excuse me. You said Page 2?

3 Q. That's what I said. Let me make sure that's
4 what I meant.

5 Yeah. Page 2, Lines 9 through 20. Have you
6 found that?

7 A. Yes.

8 Q. Now, that's a list of reasons that you give
9 for proposing this type of capacity release credit,
10 isn't it?

11 A. That's correct.

12 Q. Okay. If you were to substitute Enron or
13 Williams Gas Marketing, or any other marketer that's
14 not affiliated with Utilicorp or Missouri Public
15 Service in that list of reasons, you wouldn't be
16 making the same recommendation, would you?

17 A. That's correct.

18 Q. Okay. So the real reason, or the only
19 reason, really, that you're concerned is because UES
20 is an affiliate of Utilicorp?

21 A. They're an affiliate and they're a major
22 player, particularly in Williams Natural Gas. They
23 are buying over 90 percent of MPS's excess capacity or
24 releasable capacity. That's a very, very large
25 percentage.

1 Q. Do you have any information to show you what
2 percentage the amount of capacity released on Williams
3 from MPS is in comparison to the total amount of all
4 of the capacity released on Williams?

5 A. In terms of just anybody releasing capacity?

6 Q. Right.

7 A. No, I don't.

8 Q. Okay. So while the UES -- the capacity
9 released to UES is a large percentage of MPS's,
10 Missouri Public Service's, capacity release, you don't
11 know what percentage that is of the total market.
12 Correct?

13 A. That's correct.

14 Q. Were you here yesterday for Mr. Warnock's
15 testimony?

16 A. Yes, I was.

17 Q. Okay. And did you have the opportunity to
18 listen to him as he drew a couple of the exhibits, I
19 believe Exhibits 18 and 19?

20 A. Yes.

21 Q. Let me hand you what is just a black and
22 white copy of Exhibit 18.

23 MR. MICHEEL: Mr. Cooper, could you put
24 up -- if you have the big --

25 MR. COOPER: Sure.

1 MR. MICHEEL: -- drawing, put that up there
2 so we could all see and follow along.

3 ALJ WICKLIFFE: Thank you, Mr. Micheel.

4 Off the record.

5 (A discussion off the record.)

6 ALJ WICKLIFFE: On the record.

7 BY MR. COOPER.

8 Q. Have you had a chance to look at Exhibit 18
9 again?

10 A. Yes, I have.

11 Q. Okay. Do you remember -- I know they are
12 not marked on, but do you remember what those numbers
13 represented as suggested by Mr. Warnock?

14 A. Yes, I do.

15 Q. Okay. Using those numbers, can you explain
16 to us how your recommendation works if capacity is
17 released to UES by Missouri Public Service?

18 A. Yes.

19 Q. Okay.

20 A. The Staff's adjustment is basically derived
21 by taking Data Request 16, which is the Company's
22 record of the capacity releases on Williams and
23 Panhandle and where those -- where those -- who the
24 purchasers of that capacity was or is, and we weigh
25 those actual market capacity releases to obtain what

1 in Mr. Warnock's Exhibit 18 would be the 10 cents or
2 the 12 cents or, for that matter, the 14 cents that
3 you see on there, and we compared that to the
4 transportation charges that UES actually collected on
5 a per-unit basis from the end user customers. So that
6 would represent the 40 to 50 cents, and the difference
7 is the Staff adjustment.

8 So our approach, basically, is to take the
9 whole 40 or 50 cents and credit that back to the
10 captive firm customers who are paying to have that --
11 that capacity available as -- as even larger release
12 credits than what would be in the market. That is --
13 that is because, again, the large level of capacity
14 that's going to UES, the fact that they have -- they
15 are making bundled sales to over half of the MPS end
16 user customers, they're making a bundled sale, as I
17 said, and they're even actually doing the billing of
18 these customers.

19 So we see that as a niche market, and that's
20 why in a niche market, the rate, the appropriate rate,
21 is the rate they're collecting, and in this case,
22 that's the -- that's the 40 to 50 cents.

23 Q. So using -- using Exhibit 18 under your
24 proposal, it would be the 40 percent -- or the
25 40 cents that would be credited back to Missouri

1 Public Service, which the 40 cents in this
2 hypothetical example represents what is eventually --
3 this capacity is eventually sold to that consumer for,
4 or the consumer?

5 A. It's -- on each individual end user bill,
6 it's the transportation charges and the volumes. You
7 take the volumes into the charges and you get a per
8 unit rate, and that's what that 40 cents would
9 represent.

10 Q. Okay. Now, using these same numbers, let's
11 assume that capacity is released to an unaffiliated
12 marketer, Enron, Williams Gas Marketing, whoever you
13 might want to use in our example.

14 A. Okay.

15 Q. Which of these numbers under that scenario
16 are going to be credited back to Missouri Public
17 Service?

18 A. The 10 cents, the 12 cents, the 14 cents. I
19 think Mr. Warnock used 12 cents yesterday.

20 Q. Let's assume that as a result of your
21 recommendation UES no longer purchases capacity from
22 Missouri Public Service. Okay? What numbers, using
23 Exhibit 18, would you assume would be credited back to
24 Missouri Public Service at that point?

25 A. If UES no longer purchases its capacity from

1 MPS?

2 Q. Right.

3 A. I don't know. You would have to make some
4 assumptions about whether or not that could be
5 replaced by another -- by another shipper, and I don't
6 know. I think Mr. Warnock indicated yesterday that --
7 that he didn't know --

8 Q. Okay.

9 A. -- if that would happen or not.

10 Q. And you would have to make assumptions, too,
11 wouldn't you, that if UES does not buy that capacity,
12 that someone else would buy that capacity?

13 A. That's correct.

14 Q. And if you assume that that would not be the
15 case, that if UES does not buy that capacity that all
16 of the capacity will not be sold, the end result is
17 lower credits back to the firm customers, isn't it?

18 A. That's -- obviously, I don't know if that
19 would happen. That's a hypothetical, but that's --
20 that's a possibility.

21 Q. It's a possibility, isn't it?

22 A. Yes.

23 MR. COOPER: That's all of the questions I
24 have.

25 ALJ WICKLIFFE: Commissioner Murray?

1 COMMISSIONER MURRAY: No.

2 ALJ WICKLIFFE: Commissioner Lumpe?

3 QUESTIONS BY COMMISSIONER LUMPE:

4 Q. The creations of affiliates which seems to
5 be a big issue in this -- the dealing with the
6 affiliate, is that a fairly -- is that a recent
7 phenomenon and based on some part of deregulation?
8 I'm asking for history here, I guess.

9 A. As far as I know, that's a recent
10 development. We now have a number of LDCs in Missouri
11 that have marketing affiliates, and those have been
12 formed in the last two or three years. So I would
13 guess that that's probably an outgrowth of Order 636.

14 Q. And that would -- the second question was
15 going to be, are most of the companies then creating
16 these affiliates to give easy sale for excess
17 capacity?

18 A. That's -- yes, that's going on, and not only
19 in terms of on-system, but also off-system sales. We
20 have some LDCs who have some recent incentive
21 mechanisms that are designed to take advantage of
22 excess capacity for off-system sales, so, yes.

23 COMMISSIONER LUMPE: Okay. Thank you.

24 QUESTIONS BY ALJ WICKLIFFE:

25 Q. To your knowledge, is UES buying released

1 capacity from companies other than MPC (sic)?

2 A. I don't know that. I suspect they probably
3 are. The company has indicated that in data request
4 responses.

5 Q. Okay. When you conducted your analysis
6 based on the data request responses you received, did
7 you compare the prices that MPS was charging for its
8 released capacity that went to UES to those prices
9 that MPS charges to the non-affiliates?

10 A. We looked at MGE to see -- kind of get an
11 idea of what the range for market capacity was, and it
12 was -- it was 2 to 20 cents, and the releases to UES
13 were, I think, in the 5- to 10-cent range.

14 Q. Mr. Warnock filed some testimony that
15 included a schedule listing approximately 19
16 non-affiliated shippers --

17 A. Yes.

18 Q. -- who had purchased capacity. To your
19 knowledge, is that list accurate?

20 A. Yeah, I think it probably is.

21 Q. Okay. So although apparently the percentage
22 of MPS's released capacity sold to these people was a
23 small percentage, all of these people at some time
24 purchased released capacity from MPS?

25 A. Yes. Yes. And you say a small percentage.

1 It was on Williams about 6 percent. Panhandle, it was
2 something -- something greater than that.

3 Q. Okay. You did not, though, do a comparison
4 of what these people paid MPS for released capacity as
5 compared to what UES paid for released capacity?

6 A. Yes.

7 Q. You did?

8 A. Right. Yeah. And I said that it all -- it
9 all -- it was fairly similar. It fell within that 2-
10 to 20-cent range.

11 Q. So the prices charged to UES were comparable
12 to prices charged to non-affiliated shippers?

13 A. Yes.

14 Q. All right. You have brought up several
15 times bundled sales, and I guess I'm concerned about
16 what the concern is over bundled sales, the fact that
17 UES is offering a bundled service. Would you explain
18 that?

19 A. It's not only the bundled sale. It's also
20 the fact that they're billing. The affiliate, UES, is
21 billing these end user customers. And as I think was
22 pointed out yesterday, that may very well be a tariff
23 violation. But in terms of do other --

24 Q. Wait a minute. I'm trying to, as
25 Mr. Micheel would say, unpack this for myself.

1 A. Sure.

2 Q. You brought up several concerns. One was
3 bundled sales. Exactly what is it about that that
4 concerns you?

5 A. Again, it's not -- it's not the bundled sale
6 itself.

7 Q. Okay. So it's not --

8 A. I would admit that other marketers, Enron,
9 for instance, could do that, but I don't think Enron
10 is out there billing the end user customers on behalf
11 of -- of -- of the LDC.

12 Q. So what you're saying occurs with the
13 non-affiliated marketers is that they break out the
14 billing in a different way?

15 A. In -- yeah. Usually, you don't see it
16 broken out really. It's -- it's -- the gas and the
17 transportation is lumped together. This is broken
18 out -- I'm not sure why that's different really, but
19 usually it's -- it's -- it's -- it's lumped, and this
20 is broken out.

21 And, yeah, it does concern me a little bit
22 because -- you know, it lets the customer see the
23 various pieces, and UES can go and say, "Hey, we're
24 going to fix this. We're going to set this all up for
25 you, and we'll even do the billing." Otherwise, they

1 would have to pay two bills.

2 Q. Well, set this all up for whom?

3 A. For the end user customer.

4 Q. Okay. I still do not understand what the

5 concern is about billing. I'm hearing what you're

6 saying. Can you demonstrate --

7 A. Well, it's a concern because it's a tariff

8 violation, and it -- and it -- it gives the customer a

9 service beyond just the bundled -- bundled bill. They

10 don't have to pay two bills. They can pay one bill to

11 the affiliate, and the affiliate turns around and does

12 a wire transfer back to MPS in this case.

13 Q. Okay. So non-affiliated marketers don't --

14 marketers don't bill in this way?

15 A. Not to my knowledge they don't.

16 Q. With non-affiliated marketers, the end

17 user -- marketer, the end user would pay two separate

18 bills?

19 A. I believe that's correct.

20 ALJ WICKLIFFE: Okay. I've lost my train of

21 thought.

22 Off the record.

23 (A discussion off the record.)

24 ALJ WICKLIFFE: On the record.

25 BY ALJ WICKLIFFE:

1 Q. Okay. So what you're saying that UES is
2 often when they do the billing the way they do is
3 something that is qualitatively different than
4 other -- than non-affiliated marketers can offer?

5 A. Yes.

6 Q. And then you're suggesting that it's worth
7 more to the end user?

8 A. Yes.

9 Q. Because it avoids the second bill?

10 A. Uh-huh.

11 Q. I remember my question.

12 It's in violation of MPS's tariff for UES to
13 bill --

14 A. Yes. I believe --

15 Q. -- an end user using MPS's transportation
16 services?

17 A. Right. I believe that they were talking
18 yesterday about Revised Tariff Sheets 21 and 22, I
19 believe.

20 Q. And you believe that's where that -- the
21 billing provision would be violated with this
22 arrangement?

23 A. Yes.

24 Q. Twenty-two and 23?

25 A. Twenty-one and 22, Revised Tariff Sheets.

1 Q. You also expressed concern about UES using
2 MPS's system assets. Can you be specific which system
3 assets you're talking about?

4 A. The transportation contracts in a
5 capacity release way and --

6 Q. Versus the contract between MPS and its
7 pipeline?

8 A. Right.

9 Q. Okay. Go ahead.

10 A. -- and also, primarily, the capacity itself.
11 The customers have paid fixed reservation charges to
12 have that capacity available, and to the extent
13 it's -- it's excess capacity, you have a situation
14 here where on -- particularly in Williams, over
15 90 percent of that is going to the affiliate, who
16 turns around and sells that to end user -- to MoPub's
17 end user customers behind MoPub's city gate.

18 Q. Okay. Now, when you talk about they are
19 taking advantage of the contract that MPS makes with
20 its pipeline, a non-affiliated marketer is also
21 getting the benefit of that contract when they buy
22 capacity release. Correct?

23 A. That's correct.

24 Q. And they're also getting the advantage of
25 the capacity itself?

1 A. That's correct.

2 Q. You're suggesting what? That MPS could be
3 over-reserving in order to provide capacity for
4 release?

5 A. That is a -- that is a very real concern,
6 yes.

7 Q. So is that -- that is what lies behind these
8 concerns about using the system assets, the potential
9 for using them in an unfair --

10 A. That's part of it. The biggest thing here
11 is that UES, as I indicated, is such a large player
12 with regard to MoPub's -- MoPub's excess capacity. A
13 very large percentage of that's going to UES. But
14 that's a very -- that's a concern.

15 Right now there is no wall between the
16 affiliate and the LDC. And Mr. Hubbs is going -- you
17 know, he has tried to address that in this case, but
18 right now, there is no protection.

19 Q. If UES were using a lower percentage and
20 there were more users, more non-affiliated users,
21 would you be less concerned about the situation?

22 A. Yes, that's correct.

23 Q. Talk to me about Page 3 of your direct
24 testimony, Line 7, "UES has established a special
25 niche market." Would you explain what you mean by

1 that?

2 A. It's basically what I -- what I've been
3 talking about. I regard that as a -- given that
4 94 percent of the -- on Williams of the excess
5 capacity is going to UES, they are providing this --
6 this bundled sale. They are doing the billing. They
7 are using over half of the end user -- of MoPub's end
8 user customers to make sales to. I think it's 23 out
9 of 41. And when I see all of those red flags go up, I
10 believe that there is a niche market there. And in a
11 niche market, the capacity release rate isn't the
12 market rate. It's -- it's what UES is selling it for.

13 Q. So the niche market are the end users of MPS
14 who are buying from UES. Correct?

15 A. That's correct.

16 Q. And what you're suggesting is that because
17 they're already a market, that they're not as
18 difficult to obtain for UES as customers?

19 A. Particularly when they're doing the billing
20 as well as the rest of it. Yes, that's true.

21 Q. And, consequently, they should not be
22 allowed to use the market rate in acquiring the
23 capacity?

24 A. Right, because the captive customers are the
25 ones paying for the -- for that excess capacity that's

1 there. And those customers, those captive customers,
2 should get not only the market rate, but the
3 difference between the market rate and the niche
4 market rate.

5 Q. If the captive customers get, going back to
6 Exhibit 18, the entire 40 cents, then where is the
7 benefit to UES to purchase capacity from MPS at all?

8 A. Well, I think, as Mr. Warnock indicated
9 yesterday -- and we don't have a problem with the sale
10 of the gas itself, and, you know, they may very well
11 make money on the sale of the gas.

12 Q. Okay. If the billing problems were resolved
13 and UES was marketing in the same way that a
14 non-affiliate would market capacity release it
15 obtained from MPS, would that resolve all or only part
16 of your problems?

17 A. That would resolve certainly the contention
18 that the end user customer, given a very close rate
19 between, say, Enron and UES, but UES can do the
20 billing and Enron can't, that would resolve that, but
21 without any -- say, without any rules in place, you
22 know, any time I saw an affiliate in any case
23 obtaining, you know, over 90 percent of the capacity,
24 that still concerns me.

25 Q. On Page 5 of your direct testimony you set

1 out some of the information that you want the
2 Commission to order to be provided for future ACA
3 cases.

4 A. That's correct.

5 Q. You ask, among other things, for all
6 contracts between UES and WMG and/or PEPL. UES, WMG
7 and PEPL are not subject to Commission jurisdiction,
8 correct, not to Missouri State Commission
9 jurisdiction?

10 A. Well, certainly Williams and Panhandle
11 aren't. I think with the discovery disputes that we
12 had over Data Requests 57 and 59, UES -- maybe that's
13 a legal question, but maybe UES to the extent it
14 affects the -- the LDC's customers could be, perhaps.

15 Q. And you think contracts between UES and the
16 major pipelines are necessary in order to properly
17 audit what W-- what MPS is doing?

18 A. Yes.

19 Q. Look at Page 2 of your surrebuttal. This
20 was discussed earlier with you by Mr. Cooper where you
21 set out your reasons for opposing the capacity release
22 credit situation that we have currently.

23 Yesterday we talked about two different
24 types of capacity release, one that looks more like
25 subleasing an apartment and the other that looks more

1 like resale. Do your recommendations vary depending
2 on what type of transaction it is?

3 A. I'd have to think about that.

4 Q. Okay. The end result of both types of
5 transactions is the same, but would that change the
6 billing problem, if you remember the examples from
7 yesterday?

8 A. I don't think it would.

9 Q. Okay. Just to clarify this, although I
10 think you've already answered this question, in your
11 surrebuttal testimony on Page 4, Line 11, you state
12 that "Actual market-based capacity released rates are
13 irrelevant in the type of niche market which UES has
14 established." And what you're saying there is what
15 you've explained to me earlier, which is your concern,
16 has to do with the possibility of UES unfairly getting
17 access to MPS end users and the billing problems and
18 the fact that they're using a lot of capacity release.
19 Correct?

20 A. That's correct. And although it's not
21 specifically stated, it's something you alluded to
22 earlier. In the corporate planning process, perhaps
23 the capacity -- the excess capacity is there to serve
24 UES. We don't have any evidence of that, but, again,
25 without some rules in place, that could be going on.

1 ALJ WICKLIFFE: Okay. Thank you.

2 Commissioner Murray?

3 COMMISSIONER MURRAY: No questions.

4 ALJ WICKLIFFE: Commissioner Lumpe?

5 FURTHER QUESTIONS BY COMMISSIONER LUMPE:

6 Q. I think you've drawn together a number of
7 the issues that I've sort of piecemealed into
8 thinking about and trying to come up with, and as
9 I -- as I'm listening to it, there is a concern for
10 competition.

11 If the affiliate can do certain things for
12 its company's customers that other non-affiliates
13 can't do, it has an advantage there.

14 A. That's correct.

15 Q. Then the other items are potential use, and,
16 as you said, you can't know this. There is not a wall
17 there that you can determine at this point, such as
18 the use of assets and your need for data or guidelines
19 or standards of conduct to know about the use of
20 assets.

21 The billing issue is another one. Can they
22 do it and non-affiliates not do it? And then the
23 potential, again, not saying it's occurring, but the
24 potential for purchasing overcapacity for the purposes
25 of the affiliate who makes a profit on it and what

1 does this mean for the other customers of MSP that
2 don't have that potential.

3 So given all of -- given all of that, you
4 have two concerns then. One is information so that
5 you can determine that -- that the company's -- all of
6 the company's customers are being treated fairly and
7 equitably?

8 A. That's correct.

9 Q. And, secondly, your concern for a set of
10 standards so that -- as my question to you, that
11 other companies are creating these affiliates and
12 tomorrow -- or they will spring up and, voila',
13 everybody will have an affiliate to which he sells
14 excess capacity. And so you're putting the standards
15 in place as sort of being pro-active so that we can
16 determine that there is actual true competition going
17 on or -- or whether certain behaviors can be preempted
18 or stopped before they start?

19 A. Yes, that's correct.

20 COMMISSIONER LUMPE: Okay. Thank.

21 ALJ WICKLIFFE: Anything else from the
22 Bench?

23 (No response.)

24 ALJ WICKLIFFE: Redirect, Ms. McGowan?

25 MS. MCGOWAN: Just one second.

1 REDIRECT EXAMINATION BY MS. MCGOWAN:

2 Q. This addresses some of the questions from
3 the Bench. You were talking about how, because of the
4 affiliate relationship through UES, Utilicorp could in
5 some way hamper competition in a marketer -- between
6 marketers and end users?

7 A. That's possible.

8 Q. Okay. Is it also a concern that with such
9 an arrangement that a regulated local distribution
10 company, for example, could, through its marketer, if
11 it were to purchase excess capacity with the -- not
12 saying that it's happening or that it's anyone
13 specific, but the possibility, absent rule such as we
14 propose, that the LDC could purchase such excess
15 capacity intending to release it to its marketer,
16 marketing affiliate, and therefore bypass regulation
17 of that affiliate relating to those transactions used
18 for that excess capacity?

19 A. Yes, that's correct.

20 MS. MCGOWAN: No further questions.

21 ALJ WICKLIFFE: Re-cross, Mr. Micheel?

22 RECROSS-EXAMINATION BY MR. MICHEEL:

23 Q. I think both Commissioner Lumpe and
24 Judge Wickliffe, Mr. Wallis, asked you about use of
25 MoPub's system assets, and I was wondering, is the

1 Staff also concerned about use of perhaps customer-
2 specific information that MoPub might have or use of
3 MoPub personnel to support the --

4 MR. COOPER: Objection to friendly cross.

5 MR. MICHEEL: Well, first of all, these are
6 based on questions from the Bench, and I'm just trying
7 to clarify something, so I don't think the friendly
8 cross-examination rule applies.

9 ALJ WICKLIFFE: I'm going allow it.

10 BY MR. MICHEEL:

11 Q. And my question to you, is that a concern,
12 use of personnel and customer-specific information by
13 the affiliate from MoPub? Is that a concern that the
14 Staff looked into?

15 A. We don't have any evidence that that's going
16 on, but that's -- that certainly is a concern, and
17 that would give UES an advantage over Enron or some
18 other marketer.

19 Q. And is that something that the proposed
20 rules would at least set a road map for and try to, in
21 a pro-active way, prevent?

22 A. Yes, I believe that's true.

23 MR. MICHEEL: That's all I have, your
24 Honor.

25 ALJ WICKLIFFE: Mr. Cooper?

1 RE CROSS-EXAMINATION BY MR. COOPER.

2 Q. Now, you just discussed potential use of
3 customer specific information. You said, then, that
4 you don't have any evidence that any of that is
5 occurring right now. Correct?

6 A. That's correct.

7 Q. And as to the potential over-reserving of
8 capacity, you also don't have any evidence that any of
9 that's occurring right now. Correct?

10 A. That's correct.

11 Q. And on both of those issues, you're really
12 just trying to prevent that from happening in the
13 future. Correct?

14 A. Yes, that's correct. And that's why you see
15 some of the documentation requests that you -- that
16 you see. And I'd also point out, too, that in this
17 case we -- we tried to get some information with
18 regard to UES, and we had discovery disputes and
19 problems in that area. So by pro-actively asking for
20 the documentation, hopefully, that won't happen in
21 future cases.

22 Q. And in this case -- you discussed discovery
23 disputes. Those data requests that were in dispute
24 were eventually answered. Correct?

25 A. That's correct.

1 Q. Now, as to the possible over-reservation,
2 there seemed to be the implication that there is
3 nothing that the Commission can do. Now, it's true,
4 isn't it, that those contracts are reviewed by the
5 Commission currently?

6 A. That's correct.

7 Q. And, in fact, this is one of the types of
8 proceedings where those contract amounts are reviewed.
9 Correct?

10 A. That's correct.

11 Q. Now, I take it that what you described UES
12 as doing with its bills is something that you think
13 that a customer views as a good thing. Right?

14 A. Yes, that's correct. They pay one bill a
15 month and not two.

16 Q. And that's a major issue to them and they
17 appreciate that. Correct?

18 A. It could be. Certainly.

19 Q. Okay. Now, you also were indicating that
20 somehow that -- that might be a tariff violation. Is
21 your line of reasoning that it might be a tariff
22 violation because the bill from Missouri Public
23 Service goes to the marketer rather than to the end
24 user?

25 A. That's correct, that -- that the LDC is

1 not -- is not billing the end user customer directly
2 for, in this case, LDC charges. I don't think that's
3 really been brought out. But on the bundled bill, you
4 have gas, transportation, LDC charges and taxes, and
5 the affiliate, UES, is also billing the LDC charges as
6 well as everything else.

7 Q. Now, you understand the relationship between
8 the marketer and the end user to be that of principal
9 and agent, don't you?

10 A. It's a buyer and a seller. Are you
11 suggesting there is an agency agreement in place?

12 Q. I'm suggesting that --

13 A. I don't know that.

14 Q. Yeah. But the end user contracts with the
15 marketer for the marketer to go out and -- and acquire
16 capacity and gas and other things on its behalf.
17 Correct?

18 A. That's possible.

19 Q. Okay. And if under agency law --

20 MS. MCGOWAN: Objection. He is not a legal
21 expert. He can't interpret the facts to meet the
22 agency legal requirements.

23 MR. COOPER: I'm not asking him.

24 ALJ WICKLIFFE: If you're asking him for a
25 legal opinion, the objection will be sustained.

1 MR. COOPER: I'm not. Let me go ahead and
2 ask it first. Let's see if there is an objection.

3 ALJ WICKLIFFE: All right. Ask your
4 question.

5 BY MR. COOPER:

6 Q. If under agency law we assumed that an agent
7 and a principal become one in the same, then sending a
8 bill to the agent would be the same as sending it to
9 the principal; isn't that correct?

10 A. I don't know. That's -- I don't know what
11 agency law -- I have no knowledge of what that is.

12 Q. I don't want you to bring any independent
13 knowledge to that. Just assume that that is what
14 agency law says, that a principal and an agent become
15 one and the same legally. Then in that case a bill to
16 the agent would be the same as a bill to the
17 principal, wouldn't it?

18 A. That's possible.

19 MR. MICHEEL: Well, I'm going to object in
20 that the question answers itself. Assume that an
21 agent and a principal become one. Then they become
22 one.

23 ALJ WICKLIFFE: Sustained.

24 BY MR. COOPER.

25 Q. But the tariff that you're referring to only

1 speaks in terms of the customer. Correct?

2 A. I believe that's correct.

3 Q. Okay. And when you talk about over

4 90 percent of the capacity being released to UES,

5 you're just talking about the capacity released by

6 Missouri Public Service. Correct?

7 A. That's correct.

8 Q. Not the total capacity released on -- on the

9 pipeline?

10 A. By other --

11 Q. By any LDC?

12 A. -- LDCs or anybody? That's correct.

13 Q. Right. So we don't know how much capacity

14 beyond that is being released on those pipelines?

15 A. That's correct.

16 Q. Now, are you familiar with the testimony of

17 Messrs. Wood and Lock in this proceeding?

18 A. I haven't read that in quite some time --

19 Q. Okay.

20 A. -- so I'm not really sure that I am.

21 Q. Okay. Well, let's get at it a little

22 differently. One side of your concern is that an LDC

23 might -- might over-reserve capacity. Right?

24 A. Yes.

25 Q. Okay. What is the danger -- let me back up.

1 The danger if an LDC under-reserves capacity
2 is the lack of reliability. Correct? Isn't that the
3 other side of that coin?

4 A. That's -- yes, that's true.

5 Q. Okay. So there are dangers to both sides
6 of -- of that contract, aren't there?

7 A. Yes, there could be.

8 Q. Are you aware that Mr. Wood and Mr. Lock
9 have expressed concerns about reliability in this
10 case?

11 A. Yes.

12 Q. If there were concerns about reliability,
13 that would, just by the nature of those concerns, mean
14 that an overcontracting situation did not exist.
15 Correct?

16 A. I don't know if I know that's true. Again,
17 I'm not familiar with their testimony. I'm not sure I
18 should answer that question. I'm not sure, really, if
19 I know the answer to that question.

20 Q. Earlier you --

21 MR. COOPER: No more questions.

22 ALJ WICKLIFFE: Commissioner Murray?

23 COMMISSIONER MURRAY: No questions.

24 ALJ WICKLIFFE: Commissioner Lumpe?

25 COMMISSIONER LUMPE: Nothing else.

1 ALJ WICKLIFFE: I have one more question.

2 FURTHER QUESTIONS BY ALJ WICKLIFFE:

3 Q. Back to the Tariff Sheets 22 and 23 -- 21
4 and 22, you're very familiar with those, regarding the
5 billing?

6 A. Vaguely. I more got that from yesterday. I
7 know that there was a problem, and Randy Hubbs and I
8 talked about that some months ago, and he was going to
9 address that.

10 ALJ WICKLIFFE: If you're not familiar with
11 it, I won't ask you the question.

12 Okay. You may step down.

13 (Witness excused.)

14 ALJ WICKLIFFE: Off the record.

15 (A discussion off the record.)

16 (Witness sworn.)

17 ALJ WICKLIFFE: On the record.

18 Ms. McGowan?

19 WENDELL R. HUBBS testified as follows:

20 DIRECT EXAMINATION BY MS. MCGOWAN:

21 Q. Please state your full name and business
22 address for the record.

23 A. My name is Wendell R. Hubbs. My business
24 address is P.O. Box 360, Jefferson City, Missouri,
25 65102?

1 Q. Are you the same Wendell R. Hubbs who has
2 prepared and caused to be pre-filed direct and
3 surrebuttal testimony in this proceeding?

4 A. Yes, I am.

5 Q. And are these your direct and surrebuttal
6 testimony now marked as Exhibits 16 and 17?

7 A. Yes.

8 Q. Do you have any changes or corrections to
9 these exhibits?

10 A. I have one correction in my direct
11 testimony.

12 On Page 8, Line 9, after the word "gate"
13 ought to be a semicolon, and that is the only change.

14 Q. With the exception of the change you've just
15 made, if I were to ask you the questions contained in
16 these exhibits today, would your answers be the same
17 as contained in these exhibits?

18 A. I believe they would.

19 Q. And the answers contained in these exhibits
20 are true and accurate to the best of your belief and
21 knowledge?

22 A. Yes, they are.

23 Q. And it's your intention to offer these
24 exhibits as your direct and surrebuttal testimony in
25 this proceeding?

1 A. Yes, it is.

2 MS. MCGOWAN: Then I now offer Exhibits 16
3 and 17 for the record, and tender this witness for
4 cross-examination.

5 ALJ WICKLIFFE: Objections?

6 (No response.)

7 ALJ WICKLIFFE: Hearing none, Exhibits 16
8 and 17 are received into the record.

9 (EXHIBIT NOS. 16 AND 17 WERE RECEIVED INTO
10 EVIDENCE.)

11 ALJ WICKLIFFE: Cross-examination,
12 Mr. Micheel?

13 MR. MICHEEL: I have none at this time for
14 Mr. Hubbs, your Honor.

15 ALJ WICKLIFFE: Mr. Cooper?

16 MR. COOPER: Yes, ma'am.

17 CROSS-EXAMINATION BY MR. COOPER.

18 Q. Mr. Hubbs, your concerns about the potential
19 detriment of affiliated transactions are not limited
20 to Utilicorp, are they?

21 A. No, they are not.

22 Q. Your concerns, at least those raised in this
23 proceeding, would exist potentially when any regulated
24 local distribution company would expand into an
25 unregulated endeavor, wouldn't they?

1 A. Just natural gas marketing affiliates.

2 Q. Okay. But any time a regulated local
3 distribution company expanded into that area?

4 A. That is correct.

5 Q. It's possible that the affiliated
6 transaction standards you have proposed could be dealt
7 with in a generic case, isn't it?

8 A. That is true.

9 Q. And there is a Missouri Commission docket
10 that's currently opened which would be appropriate for
11 that purpose?

12 A. I believe that it could be expanded or --
13 excuse me -- expanded to address specifics of that.

14 Q. And you've stated previously, haven't you,
15 that pursuing these affiliate transaction standards in
16 an ACA case is probably not the venue you prefer,
17 haven't you?

18 A. Yes, I have.

19 Q. Under your proposal, the affiliated
20 transactions standards would only be enforceable after
21 the effective date of whatever tariff they might
22 appear in; is that correct?

23 A. Yes. I did not ask for any retroactive
24 implementation.

25 Q. Okay. Why is that?

1 A. Because I didn't want to disadvantage anyone
2 who -- with rules for actions that they may have taken
3 before they knew what standards and rules they were to
4 live by.

5 MR. COOPER: That's all of the questions I
6 have.

7 QUESTIONS BY ALJ WICKLIFFE:

8 Q. Mr. Hubbs, your original proposal was that
9 in an agency situation where marketers act as agent
10 for an end user, that the MPS would also send a
11 detailed bill to the end user as well as to the
12 marketer, but you modified that proposal; is that
13 correct?

14 A. That is correct.

15 Q. So it would be acceptable to you -- if your
16 rules were implemented in this case as tariff
17 language, would it be acceptable to you for the end
18 user to indicate they don't want a second bill?

19 A. Yes. If they are not interested in seeing a
20 detail of their bill with the LDC, and provide a
21 letter to the utility stating that, I would have no
22 problem with that.

23 Q. Would you need a letter in addition to the
24 agency contract? In other words, if the end user and
25 the marketer put that as a provision in their agency

1 contract and it was signed by the end user, would that
2 be adequate, or would you still need a separate
3 letter?

4 A. No, I think that would be adequate.

5 Q. On Page 3 of your direct testimony, Lines 9
6 through 11, you state, "Absent this information, the
7 customer will not be assured that the marketer is not
8 reselling the transportation service."

9 Would you explain exactly what your concern
10 is about reselling transportation service?

11 A. That a profit will be made from the resale
12 of the transportation service, that they will collect
13 something over and above the charge for the local
14 distribution service.

15 Q. You mean a markup on the transportation
16 service?

17 A. That's -- on the LDCs transportation
18 service, yes, ma'am.

19 Q. All right. And you don't have any evidence
20 that that's being done at this point, do you?

21 A. No, I do not.

22 Q. On Page 4, Lines 2 through 4, you identify
23 as a problem the Staff's inability to obtain
24 documentation necessary to assure that gas costs have
25 been properly allocated. Would you just tell me which

1 documentation is necessary to show proper allocation
2 of gas costs?

3 A. I do not know all of the documentation that
4 is necessary.

5 Q. Well, the type --

6 A. Mainly, what I'm talking about is
7 procurement practices, reselling of released capacity,
8 the -- any documentation of -- as to why specific
9 services are performed for an affiliate and -- and at
10 what cost those services are being incurred by the
11 local distribution company.

12 Q. The cost of providing the service to the
13 affiliate?

14 A. That's correct. There has to be some
15 allocation of shared resources or some allocation of
16 utility assets where they are going to allow.

17 Q. Okay. The second problem you identify is
18 the possibility of discrimination in favor of
19 affiliates, and you mention less federal control.
20 You're talking about the deregulation of the --
21 upstream of the city gate?

22 A. Yes. The well head deregulation.

23 Q. What sources did you use in developing the
24 standard which you've proposed for Utilicorp's tariff?

25 A. I mainly looked at -- or used four sources,

1 which were the New Jersey rule; I also looked at
2 Michigan and Wisconsin rules, and made some minor
3 adjustments to the New Jersey rule. The costing
4 criteria that you find implemented -- or that I've got
5 in the -- put in the rule basically came from Staff's
6 recommendation in case 0096-329, the Affiliated
7 Standards Rule.

8 Q. And Staff submitted that as comments in that
9 docket?

10 A. They submitted a draft rule.

11 Q. A draft rule.

12 A. And those are basically Federal
13 Communication Commission modified standards.

14 Q. You did state that you did not use FERC
15 standards?

16 A. No, I did not use FERC standards.

17 Q. Were they not applicable to this type of
18 situation or not adequate?

19 A. I did not feel they were adequate or
20 applicable, either one --

21 Q. Neither one?

22 A. -- so --

23 Q. Okay. You did state that your preferred
24 forum for this kind of restrictions would be a generic
25 proceeding?

1 A. The generic proceeding is what I've been
2 counting on for quite some time, but there is
3 evidently some problems with getting a proceeding with
4 the Commission rules. And I'm not really sure what
5 that is, but we've had quite some time go by with no
6 actions, and it's -- and I felt it was past time to
7 get some of these standards in.

8 Q. So your primary reason for proposing
9 specific rules in this case for this company is that
10 no action has occurred in the generic docket?

11 A. That is one of the reasons. I think even in
12 the generic docket the cost associated with gas
13 purchasing and the allocations associated with it
14 would have to be expanded from the current docket,
15 which addressed all affiliated transactions and
16 addressed just some of the specifics of gas marketing.

17 Q. Okay. But that could be done --
18 conceivably, it could be done in the generic docket?

19 A. Conceivably.

20 Q. There was some discussion yesterday about
21 rules that may be enacted by the Commission but then
22 don't apply very well to large as opposed to small
23 companies, et cetera. Is there some reason in this
24 case why MPS is unique and a rule developed
25 generically would not apply to it or would not work

1 well?

2 A. No. There are other utilities out there who
3 do not have marketing affiliates. As a matter of
4 fact, I believe most of the utility -- gas utilities
5 do not have where they would not need to fall under
6 it -- under an affiliated rule.

7 Q. Okay. But any LDC that does have a
8 marketing affiliate, you think the same type of rule
9 could work?

10 A. Yes, basically, the same type of rule.

11 Q. So even if Greeley Gas for some reason
12 should apply, require a marketing affiliate, the same
13 basic protections is what you would recommend for
14 them?

15 A. Yes.

16 ALJ WICKLIFFE: Off the record.

17 (A discussion off the record.)

18 ALJ WICKLIFFE: Back on the record.

19 Commissioner Lumpe?

20 QUESTIONS BY COMMISSIONER LUMPE:

21 Q. In essence, you probably asked this, but I
22 just want to reconfirm: On the billing issue,
23 Mr. Hubbs, you raise the issue of perhaps being in
24 violation of the company's tariff --

25 A. Yes, ma'am.

1 Q. -- and then in your surrebuttal you talk
2 about modification. Do you feel with that
3 modification they would be in compliance and not be in
4 violation, if they had this written agreement? Is
5 that correct?

6 A. If it is tariffed, the modification is
7 tariffed.

8 Q. Okay. So --

9 A. The modification would --

10 Q. -- there is a step in between?

11 A. Yes, uh-huh.

12 Q. Okay.

13 A. The modification would be needed.

14 Q. In other words, if they have a current
15 tariff and they go out and get the written letter,
16 they're still in violation? The tariff would have to
17 be changed?

18 A. That is what I recommend.

19 COMMISSIONER LUMPE: Okay. I wanted to
20 clarify that. Thank you.

21 FURTHER QUESTIONS BY ALJ WICKLIFFE:

22 Q. Well, along those same lines, speaking of
23 Tariff Sheets 21 and 22, you are familiar with those?

24 A. Yes, ma'am.

25 Q. Okay. Does the tariff sheet specify who the

1 customer is in a marketer-type situation?

2 A. Yes, it does.

3 Q. It does.

4 A. Uh-huh.

5 Q. And who does it specify as the customer?

6 A. The end user.

7 Q. So it would definitely need modification in

8 order to allow for only one bill being sent?

9 A. It is kind of gray since it does not

10 specifically address the agency-type of agreements.

11 Q. Okay.

12 A. But I -- for clarification, I would prefer

13 that it be tarified.

14 Q. Is the tariff language old enough that it

15 would not have anticipated the agency-type of

16 relationship?

17 A. It anticipated it in that MPS -- when the

18 transportation tariffs were adjusted or created, it

19 allowed MPS to bill for third-party purchases, in

20 other words, UES's or anybody else's. It allowed

21 that, or built that in, but it did not contemplate the

22 LDC charges being charged by a third party.

23 Q. Okay. Page 4 of your direct testimony,

24 lines -- beginning at Line 15, you talk about impacts

25 on rate payers. In the first sentence you say, "The

1 detriment caused by a utility's business transactions
2 in an unregulated market can occur either internally,
3 this by the utility directly offering what it
4 considers unregulated services." What do you mean by
5 that? Can you give me a specific example?

6 A. A specific example may be that -- where a
7 utility is providing billing services for other
8 entities as a utility itself, or others like billing
9 for appliance repair.

10 Q. Okay. So that would offer a cost savings to
11 the affiliate?

12 A. It could, if they were not allocated or
13 appropriate costs for that. So that can occur
14 internally within the utility.

15 Q. Okay.

16 A. Or they can be providing a service
17 themselves and --

18 Q. And allocating the cost of that to captive
19 end users?

20 A. That's correct, or not -- not allocating
21 appropriate costs to this other business function.

22 Q. On Page 7 of your direct under "Non-
23 discrimination Standards of Conduct," Subparagraph E,
24 this struck me as not very specific. "Utilicorp
25 should not disclose or cause to be disclosed to its

1 marketing affiliate or any non-affiliated marketer any
2 information that it receives through its processing of
3 request for provision of transportation." That
4 sounded rather broad. What are you actually aiming at
5 here?

6 A. Keeping Utilicorp from disclosing customer-
7 specific information, and if it is -- if it is or has
8 the authority to go ahead and release customer-
9 specific information, making sure that it's available
10 to anyone interested.

11 Q. Would there also be a need to make sure
12 there was no disclosure of information regarding
13 non-affiliates?

14 A. I did not put that in. I don't think that
15 they probably would do that. Oh, you mean, excuse me,
16 non-affiliates?

17 Q. Right. Disclosing information regarding
18 non-affiliated marketers and information that might be
19 of use in a competitive -- of a competitive nature?

20 A. That would include that, I think.

21 Q. Do you not think the language is so broad
22 that it eliminates the ability to relay any
23 information between the -- between MPS and its
24 marketer? You may want to think about that.

25 A. It may be.

1 Q. Okay. On Page 8, Paragraph H, the second
2 sentence states that, "If Utilicorp wants to provide a
3 discount to any marketer, they must file, subject to
4 an appropriate protective order, for approval of the
5 transaction with the Commission."

6 A lot of these purchases are made on a
7 fairly short schedule, are they not, for release
8 capacity?

9 A. This is not speaking of release capacity but
10 of LDC charges. And currently -- currently, they are
11 required to seek Commission approval pursuant to the
12 flex tariffs in Missouri Public Service's tariff book.

13 Q. So you're talking about setting up a
14 contract with the marketer for a discount on LDC
15 charges?

16 A. That's correct, in this instance here.

17 Q. And it wouldn't apply to a particular
18 purchase but would be a relatively long-term contract?

19 A. Yes.

20 Q. And this is not a change from the current
21 procedure?

22 A. That is correct.

23 Q. On Page 11 of your direct testimony,
24 Lines 29 and 30, the requirement is to report annually
25 to the Commission all contracts entered into with

1 these affiliated companies. Are you asking for a copy
2 of the contract as well as reporting the existence of
3 the contract?

4 A. We would be.

5 Q. That's --

6 A. Yes. We wanted access to it more than
7 anything else, but this is just a reporting to know --
8 this is just a list to know that they exist.

9 Q. So you may or may not want a copy of the
10 particular contract?

11 A. That is correct.

12 Q. Page 4 of your surrebuttal testimony, at
13 Line 5 you were asked -- Mr. Jurek states that you
14 have now provided evidence of undue discrimination or
15 preferential treatment in favor of unregulated
16 affiliates. And you state in your answer that such
17 evidence is addressed in your deposition in this
18 proceeding. Is that deposition in evidence here?

19 A. No, it is not.

20 Q. What kind of undue discrimination are we
21 talking about?

22 A. The discrimination that we were talking
23 about was the use of utility assets by the company to
24 offer a service that was not -- that the Westar
25 itself, the other entity here, did not have access to.

1 The reason that --

2 Q. That's --

3 A. Excuse me.

4 Q. That's all I need.

5 Has Staff seen any copies of the agency

6 contracts between UES and its customers?

7 A. I am not aware of any that they have seen.

8 Q. Okay. Are you aware of the conversion rate

9 of natural gas to natural gas in the Rolla area?

10 A. No, I am not.

11 ALJ WICKLIFFE: Commissioner Murray?

12 COMMISSIONER MURRAY: No.

13 ALJ WICKLIFFE: Commissioner Lumpe?

14 COMMISSION LUMPE: No.

15 ALJ WICKLIFFE: Redirect?

16 MS. MCGOWAN: No questions.

17 ALJ WICKLIFFE: Recross?

18 MR. MICHEEL: I just have a couple, your

19 Honor.

20 RECROSS-EXAMINATION BY MR. MICHEEL:

21 Q. Mr. Hubbs, Judge Wickliffe asked you about

22 what I like to refer to as the zero docket, 0096-329.

23 Do you recall those questions?

24 A. Yes, I do.

25 Q. And just so the record is clear, we've been

1 discussing it as if it were an open proceeding. Isn't
2 it correct, Mr. Hubbs, that all the Commission has
3 done in the zero docket is ask the question, should we
4 open a docket where we will move forward with
5 affiliated-transaction-type rules?

6 A. That's pretty much all that's transpired so
7 far.

8 Q. So we don't have right now today a docket
9 open where we're talking about proposed rules or
10 anything like that? We're one step behind that,
11 aren't we, Mr. Hubbs?

12 A. I don't know whether it's one step behind,
13 but we're not proceeding. We have been stalled for
14 some time. Beyond -- after the Commission received
15 responses from interested parties, we have been
16 stalled for quite some time.

17 Q. And the responses from interested parties,
18 would you agree with me that some people recommended
19 doing nothing; some people recommended deal with it on
20 a case-by-case basis, and some people recommended do
21 it in a rule-making?

22 A. Yes.

23 Q. Now, Judge Wickliffe also asked you about
24 the origins of your proposed standard of conduct. Do
25 you recall those questions?

1 A. Yes, I do.

2 Q. And I think you indicated that you reviewed
3 rules in New Jersey, Michigan and Wisconsin; is that
4 correct?

5 A. That's correct.

6 Q. And do you know, sir, how long New Jersey
7 has had a rule in place?

8 A. No, I do not.

9 Q. How about Michigan?

10 A. I am not aware of that either.

11 Q. Okay. And you don't know how long Wisconsin
12 has had a rule in place?

13 A. No, I do not.

14 MR. MICHEEL: That's all I have.

15 ALJ WICKLIFFE: Mr. Cooper?

16 RE CROSS-EXAMINATION BY MR. COOPER.

17 Q. Going back to the questions about that
18 generic docket, to your knowledge, that docket is not
19 stalled as a result of anything that any of the local
20 distribution companies have done or not done, has it?

21 A. That's correct.

22 Q. Okay. Who would -- or what rules,
23 affiliated transaction rules, would a marketer such as
24 Williams Gas Marketing fall under?

25 A. They wouldn't have to because they would not

1 be affiliated with the LDC and not be using the LDC's
2 assets.

3 Q. But they do have a parent whose assets they
4 would potentially use. Correct?

5 A. That is true.

6 Q. And in that case, Williams Gas Marketing
7 would then -- under your proposal, Williams Gas
8 Marketing would operate under a different set of rules
9 from UES. Correct?

10 A. That is correct.

11 Q. Okay. This Westar letter that you alluded
12 to, is it your understanding that Westar is a
13 competitor of UES?

14 A. Yes, it is.

15 Q. And that letter is -- does not contain any
16 supporting documentation, does it?

17 A. No, it does not.

18 Q. And you haven't requested or received any
19 response from UES, have you?

20 A. No, I have not.

21 Q. And I believe you have stated that you
22 depended primarily on New Jersey, Michigan and
23 Wisconsin Commission rules; is that right?

24 A. Mainly on New Jersey.

25 Q. Okay. And those were Commission rules?

1 A. The New Jersey rule was.

2 MR. COOPER: Okay. That's all of the
3 questions I have.

4 ALJ WICKLIFFE: Thank you.

5 FURTHER QUESTIONS BY ALJ WICKLIFFE:

6 Q. Before you step down, you said the New
7 Jersey rule was a Commission rule. Michigan and
8 Wisconsin would be what kind of rules?

9 A. I'm sure they were the Board or Commission
10 rules. I do not -- I did not know the status of them.

11 Q. Whether they had been enacted or not?

12 A. That's correct.

13 Q. If I asked you to get together a late-filed
14 exhibit containing the New Jersey rule, the Michigan
15 rule and the Wisconsin rule, and the draft rule from
16 96-329, in addition to the FCC affiliate transactions
17 rule that you referred to, could you do that?

18 A. Yes, I will.

19 ALJ WICKLIFFE: Off the record.

20 (A discussion off the record.)

21 ALJ WICKLIFFE: On the record.

22 Questions from the Bench?

23 (No response.)

24 ALJ WICKLIFFE: You may step down then.

25 Off the record.

1 (A discussion off the record.)

2 ALJ WICKLIFFE: On the record.

3 We had a discussion off the record about
4 exhibits and briefing schedules.

5 Exhibits 18 and 19 will be filed in a
6 revised form, late-filed. At the time that those
7 exhibits are late-filed, counsel will have five days
8 to file any objections.

9 Also late-filed will be, by the Company,
10 some figures showing conversion rates of customers to
11 natural gas in the Rolla area only in the -- this ACA
12 period, the next ACA period, and the current rate of
13 conversion.

14 The last late-filed exhibit will be provided
15 by Staff showing sources used by Staff Witness Hubbs
16 to develop his proposed tariff language for affiliate
17 transaction rules.

18 We have agreed to -- tentatively to a
19 briefing schedule. I will send out a notice when the
20 transcript is filed. Initial briefs will be due
21 30 days after the filing of the transcript. Reply
22 briefs will be due 15 days after the initial briefs
23 are due.

24 Is there anything else that needs to be
25 addressed on the record?

1 (No response.)

2 ALJ WICKLIFFE: Thank you very much for your
3 participation and cooperation, and this hearing is
4 adjourned.

5 WHEREUPON, the hearing of this case was
6 concluded.

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