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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

HEARING

October 26, 2000

Jefferson City, Missouri

Volume 2

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In the Matter of the Application of )  
St. Joseph Light & Power Company for ) Case No.  
the Issuance of an Accounting Authority) EO-2000-845  
Order Relating to its Electrical )  
Operations. )

\_\_\_\_\_

MORRIS L. WOODRUFF, Presiding,  
REGULATORY LAW JUDGE.  
SHEILA LUMPE, Chair  
CONNIE MURRAY,  
ROBERT G. SCHEMENAUER,  
M. DIANNE DRAINER, Vice-Chair  
KELVIN SIMMONS,  
COMMISSIONERS.

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

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A P P E A R A N C E S

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1 JUDGE WOODRUFF: This is Case No. EO-2000-845  
2 in the matter of the application of St. Joseph Light & Power  
3 Company for the issuance of an Accounting Authority Order  
4 relating to its electrical operations.

5 I'm going to begin today by taking entries of  
6 appearance, and we'll begin with St. Joseph Light & Power.

7 MR. DUFFY: Gary W. Duffy; Brydon, Swearengen  
8 and England, P.C., P.O. Box 456, Jefferson City, Missouri  
9 65102 appearing for St. Joseph Light & Power Company.

10 JUDGE WOODRUFF: Thank you.

11 And for Staff?

12 MR. WILLIAMS: Nathan Williams for the Staff  
13 of the Missouri Public Service Commission, P.O. Box 360,  
14 Jefferson City, Missouri 65102.

15 JUDGE WOODRUFF: Okay. And for the Office of  
16 Public Counsel?

17 MR. MICHEEL: John B. Coffman and Douglas E.  
18 Micheel, appearing on behalf of the Office of Public Counsel  
19 and the public, P.O. Box 7800, Jefferson City, Missouri  
20 65102-7800.

21 JUDGE WOODRUFF: And for Ag Processing?

22 MR. CONRAD: Stuart W. Conrad and Jeremiah  
23 Finnegan of the law firm of Finnegan, Conrad and Peterson,  
24 Kansas City.

25 JUDGE WOODRUFF: Thank you.

1 All right. As indicated before we went on the  
2 record, we're going to go ahead and take opening statements  
3 at this point. We'll go off the record for a moment while I  
4 go get the Commissioners.

5 (Off the record.)

6 JUDGE WOODRUFF: We're ready to begin with  
7 opening statements, and we'll begin with St. Joseph Light &  
8 Power.

9 MR. DUFFY: Good morning. This is a simple  
10 case that some parties are unnecessarily trying to make  
11 exceedingly complex. The facts are that on June 7, 2000 a  
12 turbine failed and fire erupted at the Lake Road power plant  
13 which resulted in the unplanned shut-down of the turbine  
14 four and boiler six unit.

15 As a result of the incident, that unit was off  
16 line, out of service, not capable of generating electricity  
17 for approximately two months. It came back on line after  
18 repairs had been completed on August 8, 2000.

19 After netting insurance proceeds against the  
20 cost of the incident and focusing only on the costs directly  
21 related to the incident, St. Joseph Light & Power has  
22 determined that it needs to defer \$3,332,931 on its books.  
23 It filed an application for Commission permission to do that  
24 which resulted in this case.

25 It needs that permission before it closes its

1 books for the year 2000. St. Joseph Light & Power is very  
2 appreciative that the Commission has granted us an expedited  
3 procedural schedule to accommodate those time constraints.

4 The simple issue is whether the Commission  
5 should give permission to St. Joseph Light & Power to defer  
6 \$3,332,931 on its books until the next general rate case for  
7 St. Joseph Light & Power. We believe the evidence will  
8 clearly show that we meet the standards established by the  
9 Commission for granting an AAO.

10 As the Commission knows, by giving permission  
11 to defer the costs on the books, the Commission does not --  
12 repeat, not change the rates of St. Joseph Light & Power.  
13 And it does not judge the prudence of those costs. It is  
14 simply making a preliminary and non-binding determination.

15 Those costs are held in limbo, if you will,  
16 until that next rate case when the Commission can determine  
17 if any of those costs will be recognized in rates, and if  
18 they are, the manner in which they will be recognized. At  
19 that time the Commission can examine all the facts  
20 surrounding the situation to the extent it deems necessary.

21 Put another way, allegations into operator  
22 error or prudence, which Ag Processing, Public Counsel and  
23 the Staff have advocated in prepared testimony filed in this  
24 case, are not relevant to a decision by the Commission to  
25 authorize a deferral.

1                   The concept has always been that you will  
2       examine those issues when it comes time to decide whether  
3       any of the costs will be put in rates. Instead, these  
4       parties want you to jump way ahead in that process and make  
5       those determinations now.

6                   Our position is, one, there's no requirement  
7       for you to make those decisions on those issues in this  
8       case; and, two, you will have to deal with those issues  
9       twice if you choose to deal with them in this case. Once  
10      now and again in a rate case.

11                  As I said, St. Joe has presented pre-filed  
12      testimony that it meets the test for deferral. The test for  
13      deferral is whether the costs come from an extraordinary  
14      event and whether they are significant or material enough to  
15      warrant deferral.

16                  The Staff concedes in their pre-filed  
17      testimony that St. Joe meets both of those tests. The  
18      Office of Public Counsel concedes that we meet the  
19      materiality test, but it is contesting whether the Lake Road  
20      incident was extraordinary or not. Public Counsel,  
21      therefore, wants you to believe that it is normal for power  
22      plants to experience explosions and fires resulting in them  
23      being off line for two months.

24                  Now, even though St. Joe Light & Power meets  
25      the existing test for the issuance of an AAO and the Staff

1       concedes that, the Staff wants you to create some new  
2       criteria for AAOs. There are two levels of problems with  
3       that approach. One is the substantive content of these new  
4       hurdles the Staff wants you to implement. The other is the  
5       procedural aspect.

6               We believe that none of the Staff's new  
7       criteria are appropriate from a substantiative standpoint  
8       and have presented pre-filed testimony explaining that. We  
9       also believe there are procedural problems with the Staff  
10      asking the Commission to adopt new general policies on the  
11      granting of AAOs in the context of this case.

12             We believe the law is clear that if the  
13      Commission wants to adopt new policies of general  
14      applicability, it must follow the rule-making process.  
15      Therefore, it is not advisable that the Commission entertain  
16      the proposed new criteria in this case.

17             The Staff apparently also wants to drag  
18      you into the middle of a potential contractual dispute  
19      between St. Joseph Light & Power and UtiliCorp about whether  
20      the costs from the incident are material for purposes of the  
21      merger agreement. As the pre-filed testimony clearly  
22      demonstrates, the test for materiality in the merger  
23      agreement is different than the test for materiality for an  
24      AAO in the Uniform System of Accounts.

25             The parties to the UtiliCorp/St. Joe merger

1 agreement are not asking you to interpret that agreement.

2 As with its proposed new criteria, again, the Staff is  
3 trying to get you to examine issues that you don't have to  
4 decide in this case.

5 In summary, all the Commission is required to  
6 decide in this case is whether the costs resulting from the  
7 June 7 incident are material and whether the event was  
8 extraordinary. There really can't be any dispute about  
9 that. All the rest of the issues that these other parties  
10 have raised are mere surplus. The Commission can consider  
11 them in another forum, at another time. Thank you.

12 JUDGE WOODRUFF: Thank you.

13 We'll move over to Ag Processing, Mr. Conrad.

14 MR. CONRAD: I'll be very brief, your Honor.  
15 The position of my client on this apparently very simple  
16 case is that no utility, whether it be Missouri or any other  
17 utility, should be allowed to set up a situation where it  
18 can recover from ratepayers for its own operational errors  
19 and imprudence. That's basically the problem.

20 And by setting up an AAO -- which if it means  
21 nothing, they can withdraw the application. They obviously  
22 want it and they want it for a reason. The answer under  
23 Missouri law in this circumstance is very simple. File a  
24 rate case. Seek, if you want, if you can make the showing,  
25 interim relief. That way all relevant factors can be



1 considered.

2 The cost that is sought to be recovered is  
3 purchased power expense. In 19, I believe, '79 or '80, the  
4 Missouri Supreme Court took away the fuel adjustment clause.  
5 Purchased power expense is part of the fuel adjustment  
6 clause. It's built into the existing level of rates.

7 If the utility wants to change that, they have  
8 every right to file a rate case. And if they are in an  
9 extremist situation, they can ask for interim relief. End  
10 of story. Thank you.

11 JUDGE WOODRUFF: Thank you.

12 Public Counsel?

13 MR. MICHEEL: May it please the Commission.  
14 Before discussing what this case is about and what the  
15 evidence will demonstrate, I want to discuss what this case  
16 is not about. This case is not a rate case proceeding.  
17 Public Counsel is not asking that the Commission make any  
18 sort of determination regarding whether or not the costs  
19 related to the explosion and fire at Unit 6/4 at the St. Joe  
20 Lake Road plant should or should not be recovered in rates.

21 Public Counsel is requesting that this  
22 Commission determine, based upon the evidence presented in  
23 this proceeding, that it is inappropriate to grant St. Joe  
24 extraordinary accounting treatment for the costs related to  
25 the explosion and fire at Unit 4/6 by allowing St. Joe to

1 defer these costs for consideration in rates by granting  
2 St. Joe an Accounting Authority Order.

3 I want to briefly discuss this Commission's  
4 standard for granting an Accounting Authority Order. This  
5 Commission in past instances has granted AAOs on a  
6 case-by-case basis after reviewing the company's request,  
7 Public Counsel's response, Staff's response and any other  
8 intervenor's response.

9 Why on a case-by-case basis? First, the  
10 Commission recognizes that granting an AAO is a  
11 discretionary act. It is not a mandatory, statutory  
12 requirement. In fact, in certain cases, this Commission has  
13 rejected AAO requests.

14 Second, this Commission has recognized that  
15 the particular facts and circumstances of each AAO request  
16 are important in determining whether a company deserves the  
17 extraordinary accounting treatment provided by granting an  
18 AAO.

19 In the Seminole case in the matter of Missouri  
20 Public Service found at 1 MoPSC 3d, page 200, the Commission  
21 articulated its standard for granting an Accounting  
22 Authority Order as follows: Quote, The decision to defer  
23 costs associated with an event turns on whether the event  
24 is, in fact, extraordinary and nonrecurring, closed quote.

25 Thus, the Commission has two questions to

1       answer: Whether the event is extraordinary and whether the  
2       event is nonrecurring. I want to discuss each factor.

3               First, the extraordinary nature of the event.  
4       The evidence will show that Staff and St. Joe believe that  
5       the only consideration this Commission should weigh to  
6       determine whether or not an event is extraordinary is  
7       whether or not the costs related to the event represent at  
8       least 5 percent of the utility's regulated Missouri net  
9       income computed before the extraordinary item, in this case  
10      the explosion and fire.

11              This view is based upon the Uniform System of  
12      Accounts seventh general instruction defining extraordinary  
13      items. Thus, St. Joe would limit this Commission to a rigid  
14      and mechanistic mathematical determination.

15              After you've heard the evidence in this case,  
16      you will understand why St. Joe does not want this  
17      Commission to look at any other factor to determine whether  
18      the event is extraordinary other than a mathematical  
19      calculation.

20              On the other hand, Public Counsel believes  
21      that the Commission should look at the nature of the event  
22      along with the cost of the event just as the Commission has  
23      always done in AAO proceedings. Public Counsel's view is  
24      wholly consistent with past Commission precedent.

25              In a Missouri Public Service case this

1 Commission stated, quote, This 5 percent standard contained  
2 in the Uniform System of Accounts is, thus, relevant to  
3 materiality and whether the event is extraordinary, but is  
4 not case dispositive. In other words, the Commission also  
5 looks at other factors to determine whether the event itself  
6 is extraordinary.

7 In this proceeding the evidence will  
8 demonstrate that because of acts or omissions on the part of  
9 St. Joe, the explosion and fire at Unit 4/6 should not be  
10 given extraordinary accounting treatment via an Accounting  
11 Authority Order.

12 The second factor the Commission considers is  
13 whether or not the event is nonrecurring. The evidence will  
14 demonstrate that forced outages of generation units are  
15 common. They happen all the time. In fact, Unit 4/6, the  
16 evidence will show, experienced 148.82 hours of forced  
17 outage not associated with the explosion and fire at  
18 Unit 4/6 during the year 2000.

19 Whatever standard this Commission may apply in  
20 this case, the Commission cannot and should not turn a blind  
21 eye to the nature and causes of the explosion and fire that  
22 occurred at St. Joe Lake Road plant on June 7th, 2000.

23 Why shouldn't the Commission grant St. Joe an  
24 AAO for the explosion and fire that occurred at Unit 4/6 on  
25 June 7th, 2000? The evidence will demonstrate the explosion

1 and fire was not the result of a natural disaster, act of  
2 God such as a 500-year flood or an ice storm. It was not  
3 the result of complying with some federal law or state law  
4 as the AAOs that have been granted, for example, for  
5 compliance with the Clean Air Act.

6 The evidence will demonstrate that the  
7 explosion and fire at the Unit 4/6 plant was not the result  
8 of unforeseen mechanical failure. The evidence will  
9 demonstrate that the explosion and fire at Unit 4/6 was  
10 caused by acts or omissions of St. Joseph Light & Power  
11 company.

12 Specifically, the evidence will demonstrate  
13 the following: During the scheduled spring maintenance  
14 outage shut-down St. Joe installed a new GE generator  
15 control system along with some other systems. The evidence  
16 will show that GE was several weeks behind on the job.

17 The evidence will show that GE and St. Joe  
18 removed the manual pistol grip switch that was one of the  
19 controls for the DC oil pump. The evidence will show that  
20 GE's training with regard to the operation of the Mark V  
21 system was not specific to the Lake Road plant. The  
22 evidence will show that the DC oil pump availability was  
23 not -- not checked when Unit 4/6 was started on June 2nd,  
24 2000.

25 The evidence will show that the DC lube oil

1 pump weekly test was not performed as scheduled for every  
2 Monday on June 5th -- Monday, June 5th, 2000. The evidence  
3 will show that someone from St. Joe Light & Power placed the  
4 DC lube oil pump in the off position. The pump was off. It  
5 did not fail, the evidence will show.

6 The evidence will show that the DC lube oil  
7 pump was off on June 7th, 2000 when Unit 4/6 tripped off  
8 line. The evidence will show due to the loss of the lube to  
9 the bearing and hydrogen seal, a fire and explosion occurred  
10 resulting in damage to Unit 6/4.

11 The evidence will also show but for the fact  
12 that the DC lube oil pump had been turned off, the explosion  
13 and fire at Unit 4/6 would not have occurred.

14 When deliberating this case, ask yourself  
15 three simple questions: Who turned off the DC lube oil  
16 pump? Who should have turned on the DC lube oil pump? But  
17 for the fact that the DC lube oil pump had been turned off,  
18 would the explosion and fire at Unit 4/6 have occurred on  
19 June 7th, 2000?

20 JUDGE WOODRUFF: Thank you.

21 For Staff?

22 MR. WILLIAMS: May it please the Commission.  
23 My name is Nathan Williams, and I'm appearing here for the  
24 Staff of the Missouri Public Service Commission.

25 The Staff has filed an opposition to the

1 application of St. Joseph Light & Power Company for an  
2 Accounting Authority Order for two reasons. The first is  
3 that the events giving rise to the fire and explosion at  
4 St. Joseph Light & Power Company Lake Road Unit 4/6 on  
5 June 7th, 2000 were within the control of the company and  
6 due to operator error.

7 In the Staff's view, this should preclude  
8 St. Joseph Light & Power Company from receiving an  
9 Accounting Authority Order allowing it to defer recognition  
10 of the incremental power costs it incurred as a result of  
11 this incident.

12 The second reason is that in contravention of  
13 the Commission's practice of requiring amortization of  
14 deferred costs to begin on the effective date of the  
15 Commission Accounting Authority Order, St. Joseph Light &  
16 Power Company is seeking in this application to defer  
17 amortization until rates become ineffective -- become  
18 effective in St. Joseph Light & Power Company's next general  
19 rate case. The company has not set any time frame for when  
20 that case might be filed.

21 It is the Staff's position that in the past  
22 the Commission has only required that expenses be  
23 extraordinary in determining to grant an Accounting  
24 Authority Order to defer recognition of cost. In Staff's  
25 view, the Commission has used the term "extraordinary" to

1 mean events that are outside the normal consideration of  
2 rate-making and that are material, exceeding 5 percent.

3 The Staff in this case is proposing to the  
4 Commission additional criteria to use in considering  
5 applications for Accounting Authority Orders because of the  
6 particular facts present in this case.

7 Those criteria are, one, that the event must  
8 be extraordinary and material; two, the utility's current  
9 rates must generate insufficient revenue to cover the costs;  
10 three, the extraordinary costs must result from an  
11 extraordinary capital addition that is required to continue  
12 safe and adequate service and for which there are unique  
13 conditions that preclude recovery of these costs by means of  
14 a rate case filing and two alternative situations.

15 The first is if the application does not  
16 request an amortization period, that the utility be required  
17 to file a rate case within 90 days of the date the  
18 Commission grants the Accounting Authority Order.

19 And the second alternative is if the  
20 application does include a prescribed amortization period  
21 and the event or project is one that has traditionally been  
22 amortized over several years in rate cases or there are  
23 benefits from future periods that will be better matched  
24 through deferral of the costs, than the prescribed  
25 amortization period should begin upon completion of the



1 event or project or the effective date of the grant of the  
2 Accounting Authority Order.

3 The Staff suggests that in this case when  
4 considering whether to grant St. Joseph Light & Power  
5 Company authority to defer recognition of the costs it  
6 incurred due to the fire and explosion at Lake Road Unit  
7 4/6, the Commission properly could consider the issue from  
8 this perspective: Do the facts presented in this case show  
9 any possibility that St. Joseph Light & Power Company should  
10 be able to recover any of these costs from ratepayers in a  
11 future rate case? If the answer is no, then St. Joseph  
12 Light & Power Company should not receive the Accounting  
13 Authority Order it requests.

14 In summary, it is the Staff's position that  
15 the Commission should not grant the St. Joseph Light & Power  
16 Company the Accounting Authorization Order to defer  
17 recognition of costs it seeks in this case, and that if the  
18 Commission decides that an Accounting Authority Order is  
19 warranted, the Commission should follow its past practice of  
20 making that amortization of those costs begin on the date  
21 the Commission makes its order effective.

22 JUDGE WOODRUFF: Thank you, Mr. Williams.

23 Chair Lumpe, would you like to say something?

24 CHAIR LUMPE: Yes. In case you're wondering  
25 about the photography, these pictures are being taken for

1       our annual report, and we hope you don't object.

2                   JUDGE WOODRUFF: Okay. That concludes the  
3 opening statements then. Let's go ahead and deal with some  
4 pending motions.

5                   I have three pending motions, I believe all  
6 filed by Staff. On October 10th Staff filed a Motion for  
7 Leave to late-filed rebuttal testimony of Staff which dealt  
8 with the testimony of Tom Lin and David Broadwater, and on  
9 October 11th filed a similar Motion for Leave to late-filed  
10 rebuttal testimony involving the testimony of V. William  
11 Harris.

12                   No one has filed any written opposition to  
13 those documents -- to those motions. Does anyone have any  
14 comment at this time?

15                   Hearing none, both motions will be granted.

16                   The other motion I have is for leave to file  
17 revisions to pre-filed rebuttal testimony of Staff Witness  
18 William Harris. That was filed on October 23rd.

19                   Does anyone wish to be heard on that motion?

20                   Hearing no objections, that motion will also  
21 be granted.

22                   Were there any other preliminary matters?

23                   MR. WILLIAMS: Judge, I think there's an  
24 agreement that we can introduce the evidence of David  
25 Broadwater in by stipulation. And unless the Commission has

1 questions, it's my understanding none of the parties do.

2 JUDGE WOODRUFF: Okay. We'll discuss that and

3 make a ruling on that later.

4 All right. Let's go off the record at this

5 time.

6 (Off the record.)

7 JUDGE WOODRUFF: Commissioner Drainer, you had

8 a question for Mr. Conrad?

9 COMMISSIONER DRAINER: Yes. I just wanted to

10 ask, in your opening statement you mentioned that fuel

11 adjustment clause was not allowed under a Supreme Court

12 decision and I wanted to -- is that Jackson County?

13 MR. CONRAD: No, ma'am. It's the UCCM case.

14 COMMISSIONER DRAINER: Oh, the UCCM case.

15 Thank you.

16 MR. CONRAD: I can get you a cite on it. I

17 just don't have it in front of me.

18 COMMISSIONER DRAINER: I have that case in my

19 file, so I appreciate that. Thank you very much.

20 JUDGE WOODRUFF: Off the record again then.

21 (Off the record.)

22 (EXHIBIT NOS. 1 THROUGH 14-HC WERE MARKED FOR

23 IDENTIFICATION.)

24 JUDGE WOODRUFF: While we were off, we went

25 ahead and pre-marked exhibits, and I believe we're now ready

1       for our first witness, which I believe is Mr. Stoll.

2                       MR. DUFFY:  Company would call Larry Stoll to

3       the stand.

4                       (Witness sworn.)

5                       JUDGE WOODRUFF:  You may inquire.

6       LARRY STOLL testified as follows:

7       DIRECT EXAMINATION BY MR. DUFFY:

8               Q.       Would you state your name for the record,

9       please.

10              A.       Larry J. Stoll.

11              Q.       Are you the same Larry Stoll that caused to be

12       filed what's been marked for purposes of identification as

13       Exhibit 1, direct testimony of Larry Stoll; and Exhibit 2,

14       surrebuttal testimony of Larry Stoll in this proceeding?

15              A.       I am.

16              Q.       Mr. Stoll, if I asked you the -- well, first

17       of all, let me ask you.  Do you have any corrections or

18       additions to either of those documents?

19              A.       Yes, I do.

20              Q.       Would you state those, please?

21              A.       In my direct testimony on page 11, line 22,

22       the words "in rates" should exist at the end of that

23       sentence so that the answer would read in total, SJLP

24       believes the amortization should begin as of the effective

25       date of a Report and Order authorizing amortization of these

1 costs in rates.

2 And just as a matter of clarification, I don't

3 wish to amend my Schedule LJS-1, which is attached to the

4 direct testimony, as it states that it is an estimated cost

5 at the time of the filing. But just for clarification

6 purposes, as indicated in my surrebuttal testimony, the net

7 cost as of the end of September was \$3,332,931 in total.

8 Q. If I asked you the same questions that appear

9 in those documents this morning, would your answers be the

10 same as you have corrected them?

11 A. Yes, they would.

12 Q. Are the answers true and correct to the best

13 of your information, knowledge and belief?

14 A. Yes.

15 MR. DUFFY: Your Honor, I would offer into

16 evidence Exhibits 1 and 2 and tender the witness for

17 cross-examination.

18 JUDGE WOODRUFF: Exhibits 1 and 2 have been

19 offered into evidence. Are there any objections to their

20 receipt?

21 Hearing none, they will be received into

22 evidence.

23 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO

24 EVIDENCE.)

25 JUDGE WOODRUFF: All right. And you've been

1 tendered for cross-examination, so we'll begin with AGP.

2 MR. CONRAD: Thank you, your Honor.

3 CROSS-EXAMINATION BY MR. CONRAD:

4 Q. Good morning, Mr. Stoll.

5 A. Good morning.

6 Q. I just have a couple of things to work through

7 with you. Look at your direct, please, page 4, lines 9

8 through 16. Let me know when you're there.

9 A. Nine through sixteen you say?

10 Q. Yes, sir.

11 A. Okay.

12 Q. Are you there?

13 A. Yes, I am.

14 Q. Do you agree with me that the cost you're

15 seeking to defer consists of purchased power and increased

16 fuel costs?

17 A. The incremental cost of purchased power and

18 fuel cost above that which is in -- established in our rates

19 at this point.

20 Q. Established in your base rates?

21 A. That's correct.

22 Q. Now, your testimony indicates that you have

23 been with St. Joe Light & Power, I believe, since 1975; is

24 that correct?

25 A. Yes, it is.

1           Q.     At any time during your employment with  
2     St. Joe Light & Power do you recall St. Joe Light & Power  
3     having a fuel adjustment clause?  
4           A.     Yes, I do.  
5           Q.     Do you recall when that clause was removed?  
6           A.     Exact year, no, I don't.  
7           Q.     Do you recall why it was removed?  
8           A.     There was a -- a court ruling, is my  
9     understanding.  
10          Q.     Although you don't recall the date, you do  
11     agree with me that the clause was removed from your tariffs  
12     though?  
13          A.     Yes, it was.  
14          Q.     Mr. Stoll, if St. Joe Light & Power today had  
15     a fuel adjustment clause, would this case be necessary?  
16          A.     I'm not sure whether the Commission would  
17     consider that as part of the fuel adjustment clause or not.  
18          Q.     Again, what you're seeking here to recover is  
19     incremental, as you characterized it, purchased power costs  
20     above the levels built into your base rates and incremental  
21     fuel costs above the levels built into your base rates.  
22     Correct?  
23          A.     Yes.  
24          Q.     If St. Joe had a fuel adjustment clause that  
25     covered these costs, would the costs under that clause be

1 recovered on an essentially current basis?

2 A. Could you repeat your question?

3 Q. Well, let me back up a second. You mentioned

4 you started with the company in '75. During the period of

5 time that you worked for the company that there was a fuel

6 adjustment clause, do you remember roughly how it worked?

7 A. The cost of fuel as it went up or down --

8 Q. Yes, sir.

9 A. -- was adjusted into rates the following

10 month, as I recall.

11 Q. Now, would you agree with me that another

12 alternative for St. Joe Light & Power in this particular

13 proceeding would be for you to file a rate case?

14 A. I'm not sure that alternative is available.

15 Q. Do you have any indication that there's any

16 statute or rule that prohibits you from filing one at any

17 particular time?

18 A. Well, we can file for a rate case, but

19 expenses or costs that have been incurred in the past,

20 unless the Commission authorizes a specific accounting

21 treatment, may not be allowed in rates in the future.

22 Q. And if you were to file a rate case, as you've

23 indicated you could, you could also seek interim rate relief

24 if you felt you met those tests, couldn't you?

25 A. We could file for interim.



1 Q. And are you familiar, sir, with the criteria  
2 for obtaining interim rate relief in Missouri?

3 A. Specifically, no. I think it has to do  
4 something though with financial hardship.

5 Q. Which standard do you believe would be harder  
6 for a utility to meet, the interim rate relief criteria or  
7 the criteria for obtaining an Accounting Authority Order?

8 A. I'm not sure.

9 Q. You have no opinion on that?

10 A. No.

11 Q. Now, I understand from your testimony that the  
12 company's position is that the company was at all times  
13 prudent; is that correct?

14 A. Yes.

15 Q. I want you to assume with me -- and we won't  
16 name a company so we can detach it from any implications,  
17 but I'd like for you to assume with me that a utility was  
18 imprudent or had some operator error in some manner and that  
19 as a result, costs in excess of normal and anticipated  
20 levels -- and anticipated levels were incurred. Should the  
21 utility in that circumstance be permitted to recover those  
22 increased costs from its customers?

23 A. You're asking me to speculate on --

24 Q. No. I'm --

25 A. -- a hypothetical?

1           Q.       -- asking you for your expert opinion, sir, as  
2       a person who has worked in the utility business since 1975.

3           A.       The question, as I understand your question,  
4       was whether or not due to an operator error --

5           Q.       Or other imprudence.

6           A.       -- that an event occurred in which incremental  
7       costs were incurred --

8           Q.       Yes.

9           A.       -- should that be included in rates? My  
10      response in general would be that accidents -- if it was not  
11      a willful event, that accidents do occur. And as a result,  
12      those accidents occur day in, day out in any organization  
13      and some have a greater magnitude than others. And, in  
14      general, unless it's willful, I believe they should be given  
15      an opportunity.

16          Q.       So you would turn the question, in your  
17      opinion, on whether the utility acted willfully?

18          A.       Yes.

19          Q.       Negligence they should be allowed to recover,  
20      in other words?

21                 MR. DUFFY: I'm going to object to the form of  
22      the question unless counsel defines what negligence is for  
23      these purposes.

24      BY MR. CONRAD:

25          Q.       Negligence from the MAI is that degree of

1 skill and care that the ordinarily careful and prudent  
2 person would use in the same or similar circumstances. Do  
3 you understand the definition, Mr. Stoll, that I've given  
4 you?

5 A. Would you repeat it, please?

6 Q. Negligence under the MAI, Missouri Approved  
7 jury Instructions, is that degree of skill and care that the  
8 ordinarily careful and prudent person would use under the  
9 same or similar circumstances.

10 A. I'm not sure that I can answer that question  
11 on a legal basis.

12 Q. I'm not asking you on a legal basis. I'm  
13 asking you for your opinion as a utility executive in which  
14 you've served in various positions since 1975. You  
15 indicated to me earlier that the company should not  
16 recover -- or hypothetical company here should not recover  
17 if its actions were willful. I'm asking you now if the  
18 company should recover if its actions were negligent?

19 A. Again, I'm not sure that I can answer that  
20 question in terms of negligence. I think that's a --

21 Q. You recognize, do you not, sir, that  
22 negligence is a lower standard than willful?

23 A. That's -- that's your definition of it, that  
24 it's a lower standard.

25 Q. No. I'm asking you. You're using the term.

1       You used the term "willful." I'm trying to understand,  
2       Mr. Stoll, what you define willful as.

3           A.       If you knowingly did it, causing an accident.  
4       But negligence -- in my view, you could argue that  
5       negligence occurs in an automobile accident. And in an  
6       automobile accident the costs related to that also are a  
7       cost of service. So I guess if you term it in terms of  
8       negligence in that respect, then I would say the answer  
9       would be yes.

10          Q.       And just so we have -- the spectrum in between  
11       those two is a conduct that we call reckless. Do you  
12       believe if a utility is reckless but short of intentional or  
13       willful, that it should be allowed to recover the increased  
14       costs that result from that reckless conduct?

15               MR. DUFFY: I'm going to object to the form of  
16       the question unless there's a definition provided for the  
17       word "reckless" in this context.

18               JUDGE WOODRUFF: Can you define reckless,  
19       Mr. Conrad?

20               MR. CONRAD: Well, that doesn't come up very  
21       often, so I can't quote the MAI, but I think it's somewhere  
22       in between.

23               MR. DUFFY: Then I object that the question is  
24       vague.

25               MR. CONRAD: With intentional disregard for

1 the consequences.

2 JUDGE WOODRUFF: I'll overrule --

3 MR. CONRAD: Let's use it that way.

4 JUDGE WOODRUFF: I'll overrule the objection.

5 You can answer the question, if you can.

6 THE WITNESS: With intentional disregard --

7 BY MR. CONRAD:

8 Q. For the consequences of the actions.

9 A. I think that's a fine line, I guess, but

10 intentional disregard of the actions -- again, using the

11 automobile accident scenario, you could argue, I guess, that

12 it was intentional disregard if -- if an automobile accident

13 were to occur, any accident maybe having some degree of that

14 definition.

15 Q. So if I understand your testimony in that

16 circumstance, your opinion is that the utility should be

17 allowed to recover that increased cost from the ratepayers;

18 is that correct?

19 A. Again, I go back to my original statement,

20 that if -- if it was not a willful act on behalf of the

21 individuals to knowingly cause an accident, then I think it

22 should be included.

23 Q. Do you believe, Mr. Stoll, that there are any

24 circumstances under which a utility should be permitted to

25 recover imprudently incurred expenses from its ratepayers?

1           A.       Imprudently incurred expenses?  
2           Q.       Expenses.  
3           A.       Not that I'm aware of.  
4           Q.       Does the amount of the increased cost or the  
5       increased expense matter for purposes of the answer that you  
6       just gave me?  
7           A.       No.  
8           Q.       Now, I'd like for you to look again at your  
9       direct, page 11, please, lines 14 through 17. Let me know  
10      when you're there.  
11                   MR. CONRAD: And I apologize, your Honor, but  
12      I obviously didn't have these marked with exhibit numbers at  
13      the time I put this together. That would be Exhibit 1.  
14                   JUDGE WOODRUFF: That's correct.  
15                   THE WITNESS: Okay.  
16      BY MR. CONRAD:  
17           Q.       At that location in your testimony you state  
18      that the company would write off the deferred balance. Do I  
19      have that approximately correct?  
20           A.       I think my response there is it possible that  
21      it may be written off -- the question is, Is it possible  
22      that some portion may be written off? And my answer was,  
23      yes, that it was my understanding that UtiliCorp would -- if  
24      given the regulatory plan and the merger that they had  
25      proposed, that a portion may be written off.

1           Q.       Now, my question with respect to that part of  
2       your testimony, you use at, I believe it's line 17, the word  
3       "company." Which company are you talking about there?  
4           A.       Well, again, as part of the merger, we would  
5       become one.  
6           Q.       So the company you're referring to there would  
7       not be St. Joe, it would be UtiliCorp --  
8           A.       Its successor company.  
9           Q.       -- as a combined entity?  
10          A.       That's correct.  
11          Q.       Do you agree that such a write-off would  
12       reduce the book value of St. Joe Light & Power, all other  
13       things being the same?  
14                 MR. DUFFY: Object to the form of the question  
15       because he's saying that it would reduce the book power of  
16       St. Joseph Light & Power when the question is asking about a  
17       post-St. Joseph Light & Power situation, a merged company.  
18       So there isn't books for St. Joseph Light & Power.  
19                 JUDGE WOODRUFF: Do you want to clarify your  
20       question?  
21                 MR. CONRAD: Well, we went through -- I'm just  
22       trying to harmonize Mr. Stoll's statement here with what was  
23       in the merger case about the 7 million. And I take it --  
24       let me just withdraw that question and try it a different  
25       way.

1 JUDGE WOODRUFF: Okay.

2 BY MR. CONRAD:

3 Q. Mr. Stoll, I'm not going to ask you, because  
4 neither one of us can remember exactly what the testimony  
5 was in the merger case, but do you recall enough to be able  
6 to tell me that -- or agree with me that at that time it was  
7 some \$7 million that this request was thought to --

8 A. Our original thought was that it was  
9 approximately \$7 million.

10 Q. And we did talk about the implications of that  
11 in the merger case with respect to the acquisition premium,  
12 did we not?

13 A. There was some discussion, yes.

14 Q. Okay. That the effect of that would be to  
15 increase the acquisition premium if there, in fact, was a  
16 write-off?

17 A. If there was a write-off, there was some  
18 discussion about it increasing the acquisition premium.

19 Q. But now we're talking -- instead of 7 million,  
20 we're now talking 3.1 or 3.3 or whatever the number is?

21 A. Right.

22 Q. Okay. Now, let's look at your surrebuttal,  
23 please, page 7. That's Exhibit 2, page 7, lines 5 through  
24 6. There's a sentence there that begins, Most accidents  
25 could be avoided. Do you see that?



1           A.       Yes.

2           Q.       How much time would have been necessary to  
3 spend in order to avoid this accident?

4           A.       I'm not sure.

5           Q.       Do you know how much money would have been  
6 necessary to expend in order to have avoided this accident?

7           A.       No, I do not.

8           Q.       And it really all boils down to just a matter  
9 of assessing the risks properly when you make decisions  
10 about what to do, isn't it?

11          A.       If the decision is to avoid all accidents?

12          Q.       Yes. As to how much money or time to spend.

13          A.       Yes.

14          Q.       Now, on page 10, a couple little clean-up  
15 things, Mr. Stoll. Lines 4 through 5 and then again at  
16 line 21 on that page in Exhibit 2, your surrebuttal  
17 testimony, you use the term "industrial steam subsidy." Do  
18 you see that?

19          A.       Uh-huh.

20          Q.       Are you, in fact, referring to the revenue  
21 that is provided by industrial steam customers pursuant to  
22 your tariffs or Commission-approved contracts?

23          A.       I'm referring to the electric tariffs that are  
24 subsidizing steam operations.

25          Q.       Oh, your contention is then, I take it, that

1 the steam service is under cost pursuant to your  
2 Commission-approved tariffs; is that correct?

3 A. Is under cost?

4 Q. Yeah. You indicated that the electric tariffs  
5 were subsidizing something. What is it they're subsidizing,  
6 Mr. Stoll?

7 A. In our previous rate cases, the allocations of  
8 Lake Road plant were provided in such a manner as to  
9 allocate an additional amount of cost to the electric  
10 operations to subsidize steam operations.

11 Q. Now, the last case is one that set the current  
12 rates. Correct? The '99, '98 case?

13 A. It set current rates?

14 Q. Yeah.

15 A. Yes.

16 Q. Was that a settled case, Mr. Stoll?

17 A. Yes, it was. And as part of that case --

18 Q. That's -- no, you've answered the question.

19 MR. CONRAD: Thank you very much, your Honor.

20 That's all I have.

21 JUDGE WOODRUFF: Thank you.

22 And then we'll go to Staff.

23 MR. WILLIAMS: Thank you.

24 CROSS-EXAMINATION BY MR. WILLIAMS:

25 Q. Mr. Stoll, isn't all of your testimony on

1 pages 6 to 12 of Exhibit 1 directed to the issue of the  
2 appropriateness of an Accounting Authority Order in this  
3 case?

4 A. Pages what again?

5 Q. Six through twelve.

6 A. Beginning at line 19 on page 6 through line 3  
7 on page 12 I'm discussing the accounting for an AAO and the  
8 criteria in which the Commission has utilized.

9 Q. I want to direct your attention to page 8 at  
10 lines 11, 12 of Exhibit 1, which is your pre-filed direct  
11 testimony.

12 A. Uh-huh.

13 Q. Are you there? Don't you state in response to  
14 the question, Would the resulting incremental cost be  
15 considered extraordinary material, that a 3.4 million cost  
16 is definitely material to St. Joseph Light & Power's  
17 financial condition?

18 A. Yes.

19 Q. I want to direct your attention to Exhibit 2,  
20 which is your surrebuttal testimony. If you would turn to  
21 page 13 at line 14 on that page, the section beginning at  
22 that point and continuing on to page 14 at line 2. Within  
23 that section don't you state that the merger agreement  
24 between St. Joseph Light & Power and UtiliCorp defines a,  
25 quote, company material adverse effect, closed quote, to

1 include a material adverse effect on, among other things,  
2 the financial condition of the company?

3 A. What lines are you on where you're reading  
4 that from?

5 Q. Turn to Exhibit 2, page 13, beginning at  
6 line 14 within the section, and specifically at line 18 on  
7 page 13 you state, The merger agreement defines a, quote,  
8 company material adverse effect, closed quote, as, quote, a  
9 material adverse effect on -- lists a number of things  
10 including financial condition?

11 A. Yes. It says that a material adverse effect  
12 item one -- or i -- little i -- on the business properties,  
13 assets, liabilities contingent or otherwise, financial  
14 condition, results of operation or prospects of the company  
15 and its subsidiaries taken as a whole; or two, on the  
16 ability of the company to perform its obligations under or  
17 to consummate the transactions contemplated by this  
18 agreement other than effects caused by changes resulting  
19 from conditions affecting the utility -- electric utility or  
20 gas utility industries generally.

21 Q. Hasn't St. Joseph Light & Power taken the  
22 position that the incremental costs resulting from the  
23 June 7, 2000 incident that's at issue here are not material  
24 for purposes of the St. Joseph/UtiliCorp merger agreement?

25 A. The standard within our merger agreement is a

1 legal dispute at this point. And the interpretation of that  
2 dispute will be handled between the parties.

3 Q. I understand that. But hasn't St. Joseph  
4 Light & Power publicly taken the position that the  
5 incremental costs that St. Joseph Light & Power incurred as  
6 a result of the June 7, 2000 incident are not material for  
7 purposes of that merger agreement?

8 A. The incident --

9 Q. I'm just asking the position you've taken.

10 A. The incident that you're referring to on -- as  
11 an individual item, the merger agreement talks about the  
12 entire operations, not individual units taken as a whole.  
13 Our position at this point is that we will close our merger.

14 Q. Isn't that listing in the alternative on the  
15 business properties, assets, liabilities, financial  
16 condition, results of operations or prospects of the  
17 company? That's not your interpretation of that?

18 A. What's your question?

19 Q. Would you agree that that definition of  
20 company material adverse effect includes a material adverse  
21 effect on the financial condition of the company taken as a  
22 whole?

23 MR. DUFFY: Objection. The document speaks  
24 for itself.

25 JUDGE WOODRUFF: Overruled.

1                   THE WITNESS: I believe that the document  
2                   itself is -- the legal interpretation of that has to be  
3                   handled by attorneys, of which I am not.  
4                   BY MR. WILLIAMS:  
5                   Q.       Has St. Joseph Light & Power Company taken the  
6                   position that the incremental costs that St. Joseph Light &  
7                   Power has incurred due to the June 7, 2000 incident are not  
8                   material for purposes of the merger agreement with  
9                   UtiliCorp?  
10                  A.       We've indicated that we will do anything  
11                  within our power to consummate the merger.  
12                  Q.       Mr. Stoll, I want to direct your attention to  
13                  page 7 of Exhibit 2. In that section don't you discuss that  
14                  the Commission should engage in rule-making in addressing  
15                  new criteria for AAOs?  
16                  A.       That they should?  
17                  Q.       Yes.  
18                  A.       That my -- my position is that if the  
19                  Commission desires to have new criteria for the  
20                  authorization of an AAO, that they should go through the  
21                  rule-making process and allow all the utilities in the state  
22                  that are affected by such rule-making to have an opportunity  
23                  to participate in that new rule-making.  
24                  Q.       Is it then your position that the Commission  
25                  should not consider making changes in the criteria for

1 issuing Accounting Authority Orders outside of the context  
2 of a rule-making docket?

3 A. That they should not change their criteria?

4 Q. Yes.

5 A. That would be my position, that they should  
6 utilize the rule-making process in order to change policy of  
7 the Commission.

8 Q. Does the Commission presently use certain  
9 criteria for determining whether or not to grant an AAO?

10 A. It's my understanding that they do, that it --

11 Q. Do you know where those criteria originated?

12 A. No, I don't.

13 Q. Do you believe that St. Joseph Light & Power  
14 has had an adequate opportunity to respond to the Staff's  
15 proposed criteria for an AAO as set forth in the rebuttal  
16 testimony of V. William Harris?

17 A. I don't believe that the time frame in  
18 which -- from point of knowing of those criteria to the  
19 surrebuttal I think was less than a week as Staff's filing  
20 was late to start with. But I don't think that's sufficient  
21 time to examine all the impacts with regard to a major  
22 change in which they're proposing.

23 Q. Does the company want more time to consider  
24 that in this case?

25 A. Again, we believe it's a -- a decision that

1       should be taken as a whole for all of the utilities in the  
2       state that are affected by this rule-making.

3               Q.       Well, you indicated you didn't feel that  
4       St. Joseph Light & Power Company had had enough time to  
5       consider the Staff's criteria. My question to you is, does  
6       the company want more time?

7               A.       Again, the company does not believe that this  
8       is an appropriate forum in which to do that. The amount of  
9       time -- regardless of the amount of time, it's not the  
10       appropriate forum.

11              Q.       You're not answering my question. My question  
12       is, does St. Joseph Light & Power Company want more time in  
13       order to respond to the Staff's position of criteria?

14              A.       Well, the company responded to your position  
15       and it's not appropriate in this forum.

16              Q.       I want to direct your attention to page 8 of  
17       your -- of Exhibit 2.

18              A.       Page 8 did you say?

19              Q.       Yes. On page 8 you indicate that it's the  
20       company -- it's St. Joseph -- St. Joseph Light & Power's  
21       position that the company should not be required to  
22       immediately begin amortization of any expense deferred  
23       pursuant to an AAO in this case, do you not?

24              A.       Yes. I indicate that amortization of a  
25       deferral in accordance with the instructions of the USOA and



1 in accordance with FAS71 would indicate the matching of  
2 those amortization costs to revenues included in your rates  
3 should match on the same time frame.

4 Q. Is it your position that the Commission should  
5 not order any deferral to be amortized to expense to --  
6 until new rates are put into effect that include the impact  
7 of the amortization?

8 A. The Commission should not begin the  
9 amortization until such time as that amortization is  
10 included in rates.

11 Q. Do you agree that this would, in effect,  
12 synchronize expense recognition of the Lake Road incremental  
13 cost deferral with rate recovery of the deferral?

14 A. The amortization of those costs would match  
15 the recovery in rates so that the impact is matching revenue  
16 and expense on the same time period.

17 Q. As a result, would St. Joseph Light & Power  
18 customers immediately pay in rates for the deferral  
19 amortization once it is recognized on St. Joseph Light &  
20 Power's books?

21 A. The deferral itself does not recognize  
22 anything in rates.

23 Q. Is it St. Joseph Light and Power's position  
24 that at the end of the amortization period for the Lake Road  
25 costs incurred as a result of the Lake Road incident on

1 June 7th of 2000 should also be synchronized with a rate  
2 case so the reduction expense on St. Joseph Light & Power's  
3 books can be passed on immediately to St. Joseph Light &  
4 Power customers as well?

5 A. In a perfect world, that would be the case.  
6 Regulatory lag sometimes has an impact on when things are  
7 adjusted in and out of the cost of service. In this case  
8 you're asking at the tailend should it be adjusted out.  
9 Other things would be adjusted in at the same time that may  
10 have an offsetting effect.

11 But in a perfect world, that would be the  
12 case. If you were able to adjust rates every time a cost  
13 changed without the regulatory lag, that would be  
14 appropriate.

15 Q. I want you to assume that the Commission  
16 orders a five-year rate moratorium for St. Joseph Light &  
17 Power as part of approval of the UtiliCorp/St. Joseph merger  
18 but otherwise rejects the regulatory plan as proposed by the  
19 joint applicants in that case.

20 If the Commission were to approve the  
21 Accounting Authorization Order of the company that  
22 St. Joseph Light & Power Company has requested in this case,  
23 is it your position that amortization of the deferral should  
24 not begin until after the five-year rate moratorium has  
25 expired and a new company rate case has been processed?

1           A.       I believe that would be appropriate.

2                   MR. WILLIAMS:  No further questions.

3                   JUDGE WOODRUFF:  Public Counsel?

4   CROSS-EXAMINATION BY MR. MICHEEL:

5           Q.       Is it correct that you state the Commission

6   has granted AAOs to St. Joe in EO-94-35 and EO-95-193?

7           A.       EO-94-35 and EO-95-193 --

8           Q.       Yes.

9           A.       -- is that what you said?

10                  Okay.  Yes.

11          Q.       And would you agree with me that both of those

12   decisions were stipulated cases?

13          A.       I believe that's the case, yes.

14                  MR. MICHEEL:  I'd like to get some exhibits

15   marked, your Honor.

16                  JUDGE WOODRUFF:  You may.

17                  Okay.  The Order Approving Stipulation

18   Agreement in EO-94-35 is No. 15, and the Order Granting

19   Accounting Authority in EO-95-193 is No. 16.

20                  (EXHIBIT NOS. 15 AND 16 WERE MARKED FOR

21   IDENTIFICATION.)

22   BY MR. MICHEEL:

23          Q.       Mr.  Stoll, do you have what's been marked for

24   purposes of identification as Exhibit 15 in front of you?

25          A.       Yes, I do.

1           Q.       And do you recognize that?

2           A.       It's the Order Approving the Stipulation

3 Agreement in our case involving the flood.

4           Q.       And does it also have the Stipulation and

5 Agreement attached to it?

6           A.       Yes, it does.

7                   MR. MICHEEL: I'd move the admission of

8 Exhibit 15, your Honor.

9                   JUDGE WOODRUFF: 15 has been offered into

10 evidence. Are there any objections to its receipt?

11                   Hearing none, it will be received into

12 evidence.

13                   (EXHIBIT NO. 15 WAS RECEIVED INTO EVIDENCE.)

14 BY MR. MICHEEL:

15           Q.       Do you have before you, Mr. Stoll, what's been

16 marked for purposes of identification as Exhibit 16?

17           A.       Yes.

18           Q.       And is that the Order Granting Accounting

19 Authority and a copy of the Stipulation and Agreement in

20 that case?

21           A.       It appears to be, yes.

22                   MR. MICHEEL: I'd move the admission of

23 Exhibit 16, your Honor.

24                   JUDGE WOODRUFF: 16 has been offered into

25 evidence. Are there any objections to its receipt?

1                   Hearing none, it will be received into  
2       evidence.

3                   (EXHIBIT NO. 16 WAS RECEIVED INTO EVIDENCE.)

4       BY MR. MICHEEL:

5           Q.       Could you, sir, turn to page 2 of the Order  
6       Approving Stipulation and Agreement, Exhibit 15, in  
7       EO-94-35?

8           A.       Page 2 of the order or the stipulation?

9           Q.       The order.

10          A.       Order. Okay.

11          Q.       And would you agree with me -- I'm looking at  
12       the bottom of the page, the last full line on the page --  
13       that the Commission found that not every flood can be  
14       construed an extraordinary occurrence? Second line from the  
15       bottom, sir.

16          A.       Yes. I'm reading the rest of their statement.  
17       Excuse me. They -- they indicate that while not every flood  
18       can be construed as extraordinary, they go on to talk about  
19       the unusual nature of this one and the fact that it is  
20       not -- cost related to it is not currently in rates and,  
21       thus, the granting would be appropriate.

22          Q.       And you would agree with me, would you not,  
23       within that Report and Order the Commission found that the  
24       July and August '93 flooding along the Missouri River and  
25       its tributaries to be an extraordinary natural disaster,

1 page 3 of that order; is that correct?

2 A. I believe they talk about an extraordinary,  
3 but they don't say anything about natural.

4 Q. Okay. Look at the first line on page 3. It  
5 says, And its tributaries certainly qualifies as an  
6 extraordinary natural disaster --

7 A. Okay.

8 Q. -- that led to unusual expenses. Did I read  
9 that correctly?

10 A. That's correct.

11 Q. Okay. So the Commission indeed found that the  
12 flood was an extraordinary natural disaster?

13 A. Yes.

14 Q. And would you agree with me that the '93 flood  
15 was a natural disaster?

16 A. Yes.

17 Q. Set that aside for a minute. I want to ask  
18 you some questions about Exhibit 16. And I'm looking at the  
19 bottom of page 3 of the Report and Order. And would you  
20 agree with me, sir, that the Commission found that the  
21 December '94 ice storm was a natural disaster?

22 A. They've indicated that it is a natural  
23 disaster.

24 Q. And would you agree with me that the  
25 December '94 ice storm was indeed a natural disaster?

1           A.       Yes.

2           Q.       Could you turn to page 8 of your direct  
3 testimony, Exhibit No. 1? And I'm focusing on the answer  
4 there beginning on line 1. Are you there, sir?

5           A.       Yes, I am.

6           Q.       And is that indeed a quote from the Report and  
7 Order in EO-95-193? If it helps, it's on page 3.

8           A.       Yes.

9           Q.       Would you read the sentence exactly following  
10 where you end your quote starting with -- it says, The  
11 principal inquiry is whether the cost and expenses to be  
12 deferred result from an extraordinary event; is that  
13 correct?

14          A.       That's correct.

15          Q.       So that sentence indicates that the Commission  
16 looks at the nature of the event; is that correct?

17          A.       And determines that it's extraordinary, that's  
18 correct.

19          Q.       And they look also at the nature of the event;  
20 isn't that correct?

21          A.       It doesn't say the nature. It says that  
22 resulted from an extraordinary event. The definition of  
23 extraordinary that we have utilized is included in the USOA  
24 which talks about nonrecurring material event.

25          Q.       So it's your testimony today that the only way

1 we determine extraordinary is the definition contained in  
2 the Uniform System of Accounts; is that correct?

3 A. I'm saying that that is -- that the Commission  
4 follows Uniform System of Accounts, and the definition of  
5 extraordinary is included therein.

6 Q. And is that the -- is that the standard that  
7 you're requesting the Commission follow in this proceeding?

8 A. We're requesting that they follow their  
9 criteria that they've utilized in the past which ties back  
10 to the USOA standards.

11 Q. So it's your testimony that the only criteria  
12 the Commission has used in the past to determine whether an  
13 item is extraordinary is the definition of extraordinary  
14 event in the Uniform System of Accounts?

15 A. To my knowledge, that is the case. That  
16 they've looked at the extraordinary nature of the event, the  
17 cost incurred and determined that it is not recurring in  
18 nature, not currently in rates and, thus, should be given  
19 that accounting treatment.

20 Q. Would you turn to page 9 of your direct  
21 testimony? And I'm focusing there on your answer on lines  
22 19 and 20 where you state specifically, While the event is  
23 different, a mechanical failure as opposed to a flood, the  
24 end result is similar; is that correct?

25 A. That's correct.



1           Q.     What mechanical failure occurred at Unit 4/6  
2     on June 7th to cause the explosion and fire?

3           A.     Mr. Svuba, another witness, is better prepared  
4     to answer that question. My -- my background does not go  
5     into the actual activities down at the Lake Road plant.

6           Q.     So even though you have in your testimony that  
7     it was a mechanical failure at the Lake Road plant, you  
8     don't know what failed?

9           A.     The turbine failed. It was --

10          Q.     Is it your testimony that the failure of the  
11     turbine is the reason the explosion and fire occurred?

12          A.     You're asking me for the cause of the failure.  
13     I'm telling you I can't testify to the cause of the failure,  
14     just that the turbine failed.

15          Q.     So you're not certain if it was a mechanical  
16     failure, are you, Mr. Stoll?

17          A.     The turbine failed.

18          Q.     Okay. And was that due to a mechanical  
19     reason?

20          A.     The machine failed. It's a mechanical  
21     machine. I'm just saying the machine failed and that was  
22     the cause.

23          Q.     Let me ask you this: If I don't put the key  
24     in my car and start it, has the car failed?

25          A.     Depends on what your expectations are, I

1 guess.

2 Q. Let me ask you this: If I turn out the light  
3 switch and the lights aren't on, have the lights failed?

4 A. If you turn out the light and the lights don't  
5 come on. Is that what you said?

6 Q. Right. If I turn the light switch off and the  
7 lights aren't on, have the lights failed?

8 A. I would assume so since the lights apparently  
9 weren't on when the switch was on.

10 Q. Assume with me that the lights were on when  
11 the switch was on and I turned the switch off. Have the  
12 lights failed?

13 A. Something has failed.

14 Q. So you're not exactly sure what mechanical  
15 failure took place at Unit 4/6 and I should ask Mr. Svuba  
16 about that; is that correct?

17 A. That's correct.

18 Q. So sitting there today you have no idea what  
19 mechanical failure took place?

20 MR. DUFFY: Objection. Argumentative, asked  
21 and answered.

22 JUDGE WOODRUFF: I'll sustain the objection.

23 BY MR. MICHEEL:

24 Q. Would you agree with me, Mr. Stoll, whether or  
25 not a cost is 5 percent per the Uniform System of Accounts

1 definition of extraordinary is not case dispositive for  
2 granting an AAO?

3 A. I would agree with that. The Commission looks  
4 at whether or not the costs are recurring or not.

5 Q. But even if the costs are above 5 percent,  
6 that doesn't necessarily mean that the Commission is going  
7 to grant an AAO; isn't that correct?

8 A. That's correct. As I said, the cost may be  
9 above the 5 percent threshold and be recurring in nature and  
10 the Commission would not grant an AAO in that case, as they  
11 did in a case involving United Water Missouri regarding  
12 FAS106.

13 Q. Let me ask you this, Mr. Stoll, if you know.  
14 Do forced outages occur with respect to turbines?

15 A. Forced outages occur. My understanding is,  
16 yes, they do occur periodically. The nature of those  
17 outages, however, are the item in question. Normal outages  
18 are shorter in duration. The smaller ones are included as  
19 part of the normalization process to establish our rates.  
20 Large ones, as of the nature of this incident, are not  
21 included in the establishment of our rates.

22 Q. But you would agree with me that forced  
23 outages are recurring factors with respect to generation  
24 unit?

25 A. I think my answer was, yes, that on a normal

1 basis there are outages not of this magnitude.

2 Q. Would you agree with me that the Commission  
3 reviews Accounting Authority Order requests on a  
4 case-by-case basis?

5 A. Yes.

6 Q. Would you agree with me that your company,  
7 St. Joe Light & Power, has received Accounting Authority  
8 Orders that did not meet the 5 percent requirement in the  
9 Uniform System of Accounts?

10 A. I'm not sure.

11 Q. Are you familiar with Case No. EO-91-247, the  
12 AMFM Mapping AAO?

13 A. Yes, I am.

14 Q. Were you with the company when the company  
15 requested that Accounting Authority Order?

16 A. Yes, I was.

17 Q. Do you have any idea how much of -- what the  
18 expense level was for that AMFM Mapping?

19 A. The exact amount, no, I do not. I know it  
20 came in over a number of months. I'm not sure if it went  
21 into years as well. And, as I recall, we were ordered by  
22 the Commission to undertake that project and that was part  
23 of the agreement with that.

24 Q. You would agree with me that those costs  
25 didn't meet the 5 percent threshold level in the Uniform

1       System of Accounts, wouldn't you?

2               A.       I don't know what the dollar amount was.

3               MR. MICHEEL: I need to get an exhibit marked,

4       your Honor.

5               JUDGE WOODRUFF: You may.

6               (EXHIBIT NO. 17 WAS MARKED FOR

7       IDENTIFICATION.)

8               JUDGE WOODRUFF: This will be 17.

9       BY MR. MICHEEL:

10              Q.       Mr. Stoll, do you have before you what's been

11       marked as Exhibit No. 17 for purposes of identification?

12              A.       Yes.

13              Q.       Is that the Order Granting Application for

14       Accounting Authority -- or for Accounting Order in

15       EO-91-247?

16              A.       Yes.

17              Q.       And is that the AMFM Mapping Accounting

18       Authority Order?

19              A.       Yes.

20              Q.       Could you tell me now after reviewing that

21       whether or not the costs involved meet the 5 percent USOA

22       requirement?

23              A.       Again, I couldn't answer that question. It

24       would go back to what our net income was at that point in

25       time, and I don't know what that net income was at that

1 point.

2 Q. Okay. Would you agree with me that the total  
3 amount was \$1.4 million per that AAO?

4 A. Is that stated somewhere in the order? I'm --

5 Q. On page 2 it says, The company estimates the  
6 cost of the AMFM project to be approximately \$1.4 million  
7 consisting of \$400,000 for hardware and software and  
8 1 million in labor extended over a five-year period.

9 A. Right.

10 Q. And that indicates that's the company's  
11 estimate; is that correct?

12 A. That's correct.

13 Q. And my question to you, sir, is, is  
14 \$1.4 million over a five-year period 5 percent of St. Joe's  
15 net income?

16 A. Again, I don't know what our net income was at  
17 the time. Our income changes from year to year.

18 Q. Has your net income in your tenure with the  
19 company ever been below -- let me ask you this. What's the  
20 lowest net income you can remember for your company?

21 A. I believe around \$1 million.

22 Q. And when was that?

23 A. The year I don't know. I'm just -- you asked  
24 me what I could remember. I don't remember what year.

25 MR. MICHEEL: If I haven't, your Honor, I'd

1 move admission of Exhibit 17 at this point.

2 JUDGE WOODRUFF: Exhibit 17 has been offered  
3 into evidence. Are there any objections to its receipt?  
4 Hearing none, it will be received into  
5 evidence.

6 (EXHIBIT NO. 17 WAS RECEIVED INTO EVIDENCE.)

7 BY MR. MICHEEL:

8 Q. Again, on your direct testimony, Mr. Stoll, on  
9 page 9, and I'm looking at line 15, you state that the only  
10 criteria should be the financial impact on St. Joe's  
11 operations for granting an Accounting Authority Order; is  
12 that correct?

13 A. The question that that was in response to  
14 asked what types of costs incurred. And I'm saying that  
15 that -- that is not a factor, the types of costs.

16 Q. And you say, and I quote, The only criteria  
17 that should be used is the financial impacts on operations;  
18 is that correct?

19 A. Looking at the total types of -- total cost as  
20 a whole, not the types of cost individually.

21 Q. Right. But you're saying the only criteria  
22 you should utilize is the financial impact; is that correct?

23 A. Again, I'm responding to the question in front  
24 of it. You're taking it out of context, I believe.

25 Q. How am I taking it out of context?

1           A.       You're inferring that that's the only criteria  
2       that the Commission should utilize in determining, and  
3       that's not the answer to the question.

4           Q.       What other criteria should they utilize?

5           A.       Whether or not the event is recurring in  
6       nature.

7           Q.       For determining whether the item is  
8       extraordinary should the Commission look at anything other  
9       than the financial impact on the company's operations?

10          A.       No.  As I said, the USOA indicates that the  
11       event itself -- the cost of the event if in excess of  
12       5 percent is one item.  The recurring nature is another  
13       that -- it refers to whether the event is significant and  
14       ordinary and typical activities of the company and whether  
15       it can be reasonably expected to recur in the future are  
16       other items included in that definition.

17          Q.       Let me give you some hypothetical situations,  
18       Mr. Stoll.  Suppose some employee, for example, the company  
19       president absconds with \$10 million during a period.  Would  
20       it be appropriate to grant the company an AAO assuming it  
21       meets the 5 percent threshold, and I would hope it's  
22       nonrecurring?

23          A.       If the president takes \$10 million, is that  
24       your question?

25          Q.       It's a hypothetical question.  Assume somebody



1       absconds -- I don't care who it is, some employee absconds  
2       with \$10 million and it meets the 5 percent threshold and  
3       it's nonrecurring. My question to you is, under that  
4       hypothetical, would it be appropriate for the Commission to  
5       grant the company an AAO?

6               A.       It may be depending upon the circumstances.  
7       I'm not sure.

8               Q.       So it's your testimony the Commission should  
9       not look at the circumstances; is that correct?

10              A.       I didn't say that. I said depending on the  
11      circumstances.

12              Q.       Well, which factors of the circumstances do  
13      you need me to fill in for that hypothetical?

14              A.       Well, that's all you gave me.

15              Q.       Okay. Are you missing any factors that  
16      prevent you from answering that yes or no?

17              A.       I'm sure there would be a lot of them.

18              Q.       Let me ask you another hypothetical. Assume  
19      the company invests \$20 million in a start-up company and  
20      the company goes under and then the company loses its  
21      \$20 million investment. And assume with me that that's  
22      nonrecurring and meets the 5 percent threshold under the  
23      USOA. Would it be appropriate for this Commission to grant  
24      the company an Accounting Authority Order in that case?

25              A.       Well, I'm assuming that if we're talking about

1 a start-up company, that it's not a regulated entity and as  
2 a result it would not be included as an AAO.

3 Q. Let's assume that it was St. Joe Light & Power  
4 funds that were invested in the start-up company and the  
5 company, you know, hit the bottom -- bottomed out, lost the  
6 money. Would that be appropriate for an AAO?

7 A. If the investment was in a non-regulated  
8 entity, no, it would not.

9 Q. Let's assume the investment was in a regulated  
10 entity. Would it be appropriate to grant an AAO?

11 A. I would -- again, it would depend on the  
12 circumstances, what you're referring to. If you have a  
13 start-up company, you don't just lose the money. It happens  
14 over time. It's recurring in nature. So in that case it  
15 wouldn't fall within the guidelines.

16 Q. Let's assume that the company invests in a bag  
17 company and they sell that investment at a loss and that  
18 investment is nonrecurring and meets the 5 percent of the  
19 Uniform System of Accounts. Would it be appropriate for  
20 St. Joe to seek an AAO in that case?

21 A. It's a non-regulated investment, no.

22 Q. So as long as it's not a regulated investment,  
23 it's inappropriate for the company to seek AAOs. Is that  
24 your testimony?

25 A. That's correct.

1           Q.       Would you agree with me, Mr. Stoll, that the  
2       Commission should look at other items beyond just the  
3       financial impact of the cost when determining whether or not  
4       the costs are extraordinary?

5           A.       As -- as I previously stated, yes. The  
6       requirements would ask you also to look as to whether or not  
7       the event was recurring in nature.

8           Q.       I'm asking you for the extraordinary piece  
9       now. Keep that in mind, Mr. Stoll.

10          A.       That's --

11          Q.       Just the extraordinary piece. Would you agree  
12       with me that the Commission, in determining whether or not  
13       the event is extraordinary, should look at items beyond just  
14       the financial impact?

15          A.       Again, reading the definition of extraordinary  
16       in the Uniform System of Accounts, it does state in -- not  
17       just looking at the dollar amount, but states that there  
18       will be events and transactions of significant effect which  
19       are abnormal and significantly different from the ordinary  
20       and typical activities of the company and which would not  
21       reasonably be expected to recur in the foreseeable future.  
22       So in answer to your question, you do look at more than just  
23       the dollar amount. You're looking at those other items and  
24       recurrence in nature.

25          Q.       And indeed in the Missouri Public Service case

1 the Commission stated that this 5 percent standard is, thus,  
2 relevant to materiality and whether the event is  
3 extraordinary, but is not case dispositive?

4 A. The 5 percent criteria is a part of the  
5 definition of extraordinary under the USOA.

6 Q. But it is not case dispositive; is that  
7 correct?

8 A. In and by itself, no.

9 Q. On page 7 of your surrebuttal testimony, which  
10 is Exhibit No. 2, and I'm focusing on line 11 there, you  
11 say, If the Commission believes a new criteria for approval  
12 of AAOs is appropriate, then they should establish a new  
13 policy through a rate-making process; is that correct?

14 MR. DUFFY: Objection. He's misquoted the  
15 testimony. He said rate-making process. It says  
16 rule-making process.

17 MR. MICHEEL: Thank you, Mr. Duffy. He's  
18 correct.

19 THE WITNESS: I recognized that one too. I --  
20 my response is, yes, that the Commission should -- if they  
21 believe that new criteria should be established, that it  
22 should be established through a rule-making process allowing  
23 all of the utilities in the state to participate in that  
24 rule-making.

25 BY MR. MICHEEL:

1 Q. Is it correct that the initial AAO criteria  
2 was not established through a rule-making process?

3 A. I do not know the answer to that.

4 Q. What Commission rule provides for allowing an  
5 Accounting Authority Order, Mr. Stoll?

6 A. I don't know the answer to that.

7 Q. Is there any rule that allows that?

8 A. I don't know that it's a rule. I believe  
9 under the legal definition of the authority of the  
10 Commission that they have the authority to grant AAOs.  
11 Again, I'm not an attorney, but I believe it falls within  
12 that category.

13 Q. So you're not aware that the Commission  
14 developed its AAO policy on a case-by-case basis through  
15 litigated cases, are you?

16 A. No, I'm not.

17 Q. Would you be surprised if that's what  
18 happened?

19 A. I don't know how it came about. All I know is  
20 that it exists today and has existed for a number of years.

21 Q. On page 21 of your surrebuttal testimony you  
22 state, This is not a rate case and the Commission should not  
23 be influenced by statements made by Staff and OPC to the  
24 contrary; is that correct?

25 A. That's correct.

1           Q.     My question to you, sir, is where in the  
2     pre-filed testimony does Public Counsel claim this is a rate  
3     case proceeding?

4           A.     Specifically I'd have to look for it, but I  
5     believe that they talked about impacts regarding Light and  
6     Power's rates if this is authorized.

7           Q.     Why don't you look for it? I'd like you to  
8     point me to where we say that in our testimony.

9           A.     As -- maybe as one example, on page 16 of  
10    Mr. Trippensee, he responds that Public Counsel does not  
11    believe it is appropriate or consistent with past Commission  
12    precedents to make such rate-making determinations in an AAO  
13    proceeding.

14          Q.     And he's responding to your recommendation  
15    there, is he not, Mr. Stoll?

16          A.     He's responding to the amortization period  
17    that I had recommended, I believe.

18          Q.     And he's saying there specifically it's not  
19    appropriate to make those rate-making determinations in AAO  
20    cases, isn't he, Mr. Stoll?

21          A.     He's implying that you're making a rate-making  
22    decision in this case. And that's what we're saying we do  
23    not want is a rate-making -- the rate-making ramifications  
24    of this would occur at the time we come in for rates.

25          Q.     Let me go back to your surrebuttal testimony,

1 Mr. Stoll. And the Q and A you're responding to on page 21  
2 is your summary; is that correct? It says, Please summarize  
3 the company's response as addressed above?

4 A. That's correct.

5 Q. And you say, This proceeding is not a rate  
6 case and the Commission should not be influenced by  
7 statements made by Staff and Public Counsel to the contrary;  
8 is that correct?

9 A. That's correct.

10 Q. And Mr. Trippensee, the portion of his  
11 testimony that you quoted says, Public Counsel does not  
12 believe it is appropriate or consistent with past Commission  
13 precedent to make such rate-making determinations in the AAO  
14 proceeding; is that correct?

15 A. That's correct.

16 Q. And is it your testimony that Mr. Trippensee  
17 is saying that the Commission should indeed make rate-making  
18 determinations within the context of an AAO proceeding?

19 A. I believe he's implying that if the Commission  
20 authorizes this deferral, that it is somehow making a  
21 rate-making determination as a part of this AAO application.  
22 And that's what we were trying to avoid, if you will, and  
23 clarify that we're not asking for the rate-making treatment  
24 at this time, that rate-making treatment would take place at  
25 the time we would file for rates.

1 Q. So you would agree with me that  
2 Mr. Trippensee also believes that this is not a rate case  
3 proceeding; is that correct?  
4 A. That this is not a rate case proceeding?  
5 Q. Yes.  
6 A. Per se, I would say that's correct.  
7 Q. And, indeed, that quotation that you cited me  
8 to on page 16 of his testimony indicates that fact, doesn't  
9 it?  
10 A. It implies to me that he is inferring that  
11 rate-making treatment would be granted as part of the AAO.  
12 Q. Why don't you go back with me to the  
13 correction that you made in your initial testimony. Where  
14 was the first correction you made and what was it?  
15 A. I made one correction and only one correction  
16 and that was on page 11, line 22 of my direct testimony.  
17 Q. And what did you add there?  
18 A. "In rates."  
19 Q. So that sentence now says, St. Joe believes  
20 the amortization should begin as of the effective date of  
21 the Report and Order authorizing amortization of these costs  
22 in rates; is that correct?  
23 A. That's correct.  
24 Q. And that passage that you quoted or cited on  
25 page 16 of Mr. Trippensee's rebuttal is responding to that



1 position; is that correct?

2 A. It -- his position is what again?

3 Q. The question and answer on page 16 is

4 responding to that request by the company; isn't that

5 correct?

6 A. I don't believe so. I believe he's saying

7 that he doesn't -- he believes an AAO in this proceeding

8 would result in rate-making treatment. And that's what

9 we're saying doesn't happen.

10 Q. And he thinks if it did result in rate-making

11 treatment, that would be inappropriate, doesn't he?

12 A. Yes. In this case, in the AAO.

13 Q. Did you find any other places in

14 Mr. Trippensee's testimony where we're requesting some sort

15 of rate-making treatment as you state in your surrebuttal

16 testimony?

17 A. I've not re-read the rest of it. If you want

18 me to, I will.

19 Q. Sure.

20 JUDGE WOODRUFF: I'm going to -- I think that

21 the relevance of this is getting pretty tenuous. I would

22 suggest that we move on.

23 MR. MICHEEL: Very good, your Honor.

24 BY MR. MICHEEL:

25 Q. Is it correct, Mr. Stoll, that the company's

1        requesting amortization to defer costs that were incurred  
2        during a certain period of time?

3            A.        We're asking for the deferral of costs during  
4        the time the turbine was being repaired, the incremental  
5        costs.

6            Q.        And what's the time period there?

7            A.        Approximately two months.

8            Q.        And is the purpose of incurring those costs to  
9        acquire electricity; is that correct?

10          A.        A portion of the costs that we're asking to  
11        defer relates to incremental energy costs, both fuel and  
12        interchange and the related transmission, as well as the  
13        deductible portion of the repair cost.

14          Q.        Is electricity a storable commodity with  
15        respect to the company's electric grid?

16          A.        Is it storable?

17          Q.        Yes, sir.

18          A.        Generally, I would say no.

19          Q.        I think that would be the right answer.

20          A.        Well, there's some ice storage type of things  
21        that you may qualify under your definition depending on your  
22        definition.

23          Q.        So would you agree with me, Mr. Stoll, that  
24        once you acquire energy during a period, it's got to be sold  
25        during that period?

1           A.     If we acquire it, it has to be sold --  
2           Q.     Yes.  
3           A.     -- is that your question?  
4                   Generally, I'd say yes is the answer.  
5           Q.     Are you a CPA?  
6           A.     No, I'm not.  
7           Q.     Do you have an accounting degree?  
8           A.     Yes, I do.  
9           Q.     Have you ever sat for the CPA exam?  
10          A.     No, I've not. I have an MBA.  
11          Q.     You indicate in your testimony that you  
12       disagree with Mr. Trippensee whether or not the company is  
13       requesting this Commission provide assurances that the  
14       amortization of any deferred amounts be included in the  
15       determination of rates in the next rate case at page 19 of  
16       your surrebuttal testimony; is that correct?  
17          A.     What line are you on?  
18          Q.     Looking at lines 21 and 20.  
19          A.     21 through 24, is that what you said?  
20          Q.     Go over to page 20.  
21          A.     Page 20?  
22          Q.     Yes.  
23          A.     I'm sorry. Now, what line?  
24          Q.     I'm looking at lines 1 through 11 there.  
25          A.     And could you repeat the question? I've

1 forgotten what the question was.

2 Q. Sure. There you're indicating your  
3 disagreement with Mr. Trippensee as to whether or not the  
4 company's requesting the Commission provide assurances that  
5 the amortization of any deferred amounts be included in the  
6 determination of rates in the next rate case; is that  
7 correct?

8 A. I was responding to the question that  
9 Mr. Trippensee stated that an AAO application would require  
10 the Commission to predetermine that ratepayers pay for the  
11 cost of the incident, and asked whether or not I agreed with  
12 that. And my response was, no, that we're not asking that  
13 they predetermine that they be required to pay for the  
14 incident. That determination would actually come at the  
15 time we would file the rate case and ask for recovery of  
16 those costs.

17 Q. Do you have a copy of Mr. Trippensee's  
18 testimony up there with you?

19 A. Yes.

20 Q. Could you turn to page 32 of that testimony?

21 A. Yes.

22 Q. Did Mr. Trippensee correctly reproduce  
23 paragraph 9 from St. Joe Light & Power's application there?

24 A. I don't know. I'd have to go back and compare  
25 them.

1                   His piece that he took out of that  
2     paragraph 9 -- he did not take the entire paragraph 9, which  
3     leads up to this particular sentence that he has included  
4     here. What he has included is correct, but it's not the  
5     entire paragraph 9 which may lead into a better  
6     understanding of what this paragraph is, but go ahead.

7                 Q.     Fair enough. Would you agree with me that  
8     your company is not asking this Commission to make a finding  
9     specifically whether or not any amortization resulting from  
10    an AAO issued in this case should be included in future  
11    rates?

12                A.     All we're asking at this time is authorization  
13    to defer the cost. And the amortization period over what  
14    period of time and what amount would be allowed in rates  
15    would be handled during a normal rate case proceeding.

16                Q.     Would it be fair to say that St. Joe is not  
17    seeking any assurances whatsoever from the Commission as to  
18    future rate-making treatment with respect to these costs?

19                A.     That's correct.

20                Q.     Does the company consider an AAO to be a rate  
21    action by this Commission?

22                       MR. DUFFY: Objection. I think that may call  
23    for a legal conclusion.

24                       JUDGE WOODRUFF: I'll overrule the objection.  
25    You can answer as best you can.

1                   MR. DUFFY: Then I ask that he rephrase the  
2                   question to define what rate action means.  
3                   BY MR. MICHEEL:  
4                   Q.       Well, why don't you turn to your direct  
5                   testimony, Mr. Stoll, page 7.  
6                   A.       Page 7 of direct?  
7                   Q.       Yes, sir. And I'm focusing on lines 12  
8                   through 15. Is it correct there you say it's not necessary  
9                   for the Commission to determine specific rate-making  
10                  treatment at this time; is that correct?  
11                  A.       That's correct.  
12                  Q.       And in your surrebuttal testimony you indicate  
13                  that the company's request is consistent with FAS71; is that  
14                  correct?  
15                  A.       That's correct.  
16                  Q.       Would you agree with me that the deferral of  
17                  these costs result in the costs being capitalized, i.e.,  
18                  they're included in the balance sheet?  
19                  A.       They would be recorded in regulatory assets.  
20                  Q.       Is that a balance sheet --  
21                  A.       On the balance sheet.  
22                  Q.       -- account?  
23                  A.       That's correct.  
24                  Q.       Assets are put on the balance sheet; is that  
25                  correct?

1           A.       That's correct.

2                   MR. MICHEEL: I need to get an exhibit marked,

3       your Honor.

4                   JUDGE WOODRUFF: All right.

5                   MR. MICHEEL: And I guess I'll just -- I'm

6       going to have a couple of exhibits, three. Why don't I just

7       mark them all?

8                   JUDGE WOODRUFF: Okay.

9                   (EXHIBIT NOS. 18, 19 AND 20 WERE MARKED FOR

10       IDENTIFICATION.)

11                  JUDGE WOODRUFF: Is that it, Mr. Micheel?

12                  MR. MICHEEL: Yes, your Honor.

13                  JUDGE WOODRUFF: FAS71 will be No. 18. USOA

14       electric balance sheet accounts will be No. 19. And USOA

15       electric definitions will be No. 20.

16                  We are getting time for a break here. Do you

17       expect your cross-examination to go much longer or should we

18       go ahead and take a break now?

19                  MR. MICHEEL: I just have a few questions

20       about these items. I don't know how much --

21                  JUDGE WOODRUFF: Let's go ahead and finish it

22       before we take a break then.

23                  You may inquire.

24       BY MR. MICHEEL:

25                  Q.       Okay. Mr. Stoll, I've handed you a portion of

1 FAS71, which has been marked for purposes of identification  
2 as Exhibit 18. Are you familiar with FAS71?

3 A. In general, yes.

4 Q. Could you turn with me, sir, to page 705 under  
5 the summary there? And I'm looking at the third paragraph  
6 under the big bold heading Summary. Is it correct there  
7 that it says, If regulation provides assurances that  
8 incurred costs will be recovered in the future, this  
9 statement requires companies to capitalize those costs?

10 A. That's correct.

11 Q. Now, would you turn to page 715 of that  
12 document? And I'm looking at paragraph 52 there, sir. And  
13 it's a sentence beginning with, Unless, on the right side of  
14 the page. Do you see that, sir?

15 A. Did you say paragraph 52?

16 Q. Yes, sir. Under numbered 52 there on  
17 page 715.

18 A. It begins with Virtually?

19 Q. Yes, sir.

20 A. Okay.

21 Q. And then I'm looking at the right-hand side.  
22 It goes over to the right-hand side of the page. Is it  
23 correct it says, Unless an accounting order indicates the  
24 way a cost will be handled for rate-making purposes, it  
25 causes no economic effects that would justify deviation from



1 the generally accepted accounting principles applicable to  
2 business enterprises in general. The mere issuance of an  
3 accounting order not tied to rate treatment does not change  
4 an enterprise's economic resources or obligations. In other  
5 words, the economic effect of regulatory decisions, not the  
6 mere existence of regulation, is the pervasive factor that  
7 determines the application of generally accepted accounting  
8 principles?

9 A. You're asking me if that's what it says?

10 Q. Yes, sir.

11 A. That's what it says.

12 Q. Do you have any reason to disagree with that?

13 A. No. That's what it says.

14 Q. And that paragraph 52 is under Basis for  
15 Conclusion section; is that correct?

16 A. Yes, it is.

17 MR. MICHEEL: I'd move the admission of  
18 Exhibit 18, your Honor.

19 JUDGE WOODRUFF: 18 has been offered into  
20 evidence. Are there any objections to its receipt?

21 MR. DUFFY: Can I have just a second?

22 Is this the whole thing or are we missing  
23 anything?

24 MR. MICHEEL: I can represent to you,  
25 Mr. Duffy, I believe it's the entire document.

1                   THE WITNESS: And you're only -- may I ask?  
2                   Your only question there is that -- you're trying to tie  
3                   that one paragraph to the basis or conclusions. Is that  
4                   what you're asking?  
5                   BY MR. MICHEEL:  
6                   Q.       No.  
7                   A.       Okay. I was going to say that's not the only  
8                   basis that is included here.  
9                   MR. DUFFY: We have no objection to the  
10                  admission of Exhibit 18.  
11                  JUDGE WOODRUFF: Okay. Exhibit 18 will be  
12                  received into evidence.  
13                  (EXHIBIT NO. 18 WAS RECEIVED INTO EVIDENCE.)  
14                  BY MR. MICHEEL:  
15                  Q.       Do you have a copy of what's been marked for  
16                  purposes of identification as Exhibit 19?  
17                  A.       Yes.  
18                  Q.       And, if you would, turn to page 4.  
19                  A.       Okay.  
20                  Q.       Is it correct that you're requesting that  
21                  these costs related to the explosion and fire at Unit 4/6 be  
22                  accounted for in Account No. 182.3?  
23                  A.       .3, right.  
24                  Q.       And down at the bottom of page 4 do you see  
25                  the heading 182.3, Other Regulatory Assets?

1           A.       Yes, I do.

2           Q.       Could you turn the page there, sir? Is it

3           correct that 182.3 A says, This account shall include the

4           amounts of regulatory-created assets not includable in other

5           accounts resulting from the rate-making actions of

6           regulatory agencies?

7           A.       Right. That continues to say, See definition

8           No. 30.

9           Q.       And are you familiar with Account No. 182.3,

10          sir?

11          A.       Yes, I am.

12          Q.       And does that appear to be Account No. 182.3?

13          A.       Yes.

14                  MR. MICHEEL: Your Honor, I'd move the

15          admission of Exhibit 19.

16                  JUDGE WOODRUFF: Exhibit 19 has been offered

17          into evidence. Are there any objections?

18                  Hearing none, it will be received into

19          evidence.

20                  (EXHIBIT NO. 19 WAS RECEIVED INTO EVIDENCE.)

21          BY MR. MICHEEL:

22          Q.       Do you have what's been marked for purposes of

23          identification as Exhibit 20, the USOA electric definitions

24          in front of you, sir?

25          A.       It's entitled that by handwritten stuff at the

1 top of the page.

2 Q. Do you have any reason to believe that those  
3 are not the definitions from the USOA?

4 MR. DUFFY: Well, I think we need to stipulate  
5 that it's obviously an excerpt since it starts with page 281  
6 or something like that.

7 JUDGE WOODRUFF: It is an excerpt?

8 MR. MICHEEL: It is an excerpt, your Honor.  
9 It's just the definition section.

10 MR. DUFFY: And not all of that.

11 JUDGE WOODRUFF: You can go ahead and answer  
12 the question, if you can.

13 THE WITNESS: That's what it says it is. I'd  
14 have to look.

15 MR. DUFFY: I think we can stipulate this  
16 appears to be an excerpt from what it says it is, but it's  
17 not the complete set of electric definitions so we -- you  
18 know --

19 JUDGE WOODRUFF: Is that acceptable?

20 MR. MICHEEL: That's acceptable, your Honor.

21 JUDGE WOODRUFF: Okay.

22 BY MR. MICHEEL:

23 Q. Now, on Exhibit 19 you said -- when you read  
24 182.3, you said it says, See definition No. 30; is that  
25 correct?

1           A.       That's correct.

2           Q.       If you would turn to page 2 of this document,  
3 do you see definition No. 30 there, Regulatory Assets and  
4 Liabilities?

5           A.       Yes.

6           Q.       And is it correct that the first sentence  
7 says, Regulatory assets and liabilities are assets and  
8 liabilities that result from rate actions by regulatory  
9 agencies?

10          A.       That's the first part of that definition --  
11 first sentence of the definition.

12          Q.       And I guess my question to you is, is an  
13 Accounting Authority Order a rate action of this Commission?

14               MR. DUFFY:  Objection.  Calls for a legal  
15 conclusion.

16               JUDGE WOODRUFF:  Can you explain why you're  
17 asking him that question?

18               MR. MICHEEL:  Well, I want to know from -- and  
19 I'm not asking him for a legal conclusion, your Honor.  I  
20 want to know from an accounting perspective if he believes  
21 consistent with the Uniform System of Accounts whether or  
22 not an AAO is a rate action of a Commission from an  
23 accounting point of view.  These are the Uniform System of  
24 Accounts.  I think we've already established that those  
25 control.

1 JUDGE WOODRUFF: I'll overrule the objection.

2 Mr. Duffy, do you want to --

3 MR. DUFFY: I'm just going to observe that,  
4 you know, there are reported appellate cases in this state  
5 that tell everybody what the effect of an AAO granted by the  
6 Commission is.

7 And my recollection is that it says that it's  
8 not a rate-making event or -- and I'm assuming that rate  
9 action is the same thing as a rate-making event. There may  
10 be a conflict between what the appellate case law says the  
11 granting of an AAO is and what this term "rate action"  
12 means.

13 And I just don't see the point in delving into  
14 legal niceties of what rate action means or doesn't mean  
15 under these circumstances. Obviously if this is a  
16 definition and that's the term it uses, then that's the term  
17 that's in there. But I don't think we ought to be, you  
18 know, asking this witness to go behind a definition in the  
19 Uniform System of Accounts. It says what it says.

20 JUDGE WOODRUFF: Mr. Micheel, you wanted to  
21 respond?

22 MR. MICHEEL: Yes, your Honor. I'm well aware  
23 of those appellate opinions, and I'm not asking this witness  
24 for his legal opinion, your Honor. Those cases say what  
25 they say. I'm asking him from an accounting standpoint, not

1 from a legal standpoint. I think I'm entitled to do that.

2 JUDGE WOODRUFF: Yeah. I will go ahead and

3 overrule the objection. You can answer from an accounting

4 standpoint.

5 THE WITNESS: From an accounting standpoint we

6 have verified that with Arthur Anderson, our external

7 auditors. And they have concluded as a result from their

8 expert opinions that this does qualify for a regulatory

9 action that would together with other things qualify this

10 for that type of treatment.

11 BY MR. MICHEEL:

12 Q. When you say "this," are you talking about the

13 Accounting Authority Order request?

14 A. An Accounting Authority Order granted by the

15 Commission would qualify for the definitions contained from

16 an accounting standpoint.

17 Q. And do you have a written opinion from Arthur

18 Anderson, sir?

19 A. No, I do not.

20 Q. How did you get that opinion from Arthur

21 Anderson?

22 A. We sat down and discussed the issues with

23 them, this being one of them.

24 MR. MICHEEL: Your Honor, I would move the

25 admission of Exhibit 20, the partial USOA electric

1 definitions.

2 JUDGE WOODRUFF: 20 has been offered into  
3 evidence. Are there any objections to its receipt?

4 Hearing none, it will be received into  
5 evidence.

6 (EXHIBIT NO. 20 WAS RECEIVED INTO EVIDENCE.)

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

8 JUDGE WOODRUFF: At this time we come up for  
9 questions from the Bench, but we're going to take a break  
10 before we do that. Let's come back at five minutes after  
11 11:00.

12 (A RECESS WAS TAKEN.)

13 JUDGE WOODRUFF: We're ready for questions  
14 from the Bench for Mr. Stoll, so we'll begin with Chair  
15 Lumpe.

16 QUESTIONS BY CHAIR LUMPE:

17 Q. Mr. Stoll, the definition of extraordinary, I  
18 think, is one of the issues in this case. And I think  
19 you've discussed it in your testimony, have you not?

20 A. Yes, I have.

21 Q. Okay. And I guess the question I have is,  
22 isn't extraordinary -- or has it not in the past sometimes  
23 been defined to include those things beyond the company's  
24 control such as acts of God, someone mentioned federal  
25 legislation, those sorts of things that the company could



1 not control? Has that not sometimes in the past been  
2 included in the definition of extraordinary?

3 A. I'm not sure whether that's been included in  
4 the definition of extraordinary. It may have been included  
5 in some of the reasoning why the Commission chose to give  
6 the AAO.

7 Q. All right. But from your definition, you're  
8 simply saying that it's something that -- well, would you  
9 define it?

10 A. It's my understanding the Commission has  
11 indicated that the company should follow the Uniform System  
12 of Accounts. And the definition contained in the Uniform  
13 System of Accounts for extraordinary does not speak  
14 specifically to any natural disaster, anything of that  
15 nature. What it specifically says that they will be events  
16 and transactions of significant effect which are abnormal  
17 and significantly different from the ordinary and typical  
18 activities of the company and which would not reasonably be  
19 expected to recur in the foreseeable future.

20 Q. So it mentions the recurring, which I think I  
21 heard in the opening statement, the definition being  
22 nonrecurring. But it is a little beyond that as you've read  
23 it to -- the first part of your definition there?

24 A. Right.

25 Q. Okay. Could you not defer these without

1 Commission approval? Can a company not defer these things  
2 on their own without Commission approval? Isn't the reason  
3 for asking for approval that you -- that it sort of sets an  
4 agreement then that the Commission has found it to be  
5 extraordinary, but could you not do that without our finding  
6 then?

7 A. Based on our discussion with our external  
8 auditors, without having the Commission grant the AAO to  
9 defer the cost, that it would not be appropriate to include  
10 it in that deferral account.

11 Q. All right. So you've gotten that opinion from  
12 your auditor that you could not just go ahead and defer it  
13 without Commission approval --

14 A. Right.

15 Q. -- is that correct?

16 A. Right. And the -- the USOA and FAS71 both  
17 speak to the fact that some sort of regulatory ruling needs  
18 to take place to defer cost.

19 Q. All right. Mr. Stoll, an issue has been  
20 brought up with regard to the timing. And I think that is  
21 probably a significant issue. Is it correct that you're  
22 sort of saying it would be indefinite? That this could go  
23 on indefinitely, this AAO? Is that your position?

24 A. That the amounts could be deferred  
25 indefinitely?

1           Q.       Indefinitely?

2           A.       No.

3           Q.       What would the time line that you would --

4           what time line would you set?

5           A.       The recommendation that I had in my testimony

6           was that the filing of a rate case would coincide with the

7           later of the moratorium that may be granted within the

8           context of our merger case that is currently existing or 12

9           months, whichever is later.

10                    So that we don't have an order requiring us to

11           file a case on one hand and if we have a moratorium of,

12           let's say, five years, on the other hand, which is the

13           regulatory plan that was requested in the merger case, we

14           couldn't file a rate case in that example in 12 months if

15           we've got a moratorium in place to prevent us from doing so.

16           So I'm just saying it -- the Commission should look at all

17           factors there and make sure there isn't a conflict with

18           regard to that.

19           Q.       That's what I was curious about.  Because if

20           the moratorium in the merger case were to be approved, then

21           you would not have a rate case for five years?

22           A.       That's correct.

23           Q.       Okay.  And that seems to me somewhat long in

24           terms of what we normally set as a time line for these AAOs,

25           that they have to be in a rate case and have to be filed

1       within a shorter period of time than that. Okay. That's  
2       why I was wondering if you were sort of saying it would be  
3       five years assuming the moratorium?

4               A.       Right. And I -- you know, I did say as well  
5       that the 90 days is, in our opinion, unrealistic. On the  
6       normal basis the new criteria that Staff was recommending in  
7       that rate cases can be very complex and it takes time to  
8       develop the information and the testimony that's required to  
9       be filed with those.

10              Q.       I suppose it's conceivable that in the merger  
11       case the Commission could do a rate case in which it could  
12       be included before it went into a moratorium, and in that  
13       case, it could be included in a rate case up front?

14              A.       If -- if we could get a rate case in between  
15       now and the time the merger occurred, is that what you're --

16              Q.       Well, or if the Commission were to say we want  
17       a rate case to occur before the moratorium is put in place,  
18       which I mean --

19              A.       Right.

20              Q.       -- I assume is a possibility, but, you know,  
21       I'm just saying on a hypothetical.

22              A.       Yeah. I would agree.

23              Q.       Okay. The materiality is also an issue. And,  
24       again, in the opening statement it seemed that there were  
25       two standards, the materiality standard for this proposal

1 and a different standard for the merger case. Why would  
2 there be two different standards?

3 A. Well, maybe it's better to ask an attorney  
4 than myself, but the contract that we have for the merger  
5 with UtiliCorp is a legal document in and to itself with  
6 terms and definitions that are different than the  
7 definitions for which the USOA follows and this Commission  
8 follows.

9 Q. And the criteria for materiality is set in  
10 that particular merger document?

11 A. Yes, it is.

12 Q. Okay. And it is different from the 5 percent  
13 that we might be considering here --

14 A. Yes.

15 Q. -- is that what you're saying?

16 Okay. Was there a liability clause with GE on  
17 this piece of equipment? Was there any kind of clause that  
18 established liability that should things not go right, GE  
19 would have some liability or where the liability would lie?

20 A. I believe Mr. Svuba would be better to answer  
21 that.

22 Q. Better for that. All right. And on any other  
23 questions relating to the GE equipment, would he be the one  
24 to ask that then?

25 A. Yes.

1 CHAIR LUMPE: Thank you. That's all I have.

2 JUDGE WOODRUFF: Commissioner Murray?

3 COMMISSIONER MURRAY: Thank you.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good morning, Mr. Stoll.

6 A. Good morning.

7 Q. Really I only have one small question, and

8 it's regarding the materiality issue. And as I understand

9 it, under the merger agreement in order to be considered

10 material, the event had to have an adverse effect on the

11 whole company and its subsidiaries taken as a whole or it

12 had to effect the ability to perform the obligations under

13 the merger agreement; is that correct? Is that your

14 understanding?

15 A. The interpretation of that document again

16 is -- there's a legal dispute going on at this point. And

17 the interpretation, I believe, has to be dealt with in a

18 legal setting. And I don't feel I'm qualified to respond to

19 that.

20 Q. All right. But it is your understanding that

21 it was -- the materiality and the merger agreement was

22 specific to that agreement, the definition specific to that

23 agreement. Correct?

24 A. Yes. In fact, if you would turn to page 13

25 and 14 of my surrebuttal testimony, I quote specifically

1 from the merger agreement what the materiality definition  
2 was in that.

3 Q. That's what I was referring to.

4 A. Yeah.

5 COMMISSIONER MURRAY: All right. Thank you.  
6 That's all the questions I have.

7 THE WITNESS: You're welcome.

8 JUDGE WOODRUFF: Commissioner Schemenauer?

9 COMMISSIONER SCHEMENAUER: Thank you.

10 QUESTIONS BY COMMISSIONER SCHEMENAUER:

11 Q. Good morning.

12 A. Good morning.

13 Q. Mr. Stoll, you're the vice president of  
14 finance, treasurer and assistant secretary so you won't be  
15 able to answer any technical questions that I may have on  
16 the pump failure?

17 A. On the plant itself, no. That would be  
18 Mr. Svuba.

19 Q. Okay. Were there any other damages beyond  
20 what you applied for in this AAO to the plant?

21 A. Any other --

22 Q. Damages or -- I think it's been alluded to  
23 that there's been more damage than what's been disclosed in  
24 this Accounting Order. Is there any additional incremental  
25 damage that we don't know about?

1           A.       Any increment-- that's being requested in this  
2 case?

3           Q.       I mean -- yes.

4           A.       What we're requesting in this case is the  
5 incremental cost of fuel and interchange during the out--  
6 period of the outage, that which is above that that we have  
7 in rates. As you know, the incident occurred during the  
8 summer months in which case energy costs are greater than  
9 what the Lake Road plant would have generated.

10                   Those incremental costs are included as well  
11 as \$150,000 of deductible cost related to the repair of the  
12 plant. All of the rest of the repair of the plant itself  
13 that was caused by this incident is covered by insurance.  
14 It's just the deductible portion that we're asking for. So  
15 if there are any other damages related to this specific  
16 incident, it should be covered by insurance.

17           Q.       Okay. Then the cost of the purchased power  
18 that you're asking for an AAO for, if the merger goes  
19 through, this would be written off. Did I read that in  
20 someone's testimony?

21           A.       It's our understanding that if the merger is  
22 consummated with the regulatory plan that was requested by  
23 the joint applicants, that being a five-year moratorium,  
24 etc., as you're fully familiar with --

25           Q.       Yes.



1           A.       -- that that would cause this amount to be  
2       written off.

3                    COMMISSIONER SCHEMENAUER:  Thank you.  That's  
4       all I have.

5                    JUDGE WOODRUFF:  Commissioner Simmons?

6       QUESTIONS BY COMMISSIONER SIMMONS:

7           Q.       Good morning, Mr. Stoll.

8           A.       Good morning.

9           Q.       Let me put this a little closer over here.

10                   You've been with the company since the '70s;  
11       is that correct?

12           A.       That is correct.

13           Q.       Since you've been with the company, this is  
14       your third AAO order during the '90s, during this decade; is  
15       that correct?

16           A.       I believe that's correct.

17           Q.       Okay.  Since you've been with the company --  
18       let's say in the decade of the '80s, how many AAO orders did  
19       the company seek?

20           A.       I honestly don't know.  I can think of maybe  
21       one or two others.

22           Q.       One or two others?

23           A.       Yeah.  I don't believe there's -- you know,  
24       it's not a normal occurrence for us to seek an AAO.  It has  
25       to be an extraordinary event.

1           Q.     An extraordinary situation. And with your  
2     testimony, I believe that -- and don't let me put words in  
3     your mouth, but we have the other two orders and those were  
4     thought of as what we might call acts of God. Would that be  
5     correct, or would that be how you would describe the other  
6     two?

7           A.     The flood and the ice storm, yes.

8           Q.     And you would see the current one sought as  
9     being very similar, or would you just describe it as  
10    extraordinary?

11          A.     I describe it as being similar in that the --  
12    for instance, the flood case, the Iatan plant was damaged at  
13    that time and was off line due to the flood and it caused us  
14    to purchase power on the grid as in the same manner as what  
15    we did to cover this outage at Lake Road. Those costs,  
16    likewise, the incremental cost of that energy was allowed to  
17    be deferred in the same manner as what we're requesting in  
18    this case.

19          Q.     Okay. So you kind of base that definition on  
20    those costs, but not actually the definition of what would  
21    be an act of God versus what would be not considered an act  
22    of God?

23          A.     Right. We don't believe that the criteria  
24    that this Commission has utilized in the past dictates that  
25    it has to be an act of God. There are AAOs that have been

1 granted for other activities that companies have come in  
2 with over the past years that have not been acts of God.

3 COMMISSIONER SIMMONS: Okay. Thank you, sir.  
4 That's all the questions I have. Thank you, Judge.

5 JUDGE WOODRUFF: Chair Lumpe?

6 FURTHER QUESTIONS BY CHAIR LUMPE:

7 Q. Yes. Just to follow-up on the statement you  
8 made that if the plan -- the merger with the plan were to go  
9 through it would be written off, would it reappear somewhere  
10 else, say, in increased premium or some other place? Would  
11 it reappear?

12 A. Well, the net effect of writing off this  
13 incident cost would be to reduce our retained earnings.  
14 And, as a consequence, that would then translate into an  
15 increased premium number since we have a fixed price  
16 agreement with our merger, yes.

17 Q. So it would not disappear, it would resurface  
18 in another --

19 A. It would become part of the premium. It would  
20 be in that case net of taxes. The 3.3 million that we're  
21 referring to today is gross of tax. And if we had to write  
22 it off, it would be written off net of tax and that's what  
23 would hit retained earnings.

24 Q. And in the extraordinary -- again, to kind of  
25 pursue that just a little further, beyond acts of God or

1 laws of Congress or the state, another item was major  
2 capital improvements such as the pipelines changing, the  
3 pipes, etc.

4 A. Right.

5 Q. Do you classify this in that sort of -- as a  
6 major capital item?

7 A. I don't classify it as a major capital item,  
8 no.

9 Q. All right. So it doesn't meet any of those  
10 particular acts of God, acts of Congress, major capital  
11 item?

12 A. No. It's -- it's more classification of an  
13 extraordinary, unusual event that resulted in costs to be  
14 incurred by the company that are not now included in rates.  
15 And, as a consequence, it should be given at least the  
16 opportunity to see that.

17 CHAIR LUMPE: Okay. Thank you.

18 JUDGE WOODRUFF: Let's go to recross  
19 questioning beginning with AGP.

20 RECROSS-EXAMINATION BY MR. CONRAD:

21 Q. Mr. Stoll, Chair Lumpe asked you about acts of  
22 God and acts of Congress. You didn't understand her to be  
23 asking you to equate those two, were you?

24 A. No.

25 Q. I mean, we could agree, couldn't we, that

1 sometimes Congress acts independently of God?

2 MR. DUFFY: Objection, irrelevant.

3 BY MR. CONRAD:

4 Q. And sometimes God acts independently of

5 Congress too, doesn't he?

6 JUDGE WOODRUFF: For the record, I'll sustain

7 the objection. You can go ahead.

8 BY MR. CONRAD:

9 Q. You did make reference, though, to the flood

10 order, did you not?

11 A. In my --

12 Q. In response to, I believe, Commissioner

13 Simmons' question?

14 A. Yes, I did.

15 Q. And I'd be correct that that was a settled

16 case, not a tried case in which the Commission actually made

17 a decision? They just simply accepted the stipulation of

18 the parties in that case?

19 A. That case included a stipulation of facts and

20 circumstances and how to handle the cost as well. And the

21 parties to the case did stipulate and the Commission did

22 approve that stipulation.

23 Q. Do you have Exhibit 15 up there still?

24 A. Yes, I do.

25 Q. If you do, the stipulation that you're

1 referring to is attached as an Attachment A. Would you look  
2 at page 2 of 5 of Attachment A and specifically, Mr. Stoll,  
3 paragraph 2, right at the top of that page. Are you there?

4 A. I'm there.

5 Q. Am I correct in understanding that paragraph  
6 to suggest that the parties have requested through their  
7 agreement that the Commission take official notice of the  
8 fact of the flood of 1993?

9 A. They have asked the Commission to take  
10 official notice of the flooding conditions, yes.

11 Q. So there wasn't any dispute about whether the  
12 flood occurred or what caused the flood or anything like  
13 that, was there?

14 A. Not that I recall.

15 MR. CONRAD: Okay. Thank you. That's all.

16 JUDGE WOODRUFF: Staff?

17 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

18 Q. Mr. Stoll, if the Commission orders the  
19 regulatory plan with the five-year moratorium in the merger  
20 case --

21 JUDGE WOODRUFF: Sir, if you could pull your  
22 microphone down.

23 MR. WILLIAMS: I'm sorry.

24 BY MR. WILLIAMS:

25 Q. Mr. Stoll, if the Commission orders the

1 regulatory plan with a five-year moratorium in the merger  
2 case that St. Joe Light & Power has requested, why would the  
3 Lake Road deferral be written off?

4 A. It's my understanding that UtiliCorp felt that  
5 if they granted the five-year moratorium, it would be  
6 inappropriate at that point that they would try to recover  
7 those costs as part of the synergies that they would be able  
8 to extract from the combination of the companies and go  
9 ahead and have it written off at the outset.

10 Q. If the Commission orders a five-year  
11 moratorium in the merger case, but doesn't accept the other  
12 parts of the proposed regulatory plan, why would it not be  
13 appropriate to also write off the deferral in that  
14 circumstance?

15 A. That would be -- again, depending on the  
16 circumstances, not knowing the particulars whether or not it  
17 would be appropriate or not, that would be a decision I  
18 believe that UtiliCorp would make given the final ruling on  
19 that regulatory plan.

20 Q. In response to questions from Chair Lumpe, you  
21 stated it was unreasonable to require the company to file a  
22 rate case within 90 days as Staff has proposed. Do you know  
23 how much time Staff is given in order to file direct  
24 testimony in a rate case as a general course?

25 A. No.

1           Q.     Do you know if the amount of time Staff is  
2     given is more than 90 days?

3           A.     Specifically, no, I don't. It may or may not  
4     be somewhere around there.

5           Q.     Do you have any idea as to the amount of time?

6           A.     Specifically, no. It obviously is less than a  
7     year after we file the procedural schedule requires Staff to  
8     perform their audit against our numbers. The key difference  
9     there is having the numbers to start with as opposed to  
10    generating them at the outset.

11          Q.     Does Staff ever have a year?

12          A.     No.

13                 MR. WILLIAMS: No further questions.

14                 JUDGE WOODRUFF: Public Counsel?

15    RE CROSS-EXAMINATION BY MR. MICHEEL:

16          Q.     Mr. Stoll, I believe Chair Lumpe asked you  
17     some questions about the definition of extraordinary. Do  
18     you recall those questions?

19          A.     Yes.

20          Q.     And I believe in response to those questions  
21     you indicated to Chair Lumpe that the Commission  
22     traditionally follows the Uniform System of Account  
23     definition of extraordinary; is that correct?

24          A.     That's correct.

25          Q.     Do you recall the cross-examination I did with



1       you where you agreed that there were other factors that the  
2       Commission looked at with regard to whether or not an event  
3       is extraordinary?

4               A.       Yes.   And that we talked about the definition  
5       that I read to Chairman Lumpe regarding the other  
6       considerations, that being that it's unusual in nature and  
7       that it's nonrecurring in nature.

8               Q.       And you also agreed with me that the  
9       Commission in the MoPub case stated that whether or not it  
10      met the USOA 5 percent threshold was not case dispositive;  
11      is that correct?

12              A.       That if -- the 5 percent threshold may not be  
13      the only consideration, that you may have something that's  
14      5 percent but may be recurring in nature and, thus, an AAO  
15      would not be appropriate.

16              Q.       So the 5 percent threshold -- I thought we had  
17      agreed and that's why I'm asking.   The 5 percent threshold  
18      is not case dispositive; is that correct?

19              A.       I thought that's what I just said, that it  
20      does not by itself make the AAO an appropriate mechanism.  
21      That if it's a recurring item, then the company would be  
22      expected to seek recovery on an annual basis under the  
23      normal rate-making process.

24              Q.       And I think we agreed that the Commission  
25      looks at AAO requests on a case-by-case basis; is that

1 correct?

2 A. Yes.

3 Q. Commissioner Simmons asked you about the  
4 number of AAO requests you'd had in the '90s. Do you recall  
5 that question?

6 A. Yes.

7 Q. Is it correct that we at least have three AAO  
8 requests by this company in the '90s that have been admitted  
9 into evidence as Exhibit 15, 16, and 17?

10 A. That's correct.

11 Q. So this would be the fourth one; is that  
12 correct?

13 A. This would be the fourth request.

14 MR. DUFFY: This isn't the '90s anymore by my  
15 calendar.

16 THE WITNESS: That's correct.

17 BY MR. MICHEEL:

18 Q. So this is the first one in 2000; is that  
19 correct?

20 A. First one in 2000, that's correct.

21 Q. Commissioner Simmons also asked you about  
22 whether or not the AAOs were activities with respect to the  
23 acts of God; is that correct?

24 A. Come again with your question.

25 Q. He asked you about the flood AAO and the ice

1 storm AAO; is that correct?

2 A. Yes.

3 Q. And whether or not those were -- I think he  
4 used the term, defined as acts of God. Do you recall that  
5 question?

6 A. Yes.

7 Q. Would you agree with me that the company had  
8 no control over the flood of '93?

9 A. Well, that would depend on your perspective, I  
10 guess. You know, if you're willing to spend enough time and  
11 money, you could have built a berm high enough to avoid the  
12 flood, but that would have meant expending a great deal of  
13 money and including in rates the cost of that berm to avoid  
14 the occurrence of a flood.

15 Q. Well, we agreed in earlier cross-examination,  
16 did we not, that -- everybody agreed that that was a natural  
17 disaster; isn't that correct?

18 A. That's correct.

19 Q. And the same thing with the -- so we agreed  
20 and all the parties in that case agreed that the company had  
21 no control over the flood; is that correct?

22 A. Well, again, depends on your definition of  
23 control. We could have, just as the Missouri -- along the  
24 Missouri River there's a dike to avoid some flooding  
25 situations. The same thing could have happened to avoid the

1 flood. While it's a natural disaster, steps could have been  
2 taking -- taken which could have avoided the situation.

3 Q. But my question was, in that case all the  
4 parties agreed and the Commission indeed found it was a  
5 natural disaster; is that correct?

6 A. That's correct.

7 Q. And the same is true with the ice storm case;  
8 is that correct?

9 A. That's correct.

10 Q. Would you agree with me that the company has  
11 control over the operation of its TG No. 4 generator?

12 A. That it has control over the operations of its  
13 turbine generator?

14 Q. Number 4, yes.

15 A. Yes.

16 MR. MICHEEL: No further questions.

17 JUDGE WOODRUFF: Redirect?

18 MR. DUFFY: A few.

19 REDIRECT EXAMINATION BY MR. DUFFY:

20 Q. According to my notes, Mr. Stoll, at one point  
21 in your testimony up there this morning you indicated that  
22 the Commission ordered St. Joseph Light & Power to undertake  
23 what you called the AMFM Mapping project. Do you recall  
24 that?

25 A. I do.

1           Q.     Is it your understanding that the Commission  
2 ordered the company to undertake that project?

3           A.     No. I was in error when I made that  
4 statement. The Commission did not order us to undertake  
5 that project. It was coupled with some other things that  
6 were going on.

7           Q.     Okay. And let's see. Is that AMFM project  
8 AAO represented by one of the exhibits that we've talked  
9 about here? Maybe 17?

10          A.     Yes.

11          Q.     Is that a situation where the Commission  
12 granted an AAO for what we've been calling an act of God or  
13 an act of Congress?

14          A.     No.

15          Q.     Can you think of any other situations where  
16 the Commission has granted AAOs that do not involve an act  
17 of God or act of Congress type situation?

18          A.     I guess an example would be the pipeline  
19 replacement was not an act of God or an act of Congress  
20 as -- as I understand it. Y2K costs have been granted AAO  
21 treatment. In the context, I believe, it was MGE and -- was  
22 granted Y2K costs as being extraordinary and given AAO  
23 treatment, which is not an act of God.

24          Q.     What about environmental clean-up situations?

25          A.     United Cities was granted environmental

1 clean-up costs to be deferred under an AAO treatment.

2 Q. Did St. Joe ever seek an AAO for Y2K costs  
3 that it incurred?

4 A. No.

5 Q. In at least one or two of these AAOs that are  
6 in evidence from St. Joe in the '90s, there was an  
7 amortization period, I believe, specified in that. And I  
8 believe that at least in one or two of them the amortization  
9 period started earlier than the period that you're  
10 recommending in this case. Can you explain whether that's  
11 an inconsistency or whether the Commission should consider  
12 that as an inconsistency in St. Joe's position?

13 A. Well, as you noted, those two AAOs consisted  
14 of stipulations that took other factors give and take,  
15 amongst the parties. And that was one of the items that was  
16 agreed upon in that give and take scenario.

17 Those AAOs do state that none of the  
18 signatores shall be prejudiced or bound in any manner to any  
19 of the terms of that stipulation and that the signatores  
20 have not approved or acquiesced to any of the rate-making  
21 principles or cost determination or cost allocations that  
22 come forth out of those.

23 We believe that the amortization period that  
24 we're requesting in this case is consistent with the Uniform  
25 System of Accounts and consistent with that of FAS71 in

1 terms of matching revenue and expenses, that you defer those  
2 costs until revenues may be granted in rates.

3 MR. DUFFY: That's all the redirect I have,  
4 your Honor.

5 JUDGE WOODRUFF: All right. Thank you.  
6 And you may step down, Mr. Stoll.

7 And it's time for a lunch break. We'll come  
8 back at one o'clock. Off the record.

9 (A RECESS WAS TAKEN.)

10 JUDGE WOODRUFF: I believe the first item for  
11 this afternoon is Mr. Ferry.

12 MR. WILLIAMS: Judge, before we start with  
13 Mr. Ferry, could we take up the stipulation regarding  
14 Mr. Broadwater's testimony and Exhibit 12?

15 JUDGE WOODRUFF: Certainly.

16 MR. WILLIAMS: The parties have an agreement  
17 and stipulation about that exhibit being received into  
18 evidence without the necessity of calling Mr. Broadwater.  
19 It's my understanding neither the Commission nor any of the  
20 parties have any questions for Mr. Broadwater.

21 JUDGE WOODRUFF: So I assume at this point  
22 you're offering No. 12 into evidence?

23 MR. WILLIAMS: Yes, I am.

24 JUDGE WOODRUFF: All right. Number 12 has  
25 been offered into evidence. Is there any objection to its

1 receipt?

2                   Hearing none, it will be received into

3 evidence.

4                   (EXHIBIT NO. 12 WAS RECEIVED INTO EVIDENCE.)

5                   JUDGE WOODRUFF: Any other preliminary

6 matters?

7                   All right. Then Mr. Ferry.

8                   STEPHEN L. FERRY testified as follows:

9                   DIRECT EXAMINATION BY MR. DUFFY:

10                  Q.       Would you state your name for the record,

11 please.

12                  A.       Stephen L. Ferry.

13                  Q.       Mr. Ferry, do you have in front of you what's

14 been marked for purposes of identification as Exhibit 3-NP

15 being your non-proprietary direct testimony, 3-HC being your

16 highly confidential direct testimony, and 4 being your

17 surrebuttal testimony?

18                  A.       Yes, I do.

19                  Q.       Were these documents prepared by you or under

20 your supervision?

21                  A.       Yes, they were.

22                  Q.       Do you have any corrections or additions to

23 these documents?

24                  A.       Really don't have any changes to the

25 testimony. I will point out that the estimated expenditures



1       that I contained -- that are shown on pages 3 and 11 of my  
2       direct testimony have been revised and are reflected in the  
3       schedules of Mr. Stoll.

4               Q.       Okay.  If I ask you the same questions that  
5       appear today -- or that appear in these documents today,  
6       would your answers be the same?

7               A.       Yes, they would.

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

10              A.       Yes, sir.

11                      MR. DUFFY:  Your Honor, at this time I'd offer  
12       into evidence Exhibit 3-NP, 3-HC and 4, and tender the  
13       witness for cross-examination.

14                      JUDGE WOODRUFF:  Okay.  Exhibits 3-NP, 3-HC  
15       and Exhibit 4 have been offered into evidence.  Are there  
16       any objections to their receipt?

17                      Hearing none, they will be received into  
18       evidence.

19                      (EXHIBIT NOS. 3-NP, 3-HC AND 4 WERE RECEIVED  
20       INTO EVIDENCE.)

21                      JUDGE WOODRUFF:  And he's been tendered for  
22       cross-examination, so we'll begin with AGP.

23                      MR. CONRAD:  Thank you, your Honor.

24       CROSS-EXAMINATION BY MR. CONRAD:

25               Q.       Mr. Ferry, I just have a couple very short

1 things for you. Look, please, at your direct testimony,  
2 Exhibit 3. I don't think it matters whether it's HC or NP.  
3 A. There's no Exhibit 3 with my direct testimony.  
4 MR. DUFFY: Your direct testimony.  
5 BY MR. CONRAD:  
6 Q. Your direct testimony is Exhibit 3.  
7 A. Oh, excuse me. I'm sorry. I thought you were  
8 referring to a schedule. Go ahead.  
9 Q. Are we ready to go?  
10 A. Sure.  
11 Q. Okay. Whatever it be, look at page 4 of it,  
12 please. And I'm specifically concerned about some material  
13 at lines 12 through 17. And you're talking there about what  
14 I would perhaps inartfully characterize as loading order.  
15 Are we on the same page here so far?  
16 A. I would call it dispatch order, but it  
17 accomplishes the same thing.  
18 Q. Economic dispatch also?  
19 A. Sure.  
20 Q. When you modeled the rates that you're  
21 referring to there, actually on lines 14 through 15, the  
22 company's Missouri retail rates, you used that MPRO or made  
23 some assumptions about the economic dispatch of the units  
24 and the various costs; is that correct?  
25 A. Yes.

1           Q.     Now, your testimony -- I was looking to see  
2     here. You go back to OPPD. And when did you start -- I see  
3     here, joined SJLP in 1990. So you came on post-fuel  
4     adjustment days?

5           A.     That's correct.

6           Q.     You know basically how fuel adjustment works  
7     from OPPD experience or something before?

8           A.     To the extent that I've heard it described  
9     while I've been with Light and Power, reasonably so, sure.

10          Q.     Would you agree with me that that would  
11     typically take care of variations from that economic  
12     dispatched model if you had one?

13          A.     I'd have to see what was there.

14          Q.     See what was there. You mean, you'd have to  
15     see what the specifics of that fuel adjustment clause were?

16          A.     Sure.

17          Q.     Sure. Okay. And since you don't know what  
18     St. Joe's old fuel adjustment clause provides, you really  
19     wouldn't be able to help me there.

20                 Okay. Let me then see if I could find one  
21     other thing I had a question about. You used the term, and  
22     I believe it's on page 12 again of your direct testimony,  
23     shows up at line 12, maybe a couple of other places too.  
24     You used the term there "financially firm energy."  
25     Elsewhere in your testimony you use the term "firm energy"

1 without the phrase -- or without the word "financial" ahead  
2 of it.

3 A. Well, where else in my testimony did I use the  
4 simple term "firm energy"?

5 Q. Something about -- I thought you were talking  
6 about being bumped on page 5, but are you referring there to  
7 non-firm at page 5 as distinguished from the material on  
8 page 12?

9 A. What line are -- where are you?

10 Q. Well, I'm looking at line 20. I see there  
11 non-firm, but also right above that on line 19 you talk  
12 about native load and firm service.

13 A. You may be confusing transmission service with  
14 the actual purchase of the energy. They're two separate  
15 transactions.

16 Q. Help me out there. Which one are you talking  
17 about then on page 5?

18 A. On page 5 -- what line again?

19 Q. Lines -- well, actually I think the discussion  
20 kind of starts at 13 but tails off at lines 19, 20 and goes  
21 on down to the bottom of the page.

22 A. The discussion beginning with line 13 has to  
23 do -- while I mention both purchasing energy and purchasing  
24 transmission service --

25 Q. Okay. But are you talking there about

1 transmission service on page 5?

2 A. When I refer to being bumped, I'm talking  
3 about the transmission service.

4 Q. Now, back then on page 12, financially firm  
5 energy --

6 A. That is the energy product. That is not  
7 transmission service.

8 Q. That's the product itself. And that's an  
9 unbundled type of approach to it; is that correct?

10 A. I'm not sure I know what you mean by  
11 "unbundled."

12 Q. Well, you're buying the product distinct from  
13 the transportation?

14 A. That's correct.

15 Q. Okay. So if I understand what you're saying  
16 then, you could buy financially firm energy but then  
17 transport that on a non-firm basis, couldn't you?

18 A. You could.

19 Q. Might not make a lot of sense to do it, but --

20 A. That's correct.

21 Q. Now, in either event, I take it at least in  
22 your understanding of how a fuel adjustment clause works,  
23 that would adjust for changes in those costs as well as the  
24 economic dispatch. That would just get figured into the  
25 economic dispatch, wouldn't it?

1           A.       Again, I'd have to see what was proposed as  
2       the adjustment.

3           Q.       Sure. But if I understand your testimony here  
4       at page 6, and we won't go into the numbers, that's what  
5       you've identified as a resource mix. And you've got that  
6       arranged in something of an order that indicates some  
7       relationship to their economics; is that correct?

8           A.       The items that I show on page 6 are a menu or  
9       the -- the resources that St. Joseph Light & Power Company  
10      has available to it for serving its native load. And I have  
11      ranked them by order of cost.

12          Q.       Okay. You anticipated my last question, which  
13      was going to be that the order there was not just random, it  
14      was intentional in that order?

15          A.       Yes.

16                 MR. CONRAD: Okay. Thank you, Mr. Ferry.

17                 JUDGE WOODRUFF: For Staff then?

18                 MR. WILLIAMS: No questions.

19                 JUDGE WOODRUFF: Public Counsel?

20                 MR. COFFMAN: Thank you.

21      CROSS-EXAMINATION BY MR. COFFMAN:

22          Q.       Good afternoon. My name is John Coffman.

23          A.       Good afternoon.

24          Q.       I'd like to ask you some questions about your  
25      pre-filed testimony. Ask you first to turn to your

1 surrebuttal testimony, which is marked as Exhibit 4. And  
2 the last paragraph -- the last paragraph that starts on  
3 page 5. You testify there, do you not, that electric loads  
4 in the summer are much higher and more costly to serve than  
5 at other times during the year?

6 A. Yes. I say that.

7 Q. And doesn't this fact create a strong  
8 financial incentive for St. Joe Light & Power to place its  
9 power plants on line during the summertime?

10 A. Sure.

11 Q. And that would be specifically particularly  
12 true with regard to the Lake Road plant which uses low-cost  
13 coal?

14 A. I don't know that I would say it specifically  
15 refers to the Lake Road plant, but it would certainly mean  
16 that from a business point of view you'd want to keep your  
17 units up and running and be able to serve the customer  
18 during the high-load periods.

19 Q. Okay. Would you agree with me, Mr. Ferry,  
20 that forced outages do occur almost every year on the  
21 St. Joe Light & Power system?

22 A. To the extent that normalized forced outages  
23 occur and are provided for in rates about 3 percent to  
24 4.4 percent of the time. And the share of that -- in fact,  
25 that 3 to 4 percent of the time is spread over the entire

1 year.

2 To be able to say that that compares to the  
3 outage which we experienced as a result of the 4/6 incident  
4 where we had roughly 1,500 hours of outage and that occurred  
5 during the summer -- three months of the summer, it took  
6 roughly two-thirds of that time. I don't -- I don't see  
7 that as being a comparison.

8 Q. What's the answer to my question? You do  
9 agree that forced outages do occur almost every year on your  
10 system, do you not?

11 A. Forced outages do occur.

12 Q. Okay. And do you disagree in any way with the  
13 testimony of Mr. Stoll earlier, that this is a recurring  
14 expense?

15 A. Which is a recurring expense?

16 Q. Forced outages.

17 A. Which forced outage?

18 Q. Just forced outages as a category of expense.

19 A. Normalized forced outages that we provide for  
20 in rates occur on a statistical basis. The forced outage  
21 which we experienced this year as a result of the June 7  
22 incident are unusual.

23 Q. Okay. And so it's your testimony -- and what  
24 I gathered from your surrebuttal testimony is that you do  
25 not believe forced outages of this magnitude are currently



1 reflected in St. Joe Light & Power's rates?

2 A. That's correct.

3 Q. But you do recognize that there is a

4 normalization in there that averages forced outages and is a

5 component of your current rates?

6 A. That's right.

7 Q. Is the only difference with regard to the

8 typical forced outages that you experience in your normal

9 operations and what you believe is different about the

10 incident that occurred at Unit 4/6 is simply the magnitude

11 of that forced outage?

12 A. I'm not sure I follow you on that.

13 Q. Is there any other aspect of the incident that

14 occurred at Unit 4/6 other than simply the size or magnitude

15 of the incident that makes it different from every other

16 forced outage that is a part of your normal operations?

17 A. Certainly the expense was much greater than

18 anything we have experienced.

19 Q. Anything other than that that makes it

20 different?

21 A. I'm not sure I understand what you mean by

22 that.

23 Q. Is there anything about the nature of this

24 event that makes it different other than the size and

25 magnitude of it? Anything else that makes it different than

1 your otherwise normal or forced outages?

2 A. I'm not aware of anything, no.

3 Q. Okay. Is the magnitude of the costs resulting

4 from the incident at Unit 4/6 the only reason that St. Joe

5 Light & Power deserves an AAO in this case?

6 A. I'm really not that familiar with what goes

7 into an AAO. I think my testimony here addresses the cost

8 associated with this outage.

9 Q. Okay. Can you think of any other factors

10 other than merely the size of this -- of the cost related to

11 this incident that you believe would make St. Joe Light &

12 Power deserving of special regulatory or accounting

13 treatment from this Commission?

14 A. Not offhand, no.

15 Q. Okay. Are you aware of anything that's

16 currently preventing St. Joe Light & Power from filing a

17 rate case at this time?

18 A. Again, my -- my expertise really isn't in that

19 area. You need to talk to somebody with a regulatory

20 background, which I do not have.

21 Q. Has anyone in the company informed you about

22 anything that might be a barrier to filing a rate case at

23 this time?

24 MR. DUFFY: Objection. He's already answered

25 the question.

1 MR. COFFMAN: All right.

2 JUDGE WOODRUFF: I'll overrule the objection.

3 You can answer, if you can.

4 MR. COFFMAN: This is a different question

5 other than --

6 JUDGE WOODRUFF: Yes. I overruled it, so you

7 can answer.

8 MR. COFFMAN: Thank you.

9 THE WITNESS: Please restate the question.

10 BY MR. COFFMAN:

11 Q. Have you been told by anyone associated with

12 St. Joe Light & Power that there is a barrier to filing a

13 rate case at this time with the Missouri Public Service

14 Commission?

15 A. No.

16 Q. Have you participated in rate cases before

17 that were filed with the Missouri Public Service Commission?

18 A. Yes, I have.

19 Q. And so you are familiar, I assume, with

20 traditional methods of calculating fuel and purchase power

21 costs through the rate-making process?

22 A. At least with respect to the methods which

23 we've employed in our rate cases in the past, yes.

24 Q. Okay. Would you agree with me that expected

25 forced outages are included in the normalization process

1       used for determining fuel and purchased power costs in a  
2       rate case?

3               A.       I testified to that in my direct testimony,  
4       yes.

5               Q.       If your company were to file a rate case in  
6       the future, would it be your opinion that the normalization  
7       could be adjusted to account for the increased outage hours  
8       experienced during this year?

9               A.       This was an event which does not occur  
10       frequently, occurs very infrequently. I'm not sure that --  
11       I'm not sure how we would go about normalizing this to be  
12       honest.

13              Q.       Don't you testify that forced outages are, by  
14       their nature, extremely variable?

15              A.       You cannot determine when they will occur.  
16       You can come up with a statistical average, which is what  
17       we've done in previous cases.

18              Q.       And would you characterize them as extremely  
19       variable from year to year?

20              A.       Yes.

21              Q.       And the normalization process does attempt to  
22       average the forced outages that you have from year to year  
23       and try to come up with a more normal level to include in  
24       the rate-making formula; is that accurate?

25              A.       I'm -- I'm not aware though of any

1 normalization which we've performed since I've been here  
2 that included anything of the magnitude of the outage we  
3 experienced this year.

4 Q. But the answer to my question would be yes?

5 A. I'm -- your question again, please?

6 Q. Okay. I'm not sure I can restate it exactly  
7 the way I had it, but -- well, let me go through the process  
8 here. In determining fuel and purchased power costs in a  
9 rate case, is it more specific to state that expected forced  
10 outages is one of the factors that's taken into  
11 consideration in setting a normalized level?

12 A. In a rate case?

13 Q. Yes.

14 A. Yes.

15 Q. And when a unit experiences a forced outage,  
16 are the total replacement energy costs a function of the  
17 energy needs times the unit cost of replacement energy?

18 A. I'm not sure I understood that.

19 Q. Okay.

20 A. Are you saying that -- well, I guess you're  
21 going to have to restate that, please.

22 Q. Is total replacement energy cost a function of  
23 determining the proper normalized level for fuel and  
24 purchased power cost?

25 A. The energy used to replace the unit when it is

1 in a statistical forced outage is based on assumptions made  
2 for purchased power and our other generation used to replace  
3 that unit at that time.

4 Q. Okay. And is it correct that absent a forced  
5 outage, there's no need for what we're calling replacement  
6 energy?

7 A. If a unit could be guaranteed to run  
8 100 percent of the time, there would not be a need to  
9 replace it, that's correct. But, of course, that just  
10 doesn't happen.

11 Q. Does the company's calculation of increased  
12 energy costs in this case assume that Unit 4/6 was available  
13 to produce power each and every hour of the outage period  
14 from June 7 through, I believe, August 8?

15 A. I think you need to take a look at the  
16 assumptions that went into the preparation of that estimate.  
17 The company assumed that transmission system losses, that  
18 foregone off-system sales margin and forced outage costs  
19 would offset each other.

20 These components are very difficult to  
21 quantify and we felt it was a wash. And as it turns out, a  
22 rough estimate -- better than a rough estimate, but a  
23 estimate of transmission service or transmission losses for  
24 foregone off-system sales margin will easily exceed \$300,000  
25 for the period of this outage that, in my opinion, offsets

1 any expense that would have been involved with normalized  
2 forced outage.

3 Q. But to more directly answer my question, among  
4 other assumptions, do not your calculations assume that  
5 Unit 4/6 would have been available every hour during that  
6 outage period?

7 A. We used a spreadsheet analysis --

8 Q. You nodded your head.

9 A. I'm sorry.

10 Q. I assume you're answering yes?

11 MR. DUFFY: Can the witness finish his answer?

12 MR. COFFMAN: I just would like a yes or no  
13 answer.

14 MR. CONRAD: Maybe he should make one first.

15 JUDGE WOODRUFF: Try to give a yes or a no  
16 answer. Answer yes or no and then he might give you a  
17 chance to explain it. If not, your counsel can.

18 THE WITNESS: Yes.

19 BY MR. COFFMAN:

20 Q. Okay. All right. Do you have any reason to  
21 disagree with the calculations done by Mr. Trippensee and  
22 shown in his testimony, I believe on page 36 of  
23 Mr. Trippensee's rebuttal testimony based on the work papers  
24 supplied to him by Mr. Harold Wyble involving the  
25 calculation of incremental replacement energy costs?

1           A.       I don't have a copy of Mr. Trippensee's  
2       testimony in front of me.

3           Q.       Okay. You did read Mr. Trippensee's rebuttal?

4           A.       Yes, I have.

5           Q.       Okay.

6                   MR. COFFMAN: Permission to approach.

7                   JUDGE WOODRUFF: You may.

8       BY MR. COFFMAN:

9           Q.       There you go.

10          A.       Okay. What --

11          Q.       I've handed you a copy of Mr. Trippensee's  
12       rebuttal. I believe it's marked as Exhibit 8. And my  
13       question was, do you disagree with Mr. Trippensee's  
14       calculations primarily on page 36 that were based on work  
15       papers supplied to him by Mr. Harold Wyble showing the  
16       company's calculation of incremental replacement costs?

17          A.       He discusses the calculation which the company  
18       made, yes.

19          Q.       Well, are there any parts of that discussion  
20       that you disagree with?

21          A.       Do you have anything specific in mind or -- I  
22       guess I -- I addressed the issues in my surrebuttal that I  
23       felt needed to be pointed out.

24                   MR. COFFMAN: I think that's all the questions  
25       I have.



1 JUDGE WOODRUFF: Thank you.

2 MR. COFFMAN: Thank you.

3 JUDGE WOODRUFF: Questions from the Bench then

4 from Chair Lumpe?

5 QUESTIONS BY CHAIR LUMPE:

6 Q. Just two, Mr. Ferry. On page 11 of your

7 direct where you outlined the amounts that come to the

8 total -- and since that total is different, I assume that

9 was revised?

10 A. Yes.

11 Q. Yes. But the items that are there are the

12 same. It's --

13 A. And the amounts -- the final amounts are also

14 very close.

15 Q. Right. And two of the items have to do with

16 fuel and purchasing power of the energy itself. Is the

17 transmission service considered as part of the fuel purchase

18 or a fuel purchase clause? If you still had the

19 adjustment -- I'm sorry, a fuel adjustment clause, would

20 transmission be considered part of that? Was that

21 considered part of the fuel adjustment clause?

22 A. In my opinion, it should be.

23 Q. But was it? Since we don't have one, you're

24 saying should we have one, then it should be?

25 A. Yes.

1 Q. All right. Okay. The other question I have  
2 on page 31 of -- well, I shouldn't ask you. I should have  
3 asked Mr. Stoll, so I'll let it go.

4 CHAIR LUMPE: Thank you.

5 THE WITNESS: Sure.

6 JUDGE WOODRUFF: Commissioner Schemenauer?

7 COMMISSIONER SCHEMENAUER: Thank you.

8 QUESTIONS BY COMMISSIONER SCHEMENAUER:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. On page 6 of your testimony, your direct  
12 testimony --

13 A. Sure.

14 Q. -- you indicate the approximate cost per  
15 megawatt hour?

16 A. Yes, sir.

17 Q. And I guess my question is, did you utilize  
18 all of the power that you could -- that you allocated from  
19 Iatan and you couldn't purchase any more from Iatan?

20 A. That's correct.

21 Q. And GGS, you could not purchase any from them?

22 A. That's correct.

23 Q. And you purchased all of it from General  
24 Systems that you show over here on page 11?

25 A. We did not. All of the replacement energy was

1 not purchased from Gen Sys. Gen Sys provided a portion of  
2 the replacement energy, but not all of it.

3 Q. And who supplied the rest of it?

4 A. Well, the replacement energy was provided  
5 either by buying purchased power from Gen Sys or other  
6 supply sources at the time or by increasing generation on  
7 other units at Lake Road --

8 Q. Those are --

9 A. -- which would have been higher cost.

10 Q. You've got those separated incremental fuel,  
11 you've got -- that's for your power units that you had to  
12 use that you normally wouldn't use; is that correct?

13 A. What I've shown here are the resources that  
14 were available to us, including our owned resources and  
15 purchases. Now, a major source of energy that was used this  
16 summer was the spot market purchase that I show at the very  
17 end here, because at times that's all there was left for us  
18 to access. So we had to --

19 Q. What was the average --

20 A. Excuse me. Go ahead.

21 Q. What was the average cost of the market power?

22 MR. DUFFY: Is that going to be highly  
23 confidential?

24 THE WITNESS: Yeah. And I'm not sure I have  
25 that answer readily available.

1 BY COMMISSIONER SCHEMENAUER:

2 Q. You mean when you buy it on the market, what  
3 you pay for it is confidential? Do you know what the  
4 average price of your power was? How many hours did you  
5 buy?

6 A. The unit -- excuse me.

7 Q. Megawatt hours, I mean. I'm sorry.

8 A. I don't have that data available -- not  
9 readily available. I could certainly get it for you, but I  
10 don't have it here.

11 Q. Did St. Joe Light & Power sell any energy on  
12 the market this summer?

13 A. There were occasions where we were able to  
14 make some sales, but not a lot. Certainly less than what we  
15 had proposed or had planned to make this summer. When I  
16 responded earlier to the question, there are foregone  
17 off-system sales margin that we would have taken if -- taken  
18 in if the unit had remained in service. And, frankly, our  
19 rates include a certain level of off-system sales that's  
20 been imputed against cost of service.

21 Q. So you didn't offset your purchase power cost  
22 by any of your off-system sales?

23 A. No. As I mentioned, we elected to omit the  
24 forced out-- outage cost, transmission losses and foregone  
25 off-system sales margin from the calculation, because,

1       frankly, they're very difficult to quantify and they tend to  
2       offset each other.

3                   COMMISSIONER SCHEMENAUER:   That's all I have.  
4       Thank you.

5                   THE WITNESS:   Sure.

6                   JUDGE WOODRUFF:   Commissioner Simmons?

7                   COMMISSIONER SIMMONS:   Thank you.

8       QUESTIONS BY COMMISSIONER SIMMONS:

9                   Q.       Good afternoon.

10                  A.       Good afternoon.

11                  Q.       I'm looking at your surrebuttal testimony.  
12       And as I look at your surrebuttal testimony, there are some  
13       comments with regard to a disagreement that you have with  
14       Mr. Trippensee.

15                  A.       Sure.

16                  Q.       I'm looking at page -- I believe it is 5 of  
17       your surrebuttal testimony.

18                  A.       Uh-huh.

19                  Q.       And there it talks about the conclusion that  
20       Mr. Trippensee comes to.   And I think that you say you do  
21       not agree with him about the power outage or the outages  
22       associated with your Unit 4/6 because it had a much greater  
23       impact.   Is that your belief of what the Commission should  
24       look at as far as granting an AAO, is the greater impact on  
25       the company?

1           A.       Again, I'm not sure I'm really in a position  
2       to let you know what the Commission should or should not do  
3       with an AAO. I do know that we have extraordinary costs  
4       associated with this forced outage that were not provided  
5       for in rates.

6           Q.       And so you would not make any kinds of --  
7       well, you don't have any thoughts on how we go about  
8       defining whether something should be given an AAO as it  
9       relates to forced outages? You don't have an opinion on  
10      that?

11          A.       I don't know if I could articulate it.  
12      Certainly this event was extraordinarily unusual. We have  
13      not had an outage like this with this amount of cost in it  
14      since I have been with the company in 10 years.

15                   COMMISSIONER SIMMONS: That's all the  
16      questions I have. Thank you, sir.

17                   THE WITNESS: Sure.

18                   JUDGE WOODRUFF: Chair Lumpe?

19      FURTHER QUESTIONS BY CHAIR LUMPE:

20          Q.       Just one, Mr. Ferry. I'm looking at your  
21      direct, page 8. Would that middle chart be a response to  
22      Commissioner Schemenauer's question?

23          A.       The values shown on this page are the  
24      resources that were available to us after the outage. The  
25      values -- the resource items shown are really the same that

1 was shown in the previous table, we just omitted Lake Road  
2 4/6.

3 Q. But these numbers then were -- if I look at  
4 Gen Sys, those --

5 A. Well, excuse me. Yes. I've added the Gen Sys  
6 purchases, and I didn't show those on the previous page.

7 Q. Okay. So those were not just available to  
8 you, they were used by you or --

9 A. Yes.

10 Q. -- are you saying they were just available?

11 A. The Gen Sys purchases were arranged such that  
12 we took the energy. We agreed to take it, 16 hours a day.

13 Q. Okay. So that is perhaps some of the answer  
14 to questions Mr. Schemenauer asked?

15 A. Okay. Perhaps I didn't understand the  
16 question.

17 Q. And maybe I didn't. Maybe he'll clarify it  
18 and say that isn't --

19 FURTHER QUESTIONS BY COMMISSIONER SCHEMENAUER:

20 Q. I think what I wanted to try to arrive at was  
21 who you purchased it from and what you paid for it. And you  
22 showed me what's available. And if I look at -- I think the  
23 total amount that you purchased isn't classified -- almost  
24 \$3 million worth of purchases. And --

25 A. That's the incremental cost.

1 Q. Yeah.

2 A. Yes.

3 Q. And I was trying to get the number of megawatt  
4 hours that you purchased for that. And if I threw in \$100  
5 an hour or \$50 an hour, whatever it was, I'd come up with  
6 6,000 megawatt hours that you purchased over the summer or  
7 3,000 megawatt hours, depending on the price.

8 And I was trying to get some idea of whether  
9 or not -- I mean, I know when you're buying and you're  
10 committing yourself to take power, you have to take it  
11 whether you need it or not. And I just -- you stated that  
12 you took Gen Sys's, I guess, available megawatt hours,  
13 25 megawatt hours, 16 hours a day?

14 A. That's correct.

15 Q. And you did this every day during the summer  
16 or --

17 A. These were what we call the on-peak hours,  
18 which are defined as Monday -- in this case Monday through  
19 Friday.

20 Q. Okay. I think I was just trying to get some  
21 idea how much power you had to buy, how many megawatt hours.

22 A. Well, the unit -- the lost generation on the  
23 unit we estimate at about 95,000 megawatt hours. So I don't  
24 have the breakdown here as to how --

25 Q. 95,000 --



1           A.       95,000 megawatt hours.

2           Q.       -- megawatt hours. You didn't buy that much?

3           A.       No. But we did generate that off of other

4           Lake Road generation. We had two ways to replace the

5           energy. We could buy it or we could increase generation off

6           of the remaining high-cost units at Lake Road. If 4/6 had

7           not -- had been available, we wouldn't have run the higher

8           cost units as much as we did.

9           Q.       And normally the gas-fired units aren't as

10          expensive to run as they were this year because the cost of

11          natural gas is higher than it was in previous years; is that

12          correct?

13          A.       Yes, it is.

14                    COMMISSIONER SCHEMENAUER: Thank you.

15          QUESTIONS BY JUDGE WOODRUFF:

16          Q.       I have a question for you about the

17          normalization of the forced outage.

18          A.       Sure.

19          Q.       I wasn't real clear as you were testifying.

20          Will the forced outage have the effect of increasing the

21          normalization in future rate cases?

22          A.       It -- if there's no other means to collect it,

23          I suppose it could.

24          Q.       And how do you mean collect it?

25          A.       The costs associated with the outage. For

1 instance, if you don't approve the AAO and we can't roll  
2 that in --

3 Q. Then it would increase the normalization rate?

4 A. The practice in the past to calculate the  
5 normalized forced outage is to look at a number of years of  
6 history of the unit and looking at the forced outage history  
7 on it. Typically what we've done is thrown out the high and  
8 low year.

9 This is an exceptionally high year, happened  
10 once -- you know, like I said, I've been here 10 years and  
11 it's the worst I've seen. Using that method, it would  
12 probably get thrown out. So it would depend on the method  
13 that was used to calculate the outage.

14 Now, if there was some provision to include  
15 that in the normalization, sure, it would tend to bring  
16 things up. But also keep in mind that the normalized forced  
17 outage spreads are those forced outage hours throughout the  
18 year; whereas, this event took all -- took place all of it  
19 during the summer.

20 Q. Okay. So it's not just add up 10 years and  
21 divide by 10 and that's your --

22 A. Yes.

23 JUDGE WOODRUFF: That's the only question I  
24 had then.

25 Let's go then to recross beginning with AGP.

1                   MR. CONRAD:  Nothing further, your Honor.  
2   Thank you.  
3                   JUDGE WOODRUFF:  Staff?  
4                   MR. WILLIAMS:  No questions.  
5                   JUDGE WOODRUFF:  Public Counsel?  
6   RE CROSS-EXAMINATION BY MR. COFFMAN:  
7                   Q.     Mr. Ferry, you were asked a question by  
8   Mr. Simmons about your testimony on page 5 of your  
9   surrebuttal testimony where you make the claim about an  
10   implication you perceived in the rebuttal testimony of  
11   Mr. Trippensee?  
12                  A.     Yes.  
13                  Q.     And your claim is that Mr. Trippensee is  
14   stating that the company didn't file AAOs for past forced  
15   outages and, thus, should not have filed this AAO.  Could  
16   you tell me where in Mr. Trippensee's testimony there --  
17   point to pages 29 through 31 -- that you drew that  
18   implication from?  
19                  A.     I don't have his testimony in front of me  
20   again, but I read it and that was the meaning I received  
21   from it.  
22                  MR. COFFMAN:  Permission to approach again.  
23                  JUDGE WOODRUFF:  You may.  
24   BY MR. COFFMAN:  
25                  Q.     I shouldn't have taken it back from you.

1           A.       Sure.

2           Q.       I'll give you a chance to refresh your memory  
3 of Mr. Trippensee's testimony --

4           A.       Sure.

5           Q.       -- on pages 29 through 31.

6           A.       Okay.

7           Q.       Is there anything in that testimony that you  
8 could point to that gave you the implication that -- or gave  
9 you the implication you testified here in your surrebuttal  
10 testimony to?

11          A.       The thing that caught my attention was the  
12 listing of the forced outage hours, which he has shown here.  
13 '95 in particular -- 1995 shows 11,045 hours of forced  
14 outage. In reading that, the implication I received from  
15 this was you had that amount of forced outage at that time  
16 but you didn't file an AAO.

17          Q.       Well, as you proceed on through pages 30 and  
18 31, isn't the point that's being made there that forced  
19 outages are included in the normalization process and, thus,  
20 are recurring and, thus, not appropriate for AAO treatment?

21          A.       And I address that later on in my surrebuttal.

22          Q.       Could I specifically draw your attention to  
23 the Q and A at the end of page 30 where Mr. Trippensee  
24 states that the normalization process anticipates  
25 averages -- overages and underages and that the regulatory

1 process provides a stockholder an opportunity but not a  
2 guarantee to earn a rate of return. Do you disagree with  
3 those statements?

4 A. What page again? Page 3--

5 Q. Pages 30 -- the Q and A that goes from page 30  
6 to 31. Is there anything in that Q and A that you would  
7 disagree with?

8 A. The normalized forced outages provide for what  
9 I would call routine forced outages. This is not a routine  
10 forced outage.

11 Q. But we have already covered the fact that  
12 St. Joe Light & Power could file a rate case and could  
13 request that the normalization covering fuel and purchased  
14 power cost be adjusted to reflect this year's experience?

15 A. We're getting back to the point now where I'm  
16 out of my area of expertise.

17 MR. COFFMAN: All right. Thank you. That's  
18 all I have.

19 JUDGE WOODRUFF: Sure. Redirect?

20 MR. DUFFY: Yeah. A few things.

21 REDIRECT EXAMINATION BY MR. DUFFY:

22 Q. While you've got Mr. Trippensee's testimony  
23 there --

24 A. Okay.

25 Q. -- you were asked some questions about page 36

1 and his statement that the company's calculation of  
2 incremental costs made no adjustment for forced outages.  
3 And if I understand your testimony, you agreed that that was  
4 the case, that --

5 A. That's really not a fair statement on my part.  
6 Yes, we did have forced outages, but they were offset  
7 because we omitted transmission losses and foregone  
8 off-system sales margin. These things are hard to quantify  
9 and we felt it was a fair trade off.

10 Q. So even if -- or even assuming -- well, taking  
11 his statement that there were no forced outages taken into  
12 account in your estimate, does that skew or make your  
13 estimate unreasonable?

14 A. No. Not at all. It's -- I've stated several  
15 times, I think the estimate we have is reasonable. Staff  
16 calculated numbers that were, in fact, greater than ours.  
17 And I've compared it to what we calculated in our budget for  
18 this year as reasonable.

19 Q. Okay. Without getting into any kind of highly  
20 confidential material, do you have an opinion as to whether  
21 the spot market energy price that was paid by St. Joe during  
22 this two-month outage was approximately the same as the Gen  
23 Sys cost that's shown in the testimony as highly  
24 confidential?

25 A. As I recall, the average price of spot market

1 during the period was actually -- I would be speculating to  
2 do that right now. I don't know for a fact.

3 Q. Would you look at page 8 of your direct  
4 testimony? I want you to focus on the column Available  
5 Megawatts, and I want you to look at lines 5, 6 and 7.

6 A. Yes, sir.

7 Q. And I want you to tell me why it's 25 for some  
8 time periods and 50 for other periods in relation, I think,  
9 to Commissioner Schemenauer's question.

10 A. All right. I have three Gen Sys purchases  
11 shown there. That's on page 8 of my direct. The first one  
12 is a 25 megawatt purchase that is shown from June 5th  
13 through June 30th. That purchase was made prior to Lake  
14 Road 4/6 tripping off. We were going to buy that energy in  
15 any event.

16 Following the outage, we took a look at what  
17 options were available to us to replace the energy and felt  
18 at that time that our best option was to purchase another  
19 25 megawatts from Gen Sys for the remainder of June and then  
20 purchase an additional 50 megawatts for the months of July  
21 and August. So the incremental purchase there would be the  
22 last two. The first purchase -- the first Gen Sys purchase  
23 I show really is not incremental.

24 Q. You answered some questions about replacement  
25 energy being needed for forced outages. Does the company

1       need to purchase replacement energy for planned outages?

2           A.       Of course.  When we -- well, again, that would  
3       depend on the magnitude of the unit coming off load.  It may  
4       not be necessary to buy at that time.  But for a planned  
5       outage, say, on Iatan, we would most likely go out and  
6       procure energy to replace that.  And we have time to do  
7       that.  We know when the outage is going to happen so we have  
8       a chance to go out and negotiate a deal in advance.

9           Q.       Is that something that's normally considered  
10      in the rate-making process also?

11          A.       Yes.  The -- the planned maintenance outages  
12      on units are included in the normalization process.  Those  
13      are not part of the forced outage rate.

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

15                  JUDGE WOODRUFF:  You may step down then.

16                  Your next witness?

17                  MR. DUFFY:  Call Mr. Svuba to the stand.

18                  (Witness sworn.)

19      DWIGHT V. SVUBA testified as follows:

20      DIRECT EXAMINATION BY MR. DUFFY:

21          Q.       Would you state your name for the record,  
22      please.

23          A.       Dwight Svuba.

24          Q.       Mr. Svuba, do you have in front of you what's  
25      been marked for purposes of identification as Exhibit 5



1 identified as the direct testimony of Dwight V. Svuba,  
2 Exhibit 6-HC identified as the surrebuttal testimony of  
3 Dwight V. Svuba with HC material, and Exhibit 6-NP  
4 identified as the NP version of the surrebuttal testimony of  
5 Dwight V. Svuba?

6 A. I have in front of me my direct testimony and  
7 my surrebuttal testimony.

8 Q. Do you have any changes or additions to either  
9 of those three documents?

10 A. Yes, sir. In my direct testimony, page 11, I  
11 need to make an addition. On line 3 after the word  
12 "reinsulated," there should be a period.

13 And then beginning at the start of the  
14 parenthetical these words should be added, "although  
15 unrelated to the June 7 accident," comma. That  
16 parenthetical would then read, Although unrelated to the  
17 June 7 accident, the rotor will require complete rewind in  
18 the near future.

19 Q. Why are you making that change, Mr. Svuba?

20 A. I understand there's some confusion about the  
21 meaning of the parenthetical in my testimony. I just wanted  
22 to make it very clear that the rotor rewind is not related  
23 to the June 7th accident. And the unit is 33 years old at  
24 this time and GE units of this particular size and type and  
25 vintage are susceptible to a condition called coil

1 foreshorting. And this is the cause for the rotary rewind  
2 and not the accident that occurred on June 7th.

3 Q. Do you have any other changes to any of these  
4 exhibits?

5 A. No, I do not.

6 Q. With that change, if I asked you the same  
7 questions that appear therein, would your answers be the  
8 same as amended?

9 A. Yes, they would.

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

12 A. Yes, they are.

13 MR. DUFFY: With that, I would offer into  
14 evidence Exhibit 5, 6-NP and 6-HC and tender the witness for  
15 cross-examination.

16 JUDGE WOODRUFF: Exhibits 5, 6-NP, 6-HC have  
17 been offered into evidence. Are there any objections to  
18 their receipt?

19 Hearing none, they will be received into  
20 evidence.

21 (EXHIBIT NOS. 5, 6-NP, 6-HC WERE RECEIVED INTO  
22 EVIDENCE.)

23 JUDGE WOODRUFF: Cross-examination, we'll  
24 begin with AGP.

25 MR. CONRAD: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. CONRAD:

2 Q. Mr. Svuba, would you please turn in your

3 surrebuttal to page 2, lines 12 through 13?

4 A. Page 2, lines 12 through 13?

5 Q. Make that -- yes. Reference to 20/20

6 hindsight?

7 A. Yes, sir.

8 Q. I take it from that that the criticism is that

9 people are looking backward with current knowledge and

10 evaluating the events of the past. Is that what you're

11 suggesting?

12 A. Yes.

13 Q. Then the very next sentence that begins

14 on line 13, We all know now what could have been done

15 differently to prevent the accident.

16 What could have been done to prevent the

17 accident?

18 A. GE could have properly designed the control

19 change-out and modified the DCS control so that it acted as

20 we anticipated that it did and as the AC oil pump control

21 did. And this would have prevented the accident, in my

22 opinion.

23 Q. So it is your testimony that the accident

24 could have been prevented by doing things differently?

25 A. Yes.

1 Q. Now, at page 3, very next page, lines 7  
2 through 8 -- are you there, sir?

3 A. Yes.

4 Q. You're indicating, I think, that the blame is  
5 shifted, as you just did a moment ago, to engineering  
6 consultants and suppliers such as GE. Correct?

7 A. We believe that if they would have done their  
8 job properly, that this accident wouldn't have happened,  
9 yes.

10 Q. Who hired them?

11 A. St. Joseph Light & Power Company hired them.

12 Q. Page 6, line 14, sir. You discuss there  
13 generally training. Training was conducted in September.  
14 When did the training that the operators initially received  
15 occur?

16 A. From General Electric?

17 Q. Well, let's start then. From whom did the  
18 operators receive training that you're speaking of here in  
19 your testimony?

20 A. On page 6 here we're talking about the plant  
21 operators receiving additional training from General  
22 Electric that was conducted in September.

23 Q. When did the training that they initially  
24 received occur?

25 A. During the outage of the unit in May. They

1       were trained by General Electric, and during the start-up  
2       process the operators were also shown how to operate the  
3       Mark V controls by the General Electric start-up engineer  
4       and St. Joseph Light & Power personnel. We trained them so  
5       that they had the ability to operate the unit on line and to  
6       take the unit off line.

7               Q.       Now, the training that occurred in May and  
8       that you just discussed, is that the training that you're  
9       characterizing at line 16 on page 6 as having been poor?

10              A.       The reference on line 16 is directed  
11       specifically at General Electric's training of the Mark V  
12       system. And I stated that we did do additional training  
13       with St. Joseph personnel during the start-up and checkout  
14       of the system as well as with the start-up engineer at that  
15       time before the unit was put on line.

16              Q.       So you had your own people involved in the  
17       training in May also?

18              A.       Yes, sir.

19              Q.       Now, if I understand your testimony here --  
20       and same page, line 9, the company project manager solicited  
21       immediate feedback from plant operators. Do you see that?

22              A.       Yes, sir.

23              Q.       Who was the plant manager or the company --  
24       excuse me -- the company project manager?

25              A.       The project manager on this project was John

1 Modlin.

2 Q. And when you indicate that he received  
3 immediate feedback -- or he solicited it, did he receive  
4 immediate feedback back from the trainees?

5 A. Yeah. The operators gave feedback and were  
6 asked to fill out evaluation sheets certainly.

7 Q. So --

8 A. And we've -- you know, we've shared that  
9 information.

10 Q. So St. Joe Light & Power received immediate  
11 feedback from the plant operators regarding the quality of  
12 the training they had received. Is that your testimony?

13 A. The quality of the training they received from  
14 General Electric Company, yes.

15 Q. Well, that's the training that we're talking  
16 about here, sir.

17 A. No.

18 Q. I'm talking about on line 9.

19 A. Yes. And I'm saying that line 9 refers to the  
20 General Electric training that they did in May.

21 Q. Did your company receive immediate feedback  
22 from the plant operators regarding the quality of that  
23 training?

24 A. Of the General Electric training? Yes, they  
25 did.

1           Q.       And your testimony indicates that St. Joe  
2       Light & Power immediately communicated concerns about the  
3       quality of that training to General Electric; is that  
4       correct?

5           A.       Yes, we did.

6           Q.       So it's true that St. Joe Light & Power knew  
7       right at the time that the training the operators had  
8       received was poor.  Correct?

9           A.       I wouldn't characterize it that way.  I told  
10      you that the General Electric training didn't come up to our  
11      standards and that we did additional training of our  
12      operators with our own personnel and with a General Electric  
13      start-up engineer during the start-up and checkout of the  
14      unit before the unit was put on line.

15          Q.       So your comments with respect to the quality  
16      of the training are all directed to the GE training?

17          A.       That's correct.

18          Q.       You have no comment with respect to the  
19      training that your folks did in May?

20          A.       Yes.  I believe it was adequate for the  
21      operators to operate the unit after it was put on line and  
22      to take the unit off successfully, as I previously had  
23      stated.

24          Q.       Please turn to page 7 of your surrebuttal.  
25      And at lines 5 through 9 you see some information that's

1       been designated as highly confidential. Do you see that,  
2       sir?

3               A.       Yes, I do.

4               Q.       Why?

5               A.       Because it involves a letter with our  
6       supplier.

7               Q.       It involves a letter from whom?

8               A.       Mr. Modlin.

9               Q.       And the basis of the claim of highly  
10       confidential treatment for that is that it's a letter from  
11       you to your supplier?

12              A.       Well, it deals with the contract --

13              Q.       Just --

14              A.       -- the contract terms and the amount of money.

15              Q.       Just answer the question. Just answer the  
16       question I asked, please.

17              A.       I think I answered it.

18              Q.       Well, let's see.

19                      MR. CONRAD: Do you want to read it back?

20                      THE COURT REPORTER: "QUESTION: And the basis  
21       of the claim of highly confidential treatment for that is  
22       that it's a letter from you to your supplier?

23                      "ANSWER: Well, it deals with the contract --

24                      "QUESTION: Just --

25                      "ANSWER: -- the contract terms and the amount



1 of money.

2 "QUESTION: Just answer the question. Just  
3 answer the question I asked, please.

4 "ANSWER: I think I answered it."

5 BY MR. CONRAD:

6 Q. Do you think you answered the question, sir,  
7 as to why it's treated as highly confidential?

8 MR. DUFFY: Well, at this point I'm going to  
9 object. My recollection -- and the record may prove me  
10 right or wrong, my recollection is when I filed the  
11 testimony, I indicated in the cover letter why the company  
12 was claiming HC at least on some occasion. And so it's the  
13 attorney's obligation to classify something as HC or not.  
14 It's not the witness's obligation. So I don't think this  
15 witness should be questioned about why an attorney did  
16 something or didn't do something.

17 MR. CONRAD: Well, your Honor, I'm going to  
18 presume that Mr. Duffy is not being arbitrary and he's doing  
19 the things that his client instructs him to do. So I'm  
20 inquiring basically of the client why --

21 MR. DUFFY: Well --

22 THE WITNESS: I believe that --

23 MR. DUFFY: Wait a minute. Wait a minute.

24 JUDGE WOODRUFF: Let's let the attorneys  
25 discuss it first.

1                   MR. DUFFY: I am not going to allow this  
2                   witness to talk about what advice he solicited from his  
3                   attorney with regard to why something is classified highly  
4                   confidential, because that violates the attorney/client  
5                   privilege.

6                   JUDGE WOODRUFF: Okay.

7                   MR. DUFFY: I don't think -- further, I don't  
8                   think that this is relevant and doesn't tend to prove or  
9                   disprove anything here.

10                  MR. CONRAD: If it's not relevant, let's  
11                  strike it.

12                  MR. DUFFY: If Mr. Conrad had a problem with  
13                  the classification of something, I believe the protective  
14                  order provides a procedure by which he can challenge that  
15                  classification.

16                  JUDGE WOODRUFF: All right. Now, Mr. Conrad,  
17                  your question is --

18                  MR. CONRAD: I'm just simply asking this  
19                  witness --

20                  JUDGE WOODRUFF: -- if he knows why.

21                  MR. CONRAD: -- if he knows why this is  
22                  classified.

23                  JUDGE WOODRUFF: Okay. You can answer that  
24                  question. Do you know why this information is classified?  
25                  And if you don't know, you can say that too.

1                   THE WITNESS: I'm not sure, but I believe it  
2           is because we quoted information that had been classified  
3           previously. And when we go back to the deposition, I  
4           believe that that was a classified in the highly  
5           confidential part of the deposition that was taken of  
6           Mr. Modlin. That's why we put it in there as being highly  
7           confidential in this case.

8           BY MR. CONRAD:

9           Q.       Let's move to page 9 of your testimony,  
10          surrebuttal, sir. And beginning at line 13 you discuss GE's  
11          incentive to get the unit back in service. Do you see that?

12          A.       Yes.

13          Q.       Did SJLP have an incentive to get the unit  
14          back on line as soon as possible?

15          A.       I wouldn't characterize it as soon as  
16          possible. You always have an incentive to get your units  
17          back on line when they're low-cost units, but you certainly  
18          don't let putting them back on line as soon as possible be  
19          the overriding decision as to when they're ready to be put  
20          back into service.

21                   So these units are not put back in service  
22          until we feel that they're ready to go back in service  
23          regardless of how they're fitting in with the outage. They  
24          have to be ready for service before we put them back  
25          on line.

1           Q.     Let's try it again. Did SJLP have an  
2     incentive to get the unit back on line as soon as possible?  
3           A.     There's an economic incentive for St. Joseph  
4     Light & Power Company to put the units back on line. But  
5     it's not done unless we're satisfied that the units are  
6     ready to go back in service.  
7           MR. CONRAD: Thank you. That's all.  
8           JUDGE WOODRUFF: Thank you.  
9           For Staff?  
10          MR. WILLIAMS: Thank you, Judge.  
11     CROSS-EXAMINATION BY MR. WILLIAMS:  
12          Q.     You made a revision to your direct testimony,  
13     what's been marked as Exhibit No. 5 on page 11, line 3?  
14          A.     Yes, I did.  
15          Q.     Did St. Joseph Light & Power account for the  
16     anticipated rewind in its year 2000 budget?  
17          A.     It was not part of the year 2000 budget, no.  
18     It was not known at that time that we were going to rewind  
19     the unit.  
20          Q.     Were you first employed by St. Joseph Light &  
21     Power Company in 1965?  
22          A.     I believe it was '66.  
23          Q.     Have you been continuously employed by  
24     St. Joseph Light & Power Company since that date?  
25          A.     Yes.

1           Q.       When was turbine generator No. 4 installed at  
2       St. Joseph Light & Power Company's Lake Road plant?

3           A.       I believe it was installed and put in service  
4       about the beginning of 1967. I think that was -- the first  
5       full year was 1967, first year of service.

6           Q.       Were you involved in the installation of  
7       turbine generator No. 4?

8           A.       No, I was not.

9           Q.       Does the shaft of that turbine have bearings  
10      that require lubrication when it is operating?

11          A.       Yes.

12          Q.       Do you know how lubrication was provided to  
13      the turbine's shaft bearings of turbine generator No. 4 when  
14      it was first installed?

15          A.       I don't have any first-hand knowledge of it,  
16      no.

17          Q.       When did you first obtain first-hand knowledge  
18      of how lubrication is provided to the turbine shaft bearings  
19      of turbine generator No. 4?

20          A.       You mean very specific knowledge?

21          Q.       Well, let's start with general knowledge  
22      first.

23          A.       Well, generally I had an understanding of that  
24      previously that oil pumps pump oil to the bearings, yes. I  
25      had that general understanding.

1 Q. When did you understand that there were more  
2 than one oil pump involved in providing the lubrication  
3 depending on circumstances?  
4 A. I don't know the exact date.  
5 Q. How about the approximate date?  
6 A. That I can't answer you either. I do know  
7 that there's an oil reservoir on turbine generator No. 4 and  
8 there's three oil pumps on it and that's been there for  
9 many, many years and --  
10 Q. Did you know that before the year 2000?  
11 A. Yes.  
12 Q. Did you know that before 1995?  
13 A. I don't know.  
14 Q. Prior to the year 2000, how were the oil pumps  
15 configured? How many alternating current oil pumps were  
16 there?  
17 A. There's two AC oil pumps.  
18 Q. How many direct current oil pumps?  
19 A. One.  
20 Q. And what was the power supply to the AC oil  
21 pumps?  
22 A. The AC oil pumps were both supplied from the  
23 Unit 4 auxiliary power source.  
24 Q. Did they have any alternate source of power  
25 supply?

1           A.       No, they did not.

2           Q.       And what was the source of the power supply

3       for the DC oil pump?

4           A.       The battery set that goes with the Unit 4.

5           Q.       And how were the pumps controlled at that

6       time?

7                   MR. DUFFY:   At what time?

8       BY MR. WILLIAMS:

9           Q.       Before the year 2000.

10          A.       Before the year 2000?

11          Q.       Yes.

12          A.       Generally they were controlled with the pistol

13       grip switches on the wall.

14          Q.       Was that both the AC and the DC oil pumps?

15          A.       Yes.

16          Q.       What were the positions that were available on

17       those manual switches?

18          A.       It's my understanding that there was an off

19       position or stop position and on position or run and then an

20       auto position.

21          Q.       Prior to June 7th of the year 2000, when

22       St. Joseph Power & Light Company performed a controlled

23       shut-down of Lake Road power plant turbine generator No. 4,

24       was the power source for the AC oil pump switched from

25       turbine generator No. 4 to another AC power source?

1           A.       When?  Restate that part of your question.

2           Q.       Before June 7th of the year 2000, when

3           St. Joseph Light & Power Company performed a controlled

4           shut-down of Lake Road power plant turbine generator No. 4,

5           was the power source for the AC oil pump switched from

6           turbine generator No. 4 to another AC power source?

7           A.       You mean on a normal shut-down?

8           Q.       Yes.

9           A.       Yeah.  You would switch the auxiliary power

10          and -- before the unit was tripped off.

11          Q.       What became the new power source for the AC

12          pumps?

13          A.       You mean in that case?

14          Q.       Yes.

15          A.       The system, the house service -- outside house

16          service.

17          Q.       So it was an external power source?

18          A.       Yes.  Well, external or it could be one of the

19          other generators at the Lake Road plant, but it was not

20          specifically tied to Unit 4.

21          Q.       So it was external to Unit 4/6?

22          A.       Yes.

23          Q.       Why was the switchover done?

24          A.       So that when the unit trips, when the

25          generator trips, it trips the auxiliaries so you don't have



1 any AC auxiliaries when the generator trips.

2 Q. Was the DC oil pump normally used during a  
3 controlled shut-down?

4 A. No.

5 Q. Prior to June 7th of the year 2000, was a  
6 power source for the AC oil pump switched from turbine  
7 generator No. 4 to another AC power source during an  
8 uncontrolled shut-down of Lake Road power plant turbine  
9 generator No. 4?

10 A. What do you mean by "uncontrolled"?

11 Q. Unplanned, trip.

12 A. If generator 4 tripped, no, you did not switch  
13 the auxiliaries before it tripped because you didn't know  
14 about it.

15 Q. You've answered my next question. In that  
16 instance was the DC oil pump alone used to deliver bearing  
17 lubricant during an uncontrolled shut-down?

18 A. Yes.

19 Q. Is there a reason why there's a difference in  
20 the operation in terms of changing the power supply to the  
21 AC pumps when the event was an uncontrolled shut-down versus  
22 a controlled shut-down?

23 A. Well, as I just stated, if you knew about it  
24 ahead of time, you could switch the auxiliaries.

25 Q. How was the switching accomplished?

1           A.       It was a manual switch in the control room --  
2       in the Lake Road power control area.

3           Q.       Did St. Joseph Power & Light Company install a  
4       Bailey DCS system in 1995?

5           A.       Yes.   It can be characterized as a Bailey DCS.  
6       Bailey supplied the equipment.

7           Q.       What does DCS stand for?

8           A.       Distributed control system.

9           Q.       Did St. Joseph Light & Power physically  
10       install the system, or did it have someone perform the  
11       installation for it?

12          A.       I'm not sure I can answer that accurately.  
13       I'm sure that we hired contractors to assist us.

14          Q.       Why did St. Joseph Power & Light Company  
15       install the Bailey DCS system?

16          A.       To provide better control of the boiler and to  
17       give us a modern control system.

18          Q.       Did the Bailey DCS system also include new  
19       controls for the AC and DC turbine shaft lubrication oil  
20       pumps?

21          A.       It's my understanding that the DC-- DCS did  
22       incorporate control stations for the AC and DC lube oil  
23       pumps that were put in, you might say, parallel service with  
24       the pistol grip switches.

25          Q.       What were the Bailey DCS settings for the AC

1 oil pumps?

2 A. What were the settings?

3 Q. Yes.

4 A. What kind of settings?

5 Q. Well, previously you described the settings

6 for the manual switch.

7 A. You mean the positions?

8 Q. Yes. Positions that were available, modes,

9 however you want to describe it.

10 A. Well, control positions and modes may be

11 different depending on how you're using it.

12 Q. What I'm referring to is what the system told

13 you whenever you were trying to perform actions with respect

14 to the pump such as stop the pump, run the pump or put it in

15 what you described in the manual system as automatic mode?

16 A. I believe that the AC oil pumps had a start

17 and a stop control position. In other words, you could

18 select it to start or you could select it to stop.

19 Q. Those were the only two options?

20 A. I believe so. But I'm not an expert in that

21 control.

22 Q. Do you know what each setting indicated?

23 A. Start, of course, was to start the pump. And

24 stop was to stop the pump.

25 Q. Did either of those settings put what you've

1 described -- enable the pump to start in the event of a  
2 trip?

3 A. It's my understanding there was an auto return  
4 feature on the AC pumps. So that when you stopped the pump,  
5 it automatically went to the automatic mode, which means  
6 that if you had low lubrication oil pressure, that that pump  
7 would try to start.

8 Q. That feature was on the pumps themselves?

9 A. That feature was incorporated in the control  
10 logic.

11 Q. What would the operators see? Were these  
12 images that showed up on the CRT screen?

13 A. Yeah. The control screen showed a control --  
14 little square control box.

15 Q. And it would show either start or stop  
16 depending on what the operator had set the position to?

17 A. Well, there's a control station and then it  
18 also has a line above it that shows the position or the  
19 condition of that pump, the mode that that pump is in.  
20 So --

21 Q. Is that something that's visible at all times?

22 A. It's visible on the control screens that it  
23 has that feature. And I think there's a couple of screens  
24 that maybe have that control indication on it. But, here  
25 again, I'm not an expert in all these details.

1 Q. Do you know what the Bailey DCS settings were  
2 for the DC oil pump?

3 A. The DC oil pump had control positions, I  
4 believe, of start, stop, and auto.

5 Q. What did each of these settings indicate?

6 A. It's my understanding from what I know now,  
7 that stop meant stop, start meant start, auto meant auto.

8 Q. And what do you mean by "auto"?

9 A. It's my understanding that auto in this case  
10 means that the DC pump is automatically armed to come on  
11 when the oil pressure switch calls for it or when the  
12 control calls for it for whatever reason.

13 Q. So there's a difference in the settings  
14 between the AC oil pumps and the DC oil pumps in terms of  
15 the Bailey DCS system?

16 A. I wouldn't call them settings.

17 Q. What would you call them?

18 A. Control positions.

19 Q. Okay. There was a difference in the control  
20 positions available for the AC oil pump and the DC oil pump  
21 on the Bailey DCS system; is that correct?

22 A. That's correct.

23 Q. Now, if I understood your testimony correctly,  
24 you were saying that the operator misunderstood that if the  
25 Bailey DCS control setting for the DC oil pump was put in

1 the stop position, it would automatically go into the  
2 automatic position; is that correct?

3 A. Repeat that.

4 Q. If I understood your testimony correctly, you  
5 stated that it was the operator's understanding prior to  
6 June 7th of the year 2000 and general understanding, I  
7 believe, among St. Joseph Light Power personnel that if the  
8 Bailey DCS setting for the DC oil pump was put into the stop  
9 position, it would automatically go into what you've  
10 described as the auto position?

11 A. I believe that was the common understanding,  
12 yes. Even though on the control station it said local.

13 Q. Can you explain what you mean by that?

14 A. The manual switches on the wall that they used  
15 all the time had on/off. And when they released the switch,  
16 it automatically went back to the auto position. So the  
17 operators over 30 years of service or 33 years of service  
18 have always seen a switch that when you turned the pump off,  
19 all you got to do is let go of the handle and it comes back  
20 to the auto position. You don't have to reset the switch or  
21 do anything.

22 So they made that assumption in the DCS  
23 control also because it did so in the AC. If you shut the  
24 AC pump off, then it automatically returned to auto in the  
25 auto position. If you shut the DC pump off -- turned it

1 off, it went to local. And local was a little light up  
2 there, a little mode that was right next to auto. So I can  
3 see where it could be confusing to them, and that's what  
4 they believed the operation was.

5 Q. Correct me if I'm wrong, but did you testify  
6 earlier that the Bailey DCS system with respect to the  
7 controls of the AC oil pumps and the DC oil pump did not  
8 replace the manual switches, but were put in to, what I  
9 believe you described, as parallel operation?

10 A. Yes.

11 Q. Before the manual DC oil pump switch was  
12 removed, if the Bailey DCS system was set into the stop  
13 position, was the exclusive means for the Unit 4/6 operator  
14 to control the operation of the DC oil pump the manual DC  
15 oil pump switch?

16 A. I think you'd better ask that again.

17 Q. Before the manual DC oil pump switch was  
18 removed, if the Bailey DCS system was set into what you  
19 described as the stop control position, was the exclusive  
20 means for the Unit 4/6 operator to control the operation of  
21 the DC oil pump the manual DC oil pump switch?

22 A. No. If the operator put the DC oil pump in  
23 the stop -- in other words, he did a stop command on that  
24 pump, he could go ahead and start it from that station also.  
25 He wasn't limited to the manual switch. He could still use

1       that control station.

2               Q.       Let's assume that the operator put the Bailey  
3       DCS system in the stop position and he's not going to take  
4       it out of the stop position. Was his only means of  
5       controlling the DC oil pump then the manual switch?

6               A.       If he did a stop command in the DCS after he  
7       got done hitting the actuator button, it went to local. It  
8       automatically went to the local position, which transferred  
9       control to the pistol grip switch or the manual switch.

10              Q.       So unless he reset the Bailey DCS control  
11       system to a different position, control resided with the  
12       manual switch; is that correct?

13              A.       That's -- that's my understanding.

14              Q.       Whenever the Bailey DCS system was installed,  
15       did St. Joseph Light & Power Company personnel receive any  
16       training on the Bailey DCS system?

17              A.       You mean back in 1995?

18              Q.       Yes.

19              A.       Yeah. They received training from Seega who  
20       was our installation engineer. I'm not sure what all they  
21       did do for us, but they did help us with the installation  
22       design of that system.

23              Q.       Do you know if the training included the  
24       Bailey DCS system controls for the DC oil pump?

25              A.       I don't know specifically what the training



1 included, but it did include operator training on the DCS  
2 operator interface. But I can't tell you specifically that  
3 they were trained in the operation of the DC oil pump  
4 station, no.

5 Q. Did the installer, Seega, provide to  
6 St. Joseph Light & Power Company in 1994 and 1995 when it  
7 installed the Bailey DCS system, the control logic diagram  
8 for the Bailey DCS system control of the DC oil pump?

9 A. I assume so.

10 MR. WILLIAMS: May I approach?

11 JUDGE WOODRUFF: You may.

12 BY MR. WILLIAMS:

13 Q. I'm handing you a copy of what's been marked  
14 as Exhibit 14. Would you take a look at that, please? Are  
15 you able to read that diagram, that exhibit?

16 A. I think I can read about everything on here.  
17 Reading it is one thing. Understanding it is another. Go  
18 ahead.

19 Q. Do you understand it? Do you understand what  
20 that diagram describes?

21 A. No. I'm not a control engineer and I'm  
22 certainly not an expert on this DCS system. That's why we  
23 hire people like General Electric to replace our control  
24 systems that have the expertise and knowledge that can come  
25 in and make these change-outs in our controls. We don't

1 have the expertise to do this at the Lake Road plant. We  
2 can't hire that expertise, so that's why we hire experts.

3 MR. WILLIAMS: Judge, I request that  
4 everything after the answer No be stricken as non-responsive  
5 to the question. I just asked him if he understood the  
6 specific diagram, the meaning of the language on it.

7 JUDGE WOODRUFF: I'm going to overrule the  
8 objection because I wanted to hear it.

9 BY MR. WILLIAMS:

10 Q. After the Bailey DCS system was installed in  
11 1995, did St. Joseph Light & Power personnel continue to  
12 rely upon the manual switches for the DC oil lubrication  
13 pump?

14 A. It's my understanding that they did rely upon  
15 the manual switches and used them almost exclusively.

16 Q. Did not St. Joseph Light & Power Company know  
17 in January of the year 2000 that the GE Mark V turbine  
18 control cabinet would be located where the manual DC oil  
19 pump switch was then located?

20 A. I don't know. I can't answer that question.  
21 I wasn't directly involved with the project to a degree to  
22 know where the Mark V cabinet was going to be. And I  
23 certainly don't know what time we knew that it was going to  
24 replace these manual switches.

25 Q. Approximately how big is the Mark V turbine

1 control cabinet?

2 A. It's probably nearly eight feet tall. I don't

3 know what the width of it is, maybe 24, 30 inches wide and

4 maybe, like, 30 inches deep.

5 Q. When the Mark V turbine control cabinet was

6 installed in May of 2000, was it set up to control the DC

7 oil pump?

8 A. The Mark V system?

9 Q. Yes.

10 A. No, it was not.

11 Q. When the manual switch for the DC oil pump was

12 removed in May of the year 2000, was the only system then

13 controlling the DC oil pump the Bailey DCS system?

14 A. Yes.

15 Q. Did St. Joseph Light & Power Company personnel

16 receive training from either the manufacturer or the

17 original installer of the Bailey DCS system on the operation

18 of the Bailey DCS system with respect to operation of the DC

19 oil pump before the manual DC oil pump switch was removed?

20 And when I say that, I want to limit the time frame to after

21 June of 1999.

22 A. Let me try to rephrase that. You're asking me

23 if we trained our operators on operation of the DCS system

24 that controlled the DC oil pump sometime after June of 1999?

25 Q. Yes.

1           A.       I don't believe so.

2           Q.       Did St. Joseph Light & Power Company make

3           inquiry of the manufacturer or the installer of the Bailey

4           DCS system with respect to how it controlled operation of

5           the DC oil pump before St. Joseph Light & Power Company

6           removed the manual DC oil pump switch?

7           A.       No. As I think I believe I stated earlier,

8           General Electric was responsible for the design -- detailed

9           engineering design on this controls change-out product. And

10          as far as we know, they never looked at the DCS control

11          station.

12                    They didn't know that there was a trap there

13          for the operators to fall into, and certainly didn't inform

14          us that the removal of that oil -- manual oil switch and

15          reliance upon the DCS oil switch was a problem for us or

16          that it operated any different than auto return after stop.

17          Q.       Did St. Joseph Light & Power Company decide

18          where to locate the GE Mark V turbine control cabinet?

19          A.       I don't know. I don't know whether it was us

20          or GE or a combination of us and GE.

21          Q.       If someone at St. Joseph Light & Power Company

22          was involved in that decision, who would that person have

23          been?

24          A.       In the location of it?

25          Q.       Yes.

1           A.       It probably would have been -- at least gone  
2 through our project manager, which was John Modlin.

3           Q.       Do you know if St. Joseph Light & Power  
4 Company considered relocating the manual DC oil pump switch  
5 instead of removing it?

6           A.       I can't answer that. I don't know if they did  
7 or not.

8           Q.       Do you know who should be able to answer that?

9           A.       We'd have to ask Mr. Modlin if he knows. I  
10 guess it's not uncommon to remove manual switches though.  
11 We've done it all over the plant when we installed new  
12 computer controlled systems. So it's not an uncommon thing  
13 to remove the manual switch.

14          Q.       In your surrebuttal testimony at page 9,  
15 lines 23 through page 10, line 3 you state that, It is  
16 considered, quote, Good utility practice, closed quote, to  
17 test and verify the operation of affected equipment before  
18 it goes back in service.

19                   Is it not also good utility practice to test  
20 and verify the operation of equipment that you have not  
21 previously relied upon before it goes into service?

22          A.       Okay. Now, what was your question again?

23          Q.       Is it not also good utility practice to test  
24 and verify the operation of equipment that you have not  
25 previously relied upon before it goes into service?

1           A.       I would think so.

2           Q.       Was not St. Joseph Light & Power Company  
3 exclusively relying upon the Bailey DCS system to control  
4 the DC oil pump when St. Joseph Light & Power Company  
5 brought Unit 4/6 up on June 2nd of the year 2000?

6           A.       As I said, we relied upon General Electric  
7 engineering expertise to change out this control system.  
8 They're the ones that directed us to remove the manual  
9 pistol grip switches. And, you know, until after the  
10 accident, we didn't realize that they had not looked at all  
11 of the DCS control modes and checked out the control station  
12 for the DCS and the DC oil pump.

13                    So I guess we didn't feel that there was  
14 anything wrong there. We didn't know there was any red  
15 flags. There was no red flags saying, Hey, you've changed  
16 something here, you need to look at this, you know. The DCS  
17 had been in service since 1995. The operators use it every  
18 day to control the boiler.

19           Q.       You still haven't answered my question. Was  
20 not St. Joseph Light & Power Company exclusively relying  
21 upon the Bailey DCS system to control the DC oil pump when  
22 St. Joseph Light & Power Company brought Unit 4/6 up on  
23 June 2nd of the year 2000?

24           A.       The DC system was the control of the DC oil  
25 pump.

1 Q. And it was the exclusive control?

2 A. Yes. There was not a manual switch in  
3 parallel with it.

4 Q. Thank you. Before May of the year 2000, did  
5 St. Joseph Power & Light Company ever set the manual DC oil  
6 pump switch to the off position and rely solely on the  
7 Bailey DCS system to control the operation of the DC oil  
8 pump for turbine generator No. 4?

9 A. I don't know if we ever did or not.

10 Q. Is it correct that at least prior to June 7th  
11 of the year 2000, the DC oil pump was designed to start when  
12 the lubrication oil pressure fell below a threshold level?

13 A. Let's see. You're saying that the DC oil pump  
14 should come on when the lube oil pressure falls below a  
15 certain level?

16 Q. Yes.

17 A. Yes. That's the intent of it.

18 Q. On page 10 at lines 6 to 8 of your surrebuttal  
19 testimony, you state that, The DC lube oil pump was tested  
20 on the evening of May 20th of the year 2000 before Unit 4/6  
21 was placed back in service?

22 A. That's correct.

23 Q. What did this testing consist of?

24 A. I'm not familiar with all the details, but I  
25 do know they ran the DC lube oil pump from the Bailey

1 control station. I do not know all the details of the test.

2 But any time -- you know, like we've said  
3 previously, any time you go in and change the control of the  
4 wiring, then you need to go and test it out. And these  
5 people were in the process -- or not in the process.

6 They were in the process of testing out the  
7 whole unit coming back on line. And they did do what they  
8 considered a functional test on the DC oil pump and  
9 satisfied themselves that the thing operated properly and  
10 came on when it should have. So they checked out the wiring  
11 and the controls of the DC oil pump here on May 20th. That  
12 was the start-up engineers and the checkout people.

13 Q. Do you know who could answer that question and  
14 provide the details?

15 A. I don't know if anybody knows exactly all the  
16 details. We'd have to go looking back through the records  
17 and talk to the start-up engineers and the project manager.

18 Q. Had the manual DC oil pump switch been removed  
19 before that test took place?

20 A. It's my understanding that it had been.

21 Q. Was the DC lube oil pump tested again before  
22 start-up on June 2nd of the year 2000?

23 A. Yes. It's my understanding the operators  
24 started the DC oil pump on the 24th of May.

25 Q. Was it tested again after the 24th of May



1 prior to the start-up on June 2nd of the year 2000?

2 A. I don't know. The only thing I do know is

3 that the records indicated that on May 20th and again on

4 May 24th the oil pump was run and its performance checked

5 out.

6 Q. Do you know how the performance was checked on

7 May 24th of the year 2000?

8 A. I don't know the exact test, no, I do not.

9 Q. Did anyone review the setting on the Bailey

10 DCS system for the DC lube oil pump after the DC lube oil

11 pump test on May 24th of the year 2000 and before the fires

12 and explosions incident on June 7th of the year 2000?

13 A. I guess I don't understand your question.

14 Q. I'm asking, during that time frame did anyone

15 look at what the Bailey DCS system showed the setting to be

16 for the DC oil pump?

17 A. I can't answer that. That's a control station

18 that's in the control room. The operators look at the DCS

19 screens all the time.

20 Q. Do you know if anyone reviewed the control

21 setting at the Bailey DCS system for the DC lube oil pump

22 when the system was started up on June 2nd of the year 2000?

23 A. Would you please repeat that question?

24 Q. It's essentially the same question as the

25 prior except for the date of June 2nd -- the start-up time

1 on June 2nd of 2000. Do you know if anyone looked at the  
2 control setting for the DC oil pump in the Bailey DCS system  
3 on June 2nd of the year 2000?

4 A. I do not know.

5 Q. Do you know where I could get that  
6 information, who would have that?

7 A. I don't know if anybody knows.

8 Q. Do you know if anyone -- do you know  
9 if --

10 (HEARING INTERRUPTED.)

11 JUDGE WOODRUFF: We're getting feedback again.  
12 We had this problem at an earlier hearing and everybody  
13 finally decided it is was probably from the microphone  
14 sticking up in the air maybe coming from a speaker. I don't  
15 know if that's what it was or not, but it's gone now, so --

16 MR. WILLIAMS: I guess my voice is back then.

17 JUDGE WOODRUFF: -- you may proceed.

18 BY MR. WILLIAMS:

19 Q. Do you know if anyone reviewed the control  
20 setting on the Bailey DCS system for the DC lube oil pump on  
21 June 5th of the year 2000?

22 A. No, I do not know.

23 Q. Do you know that anyone -- that -- do you know  
24 if that -- strike that.

25 What did the operator believe, to your

1 knowledge, that the Bailey DCS system controlling setting  
2 should be for the DC oil pump when turbine generator No. 4  
3 was operating?

4 A. I don't know.

5 Q. Who should I direct that question to? Who  
6 would know?

7 A. Well, it's easy to say right now after the  
8 incident when we know that there was a trap left in the  
9 controls for the operator, that it should have been in the  
10 automatic position. However, after 33 years of use and all  
11 of the switches being such that when you shut the pump off  
12 it went back to the automatic position, I'm not sure. I  
13 think they assumed that it went back to the automatic  
14 position.

15 Q. Did anyone check to see if it went back to the  
16 automatic position?

17 A. I do not know.

18 Q. Wouldn't that have been a prudent thing to do?

19 A. Not if you didn't know that was a problem.

20 Q. Does shutting off the steam supply to turbine  
21 generator No. 4 result in the turbine generator coming to a  
22 complete stop?

23 A. If you shut off the steam to turbine 4, the  
24 turbine will come to a stop if it's not powered electrically  
25 somehow.

1 Q. Is this a normal step during both a controlled  
2 and uncontrolled shut-down of turbine generator No. 4?  
3 A. The shut --  
4 Q. And when I say that, I'm referring to shutting  
5 off the steam.  
6 A. Yeah. If you're going to shut the turbine  
7 off, yeah, you have to shut off the steam.  
8 Q. And under normal operating conditions  
9 approximately how long does it take for turbine generator  
10 No. 4 to come to a complete stop when the steam supply is  
11 shut off?  
12 A. I can't answer that question.  
13 MR. WILLIAMS: Can I have just a moment?  
14 JUDGE WOODRUFF: You may.  
15 MR. WILLIAMS: Apparently I have no further  
16 questions.  
17 JUDGE WOODRUFF: Okay. Before we move on to  
18 further cross-examination, then we're going to ahead and  
19 take a break. We'll come back at three o'clock.  
20 (A RECESS WAS TAKEN.)  
21 JUDGE WOODRUFF: And we're ready for  
22 cross-examination by Public Counsel.  
23 MR. MICHEEL: Thank you, your Honor.  
24 CROSS-EXAMINATION BY MR. MICHEEL:  
25 Q. Mr. Svuba, is it correct that you're the vice

1 president of energy supply for St. Joe Light & Power  
2 Company?  
3 A. Yes.  
4 MR. MICHEEL: I need to get an exhibit marked,  
5 your Honor.  
6 JUDGE WOODRUFF: You may. Counsel, what would  
7 you like to call this?  
8 MR. MICHEEL: Response to Staff DR 4150 -- I  
9 should say partial response, your Honor.  
10 JUDGE WOODRUFF: 4150?  
11 MR. MICHEEL: Yes, sir.  
12 JUDGE WOODRUFF: Okay. It's No. 21.  
13 (EXHIBIT NO. 21 WAS MARKED FOR  
14 IDENTIFICATION.)  
15 BY MR. MICHEEL:  
16 Q. Mr. Svuba, I apologize for mispronouncing your  
17 name earlier.  
18 Do you have in front of you what's been marked  
19 for purposes of identification as Exhibit 21?  
20 A. I have this response that's No. 4150. Is that  
21 Exhibit 21?  
22 Q. Yes, sir.  
23 A. Yes.  
24 Q. Could you turn with me to page 2 of that  
25 exhibit, sir?

1           A.       Yes.

2           Q.       And is that the organizational chart for the  
3 energy supply part of St. Joe Light & Power, sir?

4           A.       Yes, it is. But I believe there's probably  
5 been some redirection of responsibilities here at least on  
6 Mr. Modlin's part. He's now director of fuels and projects.

7           Q.       Okay. So under the box that says Director of  
8 Fuels, J.T. Modlin, it should be Director of Fuels, slash,  
9 Projects; is that correct?

10          A.       Yes. And then there is a dual reporting  
11 responsibility for Mr. Modlin. On fuels he reports directly  
12 to me. On projects he reports to Mr. Ceglenski.

13          Q.       And on this sheet Mr. Ceglenski, that's  
14 C-e-g-l-e-n-s-k-i, is the Superintendent maintenance, slash,  
15 Construction, dash, Lake Road; is that correct?

16          A.       That's correct.

17          Q.       With those corrections, is that an accurate  
18 display of the organizational chart, just this portion of  
19 the organizational chart?

20          A.       No. I see some other things on here that are  
21 not current.

22          Q.       Okay.

23          A.       So, you know, I don't know how much detail you  
24 want to get into here, but --

25          Q.       Let me just flip you back to the first page of

1       that exhibit. Do you see the date that that was requested  
2       up there?

3           A.       September 26th.

4           Q.       And do you see the response date stamped  
5       below, October 10th, 2000?

6           A.       Yes.

7           Q.       And you're aware that St. Joe Light & Power  
8       responded to this data request asking for its organizational  
9       chart; is that correct?

10          A.       Well, I did not prepare this so I don't know  
11       the source of the information contained herein. You've just  
12       handed it to me.

13          Q.       Do you know Bob Koranda?

14          A.       Yes, I do.

15          Q.       Who's he?

16          A.       He works in our human resources department. I  
17       don't recall his exact title.

18          Q.       So he's an employee of St. Joe Light & Power;  
19       is that correct?

20          A.       Yes.

21          Q.       Let me ask you to turn to page 3 of this  
22       document, page 3 of 39. And it says, Position Description  
23       Vice President dash Energy Supply; is that correct?

24          A.       Right.

25          Q.       And is it correct there that it says that you

1 direct the activities and are responsible for the results  
2 produced by employees in the following positions: Manager,  
3 systems operation and planning; superintendent production  
4 engineering and five employees; superintendent operations  
5 and 39 employees; superintendent maintenance slash  
6 construction and 32 employees; coordinator of fuels?

7 A. Yes.

8 Q. If you could, turn to page 4 there, sir. And  
9 this is under the Principal Responsibilities section in  
10 paragraph 4 there. It says, Oversees the activities of the  
11 manager, system operations and planning with respect to  
12 operations and management of the company's system operation  
13 and system planning functions; is that correct?

14 A. That's correct.

15 Q. Is that part of your principal responsibility  
16 as the vice president of energy supply, Mr. Svuba?

17 A. Yes, it is.

18 Q. Will you now turn with me to page 18 of 39 in  
19 this document? And that's the position description of the  
20 Superintendent Operations dash Lake Road; is that correct?

21 A. Yes.

22 Q. And that says it's accountable to you, the  
23 vice president of energy supply; is that correct?

24 A. Right.

25 Q. And I've written up at the top right-hand



1 corner J.L. Parker. Is he the current superintendent of  
2 operations at Lake Road?

3 A. Yes. Jim Parker is.

4 Q. Is it correct that his primary functions are  
5 to control and monitor all aspects of the operations  
6 function to assure continuous, safe, reliable, economic,  
7 environmentally compliant production of electric power and  
8 industrial steam. Areas of control include shift  
9 operations, coal and ash handling, results, plant chemistry,  
10 environmental compliance and operations department  
11 management?

12 A. Yeah. That's what it says under Primary  
13 Functions.

14 Q. And is that consistent with that individual's  
15 primary functions?

16 A. Yes.

17 Q. Now, if you would, turn to page 19 of 39. And  
18 I'm looking under the Principal Responsibilities section  
19 there, principal responsibility 10. Is it correct that it  
20 states, He reviews electrical and mechanical systems for the  
21 purpose of making modifications that will improve safety,  
22 reliability or economics of the overall operation?

23 A. Yeah. What that means is that he is supposed  
24 to review our existing electrical mechanical systems and  
25 suggesting modifications that will improve safety,

1 reliability or economics. Yes. I believe that's what that  
2 says.

3 Q. And that's part of his job requirements per  
4 this document; is that correct?

5 A. That's one of his principal responsibilities.

6 Q. And you would agree with me that is indeed one  
7 of his principal responsibilities; is that correct?

8 A. Yes.

9 Q. Okay. Why don't you turn with me to page 20  
10 of 39 there? It's the shift supervisor. And that's  
11 accountable to the superintendent of operation at Lake Road;  
12 is that correct?

13 A. That's correct.

14 Q. And I've got written in the upper right-hand  
15 corner W.J. White. Is he one of the shift supervisors at  
16 the Lake Road plant?

17 A. Yes. Bill White is a shift supervisor.

18 Q. Are there any other shift supervisors?

19 A. Yes.

20 Q. Who are they?

21 A. There's five shift supervisors. There's --

22 Q. You --

23 A. You know, Bill White's one of them.

24 Q. You don't need to name them all.

25 A. Okay.

1           Q.       And it's correct that the primary function of  
2       the shift supervisor is responsible during an assigned shift  
3       for supervising the operation of the power plant, equipment,  
4       in a continuous, efficient, safe and economical manner; is  
5       that correct?

6           A.       Yeah. That's what it says under Primary  
7       Functions.

8           Q.       And would you agree with me that's a shift  
9       supervisor's primary function?

10          A.       That certainly is one of his primary  
11       functions, yes.

12          Q.       And then under the Principal Responsibilities,  
13       is it correct principal responsibility No. 1 is, Directs the  
14       activities of operating personnel in performance of the  
15       operations and maintenance of the power plant in accordance  
16       with work management procedures; is that correct?

17          A.       That's what it says.

18          Q.       Is that one of a shift supervisor's principal  
19       responsibilities, Mr. Svuba?

20          A.       His responsibility is certainly to direct the  
21       activities of the operating personnel and performance of the  
22       operation and maintenance of the power plant. I don't know  
23       that I'd agree that it was in accordance with work  
24       management procedures. I guess I'd have some exception with  
25       that.

1           Q.     But, nonetheless, this document was produced  
2     by St. Joe Light & Power; is that correct?  
3           A.     Yes. I believe so.  
4           Q.     And this is the job descriptions; is that  
5     correct?  
6           A.     It's a position description, yes.  
7           Q.     Would you, sir, turn to page 25 of 39? And  
8     the title there is Superintendent Maintenance, slash,  
9     Construction, dash, Lake Road. And that person is  
10    accountable to the vice president of energy supply, and  
11    that's you; is that correct?  
12          A.     That's correct.  
13          Q.     And that individual's name is Mike Ceglenski;  
14    is that correct?  
15          A.     That's right.  
16          Q.     And would you agree that his primary function  
17    is controls and monitors the electrical, mechanical and  
18    instrumentation maintenance at the Lake Road plant; controls  
19    and monitors the construction activities at the Lake Road  
20    plant?  
21          A.     Yes. I'd agree with that. That's his primary  
22    function.  
23          Q.     Would you agree with me looking at the  
24    Principal Responsibilities, and I'm looking at paragraph 7  
25    of the Principal Responsibilities there on page 26, that

1       that individual is supposed to oversee all construction  
2       projects at Lake Road plant, assuring adherence to  
3       specifications, costs and schedules; directs and is  
4       personally responsible for the larger, more complex  
5       construction projects in the power plant complex; is that  
6       correct?

7               A.       If you've read No. 7 correctly, I think -- I  
8       think that's what it says, yes.

9               Q.       And would you agree that that's one of his  
10      principal responsibilities?

11              A.       Yes. With the exception of some operations of  
12      our building services department. We're not directly  
13      involved with those projects and they could be construction  
14      projects there. But other construction projects at the  
15      plant are under the direction of Mr. Ceglenski.

16              Q.       How about paragraph 8 there, Develops a full  
17      understanding of the technical and maintenance aspects of  
18      new equipment and assures that all employees involved are  
19      adequately trained in safe and efficient maintenance  
20      practices. Is that one of his primary functions --  
21      principal responsibilities, excuse me?

22              A.       That's what it says, yeah.

23              Q.       And do you agree that's one of his principal  
24      responsibilities?

25              A.       I would say that this is stated very strongly.

1 I don't know how anyone can fully understand all the  
2 technical and maintenance aspects of all the new equipment  
3 that's put in the plant and assuring that all employees  
4 involved are adequately trained. I think that's an  
5 impossible task.

6 Q. Who developed this job description, if you  
7 know?

8 A. I don't know.

9 Q. Well, would you agree with me that it was  
10 somebody in St. Joseph Light & Power --

11 A. Yes.

12 Q. -- at St. Joe?

13 A. I would say that's true.

14 Q. Would you turn with me, sir, to page 30 of  
15 this document? That's the senior project engineer and  
16 they're accountable to the superintendent of maintenance and  
17 construction; is that correct?

18 A. Yes.

19 Q. And who is the senior project engineer?

20 A. I guess the person that holds that title right  
21 now is Danny Baldwin.

22 Q. And if you look back on page 2 of this  
23 document, it says under senior project engineer D.C.  
24 Baldwin; is that correct?

25 A. Yes.

1           Q.       And is it correct that his primary function is  
2       to provide overall on-site managerial direction of  
3       generating plant construction or modification projects,  
4       addition to plant or any facilities usually constructed by a  
5       general contractor; acts as a focal point for all matters  
6       related to the project and has basic responsibility for  
7       meeting company's objections -- objectives, excuse me,  
8       concerning the project?

9           A.       No.   Danny Baldwin essentially has been taken  
10      off of project engineering and right now is mostly assisting  
11      Mr. Modlin in fuel procurement.   So Danny really is not in  
12      charge of any construction projects right now.

13          Q.       Mr. Modlin would be the individual in charge  
14      of the construction projects now?

15          A.       Mr. Modlin generally is fulfilling the  
16      obligations of the senior project engineer.

17          Q.       So that --

18          A.       And -- as we said, we changed his direct-- his  
19      title from director of fuels to director of fuels and  
20      projects.   So he's taken over some of those  
21      responsibilities.

22          Q.       And is it correct one of the principal  
23      responsibilities listed for the senior project engineer,  
24      No. 5, is reviews and provides engineering input on  
25      consultant engineer and, slash, or contractor designs for

1 maximum applicability for each project?

2 A. That's what it says, yeah.

3 Q. And that's what you would expect that

4 individual to do; is that correct?

5 A. Yeah. But it doesn't say review detailed

6 design decisions made by the engineer in charge here, nor

7 does it say he has to check out every detail that the design

8 engineer has in one of his projects.

9 MR. MICHEEL: Your Honor, I'm going to ask

10 that you direct this witness to answer my questions and

11 anything after Yes be stricken from the record as

12 non-responsive to my question.

13 JUDGE WOODRUFF: I am going to sustain that

14 objection. Your attorney is going to have a chance to ask

15 you questions later on during redirect and you might have a

16 chance to -- give you a chance to explain. But right now

17 you just need to answer the questions the attorney asks and

18 not go into explanations unless the attorney asks you for

19 it. Okay?

20 You may proceed.

21 BY MR. MICHEEL:

22 Q. Would you turn to page 34 of this document,

23 sir? Do you see the position description there Project

24 Coordinator?

25 A. Yes.



1 Q. And who is the senior project coordinator  
2 under Mr. Ceglenski?

3 A. Mr. Clemmons -- Clements.

4 Q. And is it correct under the Primary Functions  
5 of the project coordinator it states, Oversees and controls  
6 the activities of contractors performing maintenance work at  
7 the Lake Road plant?

8 A. Where do you see that?

9 Q. Under the Primary Functions, the last  
10 sentence, Oversees and controls the activities of  
11 contractors performing maintenance work at the Lake Road  
12 plant?

13 A. Yeah. That's what it says.

14 Q. And you agree with me that that's what the  
15 senior projects coordinator does?

16 A. Not entirely.

17 Q. Is it correct that Principal Responsibility 4  
18 states, Oversees contractor work for meeting specifications,  
19 quality of work and timeliness; reports any deficiencies to  
20 superintendent maintenance, slash, construction in a timely  
21 manner, documents any change orders, cost overruns or  
22 deviations from the contract?

23 A. That's what that principal responsibility is,  
24 yes.

25 Q. And would you agree with me that's one of the

1 principal responsibilities of the project coordinator?

2 A. Yeah. That's one of his principal  
3 responsibilities.

4 MR. MICHEEL: With that, your Honor, I'd move  
5 the admission of Exhibit 21 into evidence.

6 JUDGE WOODRUFF: Exhibit 21 has been offered  
7 into evidence. Are there any objections to its receipt?

8 Hearing none, it will be received into  
9 evidence.

10 (EXHIBIT NO. 21 WAS RECEIVED INTO EVIDENCE.)

11 BY MR. MICHEEL:

12 Q. Is it correct, Mr. Svuba, that during the  
13 spring 2000 -- during spring 2000 turbine generator No. 4  
14 was taken out of service for scheduled maintenance?

15 A. No.

16 Q. What was it taken out of service for?

17 A. It was a forced outage.

18 Q. In the spring of 2000?

19 A. Yes.

20 Q. Okay. How about in May of 2000? Let me  
21 narrow the time frame for you. In May of 2000 was turbine  
22 generator No. 4 taken out of service for scheduled  
23 maintenance?

24 A. I believe it came off line because of a forced  
25 outage.

1 Q. Did St. Joe Light & Power have it scheduled  
2 for scheduled maintenance in May of 2000?

3 A. It was scheduled out, yes.

4 Q. And what was the date the scheduled outage was  
5 supposed to start?

6 A. I don't have that date with me. I don't  
7 remember the date.

8 Q. So you have no idea?

9 A. Yes. I have an idea.

10 Q. Why don't you enlighten me?

11 A. I was directed to answer your questions yes or  
12 no.

13 JUDGE WOODRUFF: Let me clarify. You were not  
14 directed to answer yes or no unless it's a yes or no  
15 question that -- unless it's a question that calls for a yes  
16 or no answer. There's a fine line here, but we'll rely upon  
17 the counsel to direct you if you're going too far. I'll  
18 expect him to step in and say, Stop. But you're not  
19 restricted to a yes or no answer.

20 THE WITNESS: Okay.

21 BY MR. MICHEEL:

22 Q. Do you remember my question?

23 A. Which one?

24 Q. Well, let's start with the annual spring  
25 outage and let me help you here, Mr. Svuba. Why don't you

1       turn to --

2               A.       Thank you.

3               Q.       -- page 4 of your direct testimony. We'll do

4       it this way. Let me know when you're there.

5               A.       I'm on page 4.

6               Q.       And I'm focusing right there on lines 9 and

7       10. Is it correct that the annual spring outage was

8       scheduled to start on May 2nd?

9               A.       I'm not sure that that was the date it was

10       scheduled. There was a forced outage just slightly prior to

11       the time of the scheduled spring outage. It was taken off

12       as a forced outage and then it went into the spring outage.

13       So I don't -- I don't recall whether that date was the

14       forced outage date or the scheduled outage date.

15              Q.       Well, you say there, After the annual spring

16       outage, comma, which started on May 2nd; is that correct?

17              A.       That's right.

18              Q.       So would you agree with me that in your words

19       the scheduled annual spring outage started on May 2nd?

20              A.       Not scheduled. The annual spring outage

21       started on May 2nd. I agree with that. I'm just a little

22       bit unsure about when the scheduled date was and when the

23       forced outage date was.

24              Q.       Okay. Will you be comfortable if we use a

25       May 2nd date?

1           A.       (Witness nodded head.)

2           Q.       And is it correct that the two most

3           prominent -- there were two prominent modifications made to

4           turbine generator No. 4 on the scheduled spring outage?

5           A.       Yeah. There were two major projects that we

6           did on the turbine generator, yeah.

7           Q.       And the first one was replacement of the old

8           turbine control -- boiler control system with a new General

9           Electric Mark V control system; is that correct?

10          A.       That's right.

11          Q.       And the second one was the addition of a new

12          generator exciting system, the General Electric EX-2000; is

13          that correct?

14          A.       That's correct.

15          Q.       Is it correct that Unit 4/6 was returned to

16          operation on June 2nd, 2000?

17          A.       I believe that's correct.

18          Q.       And is it correct that the explosion and fire

19          at Unit 4/6 occurred on June 7th, 2000?

20          A.       I believe that's correct.

21          Q.       Would you agree with me that Unit 4/6 was at

22          full capacity when it tripped off at 2:06 p.m.?

23          A.       It was at near full capacity, yeah.

24          Q.       Would you agree with me that immediately after

25          the trip, the supply of lubricating oil to the Unit 4/6's

1       bearings and the generator hydrogen seals was interrupted?

2                   MR. DUFFY: Your Honor, why is counsel just  
3       reading the testimony and then asking the witness if he  
4       agrees with what he said in the prepared testimony? It  
5       seems to me this is pretty cumulative and we're kind of  
6       wasting time here.

7                   MR. CONRAD: If it's cumulative, who's it  
8       hurting?

9                   JUDGE WOODRUFF: The objection is that it's  
10      cumulative?

11                  MR. DUFFY: Well, your Honor, all he's doing  
12      is reading out of the -- he's reading the sentence out of  
13      prepared testimony and asking the witness if he agrees with  
14      it. I just don't see the point in doing that if it's  
15      already in the testimony.

16                  JUDGE WOODRUFF: Mr. Micheel, do you want to  
17      respond?

18                  MR. MICHEEL: Well, I want to establish the  
19      chain of events that's going to lead up to my further  
20      questions, your Honor. And I need to do that via the  
21      cross-examination. I understand what's in the testimony,  
22      but the chain of events leading up to the explosion and fire  
23      is important and that's what I'm trying to set up here.

24                  MR. DUFFY: But it is not in dispute. I mean,  
25      we're just --

1 JUDGE WOODRUFF: I'm going to overrule your  
2 objection. You can go ahead and continue with this line of  
3 question as long as it doesn't get too excessive.

4 MR. MICHEEL: I'm just trying to set the  
5 stage, your Honor.

6 JUDGE WOODRUFF: You've won. Go ahead.

7 BY MR. MICHEEL:

8 Q. Would you agree with me immediately after the  
9 trip, that the supply of lubricating oil to the unit's  
10 bearings and generator hydrogen seals was interrupted?

11 A. Yes.

12 Q. And would you agree with me that the  
13 lubricating oil supplied the five bearings on -- due to lack  
14 of the lubricating oil supply, the five bearings on  
15 generating Unit No. 4 quickly overheated and mechanical  
16 damage was suffered; is that correct?

17 A. Yes.

18 Q. And you'd agree that the loss of the seal oil  
19 allowed hydrogen to escape from the generator resulting in  
20 explosions and fires; is that correct?

21 A. Yes.

22 Q. Would you agree with me at the time of the  
23 explosion and fire on June 7th at turbine generator No. 4,  
24 lubrication was performed by three oil pumps?

25 A. No.

1 Q. How many oil pumps was lubrication provided  
2 by?  
3 A. At the time of the fire, zero.  
4 Q. How many oil pumps were on the unit at the  
5 time of the explosion?  
6 A. Installed on the unit?  
7 Q. Yes, sir.  
8 A. Three.  
9 Q. And there were two AC lube oil pumps and one  
10 DC lube oil pump; is that correct?  
11 A. Yes.  
12 Q. And it's correct that the two AC lube oil  
13 pumps on June 7th received their power from turbine  
14 generator No. 4; is that correct?  
15 A. The AC lube oil pumps received their power  
16 from the auxiliary that is supplied from turbine generator  
17 No. 4.  
18 Q. So for all intents and purposes, the power  
19 that was supplied to the AC lube oil pumps came from turbine  
20 generator No. 4; is that correct?  
21 A. That's right.  
22 Q. Was that a yes, sir?  
23 A. Yes.  
24 Q. Okay. And it's correct that the third oil  
25 pump installed with respect to TG generator No. 4, the DC



1 lube oil pump, received its power from batteries; is that  
2 correct?

3 A. Yes.

4 Q. Is it correct when turbine generator No. 4  
5 tripped off on June 7th, 2000, the two AC lube oil pumps  
6 lost power and stopped working?

7 A. When the turbine generator tripped, it cuts  
8 the AC power or stops the AC power, trips the AC power to  
9 the auxiliary system which supplies those pumps. And, yes,  
10 those AC lube oil pumps lose their power, that's right.

11 Q. And without power they cannot work; is that  
12 correct?

13 A. Yeah. They quit running.

14 Q. Is it correct that upon the loss of power to  
15 the AC lube oil pumps, the DC lube oil pump is supposed to  
16 start operating?

17 A. Yes. That's the intent of the DC lube oil  
18 pump.

19 Q. Is it correct on June 7th the DC oil pump did  
20 not start operating?

21 A. We don't believe it did.

22 Q. Is it correct that on June 7th, the DC oil  
23 pump switch was in the off position?

24 A. The DC lube oil pump and the DCS control on  
25 June 7th at the time of the accident, as far as I know, was

1 in the local position.

2 Q. And local means off now that the manual pistol  
3 grip controls were removed; isn't that correct?

4 A. Since the pistol grip had been removed when it  
5 was in local, essentially there was no local switch to  
6 operate it.

7 Q. And so the pump was off; is that correct?

8 A. It was in the local position, which means it  
9 wouldn't run, if that's what you're getting at.

10 Q. So it was turned off?

11 A. It was in the local position.

12 Q. Did you attend Mr. Modlin's deposition?

13 A. Yes, I did.

14 Q. Do you have a copy of Mr. Modlin's deposition  
15 with you?

16 A. I have a copy here. I'm not sure it's  
17 complete, but I have a copy.

18 Q. Great. Do you have page 97 of Mr. Modlin's  
19 deposition there?

20 A. Yes.

21 Q. And does Mr. Modlin indicate that, So after  
22 the switch was gone, meaning the manual pistol control  
23 switch, the local was basically off, on line 19?

24 A. That's what he says, yes.

25 Q. Do you agree with Mr. Modlin's description

1       that local was basically off?

2               A.       Yes. I'd agree with that.

3               Q.       Would you agree with me on June 7th the DC oil

4       pump switch should have been in the automatic or on

5       position?

6               A.       Would I agree with you what? Would you please

7       repeat that?

8               Q.       Sure. Would you agree with me on June 7th the

9       DC oil pump switch should have been in the automatic or on

10      position?

11              A.       To allow the pump to run, it would have had to

12      have been in the automatic position.

13              Q.       Is it correct that an employee of St. Joe

14      Light & Power placed the DC oil pump in the local or off

15      position?

16              A.       We believe that's correct.

17              Q.       And Mr. Modlin agreed with that when I took

18      his deposition, didn't he?

19              A.       I'd have to check with the deposition.

20              Q.       Why don't you look at page 98, lines 8 through

21      13?

22              A.       Yeah. He says it more than likely would have

23      been an SJLP employee.

24              Q.       Would you agree with me at the time of the

25      June 7th explosion and fire at Unit 4/6, there was nothing

1 mechanically wrong with the DC oil pump?

2 A. I don't know if there was anything

3 mechanically wrong with the DC oil pump or not.

4 Q. After the explosion and fire, did St. Joe

5 Light & Power check the operation of the DC oil pump?

6 A. Yes. I testified previously that we did run

7 the pump.

8 Q. And did it run as it was supposed to run?

9 A. As far as I know.

10 Q. Would you agree with me at the time of the

11 June 7th explosion and fire at Unit 4/6 no natural disaster

12 or act of God was preventing the DC oil pump from operating?

13 A. I don't know of any.

14 Q. Would you agree with me but for the failure of

15 the DC lube oil pump to start under normal operations, the

16 explosion and fire that occurred on June 7th, 2000 would not

17 have occurred?

18 A. I would not say that a trip of a generator

19 operating under near full load is normal operations, so I

20 guess I'd have to disagree with that statement of yours.

21 Q. Are you aware that Mr. Modlin at his

22 deposition agreed with that statement?

23 A. No, I'm not aware of that.

24 Q. Why don't you turn to page 171 of his

25 deposition? Let me know when you're there, sir.

1           A.       I'm on 171.

2           Q.       Starting on line 20 I asked Mr. Modlin the  
3 following question, So but for the failure of the DC oil  
4 pump to start under normal operations, the explosion and  
5 fire that occurred on June 7th, 2000 would not have  
6 occurred?

7                    Answer: Under normal situations, yes.

8                    Is that correct?

9           A.       Yeah. That's what Mr. Modlin testified.

10          Q.       Do you disagree with Mr. Modlin?

11          A.       I guess my opinion would be slightly  
12 different. I certainly wouldn't describe this as normal  
13 operations.

14          Q.       What would you describe this as?

15          A.       Well, a trip of the unit under full load is  
16 certainly not normal operations. They don't occur very  
17 often and it -- it's quite an unusual condition actually.

18          Q.       When a generator trips at full load and the AC  
19 oil pumps lose power, is it the purpose of the DC lube oil  
20 pump to come on automatically to replace the lubrication  
21 that the AC oil pumps were providing the unit?

22          A.       That was the way this unit was designed.

23          Q.       So it would be normal operating procedure once  
24 that unit tripped at full power or whatever power, when the  
25 DC lube oil pumps ceased operation, to come on and provide

1 lubrication to the unit; is that correct?

2 A. I wouldn't agree with what you just said.

3 Q. What part don't you agree with?

4 A. Could we have her read it back?

5 Q. Sure.

6 THE COURT REPORTER: "Question: So it would  
7 be normal operating procedure once that unit tripped at full  
8 power or whatever power, when the DC lube oil pumps ceased  
9 operation, to come on and provide lubrication to the unit;  
10 is that correct?"

11 THE WITNESS: I'd still disagree.

12 BY MR. MICHEEL:

13 Q. And my question is why?

14 A. Because you just said the DC lube oil pump  
15 went off, so it wouldn't come on.

16 Q. Okay. Let's say the AC lube oil pumps go off.  
17 Is it normal operating procedure for the DC lube oil pump to  
18 come on?

19 A. That's the way the system's designed, yes.

20 Q. And so when the unit trips at whatever power  
21 and the AC lube oil pumps go off, the way it's designed is  
22 the DC lube oil pump is supposed to come on and provide  
23 lubrication to the unit; is that correct?

24 A. Yeah. It's designed so that the DC pump will  
25 come on when the DC -- or when the AC pumps do not supply

1 lubrication anymore. Then the DC pump is to come on. But  
2 it's certainly not a normal operation, I mean, a trip.

3 Q. Were you aware that Mr. Modlin in his  
4 deposition indicated that turbines trip all the time?

5 A. I don't know Mr. Modlin's testimony or  
6 deposition that clearly, but do -- turbines do trip  
7 occasionally.

8 Q. I want to discuss with you the configuration  
9 of the two AC and one DC oil pump at the time of the  
10 explosion and fire at Unit 4/6, Mr. Svuba. And I think we  
11 agreed that at the time of the explosion and fire the two AC  
12 oil pumps received their power from turbine generator No. 4;  
13 is that correct?

14 A. Yeah. From the auxiliaries on turbine  
15 generator No. 4.

16 Q. So when turbine generator No. 4 tripped off  
17 line, those AC oil pumps lost power; is that correct?

18 A. That's -- that's correct as far as we know,  
19 yeah.

20 Q. And you'd agree with me at the time of the  
21 explosion and fire you had one DC oil pump that was powered  
22 by batteries attached to turbine generator --

23 A. Yeah.

24 Q. -- No. 4?

25 A. There was one DC oil pump, yeah.

1           Q.       Would you agree with me due to this  
2       configuration that St. Joe at turbine generator No. 4 only  
3       had two lines of defenses instead of three lines of  
4       defenses?

5           A.       That's the character-- characterization of how  
6       the lube oil system was set up, and people have used that  
7       characterization.

8           Q.       Indeed, Mr. Modlin used that characterization;  
9       is that correct?

10          A.       Yes. That's true.

11          Q.       And he testified in his deposition on page 130  
12       at lines 21 through 25 and then over to page 131 that it  
13       only had two lines of defenses; is that correct?

14          A.       Yeah. That appears to be what he's saying  
15       there on page 130.

16          Q.       And, indeed, he also put that in a document,  
17       did he not, a document entitled Possible Causes -- Possible  
18       Contributing Factors, Turbine Generator 4, June 7th, 2000  
19       incident?

20          A.       I don't recall the exact terminology, but  
21       yeah, that may be in that document, yeah.

22          Q.       So would you agree with me at the time of the  
23       explosion and fire, there were only two lines of defenses?

24          A.       I'd say that's one way of characterizing the  
25       lubrication system for turbine 4, yeah.



1           Q.       Would you agree with me that the general  
2       practice is to have three lines of defenses?  
3           A.       I don't know that I can make that statement.  
4           Q.       Are you aware that Mr. Bird (phonetic  
5       spelling) made that statement, a consultant for Factory  
6       Mutual?  
7           A.       Yeah. He made a statement similar to that, I  
8       know.  
9           Q.       Are you aware that in Mr. Modlin's deposition  
10      he admitted that most units have three lines as opposed to  
11      two lines of defenses?  
12          A.       No. I'm not aware that he admitted that.  
13          Q.       Why don't you again turn to page 130 and 131?  
14          A.       I'm right there. I was looking for it. I  
15      don't see it.  
16          Q.       On the top of page 131 he says, DC oil pump is  
17      usually the third thing in line, not the second; is that  
18      correct?  
19          A.       That's what it says here, yeah.  
20          Q.       And he says essentially the same thing on  
21      page 171, doesn't he?  
22          A.       Well, let's go back here to page 130. I don't  
23      know if that's Mr. Modlin saying that or if he's just saying  
24      that that's what Mr. Bird says.  
25          Q.       Well, I asked Mr. Modlin, Why did you make

1       that statement then that no second line of defense was  
2       installed?

3                   And he answered, In discussions with Joe Bird  
4       and John Mitchell and other people, it has come to light  
5       what happened. It's my understanding that most units have  
6       an alternate AC supply or some other feature that protects  
7       the unit from situations such as this before relying on the  
8       DC oil pump. DC oil pump is usually the third thing in  
9       line, not the second.

10           A.       Okay. What was your question?

11           Q.       My question was, is it general practice to  
12       have three lines of defense?

13           A.       And I said I couldn't necessarily agree with  
14       that statement and then you started quoting Mr. Bird. Okay.

15           Q.       And Mr. Modlin; is that correct?

16           A.       You quoted Mr. Modlin's deposition here, yeah.

17           Q.       And you disagree with Mr. Modlin's statement  
18       there?

19           A.       I'm not necessarily disagreeing with it.  
20       I'm -- you asked me if I would characterize it that way or  
21       if that's normal to have three lines of defense. And I'm  
22       saying I can't make that statement.

23           Q.       Okay. Let me ask you this: Sitting there  
24       today, if I trundled on out to the Lake Road plant, looked  
25       at turbine generator No. 4, would one AC oil pump receive

1 power from turbine generator No. 4?

2 A. I believe that's correct.

3 Q. And would one AC oil pump receive power from

4 an alternate source of AC power, not turbine generator

5 No. 4?

6 A. Most likely what you would find is that one AC

7 oil pump would be on and running off the auxiliaries off of

8 turbine 4 and the other AC oil pump would be standing still.

9 Q. Well --

10 A. It wouldn't be receiving power at all.

11 Q. Let's turn to your direct testimony,

12 Mr. Svuba. And I'm looking at page 12 of that direct

13 testimony. And I'm focusing on line 21 of your direct

14 testimony. Are you there?

15 A. Yes.

16 Q. You say, and I quote -- the question is, How

17 were the oil pump controls modified? And just that part of

18 the answer is, One of the AC oil pumps, paren, No. 1, closed

19 paren, now has a second power source that is supplied from

20 the 900-pound plant which is not normally interrupted on the

21 Unit 4/6 slash trip -- or Unit 4, slash, 6 trip.

22 This alternate source is now the normal power

23 supply for this pump which effectively moves the DC pump

24 from being the first, paren, and only, closed paren, back-up

25 in the case of a unit trip to a secondary back-up role.

1                   Is that correct?

2                   A.       Yes. We installed a -- an alternate source to  
3       the second oil pump, but I don't believe that was your  
4       question that -- that I answered no to. I think you asked  
5       me would it be receiving power. And normally only one oil  
6       pump runs at a time.

7                   Q.       Okay. Let me ask it a different way. Is it  
8       correct now that there are three lines of defenses at  
9       turbine generator No. 4?

10                  A.       It could be characterized that way. We have  
11       two AC oil pumps. Both of those pumps can take power from  
12       No. 4 unit auxiliaries. One of those pumps has an alternate  
13       source off the 900-pound plant. So it could be fed from  
14       that or could be fed from No. 4. And we have a DC oil pump.

15                  Q.       And you didn't have that configuration prior  
16       to the explosion and fire that occurred on June 7th; isn't  
17       that correct?

18                  A.       That's correct. After the fire, we had people  
19       look at this and they advised us that maybe we should do  
20       that. So we went ahead and did that as a precaution.

21                  Q.       Would you turn to page 3 of your surrebuttal  
22       testimony? And I'm focusing on your answer on lines 10  
23       through 12 there. Let me know when you're there, sir.

24                  A.       Page 3, line 10. Okay.

25                  Q.       In your surrebuttal there you state that Black

1 and Veatch designed two, rather than three, lines of defense  
2 in the 1960s; is that correct?

3 A. Black and Veatch, yeah, designed the unit in  
4 the '60s. Yeah, that's true.

5 Q. And they only designed those two lines of  
6 defense into the system. Is that what you're saying there,  
7 sir?

8 A. That was their -- the original design had the  
9 three oil pumps, two AC oil pumps and one DC oil pump.

10 Q. And both AC oil pumps received their power  
11 from the turbine generator No. 4; is that correct?

12 A. That's correct.

13 Q. Was Black and Veatch's decision reviewed by  
14 St. Joe at the time it was made to design the unit like  
15 that?

16 A. I do not know.

17 Q. Is St. Joe Light & Power responsible for the  
18 safe operation of turbine generator Unit No. 4?

19 A. Yes.

20 Q. Would you agree with me that St. Joe Light &  
21 Power should have understood the design and operation of its  
22 system?

23 A. I think that's a very broad statement. And I  
24 don't know that we know and understand the design of all the  
25 controls and systems that are in the Lake Road plant.

1       There's thousands of them there. And I'm sure that we do  
2       not know and understand all of those systems or all the  
3       design parameters that went into them.

4               Q.       So it's your expert testimony that St. Joe  
5       Light & Power should not know and understand the design and  
6       operation of its system?

7               A.       No. Those are your words. My -- I made my  
8       statement on the record.

9               Q.       Well, you're kind of in the middle there,  
10       Mr. Svuba. I mean, let me ask it again. Should St. Joe  
11       understand the design and operation of its systems, yes or  
12       no?

13              A.       Yes.

14              Q.       And would you agree with me that St. Joe Light  
15       & Power should be responsible for controlling the operations  
16       of its systems, yes or no?

17              A.       Yes.

18              Q.       Assume with me, Mr. Svuba, that two AC oil  
19       pumps at the time of the explosion and fire both were not  
20       receiving power from the same source. Would you agree with  
21       me that the explosion and fire would not have occurred?

22              A.       I don't think you can draw that conclusion  
23       from that statement.

24              Q.       Is it correct, Mr. Svuba, that prior to the  
25       installation of the Mark V control cabinet, a manual pistol

1 grip control was on the wall that controlled the operation  
2 of the DC lube oil pump?

3 A. That's my understanding.

4 Q. Had you ever seen that manual pistol grip  
5 control?

6 A. I had seen that panel, yeah. I wasn't  
7 familiar with the operation of the unit.

8 Q. Would you agree with me that the manual pistol  
9 grip control had indicating lights visible to the operator?

10 A. That's my understanding.

11 Q. Is it correct since 1995 with the installation  
12 of the distributed control system, the DCS, that the  
13 operator of turbine generator No. 4 could control the DC oil  
14 pump in two ways, one via the DCS system and one via the  
15 manual pistol grips?

16 A. Yes. The --

17 Q. On page 4 of your surrebuttal testimony, sir,  
18 and I'm looking at lines 21 through 23, you assert, The DC  
19 oil pump has only one control system now and prior to the  
20 installation of the Mark V project; is that correct?

21 A. Yeah. That's what it says.

22 Q. Would you agree with me, Mr. Svuba, prior to  
23 the installation of the Mark V control panel, the operator  
24 had two ways to interface with the control, one, was the  
25 manual pistol grip switch and the second was the DCS control

1 system?

2 A. Yeah. Those were the two operator interfaces.

3 Q. Would you agree with me that this is a

4 redundant operator control interface?

5 A. I would say that it's two operator interfaces

6 to one control system. So when we start talking about

7 redundancy here, we need to be very careful, because there

8 were certainly parts of this system that were not redundant.

9 Q. As it relates to controlling the DC oil pump,

10 is that a redundant control?

11 A. It's a redundant control position or operator

12 control position.

13 Q. And, indeed, at the bottom of page 4 of your

14 surrebuttal you say, From that perspective, it could be

15 considered a redundant operator control interface; is that

16 correct?

17 A. Yes.

18 Q. Would you agree with me, Mr. Svuba, that with

19 removal of the pistol grip control switch, that St. Joe went

20 from a more reliable to a less reliable system?

21 A. In retrospect, I'd agree with you.

22 Q. Is it correct that the decision to remove the

23 manual pistol grip switch was made in January or February of

24 2000?

25 A. I do not know.



1 Q. Were you at Mr. Modlin's deposition?  
2 A. Yes.  
3 Q. Why don't you turn to page 175 of that  
4 deposition. And I'm focusing there on the answer  
5 starting -- the question, Who decided the location for where  
6 that control panel was placed?  
7 A. What line is that?  
8 Q. Line 11.  
9 A. Okay.  
10 Q. And he says, Answer: General Electric was  
11 on-site. I don't know if it was January, February. Early  
12 in the year.  
13 Is that correct?  
14 A. That's what it says.  
15 Q. Do you have any reason to disagree with  
16 Mr. Modlin's time line?  
17 A. No.  
18 Q. And is it correct that the decision to remove  
19 the manual pistol grip control switch was a mutual decision  
20 by General Electric and St. Joe Light & Power?  
21 A. I don't know that.  
22 Q. Would you look at page 175 of Mr. Modlin's  
23 deposition. Starting on line 22 the question is, And was  
24 that done by the recommendation from General Electric that  
25 was approved by St. Joe?

1                   Answer:  Probably more of a mutual decision.

2                   A.       Yeah.  That's what it says.

3                   Q.       Do you agree with that characterization?

4                   A.       I have no knowledge of how that decision was

5                   made.  We'll have to rely on Mr. Modlin's statement.

6                   Q.       And Mr. Modlin was the individual who was in

7                   charge of this project, isn't that correct, Mr. Svuba?

8                   A.       That's correct.

9                   Q.       So if somebody within your company would know,

10                  it would be Mr. Modlin; is that correct?

11                  A.       He should know how the decision was made, yes.

12                  Q.       And your company chose not to file any

13                  testimony by Mr. Modlin in this case; is that correct?

14                  A.       That's correct.

15                  Q.       So you're the witness on behalf of this

16                  company who's testifying about the causes of the explosion

17                  and fire at Unit 4/6 on June 7th, 2000; is that correct?

18                  A.       That's, I guess, your characterization of it.

19                  Q.       Were you here earlier this morning when I

20                  asked Mr. Stoll what mechanical failure resulted in the

21                  explosion?

22                  A.       Yes, I was.

23                  Q.       And was his answer, Mr. Micheel, you ask

24                  Mr. Svuba?

25                  A.       There was an answer similar to that, yes.

1           Q.       So I was directed by Mr. Stoll to ask you  
2       these questions; is that correct?

3           A.       Mr. Stoll said that I could better answer your  
4       mechanical questions than he could.

5           Q.       Is there any other witness I can ask about the  
6       mechanical operation of turbine generator Unit 4 for St. Joe  
7       Light & Power that's filed testimony?

8           A.       No.

9           Q.       You'd be the best one, wouldn't you?

10          A.       Yes. That's right.

11          Q.       So I'm stuck with you and you're stuck with  
12       me.

13                   Is it correct, Mr. Svuba, that St. Joe is  
14       aware of the parallel control paths being removed when it  
15       removed the manual pistol grip control switch?

16          A.       The manual switch was removed at the direction  
17       of General Electric and their design. And I wouldn't  
18       characterize it as a dual or parallel control. I think we  
19       went through that as how I characterized it as a redundant  
20       operator position or something like that.

21          Q.       Well, let me ask you this: The work that  
22       General Electric was performing at your plant, was that on  
23       your behalf?

24          A.       Yes, it was.

25          Q.       When I say "your behalf," I mean St. Joe Light

1       & Power's behalf; is that correct?

2           A.       That's correct.

3           Q.       And we went through at the outset a bunch of

4       job descriptions. Do you recall that?

5           A.       Yes, we did.

6           Q.       And would you agree with me that it was

7       Mr. Modlin's job as the project coordinator of this project

8       to oversee the contractor's work with respect to the

9       installation of the Mark V unit and the Exciter deal and all

10      of that?

11          A.       Well, the job descriptions don't have anything

12      in there about the Mark V job.

13          Q.       Well, I asked you was it Mr. Modlin's job to

14      oversee that?

15          A.       Mr. Modlin was the project manager on that.

16      Yes, he's responsible for the oversight of the project as

17      far as St. Joseph Light & Power Company is concerned. But

18      that doesn't mean he does every detail design review or

19      check out of all the design or detail of General Electric.

20          Q.       So you just relied on General Electric to get

21      it right; is that correct?

22          A.       They have the expertise -- more expertise than

23      we do in many of these fields. We have to rely on outside

24      experts.

25          Q.       Let me ask you this: Would you agree with me

1       that St. Joe Light & Power was wholly aware of General  
2       Electric's design configuration and placement of the Mark V  
3       control system?

4             A.       I don't know what you mean by "wholly aware."

5             Q.       Well, let's go back to the beginning. Is it  
6       correct that personnel from St. Joe Light & Power Company  
7       reviewed the project documents for this project given to  
8       them by General Electric?

9             A.       Yes.

10            Q.       Is it correct that if St. Joe Light & Power  
11       objected to the way General Electric had designed this  
12       project, it could have said so?

13            A.       Yes.

14            Q.       Is it correct that General Electric was  
15       working for St. Joe Light & Power in this project?

16            A.       General Electric was contracted to supply a  
17       control system. They weren't acting or designing under our  
18       direct control. We were not taking direct supervisory  
19       responsibility of their design. That was their  
20       responsibility.

21            Q.       Did you review their design?

22            A.       Of course you review it, but you don't review  
23       every detail. You can't review all the design.

24            Q.       Was removal of the manual pistol grip switch,  
25       taking down an entire switch, was that a minute detail,

1 Mr. Svuba?

2 A. I don't know what you mean by "minute." We  
3 just got done saying that Mr. Modlin and General Electric  
4 were looking for a place to put the panel.

5 Q. And so everyone at St. Joe Light & Power in  
6 the operations area was aware that the manual pistol grip  
7 control switch had been removed; is that correct?

8 A. Well, that's a broad statement when you say  
9 everybody in the operating department.

10 Q. Let me limit it. Do you think, Mr. Svuba,  
11 that the operators of turbine generator No. 4 were aware  
12 that the manual pistol control grip switch had been removed?

13 A. Yes, they were.

14 Q. Do you think that Mr. Ceglenski, the  
15 maintenance superintendent and superintendent of  
16 construction, was aware that the switch had been removed?

17 A. Yes.

18 Q. Do you think that the superintendent for  
19 operations at the Lake Road plant was aware that the manual  
20 pistol grip switch had been removed?

21 A. Yes.

22 Q. Do you think those people should have been  
23 aware of the consequences of removing that manual pistol  
24 grip switch?

25 A. I think they had no idea what the consequences

1 of removing that switch were. General Electric didn't check  
2 that detail design and inform us of it.

3 Q. Did you ask about it? "You," being St. Joe  
4 Light & Power.

5 A. I don't know.

6 Q. Do you think it would have been a good idea on  
7 behalf of the people who work directly for you to ask that  
8 question of General Electric?

9 A. You know, right now it sure seems like a good  
10 idea, but that's 20/20 hindsight again. You don't know all  
11 of these questions ahead of time. There's thousands of  
12 decisions that have to be made on a control system  
13 change-out.

14 Q. Let's stop right there. Is it your testimony  
15 today, Mr. Svuba, that the operators and the superintendent  
16 of operations for St. Joe Light & Power did not recognize  
17 that when the manual pistol grip control switch was  
18 completely removed from the wall, was no longer there, that  
19 the only control that they had was the DCS control system?

20 A. Are you asking me if they recognized that?

21 Q. Yes, sir.

22 A. Yes. I think they probably did.

23 Q. So they knew at the time of the explosion and  
24 fire on June 7th the only way they could control the DC oil  
25 pump was through the DCS Bailey logic; isn't that correct?

1           A.       They knew that the DCS control station was  
2       their only control point, that's right. But they didn't  
3       know there was a hidden trap in the control logic.

4           Q.       Is it correct, Mr. Svuba, that once the manual  
5       pistol grip switch and light were removed, and I think I  
6       just asked you this, the DCS control system was the only  
7       thing operating the DC lube oil pump?

8           A.       That was the only operator interface.

9           Q.       On page 5 of your surrebuttal testimony, I'm  
10      focusing on lines 6 through 8 there, you state, There are  
11      situations in which the existence of parallel control paths  
12      can reduce reliability; is that correct?

13          A.       Yes.

14          Q.       Would you agree with me that this is not one  
15      of those cases?

16          A.       In retrospect, I'd say yes.

17          Q.       In fact, at the time of the explosion and  
18      fire, there was not a redundant control path. The only  
19      control was the DCS Bailey logic; is that correct?

20          A.       That's correct. And the operator trap that  
21      resulted from the removal of the switch is probably because  
22      there was a redundant path in the first place.

23          Q.       And those operators were aware that that  
24      redundant path had been removed, weren't they, Mr. Svuba?

25          A.       The redundant operator control station was



1 removed and they knew it, yes.

2 Q. On page 8 -- or page 5, excuse me, of your  
3 surrebuttal testimony --

4 A. Which one now?

5 Q. Page 5 of your surrebuttal testimony, I'm  
6 looking at lines 6 through 8 -- or excuse me -- page 8 of  
7 your testimony, my fault. Sorry to confuse you. And I'm  
8 looking at lines 1 through 4 there. You give an example of  
9 a bug in a software system; is that correct?

10 A. Yes, sir.

11 Q. Would you agree with me, Mr. Svuba, that  
12 somebody turned the DC oil pump off?

13 A. I would say that somebody in the control --  
14 the DCS control logic did turn the pump off, yes. I would  
15 agree with that.

16 Q. And that would be an operator or someone who  
17 had operational control of turbine generator No. 4; is that  
18 correct?

19 A. We assume so, yeah.

20 Q. I mean, you have security at the Lake Road  
21 plant? I couldn't just walk in and start pushing buttons,  
22 could I, at the operation panel?

23 A. We do have security at the Lake Road plant.

24 Q. And the operation shack or room is limited  
25 access, is it not?

1           A.       It is not limited access.

2           Q.       Okay. But, in any event, you would agree with  
3 me that it was an employee of St. Joe Light & Power that  
4 turned it off?

5           A.       I assume so, yes.

6           Q.       Would you agree with me that the DCS system  
7 displayed the fact that the DC lube oil pump was off?

8           A.       No. I wouldn't agree with you there.

9           Q.       Did the DCS system show the DC lube oil pump  
10 to be in the local position?

11          A.       That's my understanding, that that's the way  
12 it would have shown up.

13          Q.       And is that essentially off?

14          A.       We know now that it's off. We didn't know  
15 that at the time.

16          Q.       Should you have known then?

17          A.       We had no reason to suspect that it was  
18 different than all of the pistol grips that we had seen  
19 before when -- after you shut the pump off, it returned to  
20 automatic. So I don't believe we had any knowledge that we  
21 should have checked into this. There were no red flags. GE  
22 designer didn't tell us that he'd changed it to do that.  
23 No. I --

24          Q.       So removal of the manual pistol grip switch  
25 was not enough of a red flag for you or your company to say,

1       Gee, we'd better figure out how the DCS control logic works.  
2       Is that your testimony?

3               A.       My testimony is that many motor controls have  
4       been taken from pistol grip switches and put in computer  
5       controls, DC logics. Hundreds of them probably at the Lake  
6       Road plant are now controlled by computers, not by  
7       old-fashioned manual switches.

8               Q.       And St. Joe Light & Power expects its  
9       operators to understand what those operational screens mean  
10      when they pull them up, don't they?

11              A.       Yes.

12                      MR. MICHEEL: I need to get an exhibit marked,  
13      your Honor.

14                      JUDGE WOODRUFF: Go right ahead.

15                      This will be response to Data Request 14; is  
16      that correct?

17                      MR. MICHEEL: Staff Data Request 14 would be  
18      more correct, your Honor.

19                      (EXHIBIT NO. 22 WAS MARKED FOR  
20      IDENTIFICATION.)

21                      JUDGE WOODRUFF: That's No. 22.

22      BY MR. MICHEEL:

23               Q.       Do you have what's been marked for purposes of  
24      identification as Exhibit 22, Mr. Svuba?

25               A.       Yes, sir.

1           Q.       And would you turn to page 2 of that exhibit?  
2       Is that signed by Jim Parker?  
3           A.       It's prepared by Jim Parker, signed, yes.  
4           Q.       And is he an individual under your  
5       supervision?  
6           A.       Yes.  
7           Q.       And who is Jim Parker?  
8           A.       He's the operations superintendent.  
9                   MR. MICHEEL: I'd move admission of  
10       Exhibit 22, your Honor.  
11                   JUDGE WOODRUFF: Exhibit 22 has been offered  
12       into evidence. Are there any objections to its receipt?  
13                   Hearing none, it will be received into  
14       evidence.  
15                   (EXHIBIT NO. 22 WAS RECEIVED INTO EVIDENCE.)  
16       BY MR. MICHEEL:  
17           Q.       And I'm looking at the answer to 2 there. It  
18       says, The head operator said that they did indeed check this  
19       screen, but that the local indication on the screen was what  
20       they'd been seeing for the past five years when the pump was  
21       in ready mode. Of course, with the pistol grip switch  
22       removed there was no, quote, local control to be in auto  
23       mode.  
24                   Is that correct?  
25           A.       That's what this response says, yes.

1           Q.       So that response indicates that at least  
2       according to the head operator, the operators failed to  
3       understand what local meant within the DCS Bailey logic; is  
4       that correct?

5           A.       For the control of this DC oil pump, I believe  
6       that's correct.

7           Q.       Would you agree with me, Mr. Svuba, that the  
8       operator, via the DCS, could have turned the DC lube oil  
9       pump on at the time of the June 7th explosion?

10          A.       You mean during the incident?

11          Q.       Yes, sir.

12          A.       I don't know that he could have done this  
13       quick enough to get the lube oil to the unit before it was  
14       ruined.

15          Q.       How many screens deep is the DC lube oil pump  
16       on the DCS system?

17          A.       What do you mean? When you say "screens  
18       deep," what specifically do you mean?

19          Q.       Well, it's my understanding from taking  
20       Mr. Modlin's deposition, that there are three big television  
21       screen-type things in the operations room; is that correct?

22          A.       Well, there's one large monitor and two or  
23       three smaller ones.

24          Q.       And how would the operator know, as it says  
25       here on Exhibit 22, when they looked at that screen -- what

1 are they talking about here? What screen in Exhibit 22 is  
2 that head operator talking about?

3 A. Let me read this, please.

4 Q. Sure.

5 A. Okay. What was your question again?

6 Q. How many screens deep was the DC lube oil pump  
7 control on the DCS Bailey logic?

8 A. And I asked specifically what you meant by  
9 screens deep?

10 Q. Yes. What does it mean by screens on  
11 Exhibit 22?

12 A. I believe what they're talking about is a  
13 software screen. In other words, it's not a physical tube,  
14 but they're talking about if you select a specific control  
15 mode, you could get a screen. In other words, it would  
16 display that, whatever that control function was.

17 Q. And how does an operator select a control  
18 mode?

19 A. Well, those are touch screens, so he touches  
20 what he wants to control.

21 Q. So he could have touched the DC lube oil pump;  
22 is that correct?

23 A. If he had a screen up or on display on one of  
24 the touch screens that showed the operator interface.

25 Q. Well, you would agree with me, would you not,

1 Mr. Svuba, that those operators were well aware that when  
2 Unit 6/4 tripped off line, the unit lost AC lube oil pump  
3 power?  
4 A. Yes, they did.  
5 Q. So they would know to look to the DC lube oil  
6 pump to begin providing lubrication for the unit; isn't that  
7 correct?  
8 A. When that unit trips at full load, there's a  
9 lot of things going on. The safeties are blowing, we had  
10 fires and explosions. So to answer your question, yes, they  
11 know that you can touch the screen if you have the right  
12 screen up and start the DC pump, yes.  
13 Q. And you had fire and explosions when that unit  
14 tripped off line because the DC lube oil pump was off,  
15 didn't you?  
16 A. Because the DC oil pump didn't run.  
17 Q. And it didn't run because it was turned off;  
18 isn't that correct?  
19 A. It was in the local mode.  
20 Q. And local means off; isn't that correct?  
21 A. In the local mode the pump will not run.  
22 Q. What's the difference between off and will not  
23 run?  
24 A. Well, there could be lots of differences.  
25 Q. Enlighten me.

1           A.       But what we're talking about here is a screen  
2       that says local, not off. And you keep calling it off and  
3       it's local.

4           MR. MICHEEL: Your Honor, I'm going to ask  
5       that he answer my question about --

6           JUDGE WOODRUFF: The last question was,  
7       Enlighten me. Enlighten him.

8           THE WITNESS: So I'm trying to tell you that  
9       off is a control and local is a mode. When you turn it off  
10      or hit the off button, so to speak, on the screen, then  
11      after that function of turning the pump off, then it goes to  
12      local. So it's not off. It's in local.

13      BY MR. MICHEEL:

14          Q.       On June 7th when the DC oil pump was in local,  
15      did it come on?

16          A.       No.

17          Q.       Would you agree with me that the DC lube oil  
18      pump at the time of the explosion had no mechanical  
19      problems?

20          A.       I think we went through this once before. I  
21      don't know of any.

22          Q.       And would you agree with me that the DC lube  
23      oil pump did not go on because an operator failed to turn  
24      the pump on?

25          A.       The DC lube oil pump didn't come on during the



1 accident because it was in the local mode.

2 Q. Would you agree with me that the DC oil pump  
3 operated just as General Electric -- or excuse me -- as the  
4 designers of the DCS Bailey logic had designed it to  
5 operate?

6 A. I don't know that I would agree with that.

7 Q. Is it correct you say in your surrebuttal  
8 testimony on page 5 starting at line 21, The control system  
9 was installed according to GE's design and its performance  
10 was checked for operation as designed?

11 A. What line are you on there?

12 Q. 21 through 23, page 5.

13 A. Yes.

14 Q. Would you agree with me that the explosion and  
15 fire occurred because of the operator's failure to recognize  
16 that the DC oil pump had been placed in the local position?

17 A. I think that was probably a contributing  
18 factor.

19 Q. You also say at page 8 of your surrebuttal  
20 testimony that all evidence now indicates that the DC pump  
21 would have failed to work regardless of the quality of  
22 training received from GE by the operators; is that correct?

23 A. What line are you on here?

24 Q. Lines 22 and 23 and then page 9, line 1.

25 A. Yes. That's what it says.

1           Q.       And that's because the operators failed to  
2 recognize that the DC lube oil pump was in the local  
3 position; is that correct?

4           A.       No. I don't think that's what this says here,  
5 is it? It says, Indicates the DC pump would have failed to  
6 work regardless of the quality of training received from GE  
7 by the operators.

8                    You know, the GE people didn't know that this  
9 trap was built in there, so I don't care how much they'd  
10 have trained us, they would have never trained us on the  
11 fact that there was a trap for the operators to fall into  
12 here. So I guess I don't agree with your statement.

13          Q.       What you refer to as a trap is the way the  
14 system was designed to work; is that correct?

15          A.       I think it -- it worked the way it was  
16 designed, yes.

17          Q.       Is it correct that the DC lube oil pump was  
18 not tested even once after May 24th, 2000?

19          A.       I believe that the pump was tested on  
20 May 24th, yes. And I don't believe it was tested after  
21 that.

22                   MR. MICHEEL: I need to mark an exhibit, your  
23 Honor.

24                   JUDGE WOODRUFF: You may.

25                   MR. MICHEEL: This is a highly confidential

1 exhibit and I'm going to have some questions. And I don't  
2 know if everybody here is under the protective order or not,  
3 so --

4 JUDGE WOODRUFF: Let me know when you get into  
5 a confidential area and we'll go in-camera if we need to.

6 Okay. This is response to Staff Data Request  
7 No. 9, I believe. It will be 23-HC.

8 (EXHIBIT NO. 23-HC WAS MARKED FOR  
9 IDENTIFICATION.)

10 MR. WILLIAMS: Judge, if I might, Exhibit 14  
11 also should be marked as an HC exhibit.

12 JUDGE WOODRUFF: Exhibit 14 should be 14-HC.

13 Okay. You can inquire.

14 BY MR. MICHEEL:

15 Q. Mr. Svuba, do you have in front of you what's  
16 been marked for purposes of identification as Exhibit 23,  
17 Response to Staff DR No. 9?

18 A. I have 23-HC in front of me.

19 Q. And have you opened the envelope?

20 A. Yes, sir.

21 Q. And do you recognize the signature of John  
22 Modlin on page 2 of that?

23 A. Yes.

24 Q. Would you turn to a page marked Oil Pump  
25 Sequence of Events, May 20 through June 7?

1           A.     Oil Pump Sequence of Events marked draft and  
2     highly confidential?  
3           Q.     Yes, sir.  
4           A.     Yes.  
5           Q.     My first question to you is, who prepared that  
6     document?  
7           A.     I believe Mr. Modlin prepared this document.  
8           Q.     Looking on the first page of that document  
9     under 5/24 2000 --  
10           MR. MICHEEL:  And I guess this is all HC, so  
11     have we cleared the room or not?  
12           JUDGE WOODRUFF:  At this point we're not  
13     in-camera.  Do we need to go in-camera?  
14           MR. MICHEEL:  Yes, sir.  All these questions  
15     are in-camera.  I'm sorry.  
16           JUDGE WOODRUFF:  Let's go into the in-camera  
17     session.  Anyone who does not have an authorization --  
18     confidentiality authorization to be in here needs to leave.  
19           MR. DUFFY:  Who was that?  
20           MR. MICHEEL:  Another client.  
21           MR. DUFFY:  Who was it?  
22           MR. MICHEEL:  Probably from UCU, I guess.  
23           MR. CONRAD:  Don't you know who your clients  
24     are?  
25           MR. DUFFY:  I just asked who it was.  I didn't

1 ask for a lot of sarcastic remarks. Does anyone know who  
2 that was?

3 JUDGE WOODRUFF: It was Mark Comley that just  
4 left.

5 MR. DUFFY: No. The one behind Mark Comley.  
6 I know who Mark Comley is.

7 JUDGE WOODRUFF: I figured you knew who Mark  
8 Comley was.

9 MR. MICHEEL: I don't know, Gary. That's my  
10 assumption, somebody from UCU, but I don't know.

11 MR. DUFFY: Nobody knows who that person is?  
12 Geez.

13 MR. MICHEEL: That's my assumption, Gary.  
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1 JUDGE WOODRUFF: All right. We're back in  
2 regular session. You may proceed.  
3 BY MR. MICHEEL:  
4 Q. Is it correct, Mr. Svuba, that the DC oil pump  
5 was routinely supposed to be checked on Mondays?  
6 A. There's a planning schedule that's kept in the  
7 control room that has on it a scheduled check of the DC oil  
8 pump on Monday mornings.  
9 Q. Let me just so everybody can see this -- I  
10 didn't make it a copy, but let me approach and hand you this  
11 big copy here. I may just kind of stand next to you, sir.  
12 A. Okay.  
13 Q. Is it correct that what I'm handing you is the  
14 operations schedule for the week of 6/5 through 6/11 2000?  
15 A. That's what it appears to be.  
16 Q. And on this schedule it has highlit yellow  
17 marks; is that correct?  
18 A. There are some highlights on here, yes.  
19 Q. And do those highlit yellow marks show the  
20 operations that were done with respect to each day?  
21 A. Yes. These are the things that were  
22 accomplished on these days, yes.  
23 Q. Would you agree with me on Monday, 6/5, under  
24 shift one, and it says 2330 to 0630, so I guess that's 11:30  
25 to 6:30, that the DC lube oil pump was supposed to be

1 checked?

2 A. This is an operation schedule of things that

3 we plan to do during each shift. And I believe it's on

4 here. I haven't found it yet.

5 Q. May I point to it?

6 A. Certainly.

7 Q. Check 4/6 DC lube, slash, seal oil pump?

8 A. Yes. There it is. It's on the first shift.

9 Q. And that is not yellow highlit; is that

10 correct?

11 A. That's correct. Along with a lot of other

12 things on this sheet.

13 Q. Okay. Would you agree with me --

14 MR. DUFFY: Are you finished with it?

15 MR. MICHEEL: Yeah.

16 MR. DUFFY: If you're not going to introduce

17 it into evidence, let's just at least say it's two feet by

18 three feet or something like that so that the record is

19 clear as to what he's looking at.

20 MR. MICHEEL: Let the record reflect that this

21 operations schedule is about two foot by three foot. It is

22 broken into three shifts, shifts one, two, and three. And

23 it contains the days Monday, 6/5, through Sunday, 6/11.

24 BY MR. MICHEEL:

25 Q. And I believe, sir, it was your testimony and

1       indeed the testimony of Mr. Modlin in his deposition that  
2       routinely on Mondays the DC lube oil pump is supposed to be  
3       checked; is that correct?

4             A.       Do you know where I said that in my testimony?

5             Q.       Yes, sir.

6             A.       Good. Point it out to me.

7             Q.       In your surrebuttal testimony on page 10 you  
8       answered, The company explained in the following responses  
9       to Staff Data Request No. 13 in this case that the test is a  
10      routine that is normally done.

11            A.       But not always done depending on other demands  
12      of the operating crew. Yes, I see that.

13            Q.       What's the purpose of having the operating  
14      schedule, sir?

15            A.       The purpose of the operating schedule is to  
16      give a list of things that the operating crews can do if  
17      they have time if they're not overloaded or -- or not taken  
18      up with other activities of operating the plant or doing --  
19      performing cut-outs or -- or placing red tags on equipment  
20      to be isolated for maintenance.

21            Q.       So is it your testimony that the operators are  
22      not required to follow the operations schedule?

23            A.       That's correct. It's a guide.

24            Q.       And who decides what operations the operators  
25      pick and choose to do?

1           A.       That would be up to the shift supervisor.

2           Q.       Okay.

3           A.       Depending on the workload.

4           Q.       Would you agree with me that the failure to

5       test the DC lube oil pump on Monday, June 5th was a

6       contributing factor to the explosion and fire that occurred

7       at Unit 4/6?

8           A.       I wouldn't necessarily agree with that.

9           Q.       Does Mr. Modlin believe it was a contributing

10       factor?

11          A.       I don't know.

12          Q.       Were you at Mr. Modlin's deposition?

13          A.       Yes, sir.

14          Q.       Did we introduce into evidence a document --

15       actually, two documents, one dated June 13th, 2000 and one

16       dated September 29th, 2000 that indicated that he believed

17       that the failure to do the routine check of readiness of the

18       pump was a contributing factor?

19          A.       Did it say possible contributing factor or

20       does it say contributing factor? And is that a preliminary

21       statement or a final?

22          Q.       Well, let me just give you both of these.

23          A.       Okay.

24          Q.       And just so everybody knows, these have been

25       attached to Mr. Kumar's testimony as schedules, so they are

1 already in the record.

2 Let me hand you this document. And at the top

3 of the first document it says Draft, Highly Confidential.

4 And we've already determined that this is no longer highly

5 confidential. Turbine generator 4, June 7th incident,

6 possible contributing factors. Did I read that correctly?

7 A. Yes, sir.

8 Q. Under operation, May 25 through June 7th,

9 2000, do you see the second bullet there, sir?

10 A. Is this where you're talking right here

11 (indicating)?

12 Q. Yes, sir.

13 A. Weekly DC oil pump not performed on 6/5/00.

14 Q. So it says, Weekly DC oil pump test not

15 performed on 6/5/00; is that correct?

16 A. That's what it says.

17 Q. Let's go over to the June 13th document. It

18 has the same type things; is that correct?

19 A. It's a similar document prepared on July 13th,

20 2000.

21 Q. But under the operations May 25th through

22 June 7th it still has the bullet, Weekly DC oil pump not

23 performed on 6/5 2000; is that correct?

24 A. That's correct. And those are possible

25 contributing factors.

1 Q. And you don't have any doubt sitting here  
2 today that those are possible contributing factors, do you?  
3 A. I have no reason to believe that they're not.  
4 Q. Would you agree with me, Mr. Svuba, that had  
5 the pump been tested on 6/5, the operators would have known  
6 the DC oil pump was in the local or off position?  
7 A. No.  
8 Q. To test the DC lube oil pump, would they have  
9 had to turn that pump on?  
10 A. It's my understanding that they would have had  
11 to have put the pump in either start position or automatic  
12 position in the control interface on the DCS.  
13 Q. Was placing the DC lube oil pump in the local  
14 position an act of God?  
15 A. I don't believe so.  
16 Q. Was placing the DC oil pump in the local  
17 position the result of some unforeseen mechanical failure?  
18 A. I think it was because GE design engineers  
19 didn't show us the trap that they had created for us.  
20 MR. MICHEEL: I'm going to ask that that  
21 answer be stricken and that he answer my question, if it was  
22 the result of an unforeseen mechanical failure, your Honor.  
23 JUDGE WOODRUFF: I'm going to grant the  
24 objection. Go ahead and answer as he's requested, yes or  
25 no.

1                   THE WITNESS: I don't believe so.

2       BY MR. MICHEEL:

3           Q.       In fact, had the pump been turned on, it would

4       have operated; is that correct?

5           A.       If you did a control function to turn the pump

6       in the on mode, then the pump will run. It will run until

7       you turn it off.

8           Q.       Okay. On page 9 of your surrebuttal

9       testimony -- let me know when you're there, sir.

10          A.       I'm there.

11          Q.       You ask yourself a question on line 13, Did GE

12       have any economic incentive to get the unit back in service

13       as soon as possible?

14                   Is that correct?

15          A.       That's right.

16          Q.       You would agree with me that St. Joseph Light

17       & Power had an economic incentive to get the unit up and

18       running; is that correct?

19          A.       If it's done properly, I would agree with you.

20          Q.       And, indeed, you were here when Mr. Ferry

21       testified, were you not, sir?

22          A.       Yes, I have.

23          Q.       And Mr. Ferry testified, I believe, that

24       St. Joe Light & Power had an economic incentive to get that

25       unit up and running; is that correct?

1           A.       I believe he did.

2           Q.       And you were at Mr. Modlin's deposition, were  
3           you not?

4           A.       Yes, I was.

5           Q.       And Mr. Modlin testified at his deposition  
6           that St. Joe Light & Power had an economic incentive to get  
7           that unit up and running; isn't that correct?

8           A.       I'd have to check his deposition.

9           Q.       Do you have a copy there?

10          A.       Yes, sir.

11          Q.       Why don't you look at page 163? And don't  
12          answer yet.

13                 MR. MICHEEL: I need a ruling on whether or  
14                 not this is HC. It's in the HC portion of the deposition.  
15                 I don't really think it's an HC answer.

16                 MR. DUFFY: Well, let me just find it here  
17                 real quick.

18                 MR. MICHEEL: I've got it right here, Gary.

19                 MR. DUFFY: If the question is just about the  
20                 bringing up and the economic incentive, that would not be  
21                 HC.

22                 MR. MICHEEL: That's all my question is about.

23                 MR. DUFFY: So is there a question pending?

24                 BY MR. MICHEEL:

25           Q.       Would you agree with me that Mr. Modlin



1 testified in his deposition that St. Joe had an economic  
2 incentive to bring Unit 6/4 back on line? I'm focusing  
3 on lines 22 and 23 where he says, I can see that it was  
4 economically -- we needed to get the unit on.

5 A. Well, you're specifically taking that out of  
6 context there. And he said in line 12 -- he said, I guess I  
7 wasn't in on the decision on whether to start the unit up  
8 due to any lack of time, training or -- and then I'm not --  
9 I guess --

10 Q. Well, then the question is -- and the question  
11 is, Well, you said in response though to that question that  
12 it was an economic decision. How did you come to that  
13 conclusion?

14 MR. DUFFY: Well, let's do this. You know,  
15 the deposition -- the testimony in the deposition speaks for  
16 itself. And if he wants us to -- I mean, we'll certainly  
17 stipulate that the deposition says what it says at that  
18 point. I don't think he ought to be asking Mr. Svuba, you  
19 know, necessarily -- he can ask him whether he agrees with  
20 it or not or he can ask Mr. Svuba if he thinks it was an  
21 economic decision, but I think --

22 MR. MICHEEL: I'll withdraw the question,  
23 Gary.

24 MR. DUFFY: Okay.

25 BY MR. MICHEEL:

1           Q.       Would you agree with me, Mr. Svuba, that GE  
2       would have waited to start up the unit if St. Joe Light &  
3       Power had requested it to wait?  
4           A.       Yes.  
5           Q.       Would you agree with me that the economic  
6       incentive Witness Trippensee discusses at page 14 of his  
7       rebuttal testimony is St. Joseph Light & Power's economic  
8       incentive, not General Electric's economic incentive?  
9           A.       I don't have Mr. Trippensee's testimony.  
10          Q.       At page 2, line 13, sir --  
11          A.       Of what?  
12          Q.       Of your surrebuttal testimony, Exhibit No. 6,  
13       you say that, Opposing witnesses are attempting to hold  
14       St. Joe to an impossible standard; is that correct?  
15          A.       Yes.  
16          Q.       Is it an impossible standard for St. Joe to  
17       know that the DC lube oil pump was in the local position?  
18          A.       You're taking one thing out of context.  
19                   MR. MICHEEL:  Would you direct the witness to  
20       answer my question, your Honor?  
21                   JUDGE WOODRUFF:  Answer that with a yes or no,  
22       if you can.  If you can't, say so.  
23                   THE WITNESS:  I can't answer that with a yes  
24       or no.  
25       BY MR. MICHEEL:

1 Q. Is it an impossible standard for St. Joseph  
2 Light & Power's operators to know how to turn the DC oil  
3 pump on via the DCS control logic?

4 A. No.

5 Q. Is it an impossible standard for St. Joe Light  
6 & Power operators to follow testing procedures?

7 A. Operators to follow testing procedures? I  
8 guess not. I don't know.

9 Q. Is it an impossible standard for St. Joe Light  
10 & Power to understand the operational configuration of TG  
11 Unit No. 4?

12 A. It is if there's hidden traps.

13 Q. On page 2, line 15, you state, quote, Alleged  
14 imprudence is irrelevant to an AAO request; is that correct?

15 A. That's my statement, yes, sir.

16 Q. Where in pre-filed testimony does Public  
17 Counsel ever discuss imprudence?

18 A. I think it's implied imprudence. I don't know  
19 that they discuss it directly, but I think it's implied.

20 Q. So there's no direct discussion of the idea of  
21 imprudence as it relates to what we commonly use as a term  
22 of art in a rate case proceeding, isn't that correct,  
23 Mr. Svuba?

24 A. Well, I haven't looked at all that testimony,  
25 so I can't -- I can't agree with that. I mean, you're

1 asking me to say that I've gone through all this and say  
2 there's nothing in there. No, I cannot agree.

3 Q. So in responding to Public Counsel Witnesses  
4 Trippensee and Kumar, you didn't read their testimony?

5 A. Yes. I read their testimony.

6 Q. Did you read it all?

7 A. I don't know if I read all of Trippensee's.

8 MR. MICHEEL: Thank you very much for your  
9 time, Mr. Svuba.

10 JUDGE WOODRUFF: Thank you.

11 To the Bench for questions then, Vice Chair  
12 Drainer? Commissioner Schemenauer?

13 COMMISSIONER SCHEMENAUER: Thank you, Judge.

14 QUESTIONS BY COMMISSIONER SCHEMENAUER:

15 Q. Good afternoon, Mr. Svuba.

16 A. Good afternoon.

17 Q. I just have a few questions based on the  
18 cross-examination you've just gone through, and I'll be as  
19 brief as I can. In your direct testimony on page 6 you  
20 indicate the most likely cause of the trip was the  
21 trouble-shooting work on the vibration sensors being  
22 performed by GE and SJLP personnel. This work resulted in  
23 false indications of high vibration which, in turn, resulted  
24 in a unit trip?

25 A. I believe that to be true.

1 Q. So the turbine didn't actually vibrate, it was  
2 a false indication?

3 A. Yes, sir.

4 Q. And then when the unit tripped, the direct  
5 current emergency oil pump failed to come on to give oil to  
6 the bearings to prevent the damage to the turbine; is that  
7 right?

8 A. That's correct.

9 Q. How many milliseconds or seconds could elapse  
10 before damage results if it doesn't have any oil? Is it  
11 almost instantaneous? Is it a few seconds or --

12 A. I can't answer very precisely there, but it  
13 doesn't take very long, a few seconds.

14 Q. It's a high-speed turbine?

15 A. Yes. It's turning at 3,600 RPMs. And as soon  
16 as you lose oil to that thing, you've got a real problem.

17 Q. The heat builds up and --

18 A. It's going to be very fast.

19 Q. -- metal fatigue sets in. Right?

20 A. Right. Really the first indication that the  
21 operators had of it were the explosions. So, you know, the  
22 alarms come on and the explosions take place at about the  
23 same time. So essentially there's no time to turn on a DC  
24 lube oil pump in between the time that the turbine tripped  
25 and the bearings were -- had failed.

1           Q.       And your company indicates one reason -- or  
2       the primary reason the DC pump didn't come on because  
3       General Electric engineers failed to include a fail-safe in  
4       their logic circuitry for the DC control panel so that when  
5       power was lost it automatically came on, or they had the  
6       switch still in the circuitry that allowed an operator to  
7       put the switch in the wrong position that would prevent  
8       automatic start-up of the DC pump?

9           A.       Right.  It's closer to what you said the  
10      second time.

11          Q.       Okay.

12          A.       As far as we know, General Electric did not  
13      check the control logic in the DCS control at all.

14          Q.       In the contract you have with General  
15      Electric, are they liable for any design malfunctions that  
16      result in economic harm to the company?

17          A.       There is a very restrictive limit of liability  
18      in their terms and conditions.  This is a problem we've had  
19      with General Electric and other contractors, of course, is  
20      that if you read their contract, you really can't sign the  
21      thing because it gives all your rights away.

22                 So it ended up in this particular case that  
23      the agreement between us was our purchase order and their  
24      terms and conditions.  And their terms and conditions had  
25      been modified somewhat to give us a little bit more

1 liability responsibility from them. But there is a strict  
2 prohibition in their on any consequential damages.

3 Q. But on normal contract law if they failed to  
4 fulfill the contract and it resulted in damage to your  
5 company, couldn't you sue General Electric to recover the  
6 damages?

7 A. I think there's a limit in there up and to the  
8 amount of the purchase order. I'm getting in an area where  
9 I'm not comfortable because of the legalities of this thing,  
10 but there was a restriction in there for any consequential  
11 damages at all, any consequential damage recovery. And I  
12 believe that the limit of liability was up to the amount of  
13 the purchase order for -- like, if they were negligent. And  
14 to go beyond that, I think you have to prove gross  
15 negligence. But, here again, I'm talking way over my head.

16 Q. Okay. And I think we were referred to you to  
17 ask these questions to.

18 You talk about the trap the engineers set for  
19 your operators, the poor training that GE gave your people.  
20 I mean, don't you think the cumulative weight of all this  
21 would at least tend to think there may be gross negligence  
22 on GE's part and allow you to sue them to recover some of  
23 your consequential damages?

24 A. Well, I don't know that I can really make a  
25 comment on that. I know that --

1           Q.     Do you know any of the witnesses for the  
2     company that could tell us whether or not they plan to  
3     pursue legal action against GE?

4           A.     I know that FM Global, our insurance carrier,  
5     is certainly looking at this.

6           Q.     And that would be just for the damages and not  
7     for the cost of the incremental power or the purchased  
8     power. Right?

9           A.     Right. Not for the consequential damages of  
10    the cost of the purchased power and extra fuel costs.

11          Q.     So there's no one from St. Joe Light & Power  
12    who's going to testify that could tell us whether or not  
13    they're looking at the possibility of litigation with GE?

14          A.     I don't think that decision's been made, but I  
15    don't believe that there's a very high likelihood that that  
16    will happen.

17                 COMMISSIONER SCHEMENAUER: Thank you. That's  
18    all I have.

19                 JUDGE WOODRUFF: Commissioner Simmons?

20                 COMMISSIONER SIMMONS: I have no questions,  
21    your Honor. Thank you.

22                 JUDGE WOODRUFF: Vice Chair Drainer?

23                 COMMISSIONER DRAINER: No. As I thought,  
24    Commissioner Schemenauer asked my question.

25    QUESTIONS BY JUDGE WOODRUFF:



1           Q.     I have a couple questions and it's starting  
2     off with some definitions.  Everybody's been talking about a  
3     trip of the generator or the turbine.  Can you describe for  
4     me what is a trip of a turbine?

5           A.     I'll attempt to.  When the turbine  
6     generator -- and the turbine and generator are bolted  
7     together so they act as one piece.  They're spinning at  
8     3,600 RPMs and generating electricity.  And, of course, the  
9     energy coming into the turbine is steam energy and the  
10    energy goes out as electricity.

11                  Well, when this thing -- this piece of  
12    equipment trips, you interrupt both the steam coming to the  
13    turbine and the electrical connection from the turbine -- or  
14    from the generator, excuse me.

15           Q.     And that could be caused by a variety of  
16    things, I suppose?

17           A.     And there's a number of things that can trip  
18    this unit.  If something is wrong in the generator,  
19    something wrong in the turbine, it will trip.

20           Q.     In this case the computer thought it was  
21    vibrating when it was not?

22           A.     That's correct.

23           Q.     Okay.  Now, you indicated that a lot of things  
24    happened when a generator trips at full load.  I assume it's  
25    different than when it trips at a light load.  Can you

1 describe for me what happens when it trips at a full load?

2 A. Well, what happens is, like I said, you  
3 disconnect the steam from it so the stop valves on the  
4 turbine slam shut. They're huge spring-loaded devices and  
5 they stop the flow of steam going into the turbine so it  
6 will stop.

7 Q. The blades will stop turning?

8 A. The blades will stop. But as soon as you do  
9 that, you haven't stopped the fuel from burning inside the  
10 boiler. And what happens then is you over pressure the  
11 boiler almost instantaneously. And the safeties on the  
12 boiler then blow. And you have 2,000 or 2,400-pound steam  
13 blowing through a safety to the atmosphere, which is very  
14 loud and, you know, rattles the whole plant. In this  
15 particular case then we had the explosions right after that.

16 Q. Okay. And the explosions resulted from the  
17 loss of the lubricant?

18 A. Right. The seal oil -- when they talk about  
19 lube oil and seal oil, these pumps supply both lubricating  
20 oil to the bearings and seal oil to hydrogen seals on the  
21 end of the generator.

22 The generator is filled with hydrogen and when  
23 the oil quits flowing to the seals, then the hydrogen comes  
24 out of the ends of the generator and these hot bearings are  
25 right there and it catches on fire and explodes.

1 Q. Okay. Now, there's also been talk about a  
2 pistol grip control switch?

3 A. Yes, sir.

4 Q. Can you describe for me what a pistol grip  
5 control switch is?

6 A. Yes. It's a control switch that in these  
7 cases were mounted on the wall or on a cabinet, a control  
8 cabinet. And it's a switch about four inches long that has  
9 a handle, something like a doorknob handle, but it's  
10 vertical. And you can -- it's spring-loaded and you can  
11 turn it one way and you let go and it reverts back to  
12 vertical position, which is the automatic position. So it  
13 was a spring-loaded switch and you turn it one way or the  
14 other.

15 Q. So under the old system, if you turned it to  
16 local, it would automatically switch back to auto. Is that  
17 what you're telling me?

18 A. No. It was stop -- stop and start in  
19 automatic.

20 Q. Okay.

21 A. So if you stop the pump, then it would revert  
22 back to automatic. If you started the pump, then it would  
23 revert back to automatic.

24 Q. I see. Now, was there a local position on the  
25 pistol grip also?

1           A.       No.

2           Q.       Okay. Now, as I understand it, the local  
3 position is what got you into trouble?

4           A.       Right.

5           Q.       Now, as I understand the testimony, the  
6 operators put the control into the local position thinking  
7 that was the same as automatic; is that correct?

8           A.       Since they had been used to using these pistol  
9 grips for 30 years, every time they shut the pump off, it  
10 went back to automatic position. And the AC controls and  
11 the DCS did the same thing. If you shut it off, it went  
12 back to automatic.

13                   This one went to what is called local. And  
14 there were two little -- well, on the control it's right  
15 beside automatic, so it almost looks like it's automatic  
16 local. And so when you turn it off, then it pops back up to  
17 local and we did not know what that meant.

18           Q.       Okay. Was there also an off position on the  
19 controls?

20           A.       Yeah. There's off -- there's stop and start  
21 and auto.

22           Q.       Okay. Now, where was local fitting in all of  
23 this?

24           A.       Okay. That's a mode.

25           Q.       Okay.

1           A.     You can't --

2           Q.     A mode is different than a position then?

3           A.     Yes.  You couldn't go up and punch the local

4 position.  You couldn't go up and punch it and put it into

5 local, but it automatically went to local after you did the

6 stop operation.

7           Q.     What was local intended for, do you know?

8           A.     Yeah.  It meant that it changed -- it had

9 given control back to the pistol grip.

10          Q.     Which was no longer there?

11          A.     Which was no longer there.

12          Q.     Okay.  And was that a GE decision or --

13          A.     Yes.  That -- to remove the pistol grips, that

14 was a GE decision.

15          Q.     Okay.  But you knew the pistol grips had been

16 removed?

17          A.     Yes, we did.

18                 JUDGE WOODRUFF:  Okay.  I don't believe I have

19 any other questions.  So we'll go to recross beginning with

20 AGP.

21                 MR. CONRAD:  Nothing further, your Honor.

22                 JUDGE WOODRUFF:  Staff?

23 RE-CROSS-EXAMINATION BY MR. WILLIAMS:

24          Q.     Is there a time limit on when St. Joe Light &

25 Power may bring some contractual action against GE for

1 liability arising from this incident?

2 A. I can't answer that.

3 Q. You don't know?

4 A. I don't know. But, you know, that's a legal  
5 question. I don't know what the --

6 Q. Has St. Joseph Light & Power established any  
7 time frame by which it intends to make such a decision?

8 A. I don't know of one.

9 MR. WILLIAMS: No further questions.

10 JUDGE WOODRUFF: Public Counsel?

11 RECROSS-EXAMINATION BY MR. MICHEEL:

12 Q. Yes. I think in response to one of  
13 Commissioner Schemenauer's questions about when the unit  
14 trips, what happens, you said alarms sound. Do you recall  
15 that answer?

16 A. Yes.

17 Q. Is it correct that at the time of the  
18 explosion and fire on June 7th, there was no alarm to  
19 indicate to the operator that the DC oil pump was in the off  
20 or local position?

21 A. I believe that would be correct.

22 Q. And, subsequently, you've placed within the  
23 system logic an alarm that will sound notifying the operator  
24 that the DC oil pump is off; isn't that correct?

25 A. We have made several modifications to that

1 control including the reinstallation of the manual switch  
2 and a number of alarms, yes.

3 Q. And isn't it correct that at the time the  
4 pistol grip manual switches were in place, the operator  
5 could look over and see a light that would tell the operator  
6 the position of the DC lube oil pump?

7 A. Well, the pistol grip itself told you the  
8 control position.

9 Q. And there was also a light; isn't that  
10 correct?

11 A. Yeah. There's also lights there to tell you  
12 whether it was running or not or ready.

13 Q. Right. So with the removal of that, those  
14 lights went away also; isn't that correct?

15 A. That's correct.

16 MR. MICHEEL: Thank you.

17 JUDGE WOODRUFF: I'm going to go a little bit  
18 out of order here because I had one more question I wanted  
19 to ask you and I'll give everybody else a chance to respond  
20 to it if they want to.

21 FURTHER QUESTIONS BY JUDGE WOODRUFF:

22 Q. On Monday you indicated that they did not  
23 check the oil pump -- the Monday before the explosion. If  
24 they had checked the DC oil pump on Monday, would they have  
25 discovered the problem?

1           A.       I don't know. We've, I guess, discussed that  
2       in-house somewhat and I'm of the opinion that there's a fair  
3       chance that they wouldn't have discovered it.

4           Q.       Why is that?

5           A.       Depends on what all the operator was doing at  
6       that time. You have an operator inside and an operator  
7       outside. They have to communicate with each other when they  
8       do this test. And I don't know whether the operator would  
9       have recognized the fact that when they did the test, that  
10      he had to put the control in a different position and if  
11      that had significance.

12                   There's -- you know, there's a lot of controls  
13      and a lot of things that don't operate the way you think or  
14      the way you look at it the first time and I think it could  
15      have been overlooked.

16                   JUDGE WOODRUFF: Okay. Redirect?

17                   MR. MICHEEL: I have one --

18                   JUDGE WOODRUFF: Okay. Go ahead.

19      FURTHER RECROSS-EXAMINATION BY MR. MICHEEL:

20           Q.       If they had indeed done that test on 6/5,  
21      taking off from Judge Woodruff's questions, is it correct  
22      that the operator, in order to get the DC oil pump to  
23      operate, would have had to put the DCS Bailey logic in some  
24      other mode than local?

25           A.       I believe that's correct.



1           Q.       So at that time, the operator would have known  
2       they had to move the DCS Bailey logic out of local to get  
3       the pump to either start or run; isn't that correct?  
4           A.       Depends on what all was taking place at the  
5       time.  
6           Q.       Well, if the pump remained in local, would the  
7       pump start?  
8           A.       No.  
9           Q.       So to test that pump then, the operator would  
10      have had to take that pump out of local; isn't that correct?  
11          A.       Yes.  
12          Q.       And if he didn't take it out of local, the  
13      pump would not have started; isn't that correct?  
14          A.       I believe that's correct.  
15                  MR. MICHEEL:  Nothing further, your Honor.  
16                  JUDGE WOODRUFF:  Now, redirect.  
17      REDIRECT EXAMINATION BY MR. DUFFY:  
18          Q.       Let's pick up on where we just left off.  But  
19      if he did that test, he could have put it back in local and  
20      the trap still could have been there and the incident still  
21      could have occurred if the test occurred -- even if the test  
22      occurred?  
23          A.       Certainly the operator could have put the  
24      switch in -- or the pump in either start or automatic and  
25      run the test, got it to run.  And then he would have had to

1       turn the switch off -- or the pump off. He would have had  
2       to stop the pump to stop the test. And when he stopped the  
3       pump to stop the test, it would have went back to local. We  
4       don't know whether he would have realized that he had a trap  
5       there for himself, that it wouldn't start the next time.

6                   MR. DUFFY: Can I borrow that big chart?  
7       Was this marked as an exhibit?

8                   MR. MICHEEL: No, sir.

9       BY MR. DUFFY:

10           Q.       I want to direct your attention again to the  
11       big chart that Mr. Micheel was looking at. And I believe  
12       we've previously established that the things that someone  
13       has put a yellow highlighter on were the things that were  
14       actually done, and the things that are not highlighted are  
15       the things that were not done; is that correct?

16           A.       That's correct.

17           Q.       Let's just look at that Monday, June 5th. How  
18       many things are there listed there to be done?

19           A.       There are 19 items on this operations  
20       schedule.

21           Q.       How many are indicated as having been done?

22           A.       Five.

23           Q.       So only 5 out of 19 things that were supposed  
24       to be done were actually done?

25           A.       That's correct.

1           Q.     Now, is that bad? I mean, was somebody  
2 punished or disciplined because only 5 out of 19 things were  
3 done?

4           A.     No, sir. There was no punishment or  
5 discipline done on this. We don't know what all activities  
6 the operators were doing during this shift. Many times they  
7 are taking equipment out of service for maintenance reasons  
8 and those things and it takes a lot of time, so they don't  
9 get around to doing all the things that are on these lists.

10          Q.     Is there anything unique about that Monday  
11 list that -- well, never mind.

12                   On Tuesday, there appears to be a lesser  
13 number of things to be done, but there were only three  
14 things done on that day; is that correct?

15          A.     There's 16 things on Tuesday and it looks like  
16 4 were done.

17          Q.     And, again, was anybody disciplined because  
18 only four things were done?

19          A.     No, sir.

20          Q.     So this is more of a recommendation than a  
21 requirement?

22          A.     This operations schedule is a -- is a guide  
23 for the operators to do these things as they have time.

24          Q.     To your knowledge, is the week -- of the  
25 things that were done or not done on the week of June the

1 5th through the 11th of 2000, is that any different than any  
2 other week? I mean --

3 A. Not to my knowledge, no.

4 Q. So it's a common occurrence that some things  
5 are done and some things are not done even though they're  
6 all listed on the schedule?

7 A. That's correct.

8 Q. Mr. Micheel asked you whether it was a mutual  
9 decision to remove the pistol grip switch, and he directed  
10 you to Mr. Modlin's deposition at page 175, line 24.

11 A. 175 --

12 Q. Line 24. Would you please go to that point  
13 and read the question and answer beginning on line 11 and  
14 then tell me whether it was a mutual decision to remove the  
15 switch or a mutual decision to locate the Mark V cabinet?

16 A. Starting on line 11, Question: Who decided  
17 the location of where that control panel was placed?

18 Answer: General Electric was on-site. I  
19 don't know if it was January, February. Earlier in the  
20 year. And reviewed the cabinet dimensions and looked  
21 through the plant for appropriate locations and determined  
22 that there was logical location.

23 Question: So when was the determination made  
24 regarding the removal of the manual switch for the DC oil  
25 pump?

1                   Answer: I guess it was made at the time the  
2                   site was located for the Mark V.

3                   Question: And was that done by the  
4                   recommendation from General Electric that was approved by  
5                   St. Joe?

6                   Answer: Probably more of a mutual decision.

7                   Question: --

8                   Q.       Okay. Stop there. Does that mean that it was  
9                   a mutual decision to remove the switch or a mutual decision  
10                  to locate the Mark V cabinet?

11                  A.       In reading this, I think it was a mutual  
12                  decision to locate the Mark V cabinet, because that's what  
13                  they're talking about.

14                  Q.       Okay. After the removal of the pistol grip  
15                  switch, what control interface was available to the  
16                  operators?

17                  A.       Would you restate your question, Mr. Duffy?

18                  Q.       After the removal of the pistol grip switch,  
19                  what control interface was available to the operators?

20                  A.       You mean for the DC lube oil pump?

21                  Q.       Yes.

22                  A.       The DCS control was their -- was the operating  
23                  interface.

24                  Q.       Okay. On May 20th, 2000, what control  
25                  interface was used to perform the testing that was performed

1 on May 20th, 2000?

2 A. Well, the DCS system.

3 Q. When the control circuit was checked, as you

4 have described in your surrebuttal on page 10, lines 4

5 through 8 on May 20th, 2000, was the operator's interface to

6 that circuit also checked?

7 A. What line are we looking at here, Gary?

8 Q. Surrebuttal page 10, lines 4 through 8.

9 MR. MICHEEL: I'm going to object, your Honor.

10 I didn't ask him a question about page 10, lines 4 through

11 8.

12 JUDGE WOODRUFF: Mr. Duffy, do you have a

13 response?

14 MR. DUFFY: Well, I think somebody did.

15 MR. CONRAD: Not guilty

16 MR. MICHEEL: I'll withdraw my objection, your

17 Honor.

18 JUDGE WOODRUFF: Okay. You may proceed,

19 Mr. Duffy.

20 BY MR. DUFFY:

21 Q. Do you want me to ask the question again?

22 A. Yes, sir, please.

23 Q. When the control circuit was checked on

24 May 20th, 2000, was the operator's interface to that circuit

25 also checked?

1           A.       Yes. They went ahead and checked the  
2       operation of the control interface in the control circuits  
3       to operate the DC oil pump.

4           Q.       What's the significance of that?

5           A.       Well, it appears to me that the significance  
6       of that is -- goes back to Judge's question about whether  
7       we'd have checked the lube oil system on the 5th and found  
8       the problem or not. We checked it twice, once here on the  
9       20th and again on the 24th and we didn't realize that there  
10      was a trap there for the operators.

11                 MR. DUFFY: That's all I have.

12                 JUDGE WOODRUFF: Thank you. You may step  
13      down, Mr. Svuba.

14                 At this time we're going to stop for the day  
15      and come back with Mr. Rush for tomorrow.

16                 Yes. Time flies, Mr. Duffy.

17                 MR. DUFFY: What time are we going to start  
18      tomorrow?

19                 JUDGE WOODRUFF: We'll start at 8:30 tomorrow.  
20      We're off the record.

21                 WHEREUPON, the hearing was adjourned until  
22      October 27th, 2000 at 8:30 a.m.

23

24

25

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