BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

March 24, 1998
Jefferson City, Missouri
Volume I

In the matter of Missouri Public Service's)
Tariff Revisions To be Reviewed In Its 1995-)
1996 Actual Cost Adjustment.) GR-96-192

GREGORY T. GEORGE, Presiding,
REGULATORY LAW JUDGE
SHEILA LUMPE, Chairman
M. DIANNE DRAINER,
HAROLD CRUMPTON,
CONNIE MURRAY,
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR
ASSOCIATED COURT REPORTERS, INC.

A P P E A R A N C E S

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(EXHIBIT NOS. 1 THROUGH 19 WERE MARKED FOR IDENTIFICATION.)

JUDGE GEORGE: On the record, please. Good morning. I'm Greg George. This is Case No. GR-96-192 in the matter of Missouri Public Service tariff revisions to be reviewed in its 1995-1996 actual cost adjustment. And we've already pre-marked exhibits, and ask that counsel make entry of appearance beginning with Staff.

MS. MCGOWAN: Cherlyn McGowan representing the Staff of the Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102.

JUDGE GEORGE: And Office of the Public Counsel.

MR. MICHEEL: Douglas E. Micheel appearing on behalf of the Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102-7800.

JUDGE GEORGE: And for UtiliCorp.

MR. COOPER: Dean L. Cooper from the law firm of Brydon, Swearengen and England, P.O. Box 456, Jefferson City, Missouri 65102, appearing on behalf of UtiliCorp United, Inc., which does business as Missouri Public Service.

JUDGE GEORGE: And are there any preliminary matters before we begin the opening statements?

MR. MICHEEL: Yes, your Honor. I'd like to just say that perhaps we should move into evidence the hearing memo, the stipulation and agreement concerning storage, and I guess Mr. Ono's testimony. I mean, because some of those folks we're not putting on the stand, and I don't think there's going to be any objections to the admissions of those items.

JUDGE GEORGE: Is there any response to that?

MR. COOPER: I believe that would be a fine idea. That would be Exhibits 1, 2, 3 and 4, I believe.

JUDGE GEORGE: Okay. Exhibit 1, the hearing memorandum, which we've pre-marked; Exhibit 2, stipulation and agreement that was filed March 23rd; Exhibit No. 3 the direct testimony of Mr. Ono; Exhibit No. 4, rebuttal testimony of Mr. Ono. Are there any objections to the admissions of Exhibits 1, 2, 3 and 4? Hearing none, Exhibits 1, 2, 3 and 4 are offered -- or admitted into the record.

(EXHIBIT NOS. 1 THROUGH 4 WERE RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: Any other preliminary matters then?

MS. MCGOWAN: I might add since they are not likely to take the stand, that the testimony on behalf of UtiliCorp of Mr. Odell and Jurek and Staff witnesses Allee and Flowers be admitted into the record. I believe that would be Exhibits 5, 6 and 7; is that right? Odell is going to take the stand, isn't he?

MR. COOPER: No.

MS. MCGOWAN: 5, 6 and 7, -- or excuse me -- 12, 17, 18 and 19. Since those witnesses --

JUDGE GEORGE: Any response on that? We have Exhibit 5, direct testimony of Mr. Odell; Exhibit 6, rebuttal testimony of Mr. Odell; Exhibit 7NP is the surrebuttal testimony of Mr. Odell; Exhibit 7HC, is surrebuttal testimony of Mr. Odell. Are there any objections to the admission of those items? Hearing none, Exhibits 5, 6, 7NP and 7HC are entered in the record.

(EXHIBIT NOS. 5, 6, 7NP AND 7HC WERE RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: The others were Mr. --

MS. MCGOWAN: Jurek.

JUDGE GEORGE: -- Jurek. Direct testimony of Mr. Jurek, Exhibit No. 12. Any objections to that? Hearing none, Exhibit No. 12 is entered into the record.

(EXHIBIT NO. 12 WAS RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: And did you also say No. 17?

MS. MCGOWAN: 17, 18, and 19, which would be Ms. Allee's testimony.

JUDGE GEORGE: 17NP is the direct testimony of Allee non-proprietary; 17HC, highly confidential direct testimony of Allee; Exhibit No. 18, the surrebuttal testimony of Allee; and Exhibit 19, the surrebuttal testimony of Mr. Flowers; is that right?

MS. MCGOWAN: Yes.

JUDGE GEORGE: And are there any objections to that?

MR. COOPER: Certainly not any as to 17NP, 17HC or 18. Flowers, I guess I have no objection contingent upon the stipulation being accepted by the Commission. Were the stipulation not accepted by the Commission, I guess I would -- we would have one issue left outstanding, I guess, that we would have to hear and I would want to cross-examine Mr. Flowers probably.

JUDGE GEORGE: Okay. And that's noted for the record. Any other comments on that item?

MS. MCGOWAN: We'll state we didn't object to Mr. Odell's testimony who is also contingent upon the stipulation, but --

JUDGE GEORGE: I think the stipulation directly addresses that.

MS. MCGOWAN: -- he's not here at this point.

MR. MICHEEL: Yeah. That is correct, your Honor. Paragraph six on page 2 of the stipulation and agreement says, if the Commission should reject the stipulation and agreement, we're back to square one and nobody has waived their rights to cross-examination.

JUDGE GEORGE: Right. And with that understood, Exhibits 17NP, 17HC, 18 and 19 are entered into the record.

(EXHIBIT NOS. 17NP, 17HC, 18 AND 19 WERE RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: Anything else as a preliminary matter? Hearing none, we'll go off the record, please.

(Off the record.)

JUDGE GEORGE: On the record, please. And now we will begin with the opening statement here beginning with Mr. Cooper.

MR. COOPER: Thank you, your Honor. May it please the Commission. My name is Dean Cooper. I'm from the law firm of Brydon, Swearengen and England.

I'll be representing UtiliCorp United, Inc., which does business as Missouri Public Service in this actual cost adjustment case concerning the 1995, '96 ACA period.

As an initial matter, I'd like to point out that the parties to this docket have filed a stipulation and agreement concerning the first contested issue listed in the hearing memorandum. This was the issue that was identified as storage utilization.

UtiliCorp would like to state that it believes that this stipulation which represents the combined efforts of the parties is a reasonable and amicable settlement of this issue.

Consequently, provided the Commission approves this stipulation, only one contested issue will remain for Commission decision. And that is what has been identified as the capacity release issue. To understand the capacity release issue, a little background is helpful.

In order to ensure that UtiliCorp has sufficient interstate pipeline capacity to enable it to provide natural gas service to its firm customers, UtiliCorp must contract for a firm entitlement of interstate pipeline capacity which is large enough to cover its busiest day of the year.

If this busiest day does not occur, UtiliCorp has unused capacity. UtiliCorp, as do other local distribution companies, attempts to sell or release this unneeded capacity to an entity which can make use of it for the short term. This sale reduces cost for the LDC's firm customers. Commonly the capacity is purchased by a gas marketer which attempts to match the released capacity with an end-use customer.

The Staff's proposed adjustment in this case is concerned with that portion of the unneeded capacity which UtiliCorp releases to UtiliCorp Energy Solutions, Inc., or UES. UES is a non-regulated marketer and affiliate of UtiliCorp.

Currently UtiliCorp establishes a market price for this capacity, that is the price which arm's length parties, non-affiliated transactors are willing to sell or buy that capacity on the open market. This is done through a review of the interstate pipeline bulletin parts and telephonic contacts with other LDCs, marketers and/or brokers. The market price is then credited to UtiliCorp and in turn to UtiliCorp's firm customers.

Staff recommends that because of the

affiliate relationship between UtiliCorp and UES that UtiliCorp be credited with the maximum pipeline tariff rate rather than the market price. This would differ for capacity release to non-affiliates in that these sales would still be credited at the market rate.

The first time this recommendation was made by the Staff was in Commission Case No. GR-95-273. That is the ACA case immediately preceding this one or the one which covers the 1994, 1995 ACA period. GR-95-273 has been heard and briefed and is awaiting your decision.

As the Commission considers how these capacity releases should be recorded for the purposes of this ACA case, it should be remember that there is nothing unlawful or inherently improper about the release process currently undertaken by UtiliCorp. No statutes, no regulations and no tariff provisions are alleged to have been broken by UtiliCorp's release process. And the credits reported by UtiliCorp are derived in accordance with the FERC mandated process for capacity release. Additionally, there is no allegation of imprudence on the part of UtiliCorp in this issue.

The system currently used by UtiliCorp for the release of interstate pipeline capacity is very efficient and results in UtiliCorp's customers receiving market rate credit for otherwise unneeded capacity.

The system which the Staff seeks to impose would have two effects. First, it would force UES to obtain its capacity from a source other than UtiliCorp so that it could continue purchasing capacity at a market rate. Second, UtiliCorp would be forced to find a non-affiliated purchaser at market price for the capacity formally purchased by UES. The best case for UtiliCorp's customers in this scenario is that they would receive capacity credits equal to the amount they now receive or the market price.

In the alternative, if UtiliCorp is not able to release to non-affiliated marketers, all the capacity currently released by UES, UtiliCorp's customers will actually receive fewer release credits.

What is being proposed by the Staff is viewed by UtiliCorp as a change in overall Commission policy two and three years after these transactions have taken place. UtiliCorp should be provided the opportunity to modify its release practices in light of any change which might be ordered by the Commission.

UtiliCorp believes it is inherently unfair and inappropriate to make this type of policy decision in a retroactive fashion. If the Commission is going to mandate a new set of rules for capacity release, UtiliCorp believes they should be applied upon a prospective or going forward basis only.

Because the Staff's proposal is primarily based on a differentiation between affiliates and non-affiliates, a perfect opportunity to address the subject in this fashion has arisen in Commission Case No. OX-98-183 which is styled in the matter of a rule making to govern interaffiliate transactions among electric, gas, heating, sewer and water companies.

The proposed rules recently filed by both the Staff and the Office of the Public Counsel in Commission Case No. OX-98-183, contain cost allocation rules that would address the capacity release issue in terms of affiliate transactions. Thus, UtiliCorp would suggest that Case OX-98-183 is the appropriate forum for the capacity release issue. I thank you for your attention and your consideration of this issue.

JUDGE GEORGE: Thank you. Next is Mr. Micheel.

MR. MICHEEL: May it please the Commission. I just want to comment about the claims that a policy change in a retroactive nature would be unfair, and

Missouri Public Service Commission UtiliCorp's request to defer these particular issues to the currently pending rule making docket.

As it relates to UtiliCorp's claim that it would be unfair and inappropriate to do a retroactive look at UtiliCorp's capacity release during this ACA docket, I would submit to the Commission that's what we do in an ACA docket. You take the time frame, in this case 1995 to 1996, and after the Staff, the procurement analysis department or the Office of the Public Counsel reviews the transactions that are made, that's when we propose the adjustment.

There's nothing new about the ACA process. That's the way it's been since I've been associated with the Missouri regulation and since the ACA came into being, I believe, in 1982. So I don't think that it's unfair to UtiliCorp. And, indeed, I think that's what the process was designed to do, to give the Staff and the Public Counsel an opportunity to look at the transactions that have taken place during an ACA proceeding period and to suggest adjustments. That's what the Staff has done in this case. It's wholly appropriate and consistent.

With respect to the proposal to defer these issues to OX-98-183, I would submit to you that the

Commission does have that rule making pending, but that will be a forward looking rule making. These issues deserve a Commission's decision. If the Commission chooses to change its mind in the rule making or do something different, that would be on a going forward basis, but this Commission has the opportunity, the evidence, the parties here to -- the witnesses here to cross-examine on their views of that and they'll have a full record to make a determination on whether or not UtiliCorp, Mo Pub's actions are appropriate.

JUDGE GEORGE: Thank you. And Ms. McGowan.

MS. MCGOWAN: May it please the Commission. I would like to begin by very quickly addressing the stipulation. In deciding to enter the stipulation, Staff considered the relative strengths and various party positions as well as the expenses associated with litigating this issue before the Commission or potentially at the appellate level, and the fact that the expenses associated with such litigation would be borne by the very customers we are trying to get the refund for. Based upon these considerations Staff believes that the stipulation to resolve the first issue set out in the hearing memorandum is an equitable one.

Relating to the remaining issue, I would like to first concur in the statements made by Mr. Micheel, that in an ACA docket it is appropriate to evaluate the actions of the company that occurred during the period that ACA docket is set up to review, and that is there is no other time when those actions can be reviewed. And in the event the Commission determined an action was inappropriate, that the rate makers can be made whole. Staff position on this issue is fully set out in a response Staff filed yesterday to the motion to defer consideration of those issues in the affiliated rule making docket.

As addressed by Mr. Cooper, the amount of capacity that a local distribution company sets as UtiliCorp's Missouri Public Service division is designed to cover the peak day needs of its customers. Staff agrees with this and believes it's inappropriate.

Staff does not generally oppose a utility recovering the costs associated with reserving sufficient capacity to meet those peak day demands, because the customers that are paying those charges are the customers that that capacity is reserved for. However, in this instance UtiliCorp is not using that capacity to serve those customers, which would be its captive, firm, residential and commercial users.

Instead it released the vast majority of its excess capacity to a wholly owned affiliate, which is UES. UES then promptly re-sold that capacity to the end-user customers of UtiliCorp. And they re-sold that capacity at the maximum rates allowed by the Federal Energy Regulatory Commission and retained as profit the difference between the price that they paid UtiliCorp and the price that they sold that capacity to UtiliCorp's end-user customers.

Although, as we've stated, UES does make a small payment for that released capacity, which ultimately will go to UtiliCorp's captive, firm, residential and commercial customers, that amount doesn't come anywhere near covering the cost that UtiliCorp paid to reserve that capacity.

The Staff does not generally have a problem with the local distribution company such as UtiliCorp's Missouri Public Service division releasing excess capacity even when that release occurs at a loss. However, due to the large volumes of gas -- or excuse me -- large volumes of excess capacity reserved by UtiliCorp and then sold to its affiliate, UES, the Staff has additional concerns.

One of those concerns is related to although there are numerous national -- or numerous companies that do the same functions as UES and market gas and many of those companies operate in UtiliCorp's service territory, the vast majority of UtiliCorp's excess capacity is sold to its affiliate.

Staff also believes that UES is receiving additional benefits from using its affiliate's excess capacity. And it is not compensating UtiliCorp's captive, residential and commercial users for that service. Specifically, due to UES's access to UtiliCorp's system supply, Staff believes UES is able to offer UtiliCorp's end-user customers a bundled service that includes gas costs, transportation costs, taxes and local distribution charges.

Further, due to its access to UtiliCorp's system supply, UES can offer this bundled service in ways and at rates that are not competitive to marketers that don't have that access. They're receiving the benefit of the system supply contract -- or contact, excuse me.

Logically, there's concern when the customers of a regulated utility are paying premiums to reserve capacity and the benefits arising from the payment of those premiums are flowing not to the customers paying the premiums, but to a wholly owned affiliate of the utility, especially when the utility is not regulated by the Commission.

The level of concern is greatly increased when one realizes again that the -- that although numerous companies in Missouri offer similar services in the same area, that the vast majority of UtiliCorp's released capacity goes to its affiliate.

Accordingly, the Staff believes that the profits which UES makes on the transportation charges collected from its affiliate's end-user customers should be flowed back to the customers that paid those charges. And those charges -- and the reason that Staff believes this is appropriate is because the customers that paid those charges, those charges are necessary for UtiliCorp to offer the bundled service in the first place -- excuse me -- for UES to offer the bundled service.

Based upon the statements I've made today, the evidence set out in testimony of Staff witness Michael Wallis, and Staff's position set out in the hearing memorandum, the Staff believes that the Commission should adopt the capacity release judgment proposed by the Staff. Thank you.

JUDGE GEORGE: Thank you. And questions from the bench beginning with Commissioner Lumpe.

CHAIRPERSON LUMPE: I'll pass

JUDGE GEORGE: Vice Chair Drainer.

COMMISSIONER DRAINER: No. I would just -- we have the two witnesses on this issue. Correct?

MR. COOPER: Yes.

COMMISSIONER DRAINER: I'll ask them the questions. Thank you. Oh, I do have just one question.

Mr. Cooper, you kept referring to UtiliCorp, and in this case are we really talking about Missouri Public Service?

MR. COOPER: Certainly only the Missouri Public Service division is a portion of this case.

COMMISSIONER DRAINER: All right. Thank you.

JUDGE GEORGE: Commissioner Crumpton.

COMMISSIONER CRUMPTON: Well, maybe this is a question that should be reserved for the witnesses. I'm a little concerned that reasonable parties can't agree upon a reasonable resolution of this issue.

And my question to the parties is, are you willing to agree to UES receiving or paying the market price, less its cost of operating that function, less a reasonable profit for UES? In other words, UES taking on this role is adding some value to this process, and for that they should recover their cost and a reasonable profit. And what's left would go to the captive customers.

JUDGE GEORGE: Mr. Cooper.

MR. COOPER: At the moment I don't know how to respond. I think that's certainly -- that's something that has not been proposed up to this point. Certainly is something that if proposed, we would take back to appropriate authorities and discuss. I don't know that I can say anymore than that this morning.

COMMISSIONER CRUMPTON: Mr. Micheel, would you respond to that?

MR. MICHEEL: I would say that that is an issue that we have not discussed, but I would point out that the Staff, in my view and in my reading of Mr. Wallis' testimony, have raised some issues as it relates to the percentage of capacity released from Mo Pub, UtiliCorp to UES, vis-a-vis other non-affiliated marketers.

And so I think from my understanding of the testimony, that's part and parcel of the controversy that's going on here as to what the problem is and how much rate payers would or would not be getting if, for example, they were releasing capacity to other non-affiliated parties.

And I would say that I don't think from my view that we're saying that UES or that the Staff is saying -- and if I'm wrong, correct me, but that the Staff is saying that UES should not get something and that UtiliCorp should not get something. I think this is a case about the degree.

COMMISSIONER CRUMPTON: Staff.

MS. MCGOWAN: Part of the conflict between the parties is identifying what the service is that's being offered. So what the appropriate market rate for that service is depends upon a determination of what the product is.

And Staff believes that based upon looking at the evidence and at such an overwhelming percentage of their released capacity is going to one marketer, there's something that marketer's got to offer people that the competitors don't have, because they have more of a rich release. That's how Staff sees the issue.

Based upon that, Staff believes there's some type of a bundled service being offered where UES, because of its contact with UtiliCorp system, has more to offer. And so it can offer the service at the same rates someone else is, but because they have the extra bundling in, its more valuable and we assume that because it's being purchased more.

COMMISSIONER CRUMPTON: You're now looking at UES.

MS. MCGOWAN: Yeah. I'm looking at UES.

COMMISSIONER CRUMPTON: You're saying because of UES's relationship, they have the ability to put together a more valuable set of services to customers who are unregulated, who are not -- they don't come within the influence of this Commission.

MS. MCGOWAN: Well, we believe they're using UtiliCorp's system --

COMMISSIONER CRUMPTON: I understand.

MS. MCGOWAN: -- and not paying for using the system.

COMMISSIONER CRUMPTON: I'm just trying to understand this value added issue. So you're saying because of this additional value that is a function of their relationship to MPS, they're able to get more money, so therefore the captive customers ought to get more than the market price for this released capacity.

MS. MCGOWAN: That's our position.

COMMISSIONER CRUMPTON: That's your position.

MS. MCGOWAN: Because the market rate is what any marketer would pay.

COMMISSIONER CRUMPTON: I understand. Now, if UES is out of the picture altogether, the most that MPS would be able to get for this service is the market price for this released capacity. Am I right?

MS. MCGOWAN: Presuming they --

COMMISSIONER CRUMPTON: Now, let's say that UES is out of the picture. The most that MPS could get for releasing this capacity --

MS. MCGOWAN: If they reserve --

COMMISSIONER CRUMPTON: -- is what the market is willing to pay; is that right?

MS. MCGOWAN: If they reserve the same amount of capacity, and we're not certain that they would.

COMMISSIONER CRUMPTON: I'm not dealing with that now. We're just talking about now we have something to sell, MPS controls this thing, and what they will get from it is the market price. Is that right or wrong?

MS. MCGOWAN: Yes. I would say.

COMMISSIONER CRUMPTON: Okay. Now, they would have to -- in order to take this to the marketplace to offer it, they would have some expenses? MPS would have expenses related to the marketing of this capacity that they have available to release. Am I right or wrong?

MS. MCGOWAN: I would assume so. That's not really -- I'm not the technical expert.

COMMISSIONER CRUMPTON: I'm asking the questions and I'm trying to get you to give me some answers so that I can better understand the relationship.

MS. MCGOWAN: And I'm trying to give you answers to the best of my knowledge as a non-gas expert.

COMMISSIONER CRUMPTON: Okay.

MS. MCGOWAN: I'm quantifying my answer saying, I believe so, but it's not in my personal expertise to know for certain.

COMMISSIONER CRUMPTON: Thank you. I think I understand your position.

JUDGE GEORGE: Commissioner Murray.

COMMISSIONER MURRAY: I think I'll reserve my questions for the witnesses. Thank you.

JUDGE GEORGE: Additional questions?

CHAIRPERSON LUMPE: Mr. Cooper, I think you raised the issue of transferring this decision to rule making. Is UtiliCorp supportive -- or may I infer then from that that UtiliCorp supports rules that would address affiliate transactions?

MR. COOPER: I believe they are. I mean, as to what those rules should say, I think there's probably a difference between several of the parties in that docket, but I believe UtiliCorp is generally supportive, and I believe there was testimony by Mr. Green in the recent rate case to that effect.

CHAIRPERSON LUMPE: Okay. Well, I sometimes have the impression that to get rid of something, you say let's go to rules, but then when we get to rules, we don't support the rules. And so I sort of wanted to get your feeling of do you actually support the rules? And it is your answer that you believe UtiliCorp does support the need for rules for affiliate transaction?

MR. COOPER: As a general proposition, yes. I mean, as I say, I think if you've been following along the comments that have been filed in that docket, there's people all the way from there should be no rule to --

CHAIRPERSON LUMPE: Exactly.

MR. COOPER: -- there should be this rule. And I think that you would find that UtiliCorp is in the in-between group, I guess. That it's merely a question of what those rules should say and that they -- if they're going to level the playing field, that the rule be written in such a way that it really does level the playing field.

CHAIRPERSON LUMPE: I just wanted to ascertain that you were not in the group of participants in the other case that said there should be no rules.

MR. COOPER: We have not been in that group.

CHAIRPERSON LUMPE: You are not in that group. Thank you.

JUDGE GEORGE: Commissioner Murray.

COMMISSIONER MURRAY: I am going to ask one question of Staff counsel. Is it your position that -- or is it Staff's position that UtiliCorp reserves more capacity than is actually needed for the peak load of its firm customers in order to benefit UES?

MS. MCGOWAN: That's possible, but one of our problems with the affiliate transaction issues is that we were unable to get some of the documentation we needed to either support or deny that. I think that will be addressed in 273 also. We had some document request issues in that docket.

MR. COOPER: Can I add to this? I mean, I would point out that I believe that as a part of the ACA process, the amount of capacity that is reserved by UtiliCorp for its firm customers, for its regulated side is reviewed. And I can at least say that there is no issue in this case as to imprudence or prudence of any of the reservation amount. So I --

COMMISSIONER MURRAY: There's been nothing that's actually questioned the amount of the capacity that has been reserved; is that correct?

MR. COOPER: Exactly.

MS. MCGOWAN: I might state that that's because UtiliCorp has all of its planning at the corporate level for its entire system and it's very difficult when you're trying to look at the corporate level and figure out where it goes down to the different divisions.

COMMISSIONER MURRAY: So then you're getting into an allocation issue, which is not a part of the issue of the --

MS. MCGOWAN: Well, it's the documentation issue trying to sort out exactly how much did the parent company reserve for its MPS division. That's my understanding. Again, it might be better to ask that question of the technical --

MR. COOPER: Which would be my suggestion as well. Dan Warnock is our witness on this issue and he's intimately familiar with gas supply. And if there is a question about that reservation process and how that's performed within UtiliCorp, I would really, really ask the Commission to address the question to Mr. Warnock. I think that would be appropriate.

JUDGE GEORGE: Commissioner Crumpton.

COMMISSIONER CRUMPTON: Yes. The reserved capacity, is that an issue for this case or is that an issue for a different case?

MR. COOPER: It would be our position that it's an issue for each ACA review period.

COMMISSIONER CRUMPTON: Is that your understanding?

MS. MCGOWAN: Yes. Because of the different capacity releases occur during -- this is the '95, '96 ACA period. We're only evaluating the releases that occurred during that time. And 273, which is the subject of the motion, was the 1994 to 1995 ACA period.

JUDGE GEORGE: And, Mr. Micheel, for what reasons is the stipulation and agreement on storage utilization issue beneficial to the rate payers?

MR. MICHEEL: Well, I think first of all, it's beneficial because the rate payers are going to be seeing a reduction in the costs of gas that are going to be flowed back through to them. It provides for, I believe, it's $190,000 reduction in the gas costs. And so I think in the spirit of compromise, that's beneficial to the rate payers.

JUDGE GEORGE: Okay. Any other questions from the bench then? Then we'll proceed to the first witness. Mr. Cooper.

MR. COOPER: At this time we would call Mr. Daniel Warnock.

(Witness sworn.)

DANIEL W. WARNOCK testified as follows:

DIRECT EXAMINATION BY MR. COOPER:

Q. Will you please state your full name?

A. Daniel W. Warnock.

Q. And by whom are you employed and in what capacity?

A. I'm employed by UtiliCorp United as their vice president of gas supply.

Q. Have you caused to be prepared for the purposes of this proceeding certain direct, rebuttal, supplemental rebuttal and surrebuttal testimony in question and answer form?

A. Yes, I have.

Q. Is it your understanding that this testimony has been marked as Exhibits 8, 9, 10 and 11 for identification?

A. Yes.

Q. Do you have any changes that you would like to make to that testimony at this time?

A. No.

Q. If I asked you the questions which are contained in Exhibits 8, 9, 10 and 11 today, would your answers be the same?

A. Yes.

Q. Are those answers true and correct to the best of your information, knowledge and belief?

A. Yes.

MR. COOPER: Your Honor, at this time I would offer Exhibits 8, 9, 10 and 11 into evidence and tender Mr. Warnock for cross-examination.

JUDGE GEORGE: Are there any objections to Exhibit No. 8, 9, 10 and 11? Hearing none, Exhibits 8, 9, 10 and 11 are entered into the record.

(EXHIBIT NOS. 8 TO 11 WERE RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: Ms. McGowan.

MS. MCGOWAN: Staff doesn't have any questions for the witness.

JUDGE GEORGE: Mr. Micheel.

MR. MICHEEL: No questions, your Honor.

JUDGE GEORGE: Commissioner Lumpe, any

questions?

QUESTIONS BY CHAIRPERSON LUMPE:

Q. Mr. Warnock, would you be the one to describe the FERC process for release? Mr. Cooper said that you'd followed that FERC process for release. Are you the one that would be able to describe that?

A. Yes, ma'am, I am. In roughly around 1993 when FERC required all the interstate pipelines to unbundle all their services, they set up a capacity release process. And the goal of this process was to allow the rate payers that paid the original cost of transportation capacity on the interstate pipelines to recover a portion of those costs if they sold it in the secondary market.

And let me digress just a minute. Remember when they went to the unbundling mode, the Federal Energy Regulatory Commission changed the rate design to what we call a straight fixed variable. So much of the demand costs that we pay the interstate pipelines are paid up front versus on a biometric when you use it basis. So whether you use it or not, you pay it.

So as FERC -- because FERC went to the straight fixed variable process, they said we've got to provide a mechanism to allow the purchasers of that

FERC capacity, mainly local distribution companies, to recover some piece of that when they're not using it in their peak day design.

So they established the capacity release process. And it goes something like this. When you have excess capacity that isn't needed for your -- the primary customers, the firm, captive customers as we're using the term today, then you can release it on an electronic bulletin board, which basically what happens is you put it up there and say I have so much capacity to release and I can release it at this price.

Now, it could be that before you put it on the bulletin board, you could do a pre-arranged deal. And a pre-arranged deal is just something where you get parties together. You say I agree to release it to you at a certain rate and the other parties say I agree to buy it to you -- buy it from you at a certain rate. And we put it on the bulletin board and the transaction's done. So you have kind of two mechanisms to do capacity release. And that process can happen on a yearly basis, monthly basis, daily basis.

Q.   When you say a pre-arranged deal, is it pre-arranged in terms of who you're doing the deal with, or pre-arranged in terms of the price you're willing to give to -- or the price that's going to be paid?

A. It's usually both.

Q. Both.

A. In other words, if you have a pre-arranged deal, you've already agreed with parties the price, the terms of the deal, who the party is, etc. Because if you don't know -- if you don't have any idea who the party is, then you'll generally put it out on the bulletin board and say Missouri Public Service has 10 million a day to release of capacity and then people will bid on that capacity. Some may say 10, some may say 14, some may say 12.

Q. So if you do a pre-arranged price, that isn't necessarily maybe the price that if you had put it on the bulletin board you would have gotten?

A. Well, again, because it trades at a range, my people that do this know what that range is. And they find out by making telephone calls to other people as well as looking at the bulletin board on what people have already offered it for.

So when we do a pre-arranged deal, we pretty much have a range of what quote, unquote market is. And so before we do the deal, we're pretty comfortable that we're going to be within the market range.

Q. Is that done on a daily basis, a weekly basis, a monthly basis, season basis?

A. However you decide to do it. It can be any one of those.

Q. So you could make a pre-arranged deal with UES to pay X price -- for them to pay X price on a full season so the market may be fluctuating all over the place, but you've got a pre-arranged market price for a full season?

A. We could do it that way. I don't -- can't say for sure that we didn't, but I will say the vast majority of what we do with UES would be a monthly basis. We would wait to see what that market price is doing and we would trade in that. I can't say we haven't ever done a seasonal basis, but most of what we've done is a month-to-month basis.

CHAIRPERSON LUMPE: Thank you for describing the process to me. I wanted to understand that. I think that's all I have at this time.

JUDGE GEORGE: Vice Chair Drainer.

QUESTIONS BY COMMISSIONER DRAINER:

Q. Good morning. I have a few questions. With respect to your direct testimony on page 5 at the top you say, As far as the service is provided to end-use transportation customers, any non-affiliated marketer could and does provide identical and similar services in Missouri. Do you have examples of who those non-affiliated marketer are?

A. Enron would be an example. They change names. Vesta, I don't know if that's the same name. I don't follow those. But there's several companies that provide those services, numerous companies.

Q. And do those -- like UES, do those companies buy your excess capacity?

A. They buy some of our excess capacity, yes.

Q. If UES was not buying your excess capacity, would you be able to sell it to others?

A. That's a hard question to answer. We certainly could go out and find other people that could buy it. The question is, keep in mind during the time -- most of the times where we're selling this excess capacity, there are other utilities and customers in Missouri that also have excess capacity.

So whereas UES has been a ready market for us as long as we're willing to sell it at a market price to them, other people we would have to go out and hunt them done down to do business with them or we'd just simply set it on the electronic bulletin board and see what price we could get for it.

Q. So it's convenient that UES was buying -- and I won't go into actual percents so we don't have to go in-camera, but they are buying a significant percent of your excess capacity?

A. This is true.

Q. With respect to the comments that UES is able to buy your excess capacity and then sell it as a bundled service, do you know how -- are they selling it? What is the bundled service that they are selling?

A. Well, I don't know the details intimately, but when I hear the term "bundled service," what it means -- and I'll step back just a minute back to the 636 unbundling process. The pipelines broke down their services into their numerous pieces, firm transportation, interruptible transportation, storage, gathering, no notice transportation. So they broke it down.

What marketers are doing is picking and choosing from those services based on the needs of the customers that they're selecting and rebundling those services to provide a -- what we're calling a bundled sales service, which simply means in most cases those customers are getting a transportation service that meets all their needs. It has gas, it has transportation, etc. It's fully bundled.

Q.   There has been a comment that UES is using UtiliCorp's system assets. When they are buying their excess capacity, are they buying other type of assets from UtiliCorp?

A.   When they -- they, like any other marketer by the way, when they go to a customer that's on our system, they're using our distribution assets. But again, they're paying the tariffed price for those assets like anybody else is paying for those assets.

Now, the only -- I'm not sure exactly what is being meant when we say they're using UtiliCorp's assets. The only other idea that I have is that they're using the transportation capacity on the interstate pipeline that they're getting like any other marketer via the capacity release electronic bulletin board.

Q.   So outside of the excess capacity, any other type of asset of UtiliCorp's they would be using, they would be paying the full tariffed rate?

A.   From the distribution system.

Q.   Would there be anything -- any rate that they would have that would be less than the full tariffed rate?

A.   On the distribution system?

Q. Well, on any of your assets that would be different than any other marketer that buys the other percent of your --

A. No.

Q. -- excess capacity?

A. We are not treating UES any differently than any non-affiliated marketer.

Q. All right. Then let me ask -- Mr. Wallis' testimony, he states that as a result of the sale of UtiliCorp to UES, it allows UES to use the pipeline transportation contracts and capacity to serve MPS's end-use customers and that then again UtiliCorp's firm captive customers are paying for this. What customers of Mo Pub is UES serving?

A. There are a number of what we call large volume customers. These are customers that use a substantial amount of gas.

Q. Industrial?

A. Industrial, correct. Industrial customers. And I don't know -- there may be -- I'm going to say roughly 40 of those customers that are large use customers, and that's who UES as well, as a lot of other marketers, are choosing to serve.

Q. So are they then competing with you for those industrial customers?

A. Competing with MPS? Yes.

Q. I mean, if they're your end-use customers and let's say they're industrial customers, so large customers, but then if UES is serving them, are they serving them at less -- I mean, why would an industrial customer go to UES instead of just staying with Mo Pub?

A. Excellent question.

Q. And you're going to give me an excellent answer?

A. I'm going to give you an excellent answer, yes, ma'am, I am.

Q. Good.

A. What happens is the -- when I do my sales rate, I have to combine all this -- these services that I get from the pipeline and generally provide one sales rate -- or do provide one sales rate. And so a transportation customer that doesn't need all those services -- because let's say they're a process and they burn the same amount of gas every day, they don't need a storage service, but on the sales rate they have to pay for that storage service.

And so what happens is by moving them to transportation, they have the possibility of selecting from a marketer, whether it be UES or a non-affiliate, the services that they want to pay for and they can do it at a less rate than what I have to put my sales rate, because I have to put all these services together.

Q. In your tariffed rate?

A. In my tariffed rate.

Q. So this is competition because it's 636. Correct?

A. Right.

Q. What rate does Mo Pub charge UES for its released capacity? Is it the full tariffed rate?

A. That we charge UES for our capacity release?

Q. Uh-huh.

A. It is the rate that -- what we're using the term as "market rate." And, again, let me define that. Market rate is the rate that willing parties are willing to pay for capacity release in the time period that we're talking about, whether it's a month, a day, a season. So it's what parties through the open cry bid process on the electronic bulletin board -- and as we call around to these customers, this is what they're willing to pay for that capacity.

Q. Then if -- because you were talking about the rate that you have to charge being really bundled with other services and the rate that UES then gets from you and they can charge industrial customers as being just one piece. Then can I assume that when they take the market rate and they charge it, it's less than the full tariffed rate that that customer would have had to pay if they were getting it from you?

A. What -- once they receive the capacity release from me at market, what they charge the customer is strictly on negotiations with that customer. So it's whatever that customer that UES or any non-affiliated marketer can negotiate as a price for the service.

Q. Why would an industrial customer pay them more than they would pay you for your tariffed rate?

A. Well, I'm not saying they are paying more than tariff rate. They obviously would have to be below the tariffed rate. But, again, remember that transportation is just one piece of my bundled service.

Q. And would the rate that UES pays for your released capacity be below the -- ever below the market rate?

A. My policy with my people is that UES will pay a market rate for that. Now, can I describe to you that market rates kind of range --

Q. You said a market rate. So I was going to ask for a clarification. What is that market rate?

A. When we call around or when we look at the electronic bulletin board, prices may be 10 cents to 14 cents. And there may be an agreement with UES or any other marketer that we're going to charge 12 cents. And you say well, why? Why won't you go to 14? Well, those change over the period of time that you can negotiate these. Sometimes it's 10, sometimes it's 14. When we did it, we agreed and everybody was happy with 12. So there isn't ever just a point called market in these transactions.

Q. Now, there is no testimony in this case that you have had to rebut stating that there was any imprudency in the capacity that UtiliCorp had for this time period?

A. That is correct.

Q. Which brings me to another issue. With respect to being able to document the ACA process with Mo Pub and look at the allocation of how excess capacity is determined from Mo Pub in Missouri when UtiliCorp is a very large company, are you willing to work with Staff and the Office of the Public Counsel so that for the 1997, '98 ACA review and all future reviews there can be a better documentation process?

A. Absolutely. And I'd like to clarify that just a little bit, because I think there were some statements that were made that are just blatantly wrong. We can very clearly -- and I will do it for the '97, '98 process -- very clearly without a doubt show you the capacity that's allocated to Missouri Public Service. It isn't an allocation, it doesn't have to be some formula. I can absolutely show you what we allocated to Missouri Public Service and why we can justify that it was a prudent amount of firm capacity for our customers.

There's no allocation issues on gas supply costs. It's not like a corporate investor relationship. Absolutely. I can show you definitely what we've got from Missouri Public Service, and will do it.

Q. So you can show us for the state of Missouri what Mo Pub would allocate for capacity for the year and their excess capacity and why that happened?

A. Why we -- why we gave up excess capacity?

Q. How much you're holding in excess capacity and what you're giving up?

A. Well, let me clarify your point, because again I'm holding the correct amount of capacity for a peak day situation.

Q. Right.

A. Which only occurs relatively infrequently, maybe three, five, six days out of a year. So I don't have any -- based on that prudent way to purchase our capacity, I don't have any excess. But on days when I'm not hitting those peak day temperatures, then I do have excess. And yes, I can show you how we're deciding how much we have excess, how we're -- not allocating, but putting out on the bulletin boards, etc.

Q. And can you also show us -- and to follow-up on Chair Lumpe's question, can you show us how often you are releasing excess capacity to an affiliate and setting the prices if it is on a monthly basis? If you took the total volume that they received from you for this time period, could you tell us how much of that volume was locked in at different time periods?

A. Sure. We could tell you when we've done deals with both affiliates and non-affiliated marketers.

Q. And the volume and that could be part of the documentation on a going forward basis for the 19-- will you commit to for the 1997, 1998 review then making sure that Staff and Office of the Public Counsel have the volumes for each of those that you've given released excess capacity to?

A. Absolutely.

Q. And the time periods in which you did that?

A. Yes, ma'am.

Q. Finally, I was asking you about some of the other parties you could be selling -- or releasing excess capacity to. If your affiliate was not to get excess capacity from UtiliCorp, can -- is there enough excess capacity that they can get it from other parties? Do they have competitors that they can easily pick that up from?

A. Could UES?

Q. Uh-huh.

A. Absolutely. No doubts about it.

Q. Same price?

A. Absolutely.

Q. Better price?

A. Maybe better. In fact, I have had situations where they've come to us with better prices and they've wanted us to release it to them and I've said it's not market. I'm not releasing it you. So absolutely. There's no doubt in my mind that the effect of a ruling in both ACAs of this kind, you won't see UES as one of my people that are buying capacity from me anymore, because they will go someplace else. They won't have to pay -- they won't have to pay market, which is what the Staff's position is. So I guarantee if that's the decision that's made here, we won't have UES as a purchaser of our capacity anymore. Which means we'll have to go find somebody else. And maybe we can do as well, maybe we can't, because then we have to go out and actually hunt it versus the ready market, which --

Q. But now you're willing though to sell that to them at market?

A. To UES?

Q. Right.

A. Yes.

Q. You just don't want to have to do it above market or in the tariffed rate?

A. That's correct.

Q. Is that your full --

A. My -- my -- well, my position is that I'm going to sell my released capacity at the market rate whether it's to UES or to a non-affiliate. What either one of those parties do to markup after that is not really my business. It's negotiations between the customer and the affiliated or non-affiliated marketer. So I'm just saying any other marketer the Staff has recommended that they only get -- that MPS only get market. They've taken a little different tact or standard with UES.

Q. Finally, in your expert opinion and in your position of having dealt with having capacity for your peak day demands and then ending up with excess capacity you have to release, if this Commission were to hold UES to a higher standard than what you had to sell to them so that you had to sell above market rate --

A. Uh-huh.

Q. -- or tariffed rate, your firm, fixed customers that receive these credits, will they end up receiving greater credits or less credits if we put you in that position?

A. Less.

Q. Because?

A. Because, again, UES is the ready market. That's why there's such a high percentage. There's nothing else to be taken from that high percentage but that they're a ready market. And if I'm willing to sell it to them at market, they'll take it. If not, I have to go out among the number of other people that can sell, Panhandle and Williams Pipeline Capacity, I have to go out and find customers to sell it to.

And so logic would tell me the best we could do would be even with UES, but the likelihood is because I've actually got to go out and take some steps, that I'll probably sell less excess capacity to non-affiliated marketers, because they'll have -- these non-affiliated marketers have other places to go.

Q. And, finally, your testimony tended to indicate that Williams has plenty of gas? That they could get it from Williams. And has that changed since you filed your testimony in November of '97?

A. No, ma'am. There's certain lines that are tied on Williams, but generally there's plenty of capacity on Williams that they could buy it from the pipeline.

COMMISSIONER DRAINER: Thank you.

THE WITNESS: Uh-huh.

JUDGE GEORGE: Commissioner Crumpton.

QUESTIONS BY COMMISSIONER CRUMPTON:

Q. Yes. Commissioner Drainer has asked most of my questions, but I have a couple left. Could you for my benefit recap your method of the determining the market price?

A. Okay. Each month or sometimes on a daily basis we go out into the market and we call around 5 to 10 different people. Might be other LDCs, might be other marketers. And we say, We've got 10 million a day of capacity we're willing to offer you at 12 cents, or we say, What are you hearing for capacity release prices? So that's one method. Telephonic.

And the other method is for us to go to the electronic bulletin board and see what other people have posted for that capacity. So we use both of those two methods to determine a market price. Again, we go back because there's going to be different conditions put in the capacity releases. You'll see a range 10, 14 and so we'll try to hit something in the middle there, because if you go to the 14 the whole time, you're probably not going to sell it all. If you're somewhere in the range there, you're going to sell the vast majority of your capacity. So that's how we do it.

Q. How would we know that you've actually done this?

A. One of the -- one of the steps that we can look at is the electronic bulletin boards, because they're published by the pipelines. And we can pull that information up and show you how our releases have done compared to other people in the market.

Q. So you have evidence that will prove that the mark -- the price you established was the price that was available in the marketplace?

A. Uh-huh.

Q. And it's your testimony that MPS charges UES the market price that you have established according to the method you just described?

A. Within the range of that market price, that's correct.

Q. Okay. Now, would you consider this an at arm's length transaction?

A. I would. Now, it's with an affiliate.

Q. Yes.

A. So sometimes it doesn't seem like it's at arm's length, but keep in mind my policy is we're not giving UES any special deals. They either pay market, which has been defined as a range, or they don't get the transaction. And we've had experience where I've actually told them, No, you aren't selling at that price. You sell it this way or you don't sell.

Q. So you're describing this as an arm's length transaction; is that correct?

A. That's correct.

Q. Now, how does UES learn about the MPS excess capacity?

A. Oh, we're -- we're telling people. We're telling UES.

Q. Do they call you?
A. Sure. They can.
Q. They call you daily? Is there an electronic bulletin board where you would actually post your capacity that you think is going to be available and thereby allow others to look at that and bid on it?
A. Yes, we do do that.
Q. You do do that?
A. We do that. We also do it as --
Q. Hold on a sec. You didn't describe that as the method that you use. You said you called others and then you looked at the bulletin board to see what others were getting for the price. You didn't say that yours was posted on that bulletin board too.
A. You're right. I didn't.
Q. Is yours posted on the bulletin board?
A. Yes. Now, sometimes we do pre-arranged deals, because --
Q. But you post it on the board?
A. Yes.
Q. All right. So that would make it more of an at arm's length transaction, would it not?
A. That's correct.
Q. Okay.
A. And, in fact, I failed to say to

Commissioner Lumpe when she asked, was as you put a pre-arranged deal out, if somebody wants to go out back and bid it higher, they can actually take that gas -- or that deal away from UtiliCorp Energy Solutions or any other person that's on that bulletin board.

Q. Okay. So now, if you didn't call UES to say we've got this capacity available, if there was -- if we didn't permit you to call them to announce you have the capacity, but instead insisted that you only look at responses to the bulletin board, would that be reassurance to the Commission that this is an at arm's length transaction?

A. We surely could do it that way.

Q. You could?

A. Sure we could.

Q. Would you be willing to?

A. We would. I'd like to say one comment in light of that. We could do that. And that would be a fine compromise. I think one of the things we find out is some people like to do pre-arranged deals, not just UES, but --

Q. That's quite all right.

A. So I have no problems at all -- I have nothing to hold back to put this on the bulletin board if that's the way the Commission wants to do it. In fact, we do do it that way.

Q. But you didn't emphasize it when I first asked you --

A. That's right.

Q. -- to recap your method.

A. That's right.

Q. All right. Now, aside from the pre-arranged deals, is it your opinion that UES bids in the open marketplace for this excess capacity along with others?

A. Bids other companies for it? Absolutely.

Q. Okay. But for yours, are they, in essence as you described, bidding in the open marketplace for this excess capacity that MPS has except for the pre-arranged deals?

A. They're doing the same things that we just got done talking about. They're looking at the bulletin board. They're calling us. They're telling us they want 10,000 a day, how much will you do it for? They're checking around with people that aren't affiliated with them. They're doing the opposite side of what we're doing to try to get rid of it.

Q. Now, this is my last question. Are you responsible for establishing the capacity that your company will require in order to meet your customers peak day requirement?

A. Yes, sir.

Q. You are responsible?

A. Yes, sir.

Q. Okay. Then can you tell me what percent of your customers peak days are met by the contracted capacity of your company?

A. I'm going to have to kind of re-define the question. Are you asking how much capacity we have to meet the peak day requirement of our customers?

Q. Okay. This is what I'm asking you.

A. Okay.

Q. I'm holding up a little chart that shows a bell-shaped curve with the mean.

A. Uh-huh.

Q. Okay. Would your capacity requirement be one or, in your opinion, two standard deviations beyond a mean or would it be even higher than that? In other words, it's possible for you to come to the Commission and say, I am establishing the capacity to cover my customers peak day needs on a winter that we expect maybe once every 50 years.

A. Okay. I see what you're asking.

Q. Okay. So I guess to rephrase the question, are you establishing capacity to reach your customers peak needs under a winter that comes 95 percent of the time or is this a winter that comes 100 percent of the time?

A. Okay. Good question. What I -- what we have proposed is generally, historically, we have proposed a peak day that occurs three times over a five-year period.

Q. Okay.

A. Which is an aggressive assumption, because you know, somebody says that's the coldest winter I've ever had.

Q. Right.

A. Now, that's on Williams. On Panhandle, we've done a one in twenty.

Q. Okay.

A. You say what's the difference? The difference is on Williams the pipeline penalties, if you don't have enough firm capacity reserved, are much less than they are at Panhandle.

Q. Sure.

A. So the higher your pipeline penalties are for going above your firm entitlement, the higher you need to cover, because like on Panhandle it's like $225 MCF. It doesn't take long to really get a lot of penalties even on that one in twenty day. So we try to do a cost benefit of analysis between the penalties in the pipeline versus how much we're going to cover with firm entitlement.

Q. So are you trying to describe for me some type of linear programming technique that you use in order to meet the constraints that you provide to the system?

A. That's right. We're -- we checking 30 -- 20 to 30 years of weather.

Q. Okay.

A. And we're going back and saying how often are you hitting these kind of temperatures? And you're drawing lines here 5 times, 10 times, 20 times. And then based on that we're making a policy statement that says we're going to cover this. And we're justifying it by saying if we're not covered, here's the penalty side of it. So we economically justify for our customers that level of entitlement.

Q. And this is truly my last question. Were Staff to challenge the amount of reserve capacity that your company arranged for its customers, would they not have to have some type of mathematical technique that demonstrates their inputs and their outputs to prove that you're wrong?

A. I would think so. They'd have to at least have some assumptions of why I'm right or wrong. You know, they could agree one in twenty is not right. It ought to be three out of the five or something. These are the kind of arguments you get into. It's somewhat of an art rather than a science. And there's different assumptions that reasonable people may come up with. We've generally though tried to be aggressive with our assumptions.

Q. Right. Because the higher the penalty, the more you've got to cover yourself. Is that the point?

A. Otherwise I've got to come to you and get coverage of the penalties. And what I've found at the Commission is it's much harder to get coverage for penalties then it is for entitlement.

Q. If this Commission forced your company to charge a price so high to your affiliate that they could no longer buy gas -- I mean, take your released capacity and you end up unable to get rid of it, all of it, whose responsibility does it become to ensure that your company in implementing Commission policy is treated fairly? In other words, if we cause to be implemented a policy that forces you to not maximize the return on this released capacity, whose responsibility does it become?

A. Well, it becomes, I would think, my responsibility to implement whatever your decision is.
Q. Okay.
A. Once I've implemented that decision, then I say that's an outcome of the decision that this Commission makes. So unless they can show that I wasn't prudent in the way I went about it like placing it on a bulletin board, then it becomes the result of this Commission decision what happens to our customers.
COMMISSIONER CRUMPTON: Thank you.
JUDGE GEORGE: Commissioner Murray.
COMMISSIONER MURRAY: Thank you.
QUESTIONS BY COMMISSIONER MURRAY:
Q. Good morning.
A. Good morning.
Q. You mentioned that you could show that the capacity release to your affiliate was at market-based rates through documentation from the electronic bulletin board; is that correct?
A. Yes.
Q. Was that documentation anything that was provided to Staff in any of the data requests that are on file in this matter?
A. Not that I remember. I'm not sure, but not

that I remember.

Q. So was that type of documentation not requested?

A. I don't know. I'd have to ask the Staff. I don't know.

Q. And when you say you can show that through documentation from the electronic bulletin board, are you saying that if you were to take specific dates from the electronic bulletin board and get reproductions of what was on that board on those specific dates, that those documents would show what the market rate was for each one of those dates, I'm assuming?

A. A range always. Keep in mind a range.

Q. Okay. A range. And when you enter into a pre-arranged deal, does that deal then get placed on the electronic bulletin board for others to see?

A. Yes.

Q. And sometimes these are for -- or I believe your testimony was that they are generally for a month-long period?

A. Could -- could be a month-long period.

Q. So if we were to ask for documentation from the electronic bulletin board for the period in question for this ACA, it would show -- on that bulletin board it would show your capacity releases through these pre-arranged --

A. That's right.

Q. -- contracts?

And it would show what others had released their capacity for?

A. That's right. There is one caveat to that. On -- on -- on -- sometimes when we are transporting, we ship it on our -- what we call ship it on our contract, which means that we don't release it. They run it on our contract, but we release it at the electronic bulletin board rate. So those would not show up on an electronic bulletin board.

Q. Go through that one more time, please.

A. Okay. I will. There will be times when rather than putting it on the bulletin board and release it, we'll what we call run it on our contract, which means they're running it through our transportation contracts. And that was allowed by the FERC. It's called a buy-sell. It was allowed by the FERC up to a certain date, which was like November of '93 or something like that for customers that were already doing that.

So we'll just -- we'll pick gas up from UES at some point on the system and we'll run it on our contract rather than actually having a capacity release, because when you release -- when you have a capacity release contract, you -- they actually get their own contract. So whoever agrees to the release, let's say it's 10 million a day, the pipeline will actually give them their own contract.

Q. And that will not show up?

A. That will not show up, that's correct.

Q. If you enter into a pre-arranged deal that is for an extended period of time, how can you look at that extended period of time and determine what the market-based rate actually is for, say, a month?

A. Two issues there. One, if there is some on the bulletin board -- because sometimes they do release it for longer than a month -- that gives us a benchmark. Generally what you find -- again, I'd have to go back. I can't say all, but generally you'll find that's why we don't do it that way is because of the very concern we've got that we would release it at 9 cents and then it would be -- the market would be 12 cents over that period of time. And we know we've got an obligation to get market for our capacity. So generally -- again, I can't say we've never done it, but generally we will release it on a month-to-month basis.

Q. Okay. It appears to me that we don't have any -- the Commission does not have any written documentation that we can look at in this particular matter and determine that your calculation of market-based rates for your release of capacity excess capacity is correct. And can you supply the Commission with documentation -- written documentation from the electronic bulletin board that substantiates that your calculations were based on market-based rates?

THE WITNESS: Counselors, any problems with that?

MR. COOPER: Well, I would -- no. Certainly not if the Commissioner requests that.

BY COMMISSIONER MURRAY:

Q. Now, I don't -- I want to be sure that I'm understanding what it is I'm requesting here. Is it possible to get printouts of the electronic bulletin board, what was posted on the electronic bulletin board for specific dates?

A. I think it is, Commissioner. I think we can get you what you're looking for. It's been a while since I've looked at the electronic bulletin board, but I believe we can get you what you're looking for.

Q. And I was wondering as I was reading the testimony in this, why the company would not establish some kind of a record -- as you go along in releasing these capacities, why you would not at that time establish some documentation as to what the price was based on?

A. I think we have. I think it's internal. It hasn't been -- as far as I know, hasn't been asked in this proceeding, so that's why you're not seeing it. But I think it's in an electronic bulletin board form so it's already there. I probably have tended -- because you're doing transactions, you're busy during most of the time, they're taking these calls, etc. I haven't asked them to put it on a piece of paper. But we -- obviously if this becomes an issue, we're going to have to start doing that then. So that obviously will be a policy change along the way that we'll have to start documenting everything we do that is, in fact, within this market range.

Q. Okay. I'd like to ask you about your -- you say sometimes when you're pre-arranging a deal with your affiliate or anyone else, I would assume --

A. Uh-huh.

Q. -- sometimes it's done by a telephone call. And in those instances is UtiliCorp proposing a price or is the marketer proposing a price?

A. Both. We go both ways.
Q. Okay. The data requests that Staff requested of the company in this proceeding, did any of those data requests, to your knowledge, supply information about the market-based rates?
A. I don't know. Not that I know of.
COMMISSIONER MURRAY: Thank you.
THE WITNESS: You're welcome
JUDGE GEORGE: Further questions, Commissioner Crumpton?
FURTHER QUESTIONS BY COMMISSIONER CRUMPTON:
Q. I just wanted to follow-up on the response to my little --
A. Okay.
Q. -- graph here.
A. Uh-huh.
Q. And you mentioned the number 1 in 20.
A. Uh-huh.
Q. Does the 1 in 20 mean that 95 percent of the peak days will be met or 95 percent of the winters will be met by the capacity you have?
A. That's correct.
Q. Okay. Which is correct?
A. That 95 percent of the winters -- there's going to be that one -- well, we're covering for that

one day that may happen over a 20-year period.

Q. Over 20 years you will cover -- 19 of the winters will be covered by --

A. That's right.

Q. -- your --

A. That's right.

Q. So this is like 95 percent of the expected winters over a 20-year period will be met?

A. That's right.

Q. Okay. And based on your juggling of the inputs and the constraints, this to you is the most cost effective way of meeting the capacity requirements of your customers?

A. Yes. And the trade-off is incurring unauthorized overrun penalties.

Q. Right. Which the Commission may not accept.

A. That's correct.

Q. Okay.

A. That's correct.

COMMISSIONER CRUMPTON: Okay. Thank you

JUDGE GEORGE: Commissioner Lumpe.

CHAIRPERSON LUMPE: Yes.

FURTHER QUESTIONS BY CHAIRPERSON LUMPE:

Q. One question, Mr. Warnock. And this has to do with the bundle of services perhaps. UES is willing to buy your excess capacity and you said other marketers are also willing to buy that?

A. Correct.

Q. And they would buy it at the same rate we would assume unless you had a negotiated one or a pre-arranged and you didn't --

A. That's correct.

Q. But assume it's the same. The bundle of services then that UES would resell could be a different bundle from the other marketer because of their relationship with you? Is that possible?

A. No.

Q. Okay.

A. They don't sell a bundle of -- I mean, the services that UES sells or any other marketer has nothing to do with their relationship, particularly UES, with us. It has -- what it has to do with is what that customer wants. And anything that UES has to offer of Missouri Public Services can be bought by anybody -- can be offered by anybody else that's a non-affiliated marketer.

Q. So what UES is reselling is only the gas? If they sell other things in that bundle, they are not selling them as something they got from you, purchased from you or whatever?

A. Correct.
CHAIRPERSON LUMPE: Okay. Thank you.
THE WITNESS: Uh-huh.
JUDGE GEORGE: Vice Chair Drainer.
FURTHER QUESTIONS BY COMMISSIONER DRAINER:
Q. Yes. With respect to the Staff's capacity release adjustments, did you review the actual dollar figures that they are proposing?
A. You mean how much it was?
Q. The calculations that got them to those dollar figures?
A. We -- I didn't review them in detail. I reviewed the description that was in Mr. Wallis' testimony.
Q. Are you comfortable with those figures being accurate based on what you looked at then?
A. Based on Mr. Wallis' assumptions, yes.
Q. So you did not go back and look behind the numbers?
A. I did not, no.
Q. Did anyone on your staff go back and look at those numbers to the best of your knowledge?
A. Steve? Steve? I do not know and they're shaking heads over here, but I don't know.
Q. Okay. Well, you're the one on the stand,

so --

A. Yeah, right. I don't know.

Q. So we'll just -- if you don't know, that is allowable.

A. Okay.

Q. I appreciate your answer. Thank you.

A. Uh-huh.

COMMISSIONER DRAINER: No other questions.

JUDGE GEORGE: Any other questions from the bench?

Off the record, please.

(Off the record.)

(A recess was taken.)

JUDGE GEORGE: Mr. Warnock, you understand you've been sworn to tell the truth in this proceeding today; is that correct?

THE WITNESS: Yes.

JUDGE GEORGE: We're at the recross. Ms. McGowan.

MS. MCGOWAN: I think actually Mr. Micheel had the honors first.

JUDGE GEORGE: Mr. Micheel, I'm sorry.

RECROSS-EXAMINATION BY MR. MICHEEL:

Q. Mr. Warnock, Chair Lumpe asked you some questions about the pre-arranged sales that Mo Pub has entered into with UES. Do you recall those questions?

A. Yes.

Q. Would it be correct to say that of the capacity release sales at issue in this particular docket that the majority of the sales from Mo Pub to UES were pre-arranged capacity released sales?

A. I wouldn't -- I don't know.

Q. Okay. You haven't undertaken any sort of analysis to determine whether they were or were not?

A. No.

Q. Okay. In response to one of your questions -- I believe one of your answers to Commissioner Murray, you stated that sometimes you placed the pre-arranged sales, I believe, on end of the market and the price is bid up. Do you recall that answer?

A. Yes.

Q. And I'm trying to understand -- when you say a pre-arranged sale, what my idea is if, for example, I'm going to sell my car to you and I offer my car for sale at $2,000 and you say you'll purchase my car for $2,000, I can't go out to the market and say I've sold my car to Mr. Warnock for $2,000, does anybody want to pay $2,500.

And I guess I'm trying to understand -- you say that you've struck a deal -- a pre-arranged capacity release deal between Mo Pub and UES and then you place it on the market and people bid that up. Is there a contract between Mo Pub and UES on the pre-arranged sales?

A. Under -- under the FERC tariff provisions, when you do a pre-arranged deal, unless -- and only if it's at max rates, you can put it on the bulletin board, but it can be bid up. That's per FERC rules.

Q. Let me ask you this: When Mo Pub or UtiliCorp and UES enter into a pre-arranged sale, is there a written contract or is that a handshake deal?

A. It's put on the bulletin board.

Q. Okay. So every pre-arranged deal between Mo Pub and UES is placed on the bulletin board. Is that your testimony?

A. I mentioned earlier with Commissioner Murray that there were some that we did that I said ran on our contract, and that those are not put on the bulletin board.

Q. And how many of those deals run on your contract?

A. I don't know. It would be on the Panhandle system and I don't know how much run on our contract versus on the bulletin board. The point is they're based on price on the bulletin board.

Q. With respect to the price on the bulletin board, I believe that Vice Chair Drainer asked you some questions about that. And what I want to know is, when we're looking on the electronic bulletin board at the prices on the electronic bulletin board, how can we be assured they're comparable markets?

A. And what do you mean by comparable markets?

Q. Well, for example, if I'm on a pipeline in Arizona and let's say the pipeline's not fully subscribed or something like that and so there's a lot of capacity out there, so you would expect, hypothetically, prices would be lower for capacity release because there's a lot of capacity out there.

And my question is, I want to compare capacity release, for example, in your service territories with other capacity release happening in your service territories. So it's an apples to apples capacity release comparison question.

And my question is, when you're looking on the electronic bulletin board or calling folks about market discovery and the range of prices that you discussed, are those prices in the market area where UES or Mo Pub, their deal, is releasing the capacity?

A. On the electronic bulletin board, they will describe the capacity that they're releasing, where it's coming from, where it's going to. And the issue is -- is you have to know from the pipeline situation do you have a constraining pipeline? Is it in the market area? Is it in the field area? That should all be described on the electronic bulletin board.

Q. And the comparison that your department makes, are those apples to apples comparisons? In other words, are they for the same area where people would -- where you're selling it to UES where there are other possible marketers out there? That's my question.

A. And the answer to that question is yes.

Q. Okay. Now, you discussed, I believe with Vice Chair Drainer, the large volume customers and Mo Pub being able to compete for gas service with various marketers. Do you recall those questions?

A. Yes, I do.

Q. Is it correct that Missouri Public Service currently has a flex rate tariff that allows Mo Pub to at least do some price competition with marketers?

A. Yes. It is correct.

Q. It is correct. You also discussed, I believe with Vice Chair Drainer, the fact that there's a lot of pipeline capacity out there. Do you recall those questions or answering to that about whether or not there's a lot of available capacity, for example, on the Williams Natural Gas Pipeline?

A. Yes. I remember those.

Q. When you were discussing the available capacity again, is that available capacity in Missouri Public Services service territory in Missouri or on the Williams Natural Gas Pipeline as a whole?

A. I was addressing Williams Natural Gas Pipeline as a whole.

Q. Let's talk about your service territory. Is it a correct statement, sir, that in the service territory for Mo Pub, the Williams Natural Gas Pipeline -- space on the pipeline is fairly fully subscribed? Is that correct, sir?

A. No. It is not correct.

Q. It's not correct?

A. There are certain branch lines that Mo Pub has certain -- like a line that would go to Sedalia, that is, in fact, sold out. But on some of the other branch lines that's not a correct statement.

Q. And in terms of percentage, if you know, what percentage of Williams Natural Gas Pipeline is fully subscribed in Mo Pub service territory?

A. I don't know.

Q. Okay. But you do know for sure the Sedalia branch is; is that correct?
A. That's correct.
Q. What other branches are there in the Mo Pub service territory for the Williams Pipeline?
A. I don't know the names of them. That one just sticks out because we've had a lot of discussions on that Sedalia branch line.
Q. Let's talk about the Panhandle Eastern Pipeline. Is that pipeline fully subscribed?
A. Yes, it is.
Q. Is it fully subscribed in Mo Pub's service territory?
A. Yes, it is.
Q. So you would expect that if there's any capacity to be released there, that would be people who are currently on the pipeline attempting to get that capacity; is that correct?
A. Marketers wanting to get the capacity, that's correct.
Q. So that's valuable capacity -- or more valuable to where I could just go out and purchase -- then, you know, there's available space on the pipeline; is that correct?
A. A constraint pipeline will bring usually

more value, that's right.

Q. With respect to the deals between Mo Pub and UES, are most of these pre-arranged deals on the Panhandle Eastern part of the system or are they on the Williams part of the system?

A. Both.

Q. Fifty/fifty?

A. I don't know.

Q. You haven't undertaken any sort of analysis --

A. No.

Q. -- to determine that?

A. No.

Q. Okay. I believe that it was Commissioner Murray who asked you about certain documentation that you keep. And I believe your response to her was that currently the people who work for you or the people in your department do not keep contemporaneous documents indicating the price that was available on the electronic bulletin board and the phone calls you make and all those items. Is that a correct recollection of your answer to Commissioner Murray?

A. We don't keep any records on the telephonic discussion. Of course, the bulletin board is held by the pipeline, not by us, so it's out there already.

Q. And if I understand your testimony today, Mr. Warnock, most of the price discovery that your folks do is related to the telephone calls; is that correct?

A. I don't know that I said that.

Q. Okay. With respect to the telephone calls it was your testimony that you don't keep that information; is that correct?

A. That's how I answered that, yes.

Q. Okay. So with respect to that information, there's no evidence in the record and indeed Mo Pub didn't have a policy to keep that information; is that correct?

A. On the telephone? That's correct.

Q. Okay. So sitting there today, you have no way of knowing whether or not those deals that were conducted by the phone, whether or not they were consistent with the market price or consistent with the price discovered, do you?

A. Yes, we do. We have the electronic bulletin board.

Q. But you kept no records; is that correct?

A. The electronic bulletin board is the record.

Q. Okay. So the only record would be the electronic bulletin board; is that correct?

A. Uh-huh.

Q. And you haven't provided any of that information today; is that correct?

A. I haven't been asked to.

Q. Okay. Also in response to Commissioner Murray, and I think we discussed this also, you said that there's a little parcel of the deals that you do between Mo Pub and UES that are shipped on MPS's contract; is that correct?

A. Correct.

Q. And what percentage of the deals between UES and Mo Pub, if you know, are based on shipping on Missouri Public Service's contract?

A. I don't know.

Q. Is there any way we could get that information?

A. I imagine.

MR. MICHEEL: I think that's all the questions I have. Thank you very much.

THE WITNESS: Thank you.

JUDGE GEORGE: Ms. McGowan.

MS. MCGOWAN: Yes. Just a few.

RECROSS-EXAMINATION BY MS. MCGOWAN:.

Q. I'd like to go on real quick with the area that Mr. Micheel was touching on in response to

Commission questions. You stated repeatedly that you were not asked for evidence relating to your bidding process and the electronic bulletin board and how you determine the market value of the capacity release?

A. I think it was related to the documentation versus being asked for the bidding process.

Q. Well, basically documentation supporting --

A. As far as I know, that's right.

Q. Did any other witness testify on behalf of UtiliCorp related to the issue of the bidding process?

A. In this hearing?

Q. Uh-huh.

A. I'm not sure.

Q. I was trying to make sure that you would be the right witness to ask this question. Are you familiar with Staff Data Request No. 16?

A. No.

Q. This request was requested from Jeff Cook from UtiliCorp and prepared by Jeff Cook who did not file testimony in this proceeding. So at some point I may ask Staff witness to identify the document. So I guess I should wait, because I guess you're not familiar with this data request, but I would like to approach the witness.

JUDGE GEORGE: You may.

MS. MCGOWAN: I've just handed the witness a copy of Staff Data Request 16, which can later be identified by staff witness Mr. Wallis. Hopefully I have three copies left in case I need to enter it in the record.

BY MS. MCGOWAN:

Q. Sir, are you familiar with this document? Have you ever seen it before?

A. I don't remember seeing it.

Q. Do you disagree that this document was prepared by Jeff Cook, or do you have any knowledge of it?

MS. MCGOWAN: I guess I'll have to wait and try to introduce this document when a Staff witness who is familiar with the document can get on the stand. I would just would like to introduce it in the record to show what it states. I don't really have any question relating to the document.

JUDGE GEORGE: Okay.

MS. MCGOWAN: But I'd hoped this witness would be able to identify it since he's the one that testified on the issue about the data request and the witness that did prepare the data request -- excuse me -- the employee of UtiliCorp that prepared the data request is not here. So I would like to try to offer it when Mr. Wallis is on the stand and can identify it.

JUDGE GEORGE: Okay.

BY MS. MCGOWAN:

Q. Okay. I guess I'll move on. In response to several of the Commission questions, you repeatedly referenced that there's a level playing field between UES and other marketers in the area; is that correct?

A. I just said that UES doesn't have any competitive advantages compared to other marketers.

Q. So there should be basically a level playing field between UES and the other marketers if there's no preferential treatment?

A. Yes.

Q. Okay. And that you release your capacity to any marketer at a comparable market rate?

A. Yes.

Q. Okay. If UES only gets a market rate and no other extra services, can you explain why does it buy the majority of UtiliCorp's surplus capacity?

A. There's one reason and only one reason, because we're a ready market, they know who we are, we give it to them at market. That's the answer. There's no other.

Q. If UES again only gets capacity at a market rate and no hidden bundled services that aren't available to other marketers, why does UES end up selling this capacity to the majority of UtiliCorp's end-user customers?

A. Maybe they're good negotiators with the customers. And by the way, last time I knew -- I don't know what the number is recently -- it was about 50 percent is what they were selling to the customers versus non-affiliate.

Q. Well, if non-affiliates and UtiliCorp itself is selling to the end-user, they've got 50 percent of all the end-user market --

A. All Missouri -- UES has 50 percent. That's the last I knew of a number.

Q. Okay. All right. Let's see. Don't want to repeat any of Mr. Micheel's questions. You also stated that to challenge UtiliCorp's capacity reservations for the ACA period, that Staff would need access to various documents. I'm assuming corporate documents both from, say, the Kansas area as well as the Michigan office, because it's my understanding that the capacity is reserved at the corporate level and you'd have to see how it's supposed to trickle down through the system?

A. Well, I would take issue with the way you're describing this. When we -- when we contract with Williams or Panhandle, we contracted on a total basis. So there's -- so when we buy a certain amount from Williams, it's the total amount we need for both Kansas and Missouri, but we can clearly delineate what is Missouri's and what is Kansas.

Q. Were you involved in UtiliCorp's last ACA case, which I believe was GR-95-273?

A. Yes.

Q. Were you familiar with the issues that were brought in that case? I know it was probably a year ago almost.

A. Yes.

Q. Do you recall that one of Staff's issues in that case was a request that the Commission require UtiliCorp in future cases to provide Staff with documentation that it said it needed to evaluate their capacity release?

A. I remember that as an issue.

MS. MCGOWAN: Okay. I would like to ask that the Commission take official notice of the record in 273, including the filings, just so that we can adequately bring this issue before the Commission. And that there was -- that there have been previous requests for documentation that we feel we needed to determine whether the capacity release was appropriate. And that we are just waiting a pending Commission decision whether they believe we need that evidence and whether it's appropriate to order the production of it.

JUDGE GEORGE: Very well.

BY MS. MCGOWAN:

Q. Okay. Just one more line. Mr. Warnock, you said you did not know if sales related to capacity releases to UES were pre-arranged sales -- or what percentage?

A. What percentage, right.

Q. Is there anyone here today that would know?

A. No.

Q. You also said, I believe, that in determining market rates for capacity release that UtiliCorp compares capacity prices from the same market region or from the same region on the system. Was that a correct statement of your testimony?

A. Is this in response to Mr. Micheel's question?

Q. I'm just trying to further clarify because I did not understand your answer.

A. When we do a comparison capacity release, we do compare it to light term like receipt and delivery points, is it in the market area, field area, is it recallable, non-recallable, is there capacity constraints, non-constraints.

Q. Do you have any documentation that could show that you compared similar areas and -- you know, you were talking about the documentation from the bulletin board that you could provide. Can you provide information that shows that it came from the same area?

A. That is the documentation, the bulletin board.

Q. So the information that you would provide in response to Commissioner Murray's request would include that type of documentation?

A. The bulletin -- what's on the bulletin board, that's correct.

Q. I just want to do make sure we'd be able to look at that.

MS. MCGOWAN: No further questions.

JUDGE GEORGE: Mr. Cooper, redirect.

REDIRECT EXAMINATION BY MR. COOPER:

Q. Mr. Warnock, I believe in response to one of Commissioner Crumpton's questions you referred to different conditions for capacity. Could you explain to us what you were meaning by that?

A. When you release capacity on the bulletin board, of course, there's different varieties of capacity, if you will. And it's based on things like is it recallable, is it non-recallable, is the charge on a demand basis or is it on a biometric basis, is it a capacity constrained pipeline or a non-capacity constrained area? All these items will have an impact on the price of that capacity.

Q. Now, to follow-up on something that Ms. McGowan just asked you, I believe in response to one of Commissioner Murray's questions, you spoke of information that could be provided to establish a market rate or a range of market prices for capacity. Once again, just to clarify, what documentation were you referring to?

A. The documentation that I'm referring to is what is published on the pipeline, the interstate pipelines electronic bulletin boards.

Q. Is unneeded capacity an issue that's unique to UtiliCorp?

A. No. Let me clarify. When we talk -- when I'm talking about unneeded capacity, I'm talking about the difference between our peak day needs and times when those peak days aren't there. So I'm certainly not talking about times when we have higher than --

anybody has higher than a peak day. But the difference between your peak day, which is what you contract with the pipelines for, and on days when you don't have the kind of temperatures that warrant a peak day, that is capacity that can be released on the capacity release system.

Q. And UtiliCorp's not the only LDC that has that situation?

A. That's correct. All -- all LDCs have that situation.

Q. You were asked, I believe by Commissioner Drainer, whether you compete with UES. Can you explain for us why it's difficult to compete with a gas marketer?

A. Well, let's take it through kind of a scenario and see if we can work our way through this, but -- to answer your question. When we're in a situation where a company is looking for lower rates and they want to find another mechanism, we as the utility want to do everything we can to meet their needs. So one of the options that we can use is to offer transportation.

Now, we could discount, which I assume is what Mr. Micheel is talking about. We could discount our distribution margin, but that certainly would not be our first line to offer to the customer, because that's giving money away which has an impact on the rest of the customers.

So what we try to do is to see if transportation is a viable alternative. If we unbundle -- I mean, ours is all a bundled service. If we can just offer them transportation, whether it's UES, a non-affiliated marketer, whatever, we can maintain our distribution rate. That's one issue is we try to maintain our distribution rate.

The second thing, the marketer can compete a little bit better because for us to do the flex rate requires us to come to the Commission and get your approval, where as a marketer, they can move pretty quickly on that. And so in light of that, there just seems to be more responsiveness that a marketer can offer than what the local distribution company can offer.

Q. To follow-up on something that was asked of you by Mr. Micheel, I believe you were asked whether Panhandle was a fully subscribed pipeline. Do you remember that?

A. Yes.

Q. The fact that it's fully subscribed, where in the market would that subscription be reflected?

A. I'm not sure I understand your question.
Q. Well, for instance, is it -- is that an issue that you just can't get capacity or is that something that's reflected in a market price?
A. For Panhandle the answer would be that you just can't get capacity unless you do a back call or something. But on Panhandle, if you ask them for additional firm entitlement, they just don't have it to give to you.
Q. But what about in the secondary market?
A. In --
Q. How would that subscription be reflected in the secondary market?
A. In the secondary market if you're in a capacity constrained situation and there's a lot of people bidding on that capacity, it's going to tend to bid that price up.
Q. So it would be reflected in the market price?
A. That's right.
Q. Okay.
MR. COOPER: Give us just one moment, your Honor. That's all the questions I have.
JUDGE GEORGE: Thank you. Mr. Warnock, you can step down.

THE WITNESS: Thank you.
JUDGE GEORGE: Mr. Cooper, do you have any other witness you wanted to bring out today or should we go ahead with Staff's?
MR. COOPER: I believe we can go ahead to Staff's witness.
JUDGE GEORGE: Okay. That brings us to Mr. Wallis; is that correct?
MS. MCGOWAN: Staff calls Mr. Wallis.
JUDGE GEORGE: Okay. Please state your full name for the record.
THE WITNESS: Michael J. Wallis.
(Witness sworn.)
MICHAEL J. WALLIS testified as follows:
DIRECT EXAMINATION BY MS. MCGOWAN:
Q. Please state your full name and business address for the record.
A. Michael J. Wallis, P.O. Box 360, Jefferson City, Missouri 65102.
Q. Are you the same Michael Wallis who has prepared and caused to be filed direct, rebuttal, surrebuttal and supplemental surrebuttal testimony?
A. I am.
Q. See if I can get this right. Is this your direct, rebuttal, surrebuttal and supplemental

surrebuttal now marked respectively 13NP, HC, 13-- or excuse me -- 14NP, HC, 15NP and HC and 16?

A. Yes.

Q. Do you have any corrections or additions to make to these exhibits?

A. Yes, I do. I have one. In my direct testimony on page 3, line 21 at the very bottom of the page. Right now it reads in October of 1996. That should state in October of 1995 and March of 1996.

Q. Do you have any other corrections or additions?

A. No.

Q. Okay. With the exception of the correction you just made, are the answers contained in these exhibits true and accurate to the best of your belief and knowledge?

A. Yes.

Q. Is it your intention to offer these exhibits as your testimony in this case?

A. Yes.

MS. MCGOWAN: Then I offer Exhibits 13NP and HC, 14NP and HC, 15NP and HC and 16 for the record, and tender the witness for cross-examination.

JUDGE GEORGE: Are there any objections to those exhibits? Hearing none, Exhibits 13NP, 13HC, 14NP, 14HC, 15NP, 15HC and 16 are entered into the record.

(EXHIBIT NOS. 13 TO 16 WERE RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: Mr. Micheel.

MR. MICHEEL: I have no questions for Mr. Wallis at this time

JUDGE GEORGE: Mr. Cooper.

MR. COOPER: Yes, your Honor.

CROSS-EXAMINATION BY MR. COOPER:

Q. Do you have your testimony with you?

A. Yes, I do.

Q. If you could look at page 3 of your surrebuttal testimony, and this would be in the highly confidential version. Once you get there, let me --

A. I'm there.

Q. Okay. I want to refer to the relationship with some numbers that have been put into the record as highly confidential. I don't really want to get into the actual numbers. I don't really think we need to go in-camera, so as we go through, if you'll keep in mind I'm really not looking for the specific numbers but rather the relationship between the numbers that you've marked as highly confidential.

A. Okay.

Q. I believe on page 3 of your surrebuttal testimony, lines 9 through 13, you describe the percentage of UtiliCorp's capacity release that went to UES. Do you see that?
A. That's correct.
Q. And those percentages are for both the 1995, '96 and then the '96, '97 ACA periods. Correct?
A. That's correct.
Q. Okay. And now the percentages that you recite, they encompass only the capacity released by UtiliCorp on the Williams and Panhandle pipelines. Correct.
A. Yes. It would be -- it would be Missouri Public Service, their capacity that was released to UES. That's right.
Q. And so while there are entities other than UtiliCorp that release capacity on the Williams and Panhandle pipelines, they would not be reflected in those numbers. Correct?
A. No. This involves the marketing affiliate UES.
Q. Okay. Now, don't say the numbers, but do you remember the percentage of UtiliCorp's capacity releases that went to UES during the '94, '95 ACA period?

A. Yes.

Q. Okay. How did they relate to the percentages that you reflect on page 3 of your surrebuttal testimony? Higher or lower?

A. The percentage that went to Williams in the '94, '95 case is higher than the percentages on page 3. The Panhandle percentage in the '94, '95 case is higher in the following two ACA periods.

Q. So just so I understand what you said, I think what you just said was that for both Williams and Panhandle the percentages were higher in '94, '95?

A. The Williams percentage was higher. The Panhandle percentage was lower.

Q. Now, as to Williams, approximately how many percentage points over the '95, '96 numbers -- how many percentage points higher was that number for the '94, '95 period?

A. My recollection is it's about 16 percent higher, the '94, '95 number.

Q. And on the Panhandle number how many percentage points difference is there between the '94, '95 number and the '95, '96 number?

A. I think it's about 65 percent higher in the '95, '96 then it was in the '94, '95. That's my recollection.

Q. Have you a followed the affiliated transaction rule making document that we referred to earlier as Case No. OX-98-183?

A. Not all that closely. I've been in a couple of the meetings, but not -- not really.

Q. Okay. Do you have any familiarity with the proposed rule that was filed by the Staff in that document docket?

A. Very generally.

Q. Okay.

MR. COOPER: Your Honor, I'd like to mark for identification an exhibit at this time, if I could.

JUDGE GEORGE: Off the record, please.

(Off the record.)

(EXHIBIT NOS. 20 AND 21 WERE MARKED FOR IDENTIFICATION.)

JUDGE GEORGE: On the record, please.

Mr. Cooper, go ahead.

MR. COOPER: Well, let me try something. I don't think there will be any objection perhaps to doing it this way. I would ask that -- I know I haven't established a foundation with Mr. Wallis, but I would ask that we take official notice of the Staff's proposed affiliate transaction rule that has been marked as Exhibit 20.

JUDGE GEORGE: Is there --

MR. MICHEEL: I would just ask what purpose --

MS. MCGOWAN: Yeah, the relevance.

MR. MICHEEL: -- you're offering this for in this proceeding?

MR. COOPER: I think that a portion of that rule applies to a situation similar to this, capacity release situation, and that's the only purpose that we're getting into.

MR. MICHEEL: Well, it's a proposed rule, unless you know something that I don't. I don't know that the Commission's ruled on that, so --

MR. COOPER: Recognized as such.

JUDGE GEORGE: Are there any other comments here or objections on this being entered in the record?

MS. MCGOWAN: Just again the relevancy. I don't see the relevancy of something proposed by Staff and we're not even sure what UtiliCorp's position on this is. I'm sure the Commission received many different parties' input into different rules and knowing UtiliCorp I can't imagine them agreeing with Staff just because of the nature of the different interests involved, but I guess -- I guess I don't object.

JUDGE GEORGE: Okay.

MR. COOPER: I would say that I believe that it's relevant in that there is testimony that's been admitted into the record for UtiliCorp suggesting that this issue would be addressed -- or best addressed in the affiliated transaction docket. Therefore, I think the rule that has been proposed by Staff in that docket has relevance to the evidence that's before the Commission.

MS. MCGOWAN: Did UtiliCorp file any response to this proposed rule?

MR. COOPER: No.

MS. MCGOWAN: You haven't yet?

JUDGE GEORGE: The objection will go to the weight of the evidence and we will admit Exhibit No. 20 into the record at this time.

(EXHIBIT NO. 20 WAS RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: Go ahead, Mr. Cooper.

MR. COOPER: I have no further questions at this time.

JUDGE GEORGE: Questions from the bench beginning with Commissioner Lumpe.

CHAIR LUMPE: Mr. Wallis just -- well, maybe later. I don't think I have any questions. Thank you.

JUDGE GEORGE: Vice Chair Drainer.

QUESTIONS BY COMMISSIONER DRAINER:

Q. Good afternoon, Mr. Wallis.

A. Good afternoon.

Q. Let me first just follow-up with a question from Mr. Cooper without going into the actual numbers. He was asking you about the percentages on page 3 of your surrebuttal testimony and you basically stated that of Mo Pub's release capacity from the Williams system that a possibly 16 percent higher release was done in the '94, '95 time period, they took a larger part of the release capacity on the Williams -- UES did. Correct?

A. That's correct.

Q. And so then in -- when we look at the numbers in the '95, '96, it's less. And then in the '96, '97 when you looked at how that trend was going, it appears to be even less in that period.

A. Yes. It's declined over the course of those three years, but again, it's still significant.

Q. Well, but there's been a significant decline too. So I guess my question -- first question is, do you have any explanation for why UES has taken such a smaller part of Mo Pub's released capacity over the Williams system?

A. I'm not sure.

Q. Okay. Then can you tell me does Staff have any evidence that UES paid less than the market price range that was shown on the bulletin board to Mo Pub for its excess capacity during this ACA period?

A. The range of capacity release rates that -- that UES paid to Mo Pub was in the 1 to 11 percent range with most of those being in the lower third. The only thing that we can really -- that we have -- we haven't done a study -- that we have that we can compare that to would be MGE who is also on the Williams system. And the MGE releases are in a range of 1 to 2 percent up to 15, 16 percent. And they're in the middle of that range. So you see that -- the releases on MGE on average are higher than the releases -- the UES releases for UtiliCorp.

Q. All right. But to answer my question, do you have any evidence that they paid below a market rate to Mo Pub then --

A. They paid below the range.

Q. -- below the range, totally below the range, this range --

A. Of the market range?

Q. Uh-huh.
A. No.
Q. Okay.
A. It kind of depends on what an appropriate range is, but no.
Q. But they -- you don't have -- okay. And in this case you have not presented any evidence on prudency problems with how much Mo Pub is holding in excess capacity for this time period?
A. That's correct.
Q. Okay.
A. And if I could add something --
Q. Sure.
A. -- that really kind of ties into Case No. GR-95-273. We feel like we need to go in and do some modeling, look at corporate contracts, all of the --
Q. This gets to the documentation issue in that case?
A. Yes, it does. That's correct.
Q. Thank you. Can you tell me with respect to your testimony -- in your direct testimony you talked about UES serving Mo Pub's end-users. And if you were here when I was speaking to Mr. Warnock, we defined those end-users as industrials. Would you agree with that?

A. Yes.
Q. And do you have any evidence that UES is bundling those services that it gets from Mo Pub by using its system assets at no charge for Mo Pub?
A. At no charge?
Q. Or below the --
A. No.
Q. One of the statements that Mr. Warnock mentioned was that there is a distribution charge that's a tariffed rate, that UES would have to pay the same tariff rate as any other marketer. Do you have any evidence that they were using any of the system assets for distribution at less than tariffed rates?
A. It appears that -- that what occurred is that -- that UES charged those end-user customers the FERC rates, the FERC transportation rates.
Q. But did UES have access to Mo Pub's system and use Mo Pub's system free of charge?
A. No. I think that they did pay them --
Q. The tariff --
A. -- an incremental rate for the capacity that they purchased.
Q. I'm not asking about capacity. I'm asking about the distribution. Do you have any evidence they used their distribution system at less than the

tariffed rate?

A. No.

Q. Are you proposing that the credit that go to Mo Pub's firm, captive customers be greater when they come from UES than they would from any other marketer that would be giving credits?

A. Yes. Staff's argument is that UES has carved out a niche market with regard to the end-user customers of Mo Pub. And our position is that in a niche market, the market rate is what you've -- what you've charged and what you've negotiated with the end-user customers and what they're being charged on the invoices.

Q. Why isn't that discriminatory that we would have UES have to pay a higher credit than other marketers would have to pay that were buying the same commodity from Mo Pub?

A. Again, it's -- it's -- when you see such a large percentage of the capacity release going to the affiliate, it really sends up a red flag as to how fair this whole -- this whole business is.

COMMISSIONER DRAINER: All right. We need to go in-camera. I need to talk about these percents in-camera. And if we want to wait until all the other questions are asked, that would be fine, but I do feel that this is an important issue and we need to talk actual percentages.

JUDGE GEORGE: In that case we can go in-camera at this time and then if we need it later on, we will also later if that's appropriate or would you rather wait?

COMMISSIONER DRAINER: Do you want to go off the record for a moment?

JUDGE GEORGE: Off the record, please.

(Off the record.)

JUDGE GEORGE: Back on the record.

BY COMMISSIONER DRAINER:

Q. If we were to implement your credit policy of having a higher credit from UES back to the firm, captive customers, do you have any evidence or documentation that you could give this Commission to ensure that the impact would not be an overall reduction in credits to the captive, firm customers of Mo Pub?

A. No. I -- I kind of see that as a situation where we kind of don't know what's going to happen until it happens, but no, I haven't done any kind of study or anything like that.

Q. And with respect to the prices themselves, do you -- could you tell me, do you believe that

Mo Pub should have to charge UES a market-based rate with more of a premium in it than it would other marketers that it serves?

A. Given the affiliate nature of UES to UtiliCorp, yes.

Q. So if on a given day Mo Pub wishes to release excess capacity and has it on the bulletin board at a range of -- and I don't wish to misspeak for you, so please correct me if I'm wrong -- you would believe that the price that UES had to pay on that day for the excess capacity for Mo Pub would need to be higher than what Enron would pay or some other company would pay Mo Pub?

A. I guess if I could establish that the release process was fair, there wasn't any niche market, there wasn't anything going on at the corporate level where they were setting aside excess capacity potentially for UES so that they could make these sales, I might be more inclined to view that Enron and UES be treated more equally. But at this stage we -- if you see Data Request 16 there that Ms. McGowan handed out earlier, we haven't been given that information. And again in 95-273 --

Q. But in this case do I have any evidence on the record that truly indicates that Mo Pub is setting aside excess capacity for UES only and that it would have told another marketer no?

A. No. That's -- we don't have anything like that.

Q. And in this Data Request No. 16 that you've just mentioned, that would seem in the back of it is -- in the very end of that data request I assume the tables that we're giving is the excess capacity release of Mo Pub from Williams and from Panhandle?

A. That's correct.

Q. And if I read this table correctly, it is the total volumes released to different marketers?

A. That's correct.

Q. And it's the prices that they pay?

A. That's correct.

Q. And so on each month it does indicate that Mo Pub released to UES excess capacity, and sometimes the rates that they pay were better than others and sometimes they were worse than others?

A. That's correct.

Q. And would you have had them pay higher rates than all other marketers at each of these time periods?

A. Again, if I could satisfy myself that there wasn't any -- that it was a fair market, but what we're seeing now with those -- those release percentages, the fact that UES is providing a bundled sale service to these end-user customers which includes local distribution company charges, which I believe Mr. Hubbs testified to in the previous case was a tariff violation, we have some real concerns as to whether Enron can come in, for instance, and offer the same service as UES.

And that may be something that we can eventually solve with better documentation and keeping track of telephone bids as to how market rates were arrived at, whether they were posted on the bulletin board eventually or not.

Q. But I don't have any evidence in this case --

A. That's correct.

Q. -- that anything -- anything different being done, this is just something that you are expressing a concern about?

A. Yes.

COMMISSIONER DRAINER: Okay. Thank you. I have no other questions at this time that will not be in-camera.

JUDGE GEORGE: Commissioner Crumpton.

COMMISSIONER CRUMPTON: Yes.

QUESTIONS BY COMMISSIONER CRUMPTON:

Q. Good afternoon.

A. Good afternoon.

Q. Is there anything inherently wrong with a company creating a niche market for itself?

A. Not generally. When it's an affiliate however, I think it's something that really needs to be scrutinized.

Q. Scrutinized. Okay. So you just want us to be sure that the relationship itself is examined closely to ensure that the rate payers are not adversely affected; is that correct?

A. That's correct.

Q. That's your goal?

A. And if they are -- if you view that they are being adversely affected, then they need to get the niche market capacity release credits, rather than what you'd think of as the bulletin board market rates.

Q. Okay. In your testimony you mention LDC charges several times?

A. Yes.

Q. And how are those related to the capacity release issue before us?

A. They're not specifically related to the

Staff's adjustment.

Q. Okay.

A. But those do appear on the bills that are submitted from UES to the MPS end-user customers. And there's a real concern that that's a tariff violation.

Q. Okay. Can you --

A. And that Enron couldn't come in and offer that same service.

Q. Okay. Is there one related to capacity release on that bill?

A. Could you repeat that, please?

Q. I say, is there an LDC charge related to capacity release on those bills that you just described?

A. It's a separate line item on the bill.

Q. And what is that? What is it called? Is it called the LDC charge?

A. Yes. Yeah. There's -- my recollection is there's -- there's four basic line items on those bills. There's charges for the gas cost itself.

Q. Okay.

A. The transportation, city, state and county sales taxes, and an LDC charge.

Q. Okay.

A. And occasionally you'll see an

administrative charge.

Q. But it's not related to capacity release, is it?

A. Not directly.

Q. I just wanted to keep these things separate if I could. All right. How can you determine the correct firm capacity that MPS should arrange for its customers? Do you have a way of knowing when they have contracted for the correct capacity?

A. I would answer that by saying that without really having access to the corporate documents, the contracts, the -- important here is that UtiliCorp is using a pooling approach where they have various contracts, the gas is dumped into this pool and then it's allocated to various jurisdiction, Michigan gas utilities, Kansas, Missouri. UES will take gas from that pool.

Their gas supply functions are centralized and I think they call it UtiliCorp Gas Supply Services Division. They do all the buying, the planning for the gas, the contracting for the gas, the storage functions. And my view is that we need to get in there and get all of those documents and do some modeling, look at the allocations to really be sure if there's a problem or not.

Q. Okay. Are you claiming that there is a problem in this case --
A. We're -- no.
A. -- with capacity release?
Q. Well, again we view that they've established a niche market because of the high level of the rates, the bundling of the -- of the bill, the fact that they've got all of these charges on the bill. And, you know, there's an argument as to what -- what market means. To us it means there's a niche market, and to UtiliCorp it means that there's a bulletin board market.
Q. Okay. Are you making a claim in this case that UES owes the MPS customers additional monies because MPS incorrectly calculated the firm capacity of its customers -- for its customers?
A. Well, we don't know that they did.
Q. You don't know?
A. Again, we'd have to have the corporate -- our argument is that --
Q. I need you to answer my question.
A. We don't have any evidence to show that.
Q. All right.
A. Because of the documentation concerns.
Q. That's quite all right. I think you've

answered my question. You don't have any evidence to show that this is a problem?

A. That's correct. Again --

Q. That's your statement?

A. Yes. Again, because we would need to get the corporate documents to look at that, but we don't have those in this case, that's correct.

Q. You really want to get that statement in here --

A. Yes.

Q. -- into my question.

A. Yes.

Q. Okay. You've done a good job.

Now, is it your opinion that UES does not bid in the open market for the MPS excess capacity?

A. No. They do. They do bid.

Q. They do bid. Okay. So now, is it your testimony that UES discovers the excess capacity in a way that is disadvantageous to other companies?

A. We don't have any evidence that would show that.

Q. All right. That's good. Now then, is it your testimony that the relationship between UES and MPS on a capacity release is an at arm's length transaction?

A. Again, given the large amount of capacity release that they're buying, I have real concerns as to whether it is an arm's length transaction.
Q. Okay. But is it your -- do you have evidence that this is not an at arm's length transaction?
A. Well, no. I guess again --
Q. That's okay.
A. -- to get at that, you'd have to have some additional documentation.
Q. Okay. But your answer is no?
A. Right.
Q. Okay. The decline in the UES take rate that's been discussed earlier, could that be related to the difference in the severity of the winters?
A. That's -- that's possible. It could be -- it could be a number of factors, but that could be one of them.
Q. That definitely was a more severe winter in the '76 -- I mean '96, '97 winter --
A. That's correct.
Q. -- than there was in the earlier winter when take rate was higher.
A. That's correct.
Q. Okay. Would a more severe winter account

for this difference? Is that --

A. It could.

Q. It could?

A. It certainly could.

Q. All right. Are the fixed reservation charges your main concern as far as the capacity release issue is concerned?

A. Well, that's part of it. The capacity release credits are -- are applied to the fixed reservation charges for the transportation, and it -- it will tend to reduce those.

Q. Okay. So are you after the -- in addition to getting these variable -- the revenue from the variable charges for capacity release -- let me restate this question.

In your testimony you mentioned several times that the fixed reservation charges were not paid to -- or returned to the MPS customers.

A. Yeah. I think I know what you're getting at.

Q. Well, help me then.

A. Under the UtiliCorp scenario you have market -- they've paid a market rate for the capacity release.

Q. Right.

A. And then UES will pay those -- those credits and it will be used by the pipeline to reduce the -- the reservation charges for the transportation.

Q. Right.

A. What we've done is to take the transportation rates on the bills from UES to its end-user customers and compare that to the market capacity release rates.

Q. Right.

A. And the difference is an additional credit in effect to be applied to the reservation charges from -- from the pipeline transportation charges --

Q. Okay. And --

A. -- the fixed charged.

Q. -- you think that additional amount should be credited to the customers or to the capacity charges for MPS?

A. Yeah. There should be a larger capacity release credit applied to the transportation bills.

Q. Okay. Is the percent of this amount that's not credited to the total reservation charge, is this a significant amount? Is it 10 percent or 15 percent or --

A. I haven't looked at that exactly as to what -- but, yes, it's significant. It would be --

well, the market rates are 1 to -- 1 to 11 percent. And my recollection of the transportation rates is that they're in the 40 to 50 percent range. So it's another 80 to 90 percent potentially.
Q.   80 to 90 percent?
A.   Yeah. It's 1 to 10 versus the transportation charges in the range of 40 to 50.
Q.   So say --
A.   It's an extra 40 cents.
Q.   Okay. Which is a huge amount?
A.   Yes.
Q.   Okay. Did you hear Mr. Warnock discuss with me the establishment of capacity -- firm capacity for its regulated customers where we talked about the 1 in 20 or the 95 percent of the winters that they're trying to cover in establishing capacity?
A.   Yes. I -- I -- I seem to recall some of that discussion.
Q.   You remember me holding up that little chart?
A.   No.
Q.   You didn't see the chart?
A.   No. I think I was blocked by the --
Q.   Oh, well, basically he was saying that the company tries to cover 95 percent of the winters in a

20-year range. Is that reasonable?

A. Yes. Most LDCs will do peak -- peak demand studies to determine how much capacity that they need to set aside. That's reasonable.

COMMISSIONER CRUMPTON: Okay. Well, thank you. I think you've answered all my questions.

JUDGE GEORGE: Commissioner Murray.

COMMISSIONER MURRAY: Thank you.

QUESTIONS BY COMMISSIONER MURRAY:

Q. Good afternoon.

A. Good afternoon.

Q. On exhibit No. 21 that Data Information Request No. 16 --

A. Yes.

Q. -- do you have a copy of that with you?

A. In front of me? No. I'm sorry. I don't.

MS. MCGOWAN: I didn't make enough copies. May I approach the witness?

THE WITNESS: Thank you.

BY COMMISSIONER MURRAY:

Q. Does that document support the capacity release adjustment calculations that Staff made?

A. Yes. What we did was pages 1 to 3 for Williams and pages 1 and 2 on panel the last five pages of the DR, we weighted those rates to come up with a weighted market rate and compared that to the actual transportation charges that appear on the -- the bills from UES to the end-user customers of Mo Pub.

Q. Okay. Now, on page 1 you're referring to the back -- the very back of the document?

A. Yeah. I was talking about the last five pages that are attached.

Q. Page 1 of the last five pages then.

A. All right.

Q. When you say you came up with a weighted amount, you're talking about -- are you talking about doing that on a month-by-month basis?

A. That's correct.

Q. And you were taking the cost toward capacity that was released to each marketer there --

A. Well, no.

Q. -- to come up with a weighted --

A. Just to UES.

Q. Were you attempting to arrive at a market-based cost or a market-based price?

A. Yes. We were -- we were comparing the -- the amount -- the rate that UES paid to Mo Pub for the capacity to come up with a weighted average of what would have actually gone back to the customers in the form of capacity release credits.

And then we compared that to what UES was actually charging to the end-user customers of Mo Pub on the invoices to establish what the niche market rate was as compared to what -- what actually flowed back to the customers absent a staff adjustment.

Q. So there was no comparison between the rates to UES and any other marketer?

A. There was kind of an eyeball comparison of what -- what the -- what the range of rates were to the non-affiliated marketers versus the affiliated marketers, but that was the extent of it.

Q. I'm still having trouble understanding how that helped to -- are you saying that in order to make your adjustments you had to first arrive at any kind of a market-based rate?

A. We had to arrive at the -- at what UtiliCorp calls the market-based rate that UES paid. And the reason we did that is we wanted to find out what the level of credits was on average that had already flowed back to the customers through transportation invoice in the form of capacity release credits to what they were actually charging -- to what UES was actually charging the end-user customers of Mo Pub, because our -- our -- again our adjustment is based on that UES has established a niche market and that we believe that there's -- that the credit should be higher that need to go back. So to come up with the adjustment, we had to compare what was actually -- what had actually gone through the invoice to what should have in our view.

Q. So you're not saying that UES should pay market rates?

A. That's correct. We believe they should -- that they should pay the niche market rate.

Q. And the documentation that you use to arrive at the niche market rate is primarily contained in Data Information Request No. -- the response to the Data Information Request No. 16?

A. The -- the -- what we used to get at the niche market rate, that would be in -- let me check. I believe that's Data Request 74. And what Data Request 74 asks for was the invoices from the -- from the marketing affiliate UES to the Mo Pub end-user customers. There were something around in the neighborhood of 20 customers.

Q. Okay. Would you provide to the Commission all information that supports the -- that you used that would support your capacity release adjustment calculations?

A. Yeah. That would be a couple of data requests. I mean, I could get those. That's Data Request 74 and -- and Data Request 16. I think they're listed in my testimony. And then there's -- obviously there's work papers that I have where I -- I make the adjustments.

Q. If the Commission were to take Data Request 16 and 74, we would have the information that you used to make those adjustments?

A. That's correct.

Q. We would have all the information that you use to do make those adjustments?

A. To make the actual calculation, that's correct.

Q. And you will supply those?

A. Yes.

COMMISSIONER MURRAY: Okay. I believe that's all my questions. Thank you.

JUDGE GEORGE: Other questions, Commissioner Lumpe.

QUESTIONS BY CHAIRPERSON LUMPE:

Q. Mr. Wallis, may I discuss this niche market a little bit? I have asked Mr. Warnock and he went through the FERC process of how -- dealing with the market price. Does FERC have a process for establishing a niche market price?

A. Not that I'm aware.

Q. Where did the notion of a different price for niche market then for, I guess, regular market come up from?

A. Well, the fact that UES can provide services to the end-user customers of Mo Pub that other marketers can't. Again, there's -- there -- they're buying the vast majority of the excess capacity. They -- they're providing a bundled bill. On one bill you see the gas cost, the transportation, most importantly the LDC charges.

And we think that a customer if approached with similar pricing from Enron versus UES and they find out they have had to pay Enron on two invoices as opposed to paying UES on one invoice, that this might make the difference in who they went with. So it's that view that there's a special market here that UES has established.

Q. And so you established certain criteria that if the relationship meets those criteria, then it is a niche market?

A. Yes.

Q. And therefore has other things that should apply to it --

A. Yes.

Q. -- rather than just the plain market price?

A. And if I saw this in any other ACA case with any other LDC, I would take the same approach.

CHAIRPERSON LUMPE: Thank you.

JUDGE GEORGE: Other questions from the bench before we go in-camera?

COMMISSIONER DRAINER: Yes.

JUDGE GEORGE: Go ahead, Vice Chair Drainer.

FURTHER QUESTIONS BY COMMISSIONER DRAINER:

Q. Yes. I wish to follow-up on Commissioner Murray and Commissioner Lumpe's questions. With respect to Data Request 74 and to look at your information to get your numbers you say that you did look at the 20-odd customers that UES is a marketer to and what they were charging?

A. That's correct.

Q. Did you look at invoices from other marketers --

A. No.

Q. -- other than UES?

A. No.

Q. Are there other marketers in Mo Pub's area besides UES?

A. Yes.

Q. And they would also be selling to Mo Pub's customers?
A. Yes.
Q. Okay. And we don't have any information in this case on what they're doing after they have bought excess capacity from Mo Pub?
A. No.
Q. Okay. And then the final question in this area is -- I want to be clear. You believe that UES by providing one bill to an industrial customer would have an advantage over another marketer that would send them two bills?
A. Yes. Potentially.
Q. Do we have any evidence or surveys that show that a customer, especially a large industrial customer, is adverse to paying two bills if it saves them money?
A. No.
Q. So it might be that if a large industrial customer would go with a marketer that could save them a lot of money for gas, they would willingly pay two bills versus one?
A. Certainly possible.
COMMISSIONER DRAINER: Okay. Thank you.
JUDGE GEORGE: Commissioner Crumpton.

FURTHER QUESTIONS BY COMMISSIONER CRUMPTON:

Q. Following up on this niche market concept, if the UES customers had to pay the LDC charges on a separate bill, would the niche market as you imagine it, be like the regular market? Is that the essence of the niche market?

A. That -- that -- that's part of it, that it's being bundled on one bill. And, again, the other concern is there's such a large percentage of the capacity release on both Williams and Panhandle that's become released to UES, the marketing affiliate.

Q. But I'm trying to get at this niche market. If I'm trying to buy this capacity, in order to -- or take the service that UES is offering, I don't perceive a niche. I just see an advantage. Isn't that right? To doing business --

A. It could be described that way.

Q. If I'm the customer buying from UES-like companies, the only thing I will see different is the difference in the service of the two -- of the offering companies?

A. Yes.

Q. Okay. And the fact that one company gives me a consolidated bill while the other requires me to get a separate bill from the LDC, is that the main advantage in this -- is that what creates this niche market?

A. It's one -- it's one of the things.

Q. Okay. Would you want the Commission to order UES to cease and desist from offering these consolidated bills?

A. Well, again, it appears that it's a tariff violation.

Q. Okay.

A. And that's sheet No. 21.

Q. Okay. So if it's a violation, would you want us to fix it --

A. Yes.

Q. -- order them to fix it?

A. Yes.

Q. And that would remove one of their advantages in the marketplace?

A. Yes. Yeah. If that were gone and they were buying a significantly smaller percentage of the capacity release and we had rules in place --

Q. Okay.

A. -- that would -- that would make it an arm's length transaction, then it wouldn't be near the concern that it is.

Q. What is the percentage you think they ought to buy in order to eliminate this perception of a niche market?

A. Well, I have one other LDC in Missouri that at the time that we had GR -- Case GR -- excuse me -- Case GR-95-273, UES was the only customer, but now there is another LDC who has a marketing affiliate. And I -- that's highly confidential, but when we're in-camera, I can certainly give you for that LDC the percentages of release and the percentages of customers that they're serving.

Q. That wasn't what I asked though. Right?

A. But it would be -- I would want something significantly smaller then 50 percent.

Q. Okay. Now, give me a number. What is it smaller than 50 percent do you think would make this a more level playing field?

A. Maybe a third.

Q. So what are you saying? What is the third? A third of the 50 percent or 100 percent?

A. A third of the capacity being released.

Q. So you're talking about 33 1/3 percent?

A. Something in that range. It's hard to say. I don't know if there's necessarily a figure. You know, I'd have to actually see it to make a determination if I thought there was a problem, but something less than 50 percent.

Q. Well, if you can't see it, how can I see it? How will I know that this market is -- is a truly -- a true marketplace -- competitive marketplace? How will I know that?

A. Well, again, based on my experience with the one -- the one case that I have actually seen, it's -- it's less than 20 percent of both the customers and the capacity release volumes. And I -- I don't have a concern with that.

Q. Okay. Less than 20 percent. So if UES uses less than 20 percent of MPS's release capacity, then the marketplace would be a competitive marketplace?

A. Yes.

COMMISSIONER CRUMPTON: Okay. Thank you.

JUDGE GEORGE: Off the record.

(Off the record.)

(REPORTER'S NOTE: At this time, an in-camera session was held, which is contained in Volume No. 2, page 127 through 130 of the transcript.)

JUDGE GEORGE: In that case, we will return to the public portion of the hearing and go to the recross. Mr. Micheel.

MR. MICHEEL: I have no recross, your Honor.

JUDGE GEORGE: Mr. Cooper.

MR. COOPER: Just a couple, your Honor. And if you'll give me just a second, I'll see if I can make sure exactly what those couple are going to be.

JUDGE GEORGE: Off the record, please.

(Off the record.)

JUDGE GEORGE: Back on the record, please. We will continue with the recross of witness Mr. Wallis. Mr. Cooper, you may go ahead.

MR. COOPER: Thank you, your Honor.

RECROSS-EXAMINATION BY MR. COOPER:

Q. Mr. Wallis, earlier in response to I believe Commission question you referred to some testimony by Mr. Hubbs in the 95-273 case pertaining to an alleged tariff violation. Do you remember that?

A. That's -- yes, I do.

Q. Okay. Is it your memory as well as that that is a disputed issue in 95-273?

A. Yes.

Q. And that has not been determined by the Commission yet. Correct?

A. That's part of Case GR-95-273, that's correct.

Q. Okay. And there is no similar issue in this case. Correct?

A. That's -- well, I guess it's implicit, but it's not in any of the testimony, no.

Q. Okay. And I believe in response to a Commission question you talked about the things you would need to determine a correct level of firm capacity. Do you remember that?

A. Yes.

Q. Okay. Now, there are no outstanding data requests in this case that have not been responded to. Correct?

A. That's correct.

Q. Okay. No objections lying out there or any disputes about discovery in this case?

A. That's correct.

MR. COOPER: That's all the questions I have, your Honor.

JUDGE GEORGE: Ms. McGowan.

REDIRECT EXAMINATION BY MS. MCGOWAN:

Q. You stated in response to several questions from the Commission and I believe Mr. Cooper was just reiterating the fact that there was no evidence in the record to show UtiliCorp is setting aside capacity for UES or that UtiliCorp is charging UES below market rates; is that correct?

A. That's correct.

Q. Did you request that information?

A. We requested that information in the previous case and were basically awaiting a Commission decision as to whether they think it's reasonable that we get access to all the documentation that we've requested.

Q. So the type of documentation in question was, I guess, UtiliCorp refused to provide that in the last case; is that correct?

A. Yes. In Case GR-95-273 we asked for contracts between -- well, we asked for the invoices between UES and the end-user customers which is -- which is the basis of our adjustment and the contracts between the you end-users customers and UES. And we had a discovery dispute that was taken all the way up the Commission. We eventually won that discovery dispute, but we feel like we need documentation -- we need that and documentation in addition to that, some very detailed documentation that would involve other states, UES. And that's still pending in Case GR-95-273.

MS. MCGOWAN: No further questions. Thanks.

JUDGE GEORGE: Thank you, Mr. Wallis. You can step down.

I do see that we have marked Exhibit No. 21, the Staff -- rather the response to Staff Data Request 16, but that's not been offered; is that correct?

MS. MCGOWAN: Staff would like to offer that exhibit for the record.

JUDGE GEORGE: Are there any objections on that?

MR. COOPER: No objection, your Honor.

JUDGE GEORGE: Hearing none, Exhibit 21 is entered in the record.

(EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

JUDGE GEORGE: And while we were off the record we discussed the briefing schedule and the late-filed exhibits and agreed that we have reserved a number for the late filed exhibit entitled Data Request 74 with work papers, and the number for that is reserved as 22HC. And that will be filed by Staff no later than March 27th with any objections or response to be filed no later than April 3rd.

And the parties also discussed whether or not a late-filed exhibit number would need to be reserved for the bulletin board information that

Commissioner Murray discussed. It wasn't clear to me that that was requested as a late-filed exhibit, so unless there is a notice issued shortly, we do not have a number reserved for that and that will not be required unless there is a notice for further direction on that.

Also, the parties have agreed with the briefing schedule that initial briefs are to be filed no later than April 29th with reply briefs due on May 19th. And those are simultaneously filed items with no request in this case for expedited transcript. You also have a different procedure with a late-filed exhibits. An original with eight copies will be mailed to the ALJ and the same method of mailing and delivery will be given to the other parties at the time that that's done. And the same with eight responses on that, objections on that Exhibit mailed to the ALJ.

Are there any other items from counsel before we finish? Ms. McGowan.

MS. MCGOWAN: Yes. Actually, I believe that DR 16 should have been marked highly confidential.

JUDGE GEORGE: Okay.

MS. MCGOWAN: Probably. I'm not entirely certain, but I believe it probably has some numbers in there that are confidential.

MR. COOPER: There are.

JUDGE GEORGE: So Exhibit No. 21 should actually be Exhibit No. 21 --

MS. MCGOWAN: HC.

JUDGE GEORGE: -- HC and designated as highly confidential. Anything else from counsel then before we adjourn?

MR. COOPER: I don't think so.

JUDGE GEORGE: Hearing nothing, we'll adjourn and go off the record.

(WHEREUPON, the hearing of this case was concluded.)

I N D E X

EXHIBITS INDEX

EXHIBITS INDEX (CONTINUED)

EXHIBITS INDEX (CONTINUED)

C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE   )

I, Tracy L. Thorpe, Certified Shorthand Reporter with the firm of Associated Court Reporters, Inc., and Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Given at my office in the city of Jefferson, County of Cole, State of Missouri, this 4th day of April, 1998.

My commission expires December 16, 2001.

____
TRACY L. THORPE
Notary Public, State of Missouri
(Commissioned in Boone County.)