

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3  
4 ORAL ARGUMENT

5 August 14, 2001  
6 Jefferson City, Missouri  
7 Volume 2

8 In the Matter of the Tariff )  
9 Filing of Missouri Public )  
Service (MPS), a Division of )  
10 UtiliCorp United Inc., to ) Case No. ER-2001-672  
Implement a General Rate )  
11 Increase for Retail Electric )  
Service Provided to Customers )  
12 in the Missouri Service Area )  
of MPS. )

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14  
15 BEFORE:

16 KEVIN A. THOMPSON, Presiding,  
17 DEPUTY CHIEF REGULATORY LAW JUDGE.  
18 SHEILA LUMPE,  
STEVE GAW,  
19 COMMISSIONERS.

20  
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1 APPEARANCES Continued:

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FOR: Office of Public Counsel and the Public.

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FOR: Staff of the Missouri Public Service  
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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 JUDGE THOMPSON: Good morning.

4 We're here this morning for the oral  
5 argument in the matter of the Tariff Filing of  
6 Missouri Public Service, (MPS), a Division of  
7 UtiliCorp United, Inc., to Implement a General Rate  
8 Increase for Retail Electric Service Provided to  
9 Customers in the Missouri Service Area of MPS, Case  
10 No. ER-2001-672.

11 My name is Kevin Thompson. I'm the  
12 Regulatory Law Judge assigned to preside over this  
13 matter.

14 We'll take oral entries of appearance at  
15 this time, beginning with the Company.

16 MR. SWEARENGEN: Let the record show the  
17 appearance of James C. Swearengen and Dean Cooper,  
18 Brydon, Swearengen & England, 312 East Capitol Avenue,  
19 Jefferson City, Missouri, on behalf of UtiliCorp  
20 United, Inc.

21 JUDGE THOMPSON: Thank you, Mr. Swearengen.

22 MR. DOTTHEIM: Steven Dottheim and Nathan  
23 Williams, Post Office Box 360, Jefferson City,  
24 Missouri, 65102, appearing on behalf of the Staff of  
25 the Missouri Public Service Commission.

1 JUDGE THOMPSON: Thank you, Mr. Dottheim.  
2 Mr. Coffman.  
3 MR. COFFMAN: On behalf of the Office of the  
4 Public Counsel and the rate paying public, I'm John B.  
5 Coffman, P.O. Box 7800, Jefferson City, Missouri,  
6 65102.  
7 JUDGE THOMPSON: Thank you.  
8 Mr. Comley.  
9 MR. COMLEY: Judge Thompson, let the record  
10 reflect the entry of Mark W. Comley, Newman, Comley &  
11 Ruth, 601 Monroe, Suite 301, Jefferson City, Missouri,  
12 65101, on behalf of the City of Kansas City.  
13 JUDGE THOMPSON: Thank you, sir.  
14 Mr. Finnegan.  
15 MR. FINNEGAN: May the record show  
16 Jeremiah D. Finnegan, Finnegan, Conrad & Peterson, LC,  
17 3100 Broadway, Suite 1209, Kansas City, Missouri,  
18 64111, appearing on behalf of Jackson County.  
19 And I'd also like to enter the appearance  
20 for Mr. Conrad who is home ill with a viral infection  
21 at this point -- a sinus infection. I'm sorry.  
22 JUDGE THOMPSON: I'm sorry to hear that.  
23 You'll convey our best wishes to Mr. Conrad.  
24 Mr. Kincheloe.  
25 MR. KINCHELOE: Duncan E. Kincheloe, the

1 Missouri Joint Municipal Electric Utility Commission,  
2 2407 West Ash, Columbia, Missouri, 65203.

3 JUDGE THOMPSON: Any other intervenors or  
4 other parties?

5 (No response.)

6 JUDGE THOMPSON: Okay. Mr. Coffman, Public  
7 Counsel, we are here on your motions, or your motion.  
8 It's been characterized, I suppose, in two different  
9 ways, as a motion to reject tariff and as a motion to  
10 dismiss for failure to state a claim. I'm not sure  
11 it's two distinct motions. And, I believe, you,  
12 therefore, have the affirmative, so I'll allow you to  
13 open and close the argument.

14 I believe we then need to determine the  
15 sequence of the parties. We will permit Company to go  
16 second. I believe Staff should then go third.

17 Do any of the intervenors choose to address  
18 this issue? Mr. Comley?

19 MR. COMLEY: Very briefly, yes.

20 JUDGE THOMPSON: All right. Why don't you  
21 go after Staff?

22 Mr. Finnegan?

23 MR. FINNEGAN: Yes, I would like a brief  
24 comment.

25 JUDGE THOMPSON: Why don't you go after

1 Mr. Comley.

2 Mr. Kincheloe?

3 MR. KINCHELOE: Judge, I don't believe the  
4 interests of the Municipal Electric Commission are  
5 affected by whether the St. Joe operations are  
6 involved in this case or not, and, therefore, we  
7 decline to advance a position, respectfully.

8 JUDGE THOMPSON: Thank you.

9 So we will have Office of the Public  
10 Counsel, followed by UtiliCorp, followed by Staff,  
11 followed by Kansas City, followed by Jackson County,  
12 with Public Counsel closing.

13 Did I restate that accurately?

14 MR. COFFMAN: Yes.

15 JUDGE THOMPSON: Very well then.

16 Mr. Coffman, if you would step to the  
17 podium, we will begin.

18 MR. COFFMAN: Thank you.

19 May it please the Commission?

20 Thank you for taking the time to let us  
21 present to you our motion in a live, on-the-order  
22 manner. I have a feeling that perhaps this will be  
23 the best way to really get at the core of what we're  
24 concerned about and hopefully let you ask questions  
25 and perhaps hypotheticals that will narrow exactly

1    what really is at issue here.

2               Public Counsel does not routinely ask for  
3    this type of opportunity to make an oral argument, but  
4    we believe we're faced with a very important issue  
5    here, an unprecedented situation, and we appreciate  
6    the fact that you're giving some special attention to  
7    it.

8               As far as I've been able to determine, this  
9    particular fact situation has never been presented to  
10   the Commission. Again, it's an important issue, and  
11   the way it's ultimately resolved, I believe, will have  
12   ramifications beyond this case.

13       A.     For those that may have been confused with  
14   some of the side issues that I raise, and others have  
15   raised, I would just like to be clear about what  
16   Public Counsel's main concern is. There are several  
17   reasons that we feel that UtiliCorp's filing is  
18   deficient in this case, but the main reason is, by  
19   far, that all relevant factors cannot be determined in  
20   one revenue requirement if the Commission's  
21   determinations are limited only to one selected  
22   portion of UtiliCorp's service territory.

23              Section 386.270.4, as interpreted by the  
24   Missouri Supreme Court, requires the Commission to  
25   base its rate-making decisions upon all relevant



1 factors within a utility's entire operations. This  
2 requirement is often referred to as the prohibition  
3 against single-issue rate-making.

4 And perhaps that's not a name that  
5 encompasses the entire requirement, because the  
6 Commission is also prohibited from setting rates on  
7 only two factors or three factors. The Commission is  
8 prohibited from setting rates based on anything less  
9 than all relevant factors.

10 We firmly believe that in a rate case this  
11 means that the Commission must determine the proper  
12 revenue requirement for UtiliCorp's entire Missouri  
13 jurisdictional service territory. This is the manner  
14 that has always been done before, and we believe that  
15 the Commission does not have the statutory authority  
16 to do anything less, to take any subset of UtiliCorp's  
17 operations and set some partial revenue requirement in  
18 that regard.

19 The Commission may not simply determine a  
20 revenue requirement for those portions that the  
21 Company selects for this rate case to encompass. If  
22 the Commission were to set something less than a total  
23 revenue requirement for UtiliCorp, it could set up a  
24 major appeal, and I'll talk about that a little later.

25 But, first, I would like to clear up some of

1 the red herrings in this matter and point out some of  
2 the things that Public Counsel's motion to reject is  
3 not about.

4 To set the record straight, this is not  
5 about rate design. We are concerned about revenue  
6 requirement. The pleadings of UtiliCorp and of the  
7 Staff have focused several pages to discussing  
8 concerns about rate design. But, again, that's not  
9 our main concern.

10 In the primary stage of a rate case, the  
11 Commission must determine or consider all relevant  
12 factors in setting the maximum level of revenues that  
13 the regulated utility may lawfully receive. This is  
14 the revenue requirement. We sometimes refer to these  
15 factors as the pie filling, trying to determine  
16 exactly how much revenue we're talking about.

17 Only after the pie is baked may we move into  
18 the rate design phase, when the Commission decides how  
19 to allocate that revenue requirement between different  
20 service areas and between different customer classes.  
21 This is the process of slicing the pie.

22 Our rate case investigation in this matter  
23 has just begun. We do not know at this time if we  
24 believe UtiliCorp needs any rate increase. We do not  
25 know if rates need to go up or down in any particular

1 region of this company's service territory.

2           What we're here to tell you about is  
3 something that we think is just fundamental to proper  
4 rate-making, and, to be perfectly honest, we have no  
5 preconceived notion at this point about what rate  
6 design should be set in the St. Joseph area or in the  
7 other portions of UtiliCorp's service territory.

8           Now, the Missouri Public Service area and  
9 the St. Joseph area are to be integrated by order of  
10 the FERC, and perhaps a single-tariff pricing or  
11 single rate would be proposed. But I doubt that  
12 that's what Public Counsel would be recommending if we  
13 got to that point. A cost of service study may  
14 suggest that different rates should apply to different  
15 areas within the Company.

16           Of course, if you allow this case to proceed  
17 in the manner filed, the Commission won't have all of  
18 the possible rate design options available to it.  
19 This filing is attempting to limit the Commission's  
20 review to the only the former Missouri Public Service  
21 area.

22           While there may be many possible rate  
23 designs that could be lawfully issued by this  
24 Commission, we believe there is only one revenue  
25 requirement that can be determined, one revenue

1 requirement per electrical corporation.

2 Another issue that really is at the core of  
3 what we're concerned about has to do with merger  
4 savings. Now, I suspect that one of the reasons that  
5 UtiliCorp has attempted a partial rate case filing is  
6 reluctance to properly credit consumers with all of  
7 the merger savings that have occurred in the last few  
8 months. But Public Counsel's main concern goes far  
9 beyond this merger savings issue.

10 The main concern is how to properly set  
11 revenue requirement and whether the Commission could  
12 be setting a bad precedent in its practice which would  
13 encourage other utilities to manipulate earnings by  
14 slicing up their service territories, strategically  
15 timing rate cases for selected portions of their  
16 territory, and frustrating the Commission's ability to  
17 properly consider all relevant factors at one time and  
18 then properly allocate the costs.

19 This issue is about fundamental rate-making  
20 principles, how you bake the pie. UtiliCorp is asking  
21 you to bake half a pie, and we don't think that that  
22 is legal. We believe that all relevant factors must  
23 be considered at one time, in one case, and this means  
24 one total UtiliCorp revenue requirement in this case,  
25 or in any case that changes UtiliCorp's rates.

1           I think the first question the Commission  
2   should answer is what is the legal entity that's  
3   permitted to ask for a rate increase? The style of  
4   this case says that Mo Pub is asking for -- or MPS, a  
5   division of UtiliCorp, is requesting a rate increase.

6           We believe the only entity that may request  
7   an increase in electric rates is an electrical  
8   corporation as defined by Section 386.020. This is  
9   the only entity that the Commission may legally  
10   recognize as an applicant in a request for an electric  
11   service rate increase.

12          UtiliCorp and Staff dismiss this concern by  
13   pointing out that utilities like UtiliCorp have always  
14   filed separate rate cases for their gas service and  
15   for their electric service. Well, of course. The  
16   statutes clearly allow separate rate cases for  
17   electrical corporations and gas corporations. They  
18   are defined separately in the statutes.

19          But no statute, no case law, and no  
20   Commission rule permits a division of an electrical  
21   corporation to request a rate increase for only a  
22   selected portion of the electrical corporation. No  
23   statute, no case law, and no Commission rule permits  
24   the Commission to hypothetically pretend that a merger  
25   did not take place for rate-making purposes only.

1           One electrical corporation cannot be treated  
2 as two separate companies for the purposes of  
3 rate-making, while, on the other hand, enjoy the  
4 benefits of having a merged structure.

5           This merged structure was the structure that  
6 UtiliCorp chose. This was the structure that was  
7 approved by the Commission on December 14th, 2000.  
8 Section 393.190 requires Commission approval before  
9 the proper structures of a regulated electrical  
10 corporation can be changed, either through an  
11 acquisition, through a merger, or through some other  
12 corporate reorganization.

13           I think part of the confusion in this matter  
14 stems from the fact that until late last year,  
15 Missouri Public Service Company was a fictional name  
16 that did accurately describe UtiliCorp's Missouri  
17 jurisdictional operations. This is no longer an  
18 accurate description. Now, Missouri Public Service  
19 describes only one internal division within the entire  
20 electrical corporation.

21           UtiliCorp is the regulated entity. Missouri  
22 Public Service is a fictional name that describes only  
23 one selected area. The fact that UtiliCorp has  
24 decided to subdivide its own area into divisions  
25 should carry no weight whatsoever in determining what

1 is the proper regulated entity for rate-making  
2 purposes.

3 As you know, at least two years ago  
4 UtiliCorp made a decision that it wanted to acquire  
5 St. Joseph Light and Power Company. At that time a  
6 decision was made regarding what new corporate  
7 structure would be requested. UtiliCorp, I would  
8 imagine, had two major options. It could propose a  
9 merger, or it could propose a holding company  
10 structure. And we've seen examples of both of those  
11 recently.

12 UtiliCorp made the decision to fold  
13 St. Joseph Light and Power Company into UtiliCorp, and  
14 over the objection of the Public Counsel and the  
15 Commission Staff, the Commission found that that  
16 merger structure would not be detrimental to the  
17 public interest.

18 And I might just note on the side that among  
19 the justifications advanced by UtiliCorp for the  
20 approval of this corporate structure was that there  
21 would be savings from the economies of scale when two  
22 companies became one.

23 The public was not privy to the management  
24 decision that led up -- or discussions that led up to  
25 this decision, and I can't tell you exactly why this

1 structure was chosen. I can presume that UtiliCorp  
2 management had a good reason. Perhaps, it had to do  
3 with taxation or finance or the Public Utility Holding  
4 Company Act or some other federal act, but the fact  
5 remains that they chose a merged structure.

6 And, presumably, they knew, or should have  
7 known, that under a holding company structure rates  
8 could be set for two separate regulated entities;  
9 whereas, under a merged structure, typically, rates  
10 would be determined in one rate case for the entire  
11 area.

12 The Commission is aware, I assume, of the  
13 recent mergers of Missouri American Water Company and  
14 its affiliates. In 1995 it merged its two regions  
15 with Missouri Cities Water Company. Missouri Cities  
16 Water Company had five cities or districts.

17 From then on, Missouri American Water  
18 Company has had to file rate increases company-wide  
19 for the entire seven district water corporations.

20 Later Missouri American Water Company's  
21 parent, American Water Works, decided to buy the  
22 company that owned St. Louis County Water Company.  
23 Over Public Counsel's objection, the Commission chose  
24 not to take jurisdiction over that purchase.

25 Now, this further proves that the use of



1 trade names can be confusing, but St. Louis County  
2 Water Company is now doing business as Missouri  
3 American Water Company, as well, but the fact remains  
4 that they are currently two separate water  
5 corporations and they have separate rate cases at this  
6 time.

7           There is a pending request to merge these  
8 two companies, and after that, we would presume that  
9 there would then be one eight-district-wide rate case  
10 in the future.

11           The point here is that currently St. Louis  
12 County Water Company and Missouri American are two  
13 separate water companies and they are set up under a  
14 holding company structure. That's in contrast to the  
15 situation we have here with one merged company.

16           And I'll just divert for a second to the  
17 Union Electric examples that Staff mentions  
18 extensively in its pleading.

19           The 1983 merger of Union Electric Company  
20 with Missouri Power and Light Company, Missouri Edison  
21 Company and Missouri Utilities Company, that was  
22 similar to the current situation in that shortly  
23 thereafter there was a rate case. And from every  
24 indication in reading the papers of those cases, the  
25 Commission considered in 1985 all of the operations in

1 one rate case. They did not have separate rate cases  
2 for those areas, even though they had separate rates  
3 going into the merger.

4           Again, I don't know why, but UtiliCorp  
5 decided that it wanted to run its business as two  
6 divisions of one regulated company as opposed to a  
7 holding company. The Commission approved this  
8 structure on December 14, and ordered UtiliCorp to  
9 assume St. Joseph Light and Power Company's  
10 certificate, its assets, its liabilities, and its  
11 entire operation. The FERC ordered UtiliCorp to  
12 integrate the operations of both areas.

13           Now, UtiliCorp appears to want to have it  
14 both ways. It wants the benefits of a merged  
15 structure without having to file a rate case for its  
16 entire operations at one time. UtiliCorp is  
17 surprisingly candid in its prepared testimony  
18 regarding its goals in this proceeding. It's asking  
19 the Commission to assume that the merger never took  
20 place.

21           The Supreme Court first spoke regarding the  
22 all-relevant factors test in the Missouri Water case,  
23 308 SW2d 704. The Supreme Court stated that a proper  
24 determination of rates must be based on all relevant  
25 factors.

1           In the all-important UCCM case, perhaps the  
2 most important court case decided from the perspective  
3 of Missouri consumers, the Supreme Court struck down  
4 fuel adjustment clauses because such clauses do not  
5 take into account all relevant factors in determining  
6 the revenue requirement.

7           Staff and UtiliCorp argue that the  
8 electrical corporation -- an electrical corporation is  
9 permitted to file a rate increase request for only one  
10 selected area within its operations. These parties  
11 then try to reassure the Commission that if there are  
12 any counterbalancing factors to consider in other  
13 areas of the company, Public Counsel could simply file  
14 a complaint or there might be other separate rate  
15 cases.

16           We submit that you cannot divide all  
17 relevant factors into two separate cases.

18           The obvious advantage to UtiliCorp in that  
19 type of scenario is that it would effectively cause a  
20 shift in the burden of proof for those particular  
21 relevant factors that do not support a rate increase.  
22 A shift in the burden of proof is one of the many  
23 arguments against fuel adjustment clauses noted by the  
24 Supreme Court in the UCCM case.

25           Just as a utility could not ask the

1 Commission to change one of its rates for one type of  
2 a service in isolation, for instance, connection  
3 charges, we do not believe that the Commission can set  
4 rates for a selected piece of its service territory.  
5 Just as a utility cannot ask the Commission to change  
6 the rates for only one of its customer classes in  
7 isolation, it also cannot ask the Commission to set  
8 rates for only one piece of its service territory in  
9 isolation.

10 Surely, if a utility asked for an increase  
11 only in residential rates, without putting into play  
12 all customer classes, it would be rejected. It could  
13 not ask the Commission to set rates for a selected  
14 piece of its Missouri territory as well, and we  
15 believe this is because the Commission lacks the legal  
16 authority to do so.

17 I'd now like to ask you to consider the  
18 ramifications of allowing a regulated utility to  
19 choose selected portions of its territory for the  
20 purposes of setting rates. We're extremely concerned  
21 about the practical precedent that this case could set  
22 and believe that we could be on the verge of a  
23 slippery slope. The UCCM case stated concerns about a  
24 slippery slope when exceptions are made to the  
25 all-relevant factors requirement.

1           I think perhaps it's easy for Staff or other  
2 parties to think about Missouri Public Service as a  
3 separate company. In fact, it used to be a separate  
4 company until just a few months ago. We're all  
5 accustomed to thinking about -- in referring to  
6 Missouri Public Service as synonymous with UtiliCorp,  
7 and we're familiar with audits that have treated these  
8 areas separately in the past.

9           The rates are currently different in these  
10 two areas. It would probably be more convenient to  
11 audit these two areas separately. Of course, the  
12 Supreme Court has made it very clear that neither  
13 convenience nor expediency relieves the Commission of  
14 its obligation to properly set rates under the law.

15           Consider for a moment how this case could be  
16 distinguished from other possible scenarios. Other  
17 electrical corporations have designated internal  
18 divisions within its service territory.

19           AmerenUE, for example, has a West Capital  
20 Division that includes Jefferson City and the Callaway  
21 plant, for instance. What if AmerenUE requested a  
22 single -- requested a rate increase for this isolated  
23 division? If such a -- if this UtiliCorp case is  
24 allowed to proceed, how would you distinguish that  
25 situation? What would stop an electrical corporation

1 from segregating one neighborhood or one industrial  
2 park out of its service territory, separating it from  
3 the rest of its operation and filing a separate rate  
4 case, asking the Commission to set a revenue  
5 requirement for that neighborhood?

6           These are hypothetical questions that I  
7 would invite you to ask of UtiliCorp and of your own  
8 Staff. We're concerned that if you do not stop  
9 selective filings, we're concerned about where it  
10 might end. And if the Commission goes forward, what  
11 exactly would be the bright line.

12           The law is well established that when the  
13 Commission sets rates, it looks at all factors based  
14 on one test year. This can only be accomplished by  
15 setting a total revenue requirement in one case. This  
16 is the best way to protect consumers from manipulative  
17 rate-filing strategies and the best way to assure that  
18 all counterbalancing factors are taken into account at  
19 one time. It also ensures that all fair rate design  
20 options will be available to the Commission. Again,  
21 this is a fundamental rate-making principle.

22           What is the proper remedy for the Commission  
23 to order in this situation? Because the Commission  
24 lacks the statutory authority to do what UtiliCorp is  
25 asking, we believe there is really only one good

1 option. Just as the Commission did a few months ago  
2 in Case No. ET-2001-482, this filing should be  
3 rejected as deficient.

4 UtiliCorp has often pushed the envelope on  
5 this issue. In the filing -- in the case I was  
6 mentioning, they requested changes in late payment  
7 charges, reconnection fees, and various miscellaneous  
8 charges. The Commission properly rejected that case.

9 I'll just quote a couple of sentences from  
10 the Commission's order. "To consider some costs in  
11 isolation might cause the Commission to allow a  
12 company to raise rates to cover increased costs in one  
13 area without recognizing counterbalancing savings in  
14 other area.".

15 The Commission went on, "UtiliCorp asked the  
16 Commission to approve changes to its customer charges  
17 without considering all factors. The Commission does  
18 not have the authority to do so. Therefore,  
19 UtiliCorp's tariffs cannot be approved. Because it  
20 violates the prohibition against single-issue  
21 rate-making, the Commission is without authority to  
22 approve UtiliCorp's tariff."

23 And as in the instant case, UtiliCorp is  
24 again asking for an increase in only one of its areas.

25 Public Counsel is merely asking the

1 Commission to reaffirm the fundamental principle of  
2 consumer protection, the all-relevant factors  
3 requirement.

4 Thank you very much.

5 JUDGE THOMPSON: Thank you, Mr. Coffman.  
6 Mr. Swearengen.

7 MR. SWEARENGEN: May it please the  
8 Commission?

9 I have a big book here, but I'll try to make  
10 my comments to you rather brief, and, perhaps, you  
11 might want to ask some questions.

12 I have a different view of this issue, of  
13 course. And I look at Section 393.150, and in that  
14 section I think I find clear statutory authority for  
15 the type of filing that we have made. I think that  
16 statute is clear on its face that a utility may file  
17 and this Commission may consider something less than  
18 all of the tariff sheets which that corporation may  
19 have on file with this Commission.

20 It's -- the statute says, "Whenever there  
21 should be filed with the Commission by any electrical  
22 corporation any schedule stating a new rate or charge,  
23 or any new form of contract, or any new rule relating  
24 to any rate," and you go on through, and the sense of  
25 the statute to me is pretty clear that a corporation,



1    such as UtiliCorp, which has various segments of its  
2    business subject to your jurisdiction, is not required  
3    to put all of those tariffs before you any time that  
4    it seeks a change in one or more of those tariffs.

5                   And I think this Commission in the past has  
6    applied the statute the way I have just described it.  
7    For example, with respect to UtiliCorp, historically,  
8    this company has come in and sought to increase its  
9    electric rates for its customers without necessarily  
10   at the same time seeking to increase the rates for its  
11   gas customers. I recognize they are two different  
12   services there, but it's the same corporation.

13                   And at one time this company provided water  
14   service, and I think the past practice was that on  
15   occasion they might seek rate relief for all three  
16   types of operations, all three services, but not  
17   necessarily.

18                   The St. Joseph Light and Power Company is a  
19   good example. At one time it had four different types  
20   of business, electric, gas, steam, and it provided a  
21   transit service in St. Joseph, Missouri. I know for a  
22   fact that in the past it would put all four of those  
23   segments of its business operation in front of you for  
24   rate adjustments at one time, and I also know, and the  
25   records will reflect, that at other times it might

1   only seek to have an increase with respect to its  
2   electric operations.  Same corporation, one  
3   corporation, with various tariff sheets, and it would  
4   choose to put only the electric or the gas in front of  
5   you for consideration.

6               There are other companies that are in the  
7   same situation.  AmerenUE has been mentioned.  They  
8   don't always seek to increase their gas rates at the  
9   same time they come to you with an electric rate  
10  increase.  The Empire District Electric Company has a  
11  rate case pending in front of you now.  They also have  
12  regulated water operations.  They have not sought to  
13  have those rates changed, and the Commission has  
14  heretofore seen wrong with that practice.

15              The Staff and the Public Counsel in the past  
16  have filed complaints against electric utility  
17  companies without seeking to -- for example,  
18  complaints have been filed against the St. Joseph  
19  Light and Power Company with connection with its  
20  electric operations.  At the same time there was no  
21  challenge made to the gas operations or to the steam  
22  operations.

23              So I think the law is clear that you can  
24  come to the Commission and seek something less than  
25  rate relief for all aspects of your operation.  I

1 think the Commission has treated it that way in the  
2 past, and I think the Staff and the Public Counsel  
3 have also done that.

4 Now, one obvious difference here is the  
5 cases -- the examples I cited to you were different  
6 types of businesses, gas, electric, steam, transit,  
7 water. But with respect to the same type of service  
8 being provided by one corporation, your practice in  
9 the past has been to consider rate increases for some  
10 public utility divisions providing the same service  
11 without others offering the same service, and we have  
12 cited to you in our pleadings several examples of  
13 that.

14 One is the case of Missouri Water Company  
15 where it had two operating divisions, one at Lexington  
16 and one at Independence, and in the case reported at  
17 23 Missouri Public Service New Series 451, a 1980  
18 case, the Commission ordered a rate increase for the  
19 Independence division without considering the  
20 Lexington division. There are other cases that we  
21 have cited in our responsive pleadings that are on  
22 point.

23 There is a Missouri Cities Water case, a  
24 1974 case, where the Commission entertained the  
25 company proposal to increase rates for some divisions

1 but not others.

2           So when you take it to the divisional level,  
3 this has been the practice in the past by both the  
4 companies and the Commission.

5           We think this makes sense. We think a  
6 utility company should be permitted to put at issue  
7 only those tariff sheets which it considers to be in  
8 need of adjustment, and this is what Section 393.150  
9 clearly allows. And by the same token, we think the  
10 Staff and the Public Counsel and other proper parties  
11 should also be free to challenge only those tariffs  
12 which they consider to be unjust and unreasonable.

13           Conversely, if you follow the Public  
14 Counsel's logic, to adjust its electric rates for its  
15 Missouri Public Service operating division, UtiliCorp  
16 would have to file all of its tariffs for all of the  
17 MPS electric service and file all of the tariffs for  
18 the MP -- to the St. Joe, the SJLP electric service,  
19 and perhaps also file the MPS gas tariffs and the  
20 St. Joe steam tariffs and the St. Joe gas tariffs.

21           And then what about -- where does this end?  
22 What about UtiliCorp's regulated subsidiaries,  
23 Missouri Gas Company and Missouri Pipeline company?  
24 Now, granted, they are separate corporate subsidiaries  
25 and maybe the Public Counsel would concede that we

1 wouldn't have to put those tariffs at issue, but it's  
2 the same concept that we're talking about.

3           And what about UtiliCorp's other corporate  
4 divisions which operate in other jurisdictions?  
5 This -- the SJLP division is not the first operating  
6 division that has been added to the UtiliCorp  
7 umbrella. For years UtiliCorp has conducted electric  
8 and gas operations in other states through operating  
9 divisions. West Plains Energy in Kansas, for example,  
10 Peoples Natural Gas in Iowa and Minnesota, Michigan  
11 Gas Utilities in Michigan, those are all operating  
12 divisions of UtiliCorp, the corporation.

13           Would the Public Counsel say that we have  
14 to -- in order to put the Missouri Public Service  
15 operating division rates at issue here, we also have  
16 to go and put our electric rates at issue in other  
17 jurisdictions where we have electric operations? Do  
18 we have to put our gas rates at issue where we have  
19 other gas operations?

20           I don't think so. If the Staff or the  
21 Public Counsel thinks that our electric rates are too  
22 high, the MPS operating rates are too high, do they  
23 have to file a complaint against all of UtiliCorp's  
24 rates in Missouri, including the gas rates for the  
25 St. Joe division, the steam rates for the St. Joe

1 division, the electric rates for St. Joe division?

2 I think the answer to that is no. I don't  
3 think that makes much sense. And I don't think you  
4 would require them to do that.

5 Now, Mr. Coffman started out and said that  
6 the Public Counsel's main concern here was that all  
7 relevant factors be considered in setting rates, and  
8 that's certainly a legitimate concern, and I think  
9 that's something that, obviously, the Commission has  
10 to do in setting rates, and we would not attempt to  
11 tell you otherwise.

12 But what I would tell you is that there has  
13 been absolutely nothing that UtiliCorp has done in  
14 this filing that will prohibit the Commission from  
15 looking at all relevant factors with respect to  
16 UtiliCorp's Missouri Public Service electric rates.  
17 And nothing that we have done will prohibit the Staff,  
18 the Public Counsel and other parties from fully  
19 exploring all relevant factors that will go into  
20 setting these rates.

21 We would expect that the Staff and the  
22 Public Counsel and others and this Commission would  
23 look at all of UtiliCorp's costs and determine a total  
24 revenue requirement. I think that's what's always  
25 been done in the past.

1                   Currently -- forget the St. Joe merger.  
2   Currently, whenever we file a rate case, the Staff  
3   comes in and does an audit and decides which costs  
4   should be allocated to Missouri, which costs should be  
5   allocated to Kansas, which costs should be allocated  
6   to Michigan and the other states in which UtiliCorp  
7   conducts its operations. So throwing the St. Joe  
8   division into the mix really doesn't change anything.

9                   Mr. Coffman suggested that -- that what  
10   UtiliCorp is trying to do here is get you to only make  
11   one half of a pie, and my answer to that is that's not  
12   right. We're going to ask you, and you will make the  
13   whole pie. It's just a question of how much of that  
14   you're going to serve to the Missouri electric  
15   customers of UtiliCorp. I think that's what the real  
16   issue boils down to.

17                  So we think that what we have done is  
18   entirely supported by the statutes of this state and  
19   by past Commission practice, and absolutely nothing  
20   that we have done will allow you, or allow us to avoid  
21   the type of scrutiny that we would normally expect in  
22   a rate proceeding when you would consider all relevant  
23   factors in setting rates for the electric operating  
24   division of this company.

25                  Thank you.

1 JUDGE THOMPSON: Questions from the Bench?  
2 COMMISSIONER GAW: I would like to hold mine  
3 to the end.  
4 JUDGE THOMPSON: Until the end.  
5 Thank you, Mr. Swearengen.  
6 Mr. Dottheim.  
7 MR. DOTTHEIM: Thank you.  
8 I'm going to be very brief. I'm not  
9 basically going to repeat the arguments that are  
10 contained in the Staff's filing of a couple of weeks  
11 ago. I would like to address, though, a couple of  
12 points.  
13 Public Counsel has represented that the  
14 Commission has never proceeded as UtiliCorp now  
15 proposes. That is not accurate regarding water  
16 utilities. UtiliCorp has pointed out four cases in  
17 its initial responsive pleading that indicate that at  
18 least as far as water utilities are concerned and, in  
19 particular, Missouri Water Company and Missouri Cities  
20 Water Company, there are a number of cases, not a  
21 great many, but a number of cases where not all  
22 divisions filed for a change in rates.  
23 Public Counsel in its response to  
24 UtiliCorp's reply has argued that all of those cases  
25 occurred before the UCCM case, really the second UCCM



1 case, but the case cited for, amongst other reasons,  
2 the holding that all relevant factors must be  
3 considered.

4           The last case that UtiliCorp cited in its  
5 response actually occurred after the UCCM case. The  
6 Missouri Supreme Court issued its decision on June 29,  
7 1979. Missouri Water Company filed its case on  
8 July 16, 1979. The Missouri Supreme Court denied  
9 rehearing on September 11, 1979. The Commission  
10 issued its Report and Order respecting the Missouri  
11 Water Company case on April 10, 1980. So I don't  
12 believe that the record of the Commission is anywhere  
13 as definitive as Mr. Coffman asserts it is.

14           There are a dearth of cases; nonetheless,  
15 the Staff cited in its filing the Union Electric  
16 Company merger case in the 1980s respecting the Union  
17 Electric Company subsidiaries and the Union Electric  
18 Company purchase of the Arkansas Power and Light  
19 facilities in Missouri because there aren't, as far as  
20 the Staff is aware at this -- at this point, any other  
21 cases to bring to the Commission's attention as far as  
22 electric cases are concerned. The Staff has not  
23 performed an exhaustive review of the Commission's  
24 history as far as this matter is concerned.

25           There are some items that I would like just

1 to briefly touch upon for purposes of clarity. One of  
2 the first things that the Staff raised in its response  
3 was that to proceed as the Office of Public Counsel  
4 has suggested would certainly make the various merger  
5 issues that were tried last summer regarding various  
6 issues such as acquisition, premium merger savings,  
7 merger savings tracking, those would become issues in  
8 the pending rate proceeding.

9           The Staff attempted to make clear that that  
10 was not a reason to decide against the Office of the  
11 Public Counsel's proposal, but the Staff wanted to add  
12 some perspective on that, and at the same time I'd  
13 like to make clear now that even if the Commission  
14 would deny, reject, overrule Public Counsel's motion  
15 to reject the tariffs of UtiliCorp, the merger of  
16 St. Joseph Light and Power and UtiliCorp may be an  
17 issue, nonetheless, in these proceedings from the  
18 perspective of trying over again, because the  
19 Commission deferred decision issues such as  
20 acquisition premium, merger savings, merger savings  
21 tracking, any number of issues.

22           The Staff would note Office of the Public  
23 Counsel raised in its initial pleading, and -- I think  
24 it was the initial pleading, maybe the second,  
25 Mr. Coffman has raised this morning the prospect of

1 other companies that presently file rate cases  
2 company-wide seeking to file on a divisional basis.  
3 That is certainly an item that the Commission would  
4 have the opportunity to address, and I think that it  
5 would have to be addressed on a case-by-case basis.

6 And, again, that was one of the reasons that  
7 the Staff at least quoted at length in its response  
8 the Commission Report and Order in the merger case of  
9 Union Electric Company and its subsidiaries in the  
10 1980s so as to give some indication of the differences  
11 that exist between Union Electric Company at that time  
12 and its subsidiaries and UtiliCorp.

13 One last item that's been -- been addressed  
14 by, in particular, UtiliCorp and the Staff, and has  
15 been addressed again this morning, is the question of  
16 if Public Counsel is to prevail on its argument, would  
17 the Commission then need to address on a company-wide  
18 basis the steam, gas operations, even water operations  
19 of utilities that operate in those areas also as -- as  
20 a public utility?

21 The Staff, again, for an item of clarity  
22 mentioned the various companies that have had steam  
23 cases before the Commission who are also electrical  
24 corporations. On occasion the Commission has  
25 indicated that there is a necessity for there to be

1 notice to both the steam and electric customers of the  
2 pending case of one operation of the company, whether  
3 it be steam or electric, because of the interactive  
4 effects of making decisions for one operation of the  
5 company upon another operation of the company.

6           For example, the question of allocations.  
7 The allocations of joint facilities in electric steam  
8 cases to decide an allocations issue in an electric  
9 case potentially has ramifications in a steam case,  
10 and, on occasion, the Commission has sought to address  
11 those -- those types of situations.

12           In fact, even when Kansas City Power and  
13 Light indicated that it was going out of the steam  
14 business and was phasing out its steam operations, the  
15 Commission in an order in the 1980s indicated that  
16 Kansas City Power and Light was to file a steam case  
17 the next time it filed an electric case because,  
18 again, of the -- the interactive effects of the  
19 altercations issue and because of the particular  
20 issues that had arisen or were arising in that case.

21           Thank you very much.

22           JUDGE THOMPSON: Thank you, Mr. Dottheim.

23           Mr. Comley.

24           MR. COMLEY: May it please the Commission?

25           I thought at the beginning of my remarks I

1 would explain a little bit about the basis of the  
2 interventions that the City of Kansas City has  
3 participated in in the past.

4           Historically, and in pursuit of its general  
5 policy, the City has sought intervention in cases  
6 before the Commission that are filed by electric and  
7 gas corporations which serve the needs of the City  
8 itself. Because there are specific offices created by  
9 Missouri law which are under the duty to represent the  
10 interests of the public before the Commission, the  
11 City has not considered it a necessity to appear  
12 before you on behalf of its ratepaying citizens.  
13 Rather, the City most often defers to the Office of  
14 the Public Counsel and the Staff for formulating  
15 positions that advance the interests of the ratepayers  
16 in the city and in the general public.

17           But in this case, the Office of Public  
18 Counsel and the Staff have come to somewhat of a  
19 marked clash on the issues raised by the Office of  
20 Public Counsel in the motion we're hearing today, and,  
21 as a consequence, the City finds itself in a somewhat  
22 rare position of re-examining the nature of its role  
23 perhaps for the purposes of this motion.

24           We wonder whether in this contest between  
25 OPC and Staff on this particular motion have the

1 interests of Kansas City's own ratepaying citizens,  
2 have they come now into a tenuous balance that  
3 requires the City itself to advocate some solution?  
4 Well, in this tightrope that we're walking here, I'm  
5 going to venture a few remarks, and that's the basis  
6 of what I'm doing here today.

7           From the authorities that the parties have  
8 cited in their briefs, I think it's clear the  
9 Commission has developed a strong tradition against  
10 single-issue rate-making, and it takes those  
11 obligations seriously. And the obligation to consider  
12 all relevant factors is a very high priority.

13           Considering costs in isolation is like  
14 adding blinders to the regulators so that increases in  
15 rates could be approved without examining a savings in  
16 some other area of the utility's operation that would  
17 justify not raising the rates.

18           Well, in this matter, the ink on the  
19 Commission's order that approved the merger between  
20 UtiliCorp and St. Joseph Light and Power has been dry  
21 for about eight months, and approval of that merger  
22 was based upon evidence at a hearing during which a  
23 number of merger savings were identified.

24           Although UtiliCorp operates Missouri Public  
25 Service and St. Joe Light and Power as separate

1 operating divisions, I submit there is much that those  
2 divisions share in common, including generation  
3 facilities, distribution facilities, and not to forget  
4 common administration.

5           To the City, this raises justifiable  
6 questions of whether economies of scale and scope have  
7 materialized since the merger with St. Joseph Light  
8 and Power, and whether those economies might have  
9 effects on the degree to which UtiliCorp could  
10 increase the rates for service that MPS is requesting  
11 in this matters.

12           In its consideration of the motion, we would  
13 ask, like Public Counsel, that the Commission not  
14 equate a division of the company with a separately  
15 certificated subsidiary of the company. I think in  
16 the regulatory world it seems hard to accept the legal  
17 fiction that the subsidiary of a major utility has a  
18 legal life and validity all its own, a life that is  
19 separate and dependent from its parent.

20           But I think it should be even harder for the  
21 Commission to accept that an operating division of a  
22 company is separate, independent, an organism that's  
23 entitled to an analysis that is exclusive unto itself.  
24 I think that would be stretching the fiction far  
25 beyond what regulatory principles would allow.

1           At one point I think St. Joseph Light and  
2   Power had separate certificates. I think the merger  
3   order was quoted correctly that now they are Missouri  
4   Public Service -- rather, they are UtiliCorp's  
5   certificates. They are all in the same.

6           I don't think the certificates justify  
7   separate treatment for some purposes, but, again, the  
8   way the companies were certificated in the past should  
9   not be an excuse to allow a company to set its rates  
10   on a division basis. Allowing the company to engage  
11   in division-specific pricing will -- I think as  
12   Mr. Coffman pointed out correctly, it will predictably  
13   encourage other companies to vulcanize their service  
14   territories.

15           One could imagine that UE could return here  
16   and say that the west capital central division  
17   operating under the -- could operate under the old  
18   name of Missouri Power and Light, or its southeastern  
19   division could operate under I think it was Missouri  
20   Utilities, and UE could file a rate case specifically  
21   for each of those operating -- prenamed operating  
22   divisions.

23           Kansas City is a major customer of  
24   UtiliCorp. UtiliCorp provides electricity to Kansas  
25   City International Airport, which is operated by the



1 Aviation Department for the City of Kansas City. At  
2 the risk of a data request coming subsequent to my  
3 speech here, during the last fiscal year for the City  
4 it paid UtiliCorp about \$1.6 million for the energy  
5 needs at the airport alone. So any increases in the  
6 rates for electric service by Missouri Public Service  
7 are important issues for the City.

8 UtiliCorp also supplies energy in some  
9 quarters of the City itself, and the City is not blind  
10 to the needs of its citizens for affordable energy  
11 rates.

12 I want to make clear that because of the  
13 stance the City is taking in this case that it is not  
14 proposing a border war with the City of St. Joseph or  
15 any of its residences, nor is this devised to create  
16 rivalry over the use and commitment of generation or  
17 transmission facilities in the future between the  
18 communities that are served by UtiliCorp whether they  
19 be in St. Joseph, Kansas City, or points south.

20 The City believes, however, that the merger  
21 with St. Joseph Light and Power is grafted onto this  
22 case, notwithstanding the efforts of other parties to  
23 argue that it is not really a factor.

24 So here is what the position of the City of  
25 Kansas City is: We're requesting the Commission to do

1 what is fair and reasonable for the City of Kansas  
2 City and the citizens who rely on Missouri Public  
3 Service, while at the same time fairly considering the  
4 effects that the St. Joseph Light and Power merger may  
5 have on that question.

6 Thank you.

7 JUDGE THOMPSON: Thank you, Mr. Comley.

8 Mr. Finnegan.

9 MR. FINNEGAN: May it please the Commission?

10 I'm speaking on behalf of Jackson County,  
11 which, unlike the City of Kansas City, has always  
12 represented its ratepayers as well as the County  
13 itself. We are not quite the big customer of Mo Pub  
14 as the City of Kansas City is; however, we feel that  
15 we do -- we represent everybody within our boundaries.

16 I would like to say that we -- Jackson  
17 County -- I'm also speaking on behalf of Mr. Conrad,  
18 although in a Reader's Digest condensed version, and  
19 the Sedalia Industrial Intervenors. We are of one  
20 mind on this, and we support Public Counsel's  
21 position.

22 This is something that the Company did  
23 intentionally by becoming -- making it a division. It  
24 could have been a separate corporation. It's not.

25 One thing that I would like to -- we

1 basically agree with all of the statements that have  
2 been made, but I'd like to add one other section that  
3 has not been referred to.

4 I noticed in the arguments Section 393.130.2  
5 is mentioned, and the Staff rebutted it because that  
6 discrimination provision applies to rates that are  
7 different for doing the same or like or  
8 contemporaneous circumstances or conditions.

9 Section 292.130.3 is different. It provides  
10 that no electrical corporation, and we talked about  
11 one electrical corporation, shall give -- and I'm  
12 paraphrasing this, because I didn't have the statute  
13 with me when I was thinking of this idea on the way  
14 down here today.

15 But 393.130.3 basically says that no  
16 electric corporation shall, one, give any undue  
17 preference or advantage to any locality or area, and,  
18 two, shall not subject any locality or area to any  
19 undue prejudice or disadvantage in any respect  
20 whatsoever.

21 And I think that statute needs to be  
22 considered in this case because of the divisions are  
23 really no more than separate service areas, and to  
24 increase rates in one area, if rates needed to be  
25 increased or decreased in another area is -- is

1 counterproductive.

2           To say that, well, if the St. Joe Light and  
3 Power area is overearning now because of cutting  
4 salaries due to the merger and some other operating  
5 costs, it comes to a horn of dilemma there that when  
6 you come to the ultimate decision, do you give that  
7 overearning to the Mo Pub customers by reducing the  
8 increase, or does that go to the St. Joe Light and  
9 Power -- St. Joe Light and Power area customers who  
10 are overpaying on their current rates? The solution  
11 to that is to look at both of their rates at the same  
12 time.

13           And to say that someone could file a  
14 complaint is rather ludicrous. There is only one  
15 person that -- only one entity in this room that can  
16 really file a complaint, and that's the Staff.  
17 They're the only ones who have the resources  
18 available. For anyone else to do it, we're talking  
19 hundreds of thousands of dollars to try a rate case on  
20 your own against the utility.

21           And so, for that reason, I think the  
22 Commission needs to make a decision to this legal  
23 question, and I presume that whatever decision the  
24 Commission makes will either go to court by Office of  
25 the Public Counsel on a prohibition proceeding or if

1 you would rule in the favor of the company in a  
2 mandamus proceeding, but at least we would get an  
3 answer. And so I think whatever you decide, you  
4 probably should do it as rapidly as possible.

5 Thank you.

6 JUDGE THOMPSON: Thank you, Mr. Finnegan.  
7 Mr. Coffman.

8 MR. COFFMAN: Thank you.

9 I'm going to try to address a few points,  
10 and in no particular order of importance, I guess.

11 Mr. Swearengen and Mr. Dottheim talked about  
12 a few past cases that the Commission has resolved. I  
13 don't understand the relevance of the fact that the  
14 Commission has determined -- has separate rate cases  
15 for natural gas operations and electric, water and  
16 steam operations. I definitely concede that those  
17 have been and should be separate cases. The statutes  
18 clearly designate those as separate regulated  
19 entities, even though they may be a part of the same  
20 corporation.

21 What we are concerned about is the entire  
22 Missouri jurisdictional operations of one electrical  
23 corporation.

24 The three water cases that have been pointed  
25 out from the 1970s, I looked at what information we

1 had in the -- in the files about those cases, and I'm  
2 not entirely certain whether the Commission approved a  
3 total revenue requirement there or not. There was a  
4 revenue requirement deficiency, one number that was  
5 determined for an increase, and in those cases the  
6 increase was applied to only particular territories  
7 there.

8 I can easily read that to be a total revenue  
9 requirement decision, which was then on a rate design  
10 basis allocated between different cities, but I can't  
11 really tell you for certain with the limited  
12 documentation that's available for these small cases  
13 exactly what the Commission did.

14 I think that even if one case had not  
15 been -- had the application for rehearing denied just  
16 yet, they were prior to the internalization of the  
17 Supreme Court's interpretation of the all-relevant  
18 factors decision. And those cases, of course, were  
19 never appealed. They really don't have precedential  
20 value, even if the Commission decided them in a way  
21 that was not consistent with what I think the law  
22 says.

23 I'm a little bit confused now, I guess,  
24 about exactly what UtiliCorp's position is. I thought  
25 I heard Mr. Swaengren say that the Commission should

1 determine a total revenue requirement for UtiliCorp.  
2 I'm not really sure how I would react if the decision  
3 were to not reject the -- not dismiss the case, but to  
4 proceed forward under the assumption that everything  
5 in the UtiliCorp operations are in play.

6 I mean, it is true, as Mr. Swearengen points  
7 out, that a rate case can be initiated by filing less  
8 than all of your tariffs. I mean, if you look at --  
9 you're a utility, you look at your operations. Your  
10 connection fees, you think, are about right, or one  
11 particular rate is right, you don't file to change  
12 that tariff. So you're going to be filing a variety  
13 of tariffs, changing many of them, but maybe there's  
14 some that based on your preferred rate design as a  
15 utility, you wouldn't need to change.

16 But the assumption has always been that with  
17 that filing everything is in play. The entire  
18 operations must be considered, and the Commission  
19 ultimately will determine the total revenue  
20 requirement for the company.

21 Now, perhaps Mr. Swearengen is saying that  
22 there needs to be a total revenue requirement  
23 determined, but the only rates that can be changed are  
24 the rates in the Missouri Public Service division.

25 I'm not really sure how Public Counsel would

1    respond to that.  I suppose I need to remain flexible,  
2    but I think that the one thing I can tell you is that  
3    Public Counsel would feel compelled to appeal a  
4    decision where the Commission did not determine the  
5    proper revenue requirement for the entire Missouri  
6    jurisdictional UtiliCorp area.  That, we feel very  
7    confident about, our legal interpretation.

8                I suppose there are some other ways to look  
9    at it.  I know Staff in their pleadings have talked  
10   about possibly netting.  You know, if it was  
11   determined, for instance, that a decrease was needed  
12   in the St. Joe area, but an increase in other areas,  
13   perhaps the decrease could be netted against the  
14   increase.  I don't know if that's really in the public  
15   interest to be doing those kind of comparisons and  
16   balancing if we're not putting all of the rates into  
17   play.  That's the way we've always understood it, and  
18   that's what we believe the law requires.

19               Mr. Dottheim does point out that perhaps if  
20   this filing was rejected and UtiliCorp would then have  
21   to file a new -- a new case, that certain merger  
22   issues would then come into play.  They may be in play  
23   no matter what.  There may be many issues that I'd  
24   rather not see addressed, but, again, we're -- we're  
25   here today because we believe the principle is



1 important, not because we're looking at some  
2 particular result in this case, and we believe that  
3 the law does not allow the Commission to consider  
4 convenience or expediency in determining the proper  
5 scope of a rate case.

6           Mr. Dottheim suggested that perhaps the  
7 Commission can decide whether a particular utility can  
8 proceed on a divisional basis on a case-by-case basis.  
9 He suggested that the Commission has the discretion to  
10 determine which utility can file on a divisional basis  
11 and which can't. Again, we don't believe there is a  
12 statutory authority to do that, but if that's what you  
13 believe is the Commission's discretion, we would then  
14 urge you to use that discretion to state that it's not  
15 appropriate in this case.

16           We think that on a public policy basis this  
17 is a dangerous way to go. We think there is a lot of  
18 mischief that can be created by utilities when they  
19 can select for themselves what part of their  
20 operations are up for grabs here for -- as far as rate  
21 changes.

22           We would ask you to look at the particular  
23 facts of this case, note that they are nearly adjacent  
24 operations, that the Federal Energy Regulatory  
25 Commission has ordered integration, and that's why

1 this company is different from the water cases that we  
2 talked about which had very separate and  
3 noninterconnected operations.

4 Much like islands, these are service  
5 territories that are very close, and I'm sure if  
6 not -- if they are not integrated now, will very soon  
7 be integrated.

8 Again, I urge the Commission to reject this  
9 filing, because it's beyond the Commission's statutory  
10 authority.

11 Thanks.

12 JUDGE THOMPSON: Thank you, Mr. Coffman.

13 Questions from the Bench.

14 Commissioner Lumpe?

15 COMMISSIONER LUMPE: Mr. Coffman --

16 MR. COFFMAN: Would you like me to go up  
17 there or stay here?

18 JUDGE THOMPSON: Please, go up.

19 COMMISSIONER LUMPE: Mr. Comley made a  
20 distinction between an operating division and a  
21 subsidiary. You talked about affiliates.

22 Are there distinct definitions for those  
23 that would make it different for -- if one entity was  
24 a subsidiary versus an operating division versus an  
25 affiliate versus whatever?

1           MR. COFFMAN: Yeah. An affiliate has a  
2   separate corporate identity, I believe, and an  
3   operating division is just a subpart of the company  
4   that the company uses for its own internal purpose.

5           COMMISSIONER LUMPE: So the argument that  
6   had they created a holding company, and this was --  
7   what would you call it then, a subsidiary?

8           MR. COFFMAN: Yeah. I imagine there is a  
9   variety of ways they could do it. One way they could  
10   do it -- they could have asked the Commission to set  
11   UtiliCorp up as a holding company, or some other  
12   company, and then have Missouri Public Service Company  
13   as a subsidiary, a regulated entity, and St. Joseph  
14   Light and Power Company could have remained a  
15   separate entity.

16          COMMISSIONER LUMPE: So by doing the merger  
17   the way they did and just having operating divisions  
18   is part of the reason that you argue what you argue;  
19   is that correct?

20          MR. COFFMAN: We believe that they made a  
21   choice and now they need to live with it.

22          COMMISSIONER LUMPE: The issue that they  
23   focus on, that UtiliCorp focuses on somewhat also is  
24   the different services that the two operating  
25   divisions provide.

1           Is your response that when it says electric  
2   corporation it's spotting that as an electric  
3   corporation, and it has another certificate as a gas  
4   corporation, and it has another certificate as a  
5   water, that it needs different certificates for each  
6   of those, and, therefore, when the statute says  
7   "electric corporation" it's referring to that specific  
8   certificate, or how do I interpret that?

9           MR. COFFMAN: Yeah. I think that the  
10   statutes and the Commission's own rules talk about  
11   electrical corporations, natural -- or gas  
12   corporations and water corporations separately. These  
13   are the phrases that are defined in 386 that -- these  
14   are the phrases that are used in the law and in the  
15   Commission's rules to talk about what entity may  
16   request a certificate, what entity may request a rate  
17   increase. These, I believe, are the only entities  
18   that the Commission can recognize for regulatory  
19   purposes.

20           And we've never believed that a company  
21   would have to file for gas and electric rate changes  
22   at the same time, and I might add that if we felt that  
23   a rate decrease complaint case was in order, we would  
24   file it for the entire electrical corporation or for  
25   the entire gas corporation. We would not believe it

1 proper to choose just a particular region.

2 COMMISSIONER LUMPE: So the definition of an  
3 electric corporation is that function of the  
4 corporation that is electricity?

5 MR. COFFMAN: Yes, ma'am.

6 COMMISSIONER LUMPE: It's not UtiliCorp  
7 corporation doing these various items?

8 MR. COFFMAN: That's the way --

9 COMMISSIONER LUMPE: Is that your --

10 MR. COFFMAN: That's the way we interpret  
11 it, yes.

12 COMMISSIONER LUMPE: Okay. I have some  
13 concern about the -- and I think you're mentioning of  
14 how the merger might get wrapped into this particular  
15 filing.

16 And I'm wondering, do you believe that the  
17 Commission could look at altercations to St. Joe, or  
18 what -- what authority might we have in terms of  
19 looking at the two of them if we only addressed  
20 Missouri Public Service?

21 MR. COFFMAN: No matter how the Commission  
22 proceeds, I would assume we will be looking at  
23 corporate altercations. We would be looking at --  
24 attempting, with our limited resources, to look at all  
25 of the savings that have occurred throughout the

1 entire UtiliCorp new merged entity.

2 I know that Staff has discussed looking at  
3 some corporate altercations, but it just doesn't seem  
4 proper, nor legal to us to, when you're doing that,  
5 only put into play the rates from one part of that  
6 company. It seems that all of these issues have to  
7 come out, and you have to look at all relevant  
8 factors, and you have -- when you're done looking at  
9 all of the cost studies, determine what rates need to  
10 go up and perhaps what rates need to go down.

11 It just invites too much mischief to allow a  
12 company to selectively choose this portion of its  
13 territory for a rate case now; maybe another portion a  
14 year later. We think it just all needs to be looked  
15 at at once. This has been the way that -- this is the  
16 principle that has protected consumers more than  
17 anything else, that we put it all on the table at one  
18 time. We look at one test year and we do it all  
19 together at once.

20 COMMISSIONER LUMPE: Thank you, Mr. Coffman.

21 Judge, should I ask all of my questions, or  
22 should we allow --

23 JUDGE THOMPSON: I think you should ask all  
24 of your questions of whoever they may be.

25 Why don't you go ahead and sit down,

1 Mr. Coffman?

2 COMMISSIONER LUMPE: All right. Then,  
3 Staff, I would like to ask a few questions there.

4 JUDGE THOMPSON: You can just stay there,  
5 Mr. Dottheim.

6 COMMISSIONER LUMPE: Sort of the same  
7 question I just asked Mr. Coffman having to do with  
8 the allocations of -- in the merger case and whether  
9 the Commission would be able to address those  
10 allocations.

11 Would we be able to look over the fence and  
12 allocate and say that belonged here and this belongs  
13 here?

14 MR. DOTTHEIM: The Staff believes yes, and  
15 the Staff believes that's necessary. The Staff,  
16 unfortunately, may not be clear, but the Staff  
17 indicated that that would be a must in the filing it  
18 made with the Commission, and the Staff would -- would  
19 naturally look at that just as in, for example,  
20 UtiliCorp. It has a Missouri Public Service case, a  
21 file. The Staff may be looking at certain overhead  
22 costs and allocations of UtiliCorp as it relates to  
23 its gas operations, and the Staff would assert that as  
24 far as discovery. The powers of the Commission would  
25 cover that, and that would be a proper item to be

1 looked at, and has been in the past looked at.

2           Regarding the merger -- and, I'm sorry, I  
3 may not have been entirely clear on this from what I  
4 thought I heard Mr. Coffman say, the -- the Staff  
5 believes that, again, even if the Commission would  
6 deny Public Counsel's motion to dismiss the tariffs of  
7 UtiliCorp for Missouri Public Service, there may be  
8 merger issues that -- that occur in the case. The  
9 Staff may make certain annualizations in its case  
10 which UtiliCorp might assert have included merger  
11 savings. And, as a consequence, UtiliCorp would want  
12 to include the acquisition premium as part of the  
13 case.

14           So depending upon -- right now the Staff  
15 has -- has not started its on-site audit of Missouri  
16 Public Service. It's a little premature to say, but  
17 the Staff could see that there may be merger issues as  
18 a part of this case, regardless of what the Commission  
19 does on Public Counsel's motion.

20           COMMISSIONER LUMPE: Do you also agree with  
21 the distinction that Mr. Comley made between  
22 division -- operating divisions, subsidiary, and that  
23 had they done a holding company, this would not be an  
24 issue, but because of doing it the way they did, it  
25 does become an issue?



1           MR. DOTTHEIM: Under a different structure,  
2 it would, I believe, not be an issue. The example of  
3 the Union Electric Company structure, when there was  
4 Missouri Utilities, Missouri Edison, and Missouri  
5 Power and Light, those were subsidiaries. I believe  
6 they had their own corporate structures, their own  
7 boards, and they filed individual cases with the  
8 Commission, which were litigated individually.

9           There was not -- when Missouri Power and  
10 Light filed a case, there was not a review of the  
11 Missouri Edison and Missouri Utilities or the Union  
12 Electric Company rates, if I recall correctly, and if  
13 I understand correctly the particulars involving the  
14 Union Electric Company structure prior to the merger  
15 of the subsidiaries with Union Electric in the '80s.

16          COMMISSIONER LUMPE: Okay. Mr. Swearengen,  
17 for UtiliCorp, would you agree that on that -- had  
18 they -- well, I guess that you'd agree that they can  
19 do it this way and so I guess the question should be,  
20 would have -- would it have been maybe better to have  
21 created a holding company?

22          MR. SWEARENGEN: Well, let me try to answer  
23 it this way: Back in the mid 1980s when UtiliCorp set  
24 out on its program of acquiring other companies, they  
25 made a decision at that time not to form a holding

1 company and therefore be subjected to the Public  
2 Utility Holding Company Act. They made a corporate  
3 decision back in the mid '80s to operate all of their  
4 domestic acquisitions as divisions, which is what  
5 they've done.

6 And that was the point I was making earlier.  
7 All of their domestic United States utility operations  
8 are done through the corporate entity UtiliCorp. And  
9 as Mr. Coffman indicated earlier, these divisions are  
10 just -- are fictions. They are fictions. They are  
11 operating fictions set up for the convenience of the  
12 utility.

13 Now, that doesn't mean that what we've done  
14 here is unlawful. And I think that's the issue. This  
15 isn't a fact issue, what may or may not come up in the  
16 rate case if it's UtiliCorp/St. Joe together or --  
17 excuse me, MPS/St. Joe together or just MPS.

18 This is a legal question, whether or not  
19 UtiliCorp has the lawful right to initiate a rate case  
20 for a distinct operating division. And we think the  
21 statute that I cited earlier gives us that authority,  
22 and I haven't heard anybody say anything to the  
23 contrary.

24 Mr. Coffman indicated he was confused. He  
25 didn't really understand what our position was about,

1 I think, the way he phrased it, everything is in play.

2 Everything is in play from the standpoint of  
3 UtiliCorp's costs of doing business and its revenues.  
4 The Staff can look at everything and will and then  
5 allocate to the various operating divisions, be they  
6 in Michigan, Minnesota, Kansas, or Missouri.

7 The question then comes, What happens to  
8 those costs? The risk I submit is with the Company,  
9 because the tendency, the temptation, is to allocate  
10 those costs to a division which does not have its  
11 rates, its tariffs in play. We see this happen, for  
12 example, in the case of St. Joe where we just filed an  
13 electric case. Costs would get allocated over to the  
14 steam operation where we wouldn't have tariffs in play  
15 to recover those costs.

16 The same thing could happen here. Costs  
17 could be allocated over to the St. Joe operating  
18 division. We have not asked to recover those costs,  
19 and, therefore, we wouldn't recover those costs. And  
20 the effect would be to lower the revenue requirement  
21 for the MPS electric operation.

22 COMMISSIONER LUMPE: The question I asked  
23 the others about looking at the allocations to  
24 St. Joe, et cetera, you would believe that that would  
25 be appropriate to do?

1                   MR. SWEARENGEN: I couldn't say it better  
2   than Mr. Dottheim did. Absolutely. We're not  
3   asking -- we're not trying to keep you from looking at  
4   anything. We concede that you can look at everything.

5                   COMMISSIONER LUMPE: Okay.

6                   MR. SWEARENGEN: You can bake the whole pie.  
7   And then it's a question of how much gets allocated to  
8   the MPS electric operations, just as the Staff in the  
9   past has gone through that process and has decided how  
10  much gets allocated to the other states and how much  
11  gets allocated to the MPS electric operations and how  
12  much gets allocated to the MPS gas operations.  
13  Really, we're not proposing anything here any  
14  different in my view.

15                  COMMISSIONER LUMPE: Would you refresh my  
16  memory? In the merger case, was there a statement  
17  made that there would be in the future an attempt made  
18  to merge the rates so that the companies would have  
19  the same rates?

20                  MR. SWEARENGEN: At the sake -- at the risk  
21  of my memory failing me, I do believe that indication  
22  was made that over time we would attempt to bring the  
23  rates closer together, but to do that immediately at  
24  this point in time would create a rate increase for  
25  those folks in the former SJLP service territory, and

1 that is not something that we intend to do or would  
2 propose to do.

3 COMMISSIONER LUMPE: Would it not make it  
4 different -- or make it more difficult if you  
5 increase -- if you increased the rates to MSP, won't  
6 that just increase it more and make it more difficult  
7 to come to a merged rate?

8 MR. SWEARENGEN: I think that ultimately  
9 when you do have an SJLP rate case in front of you,  
10 and this comes into looking -- everything being in  
11 play and looking at all of costs, if the costs are  
12 properly assignable to the MPS operating division,  
13 that's where they ought to go. I mean, that's the way  
14 traditionally rates are set, and if they are properly  
15 assignable to the SJLP division, that's where they  
16 should go.

17 And in this MPS rate case, those decisions  
18 will be made, but the only customers who will be  
19 affected by those decisions will be the MPS electric  
20 customers, because those are the only rates that are  
21 at issue.

22 So if you decide, for example, that costs  
23 ought to go to the St. Joe operating division, they  
24 won't because we won't have those tariffs in front of  
25 you. And we won't be able to recover those costs from

1 the MPS customers.

2 COMMISSIONER LUMPE: They could be assigned,  
3 but just not recovered?

4 MR. SWEARENGEN: Not at this point in time.

5 And then in the next case, when we come in  
6 for the St. Joe's rate, maybe somebody will change  
7 their mind and say, We think those costs ought to be  
8 back over on the MPS side, and we won't recover them.

9 That's why I say, I think the risk is really  
10 with the Company.

11 COMMISSIONER LUMPE: Thank you,  
12 Mr. Swearengen.

13 That's all I have, Judge.

14 JUDGE THOMPSON: Thank you, Commissioner  
15 Lumpe.

16 Commissioner Gaw?

17 COMMISSIONER GAW: Thank you, Judge.

18 I want to see whether you-all are saying the  
19 same thing to us on the revenue requirement issue,  
20 because I'm still not sure that -- whether -- whether  
21 you-all are disagreeing or agreeing on that issue at  
22 this point.

23 When we're talking about the analysis of the  
24 revenue requirement of the portion of the electric  
25 corporation doing business in Missouri, Mr. Coffman,

1 I'll ask you this first: It's my understanding that  
2 your position is that everything should be examined in  
3 determining that revenue requirement from the  
4 standpoint of that part of UtiliCorp's electric  
5 business in Missouri; is that -- is that correct?

6 MR. COFFMAN: We think the Commission must  
7 consider all of those relevant factors and we think  
8 that to do a lawful rate case, all of those rates need  
9 to go in -- come into play.

10 COMMISSIONER GAW: Now, here is my  
11 difficulty. Now, I'm listening to all of you, and  
12 I -- I'm not sure that I'm seeing the distinction at  
13 this point. I thought I did earlier, but at this  
14 point, I'm not sure I'm seeing the distinction in what  
15 you're saying in regard to that narrow issue.

16 From your standpoint, can you tell me if you  
17 can see the distinction between what everyone is  
18 saying on the examination of revenue requirement?

19 MR. COFFMAN: I think -- and I am still  
20 unsure that I understand this correctly, but I think  
21 Mr. Swaengen is saying that the Commission can  
22 determine, or maybe they are saying that they should  
23 determine a total UtiliCorp revenue requirement, and  
24 then if any rates need to be changed, they -- he wants  
25 to limit any rate changes only to that one MPS

1 territory.

2 That makes me feel uncomfortable in  
3 exactly -- I guess depending on how the Commission did  
4 it, but it makes me uncomfortable to think that we  
5 would be having a total rate case, but only putting in  
6 play one service territory in this rate case, and then  
7 perhaps down the road in another year or two we would  
8 have another rate case where a different portion would  
9 be in place.

10 It seems that to really set rates that are  
11 just and reasonable and fair to everyone, you do the  
12 whole -- the whole thing at once and make sure that  
13 the utility recovers its total revenue requirement and  
14 that that total revenue requirement is properly  
15 allocated to those who have caused the cost and in a  
16 fair rate design.

17 COMMISSIONER GAW: But you just -- you just  
18 drew out two parts to this. And when I listened to  
19 you initially make your presentation, it -- I got the  
20 impression that you believed that the position of the  
21 Company was that the revenue requirement portion, the  
22 first portion was also an issue in regard to this  
23 case. And I'm not sure I'm hearing that that's an  
24 issue at this point in time.

25 MR. COFFMAN: I think Mr. Swearengen may



1 have a different position than that.

2 COMMISSIONER GAW: I want to come back,  
3 then, to the Company, if I could.

4 Mr. Swearengen --

5 MR. SWEARENGEN: Our position is, you look  
6 at everything and you get a total company revenue  
7 requirement, and then you decide what customers ought  
8 to pick up that -- those costs or get a reduction.

9 Where we differ is with respect to what  
10 rates are actually at play to implement your decision.  
11 And our experience in the past has been with St. Joe  
12 as a classic example, we come in in an electric case,  
13 and costs get allocated over to the steam side, and we  
14 can't recover those because we don't have those  
15 tariffs in play.

16 COMMISSIONER GAW: Well, in getting to that  
17 second part, that argument could be made both  
18 directions, that it could be shifted to the benefit or  
19 to the cost of the customer and -- but I --

20 MR. SWEARENGEN: That's true.

21 COMMISSIONER GAW: And I understand that's a  
22 separate issue. But my difficulty, and what I'm  
23 trying to make sure I understand at this point, is  
24 whether the arguments that the Office of the Public  
25 Counsel was making earlier regarding the Commission's

1 jurisdiction as it played out to the revenue  
2 requirement are still relevant arguments to this  
3 proceeding and -- because -- and I want to go to the  
4 second part of the allocation question in a moment,  
5 but I'm trying to -- trying to determine whether or  
6 not those arguments that Public Counsel and those who  
7 are supporting Public Counsel's position are still  
8 legitimate arguments at this point in time after we've  
9 heard the arguments in the last hour or so.

10 And, Mr. Dottheim, I want to come to you in  
11 a minute, but, really, this is more relevant to  
12 Mr. Coffman.

13 And I don't know that it's fair to you to  
14 ask you to answer that question at this point, but if  
15 you have an answer, I'd like to hear it.

16 MR. COFFMAN: Okay. Could you restate it  
17 again? I'm sorry.

18 COMMISSIONER GAW: I'm mainly at this point  
19 just focusing on the motion that is pending in front  
20 of us regarding the issue -- the development of your  
21 argument on this Commission's jurisdiction relating to  
22 an examination of a rate case where the revenue  
23 requirement of the entire corporation doing --  
24 electrical portion of the corporation doing business  
25 in Missouri is conceded to be in issue, and whether or

1 not that impacts your jurisdictional argument.

2 And I will get to the question of the second  
3 part of, does the jurisdiction of the Commission  
4 question also relate to our ability to shift or to  
5 make a limited scope rate-making to a particular  
6 geographic area, because your arguments to me as I've  
7 read them and as I've listened to you today are two  
8 parts, but I heard most of the argument on the first  
9 part which no longer seems to be an issue. I'm sorry.

10 MR. COFFMAN: It's sort of confusing, and I  
11 probably confused you with my arguments, but revenue  
12 requirement and rate design, you know, have to be  
13 separate determinations.

14 We think that the revenue requirement has to  
15 be determined all at once and that the utility bears  
16 the burden of proof for that entire revenue  
17 requirement. They have not filed a total revenue  
18 requirement. They have done their minimum filing  
19 requirements and they have acted in their filing as if  
20 MPS were the electrical corporation.

21 We think that the Commission has to treat  
22 this as a UtiliCorp-wide case, that the revenue  
23 requirement has to be determined company-wide, and  
24 then after that, the Commission has many options for  
25 rate design.

1 I don't know if I'm answering your question.

2 COMMISSIONER GAW: Let me ask you this more  
3 specifically then.

4 Does -- in regard to the second part of  
5 this, does the Commission have jurisdiction in Public  
6 Counsel's opinion to determine or to shift rates or to  
7 determine rates within only a part of the geographic  
8 area of a corporation -- electric corporation doing  
9 business in Missouri? Is that a jurisdictional  
10 question?

11 MR. COFFMAN: It's our interpretation that  
12 legally the Commission must set a revenue requirement  
13 company-wide and recover that from the Company.  
14 Now --

15 COMMISSIONER GAW: That's not answering the  
16 question I'm asking.

17 I'm setting that question aside. Everyone  
18 concedes that issue.

19 Then the issue becomes, at least as I  
20 understand it, is it a jurisdictional question for  
21 this Commission to suggest that we have no  
22 jurisdiction for a filing that only pertains to a rate  
23 adjustment in a -- in a portion of the geographic area  
24 that an electric corporation does business in this  
25 state. Did I make that clear?

1 MR. SWEARENGEN: That's the question?

2 COMMISSIONER GAW: Yes.

3 MR. COFFMAN: Well, first of all, let me say  
4 I'm not entirely sure that there is -- that we are all  
5 in agreement. I think I'm hearing something different  
6 from UtiliCorp today, and I know that at least in the  
7 Staff's pleading there was a statement that the Staff  
8 believed that the Commission had the authority if it  
9 wanted to to determine a revenue requirement for just  
10 a particular region. We definitely disagree there  
11 with the Staff.

12 It just -- and, then, if you're moving into  
13 actually designing the rates, it just -- it doesn't  
14 make much sense to us that in recovering that total  
15 revenue requirement you can only look at one portion.  
16 Now, you know, I've had lots of experience with these  
17 water companies, and in some -- some customer classes  
18 in some districts get decreases when some customer  
19 classes in other regions get increases.

20 Missouri -- in this case was allowed to  
21 proceed, I'm sure Missouri American is going to come  
22 in and try to limit its next case to only those cities  
23 where they think the costs are going up and try to  
24 shift the burden of proof on to other parties to prove  
25 the revenue requirement where those decreases might be

1 needed.

2 COMMISSIONER GAW: I'm not -- I understand  
3 your point. What I'm trying to get information on --  
4 Mr. Dottheim really would like to answer this  
5 question -- is whether or not it is a jurisdictional  
6 issue for the Commission, that's my question, or is it  
7 an issue to be decided in the rate case whether or not  
8 that's an appropriate means of dealing with the  
9 revenue requirement?

10 MR. COFFMAN: I think it -- I don't know if  
11 it is properly considered a jurisdictional issue, but,  
12 yes, I think it is a fundamental legal issue that  
13 there has to be a total company revenue requirement,  
14 and we've established that. After that, I'm just not  
15 sure.

16 I know the Commission has broad discretion  
17 in rate design, but I would think that it would need  
18 to arrive at its total -- the total revenue  
19 requirement for the Missouri jurisdictional entities,  
20 and I'm not sure how they do that if some portions or  
21 some of the regions of the territory are off limits  
22 for rate changes.

23 COMMISSIONER GAW: I understand. I  
24 understand. What I would -- I think what might be  
25 helpful is if -- because this is -- it seems to me

1    that the development of this issue has turned a little  
2    bit of a course for me, anyway, if no one else.

3                If I would -- and perhaps it would be  
4    helpful to have that addressed in some follow-up here  
5    so that you're not put totally on the spot, but I do  
6    need to ask Mr. Dottheim if he can add to this,  
7    because I think he's very anxious.

8                MR. DOTTHEIM:  And what I have to add, I  
9    think it is possibly rather fundamental and goes  
10   before even your most recent question.  And I may be  
11   mistaken, but let me try to clarify.

12               The type of audit that the Staff would  
13   perform if Public Counsel prevailed on its motion  
14   would be a different type of audit than the Staff  
15   would perform if the Commission denied Public  
16   Counsel's motion.

17               The Staff in the present situation where  
18   it's just the Missouri Public Service tariffs that  
19   have been filed will look at certain items respecting  
20   St. Joseph Light and Power, but it will not look at  
21   all of the items in the detail, or all of the items,  
22   period, that it would look at for purposes of an  
23   audit if it was both the Missouri Public Service and  
24   the St. Joseph Light and Power tariffs that were filed  
25   before the Commission.

1           The Staff will look in the present  
2 situation at things such as corporate overheads, fuel  
3 revenues, probably payroll, but it would be a  
4 different scenario if it was both the Missouri Public  
5 Service and the St. Joseph Light and Power tariffs  
6 that were filed.

7           The Staff will not in the present stance of  
8 the case determine a -- what the Staff would consider  
9 to be a definitive revenue requirement for St. Joseph  
10 Light and Power. The Staff would determine what it  
11 considered to be appropriate review in the necessary  
12 detail for determination of the revenue requirement of  
13 Missouri Public Service.

14           The Staff believes that the moment that our  
15 review would be of a nature, that we think we would  
16 have a handle on whether St. Joseph Light and Power  
17 was likely in a revenue deficiency or revenue excess  
18 position.

19           COMMISSIONER GAW: Mr. Dottheim, does that  
20 mean that you would treat the analysis of the case as  
21 though the -- the St. Joseph division were a separate  
22 corporation in your analysis as opposed to it being a  
23 part of the same corporation?

24           MR. DOTTHEIM: I don't know if we would say  
25 that it was a separate corporation, but it would be a



1 different -- it would be a different audit just as --  
2 what you're saying is that the Staff in looking at  
3 both Missouri Public Service and St. Joseph Light and  
4 Power would look at it as if it was a different  
5 corporation than the UtiliCorp properties in other  
6 jurisdictions, other states.

7 COMMISSIONER GAW: So you're telling us that  
8 your review would not necessarily include the same  
9 scope?

10 MR. DOTTHEIM: That is correct.

11 COMMISSIONER GAW: And the numbers would not  
12 necessarily be the same?

13 MR. DOTTHEIM: Well, the numbers for -- for  
14 the --

15 COMMISSIONER GAW: For the revenue  
16 requirement.

17 MR. DOTTHEIM: -- for the revenue  
18 requirement for Missouri Public Service would be, but  
19 for St. Joseph Light and Power, no.

20 COMMISSIONER GAW: How is that possible?

21 MR. DOTTHEIM: Because amongst other things,  
22 I believe at this point the two companies -- or,  
23 excuse me, the two entities are not fully integrated,  
24 and -- amongst other things, as opposed to the Union  
25 Electric Company situation where the subsidiaries, the

1 separate subsidiaries, other than having some peaking  
2 units, did not have their own generation. They  
3 purchased their power from Union Electric Company.

4 In this situation, we have Missouri Public  
5 Service and St. Joseph Light and Power who had  
6 different generating units, which they have a joint  
7 dispatch agreement where they are going to jointly  
8 dispatch those units, but they are in some status of  
9 that where I don't believe it has been fully  
10 accomplished.

11 COMMISSIONER GAW: I guess my -- I  
12 understand that that may be difficult to sort out, but  
13 my -- what I didn't understand about your comment was  
14 how you -- how could it be that Missouri Public  
15 Service division would have the same revenue  
16 requirement -- well excuse me. Let me -- maybe I  
17 am -- maybe I just didn't follow it well.

18 That your revenue requirement in this case  
19 will be the same as you determine it for this case  
20 whether or not we're examining it under Office of  
21 Public Counsel's position or under the Company's  
22 position with your numbers?

23 MR. DOTTHEIM: For Missouri Public Service.

24 COMMISSIONER GAW: And, yet, it would not be  
25 the same for St. Joseph?

1           MR. DOTTHEIM: Not necessarily, because --  
2           COMMISSIONER GAW: Why wouldn't those things  
3 all be the same at that point?  
4           MR. DOTTHEIM: Because --  
5           COMMISSIONER GAW: I shouldn't have asked  
6 that question.  
7           MR. DOTTHEIM: No. Again, amongst other  
8 reasons, the companies aren't fully -- excuse me when  
9 I say "companies."  
10          The entities --  
11          COMMISSIONER GAW: The divisions.  
12          MR. DOTTHEIM: -- the divisions aren't fully  
13 integrated.  
14          COMMISSIONER GAW: True. But, I mean, that  
15 would be the case for both divisions. Why wouldn't  
16 they be -- why wouldn't the outcome be the same for --  
17 under both scenarios under the -- your assumption?  
18          Maybe I just need to look at that a little  
19 closer to follow that.  
20          MR. SWEARENGEN: Can I try to respond to  
21 that?  
22          COMMISSIONER GAW: Mr. Swearngen.  
23          MR. SWEARENGEN: This is -- this has been my  
24 experience with how their audits would work in a  
25 situation like that.

1           Once they have decided that a cost was  
2 directly assignable to the St. Joe division, because  
3 we were not seeking to recover those costs through  
4 rates, they won't do an exhaustive audit and run it  
5 down and refine it to the final dollar. Those costs,  
6 however, that are common to both St. Joe and  
7 UtiliCorp, they will bore in and they will nail those  
8 to the penny and then assign them.

9           And that's why he's saying if they didn't do  
10 St. Joe at the same time completely, the numbers might  
11 be a little bit different, because they don't have to  
12 go out there and refine that St. Joe number, because  
13 we're not asking for any rate relief for St. Joe.

14           COMMISSIONER GAW: I understand that. I  
15 guess my question -- if that's the case, but my  
16 question had to do with if they would have done a  
17 complete analysis, wouldn't the numbers be the same.  
18 Assuming that -- that Missouri Public Service was the  
19 same, I would think St. Joe would be the same if you  
20 completed that analysis.

21           MR. SWEARENGEN: If you took it to the end,  
22 I think that's probably true. It would be.

23           COMMISSIONER GAW: Yes. And I was -- I  
24 thought I heard Staff saying that would not be the  
25 case, but your explanation may be sufficient.

1           MR. DOTTHEIM: Well, if I understand what  
2 your question is now, if we took the analysis to the  
3 end, we looked in as much detail at St. Joseph Light  
4 and Power as if they had filed their tariffs in the  
5 case, we would -- well, we would -- the numbers should  
6 be the same as if Public Counsel would prevail. But  
7 it -- well -- and I don't disagree with  
8 Mr. Swearingen's characterization of the situation.

9           There may be -- when we look at costs that  
10 are, we might say, directly assignable to St. Joseph  
11 Light and Power, there may be disallowances that --

12           COMMISSIONER GAW: Yes. Mr. Dottheim, do  
13 you believe that breaking these cases up into  
14 geographic areas is good policy for the Commission if  
15 we get to that question, for us to analyze rate --  
16 allowing -- and allow rates to be raised in one  
17 geographic area under a corporation -- an electric  
18 corporation's structure and not do the complete rate  
19 case for all of the area they are doing business in  
20 Missouri?

21           MR. DOTTHEIM: Well, I think that certainly  
22 is a policy determination for the Commission, and I  
23 think various parties have raised questions from a  
24 policy perspective that the Commission may find  
25 troubling.

1           If I might address something that maybe I  
2   should have addressed in my -- my comments, but I  
3   think was also -- because Mr. Coffman raised it, and I  
4   think it was also prompted by a statement by -- by  
5   Mr. Finnegan as to none of the other parties being  
6   able to file -- not having the resources to file a  
7   complaint.

8           The Staff has, I think, a little bit  
9   different perspective of what would necessarily occur  
10   if the Commission looked at both the Missouri Public  
11   Service and the St. Joseph Light and Power division.  
12   I think there is some assumption on the part of the  
13   Office of the Public Counsel that St. Joseph Light and  
14   Power is in an excess earnings situation and Missouri  
15   Public Service might be in a revenue deficiency  
16   situation, or we can just take that hypothetically.

17           If one -- and, again, we'll just take  
18   hypothetically. If we assume that maybe that were the  
19   case, but the Company was not going to file for a rate  
20   decrease for St. Joseph Light and Power and filed a  
21   rate increase for both Missouri Public Service and  
22   St. Joseph Light and Power, I think there is an  
23   assumption on the -- on the Office of Public Counsel  
24   that with a filed rate increase case for those two  
25   companies, that if the Commission determined that

1 St. Joseph Light and Power were in an excess earnings  
2 situation, that the Commission could order a rate  
3 reduction.

4 Now, the Staff has taken the position in the  
5 past that in order for there to be a rate reduction,  
6 the Commission -- excuse me -- there must be a  
7 complaint case pending before the Commission, so that  
8 if there was, again, a rate increase case for Missouri  
9 Public Service at St. Joseph Light and Power and the  
10 Commission found that St. Joseph Light and Power in an  
11 excess earnings situation, the Staff, some other  
12 entity would need to file a complaint, and --

13 COMMISSIONER GAW: I understand your -- I  
14 understand what you're suggesting, and it strikes me  
15 that part of what we're contending with here is this  
16 change in this corporate structure that's -- where we  
17 have original tariffs still on file that were done by  
18 the corporations as they stood before the merger, and  
19 that now we're in a situation where the companies have  
20 merged. We have -- still have these separate tariffs  
21 out here, and the Commission is going to have to deal  
22 with questions at some point in time, but when we  
23 start treating these companies as they currently are.

24 Now, we are looking at a true-up period on a  
25 case that basically leaves the Company during a time

1 period when they were not merged, if I understand it  
2 correctly. And we're coming through some of that  
3 period. Maybe I'm not correct on that.

4 But what I am -- let me ask this direct  
5 question: If we proceed under this scenario as the  
6 Company is requesting us to proceed, will we be able  
7 to, if there are any, discuss any savings from the  
8 merger in this case as a part of determining  
9 appropriate revenue requirements?

10 MR. DOTTHEIM: Well, there is a  
11 philosophical discussion there, and, excuse me, the  
12 Staff has maintained in merger cases that it's not  
13 possible to track merger savings. And, of course, the  
14 companies have had a very different perspective on  
15 that.

16 But I expect at some time in the future,  
17 whether it's this case or some other case, those  
18 issues will be addressed, and the Company may want to  
19 address it based upon its present situation where it  
20 plans to be, as far as the integration of the Missouri  
21 Public Service division and the St. Joseph Light and  
22 Power division at the operation of law date or at  
23 the -- at the true-up period of January 31, 2002.

24 Of course, with those true-ups, those aren't  
25 a literal reaudit of the Company, so it's -- it



1 becomes problematic the further you move forward as to  
2 how detailed of an audit the Staff can perform at that  
3 stage.

4 COMMISSIONER GAW: Well, I think that's --  
5 that's all that I need, but I would, again, reiterate,  
6 I think from my standpoint the -- the issue of the  
7 Commission's jurisdiction over this case as it's  
8 developed would be -- if Public Counsel has  
9 information bearing upon that with what appears to me  
10 to be somewhat of a consensus regarding the ability of  
11 the Commission to analyze revenue requirement for the  
12 electric corporation in the portions of the state it's  
13 doing business in across division lines, and if we are  
14 dealing with a jurisdictional issue, if we assume that  
15 to be true, would be helpful for me.

16 Thank you, Judge.

17 JUDGE THOMPSON: Thank you, Commissioner.

18 Mr. Swearengen?

19 MR. SWEARENGEN: Yes, sir.

20 JUDGE THOMPSON: Where is the Missouri  
21 Public Service service area?

22 MR. SWEARENGEN: Western Missouri, around  
23 the Kansas City area.

24 JUDGE THOMPSON: South of Kansas City?

25 MR. SWEARENGEN: Yes, some of it.

1 JUDGE THOMPSON: How far south does it  
2 extend?

3 MR. SWEARENGEN: Oh, I can't tell you  
4 exactly.

5 JUDGE THOMPSON: Okay. Is it immediately  
6 adjacent or contiguous with the St. Joseph Light and  
7 Power service area?

8 MR. SWEARENGEN: On the northern side I  
9 believe it is in some instances, yes.

10 JUDGE THOMPSON: And, historically, these  
11 service areas were separately certificated?

12 MR. SWEARENGEN: That's true.

13 JUDGE THOMPSON: Are they separate  
14 certificates now?

15 MR. SWEARENGEN: When the merger went  
16 through, the St. Joe certificates became part of the  
17 UtiliCorp certificates, so the certificates were, in  
18 essence, transferred, but they are historical--

19 JUDGE THOMPSON: The certificates are now  
20 owned all by UtiliCorp?

21 MR. SWEARENGEN: That's right.

22 JUDGE THOMPSON: But there are still two  
23 certificates, are there not?

24 MR. SWEARENGEN: There are. Probably more  
25 than just two.

1 JUDGE THOMPSON: All right. And where are  
2 the generating assets of the Missouri Public Service  
3 service area?

4 MR. SWEARENGEN: Some of them are in Kansas;  
5 some are in Missouri.

6 JUDGE THOMPSON: How about the St. Joseph  
7 Light and Power service area?

8 MR. SWEARENGEN: The former St. Joseph Light  
9 and Power Company generating assets were all located  
10 in Missouri.

11 JUDGE THOMPSON: Are they identical to any  
12 degree? Are they the same generating assets?

13 MR. SWEARENGEN: The same as the Missouri  
14 Public Service assets?

15 JUDGE THOMPSON: Right.

16 MR. SWEARENGEN: No. They were separate,  
17 right.

18 JUDGE THOMPSON: They were separate.  
19 Do they continue to be separate today?

20 MR. SWEARENGEN: Well, they are all owned by  
21 UtiliCorp.

22 JUDGE THOMPSON: I understand they are owned  
23 by UtiliCorp. What I'm asking you is whether the  
24 generating assets that formerly belonged to St. Joseph  
25 Light and Power are continuing to serve the former

1 St. Joseph Light and Power service area?

2 MR. SWEARENGEN: They are continuing to  
3 serve that, but they would also be available to serve  
4 the Missouri Public Service area. As you know,  
5 electricity flows wherever it wants to, and some of it  
6 might even go over into Kansas and serve those Jay  
7 Hawks.

8 JUDGE THOMPSON: Okay.

9 COMMISSIONER GAW: No.

10 JUDGE THOMPSON: I'll try to fight down the  
11 nausea that that has produced.

12 So there is a degree of interconnection and  
13 integration of the two areas; is that correct?

14 MR. SWEARENGEN: I think that's true.

15 JUDGE THOMPSON: And I understand there has  
16 been some reference to a FERC order requiring  
17 integration?

18 MR. SWEARENGEN: My understanding is that  
19 the FERC has allowed joint dispatch, but I'm getting  
20 into an area that I'm not that familiar with. So if  
21 you really want the right answer to that question, I  
22 could ask one of my colleagues here from the Company  
23 to speak to it.

24 JUDGE THOMPSON: Well, what I was going to  
25 ask is for someone to file the FERC order in the case

1 file so that it's available to the Commission to  
2 review.

3 MR. SWEARENGEN: I'm advised that the  
4 Commission should have that as a party to the FERC  
5 docket, but we would be more than happy to supply  
6 another copy.

7 JUDGE THOMPSON: That would be the most easy  
8 thing than for us to try to find where the  
9 Commission's copy might be.

10 Obviously, before the merger there were  
11 separate books and records. Do they continue to be  
12 kept separately today?

13 MR. SWEARENGEN: I'm advised that the answer  
14 to that is, yes, they are.

15 JUDGE THOMPSON: Okay. And is there  
16 separate management over each of those two services  
17 areas?

18 MR. SWEARENGEN: Let me answer it this way:  
19 There is a single corporate management structure,  
20 obviously, and then there are people that are assigned  
21 specifically to the various service territories,  
22 including the St. Joe service territory, so there  
23 would be some management people who would have  
24 responsibility just for the St. Joe service territory.

25 JUDGE THOMPSON: Okay. Now, Mr. Coffman,

1 you told me, I believe, that UtiliCorp chose to  
2 structure itself in a particular way and that it is  
3 therefore stuck with the consequences of that  
4 decision; is that more or less an accurate --

5 MR. COFFMAN: That's fair, yes.

6 JUDGE THOMPSON: Okay. Are you familiar  
7 with the definition of "electrical corporation" in  
8 386.020.15?

9 MR. COFFMAN: I couldn't recite it to you.

10 JUDGE THOMPSON: Let me recite part of it to  
11 you.

12 It states that an electrical corporation  
13 includes every corporation, company, association,  
14 joint stock company or association, partnership and  
15 person, their lessees, trustees or receivers, and  
16 we'll skip part of that having to do with street  
17 railroads, owning, operating, controlling, or managing  
18 any electric plant, except where electricity is  
19 generated or distributed by the producers solely on or  
20 through private property from railroad, light rail, or  
21 street railroad purposes, or for its own use, for the  
22 use of its tenants, and not for sale for others. So  
23 any entity owning, operating, controlling, or managing  
24 any electric plant producing electricity for sale to  
25 others.

1           Now, if I'm a holding company and I own a  
2   Missouri-regulated electric utility which owns  
3   generating assets which is producing electricity for  
4   sale to others, why am I -- as a holding company, why  
5   am I not an electrical corporation within that  
6   definition?

7           MR. COFFMAN:   That's -- that's an  
8   interesting question.

9           MR. COMLEY:   I think he would like for them  
10   to be electrical corporations.

11          MR. COFFMAN:   Perhaps they could be.

12          JUDGE THOMPSON:   So what I'm trying to  
13   explore --

14          MR. COFFMAN:   But what I --

15          JUDGE THOMPSON:   -- is your statement, which  
16   I think everyone agreed with, that had UtiliCorp  
17   structured itself as a holding company so that MPS was  
18   a corporate entity and St. Joseph Light and Power was  
19   and remained a corporate entity, and that all that  
20   changed hands were the shares representing the  
21   ownership of St. Joseph Light and Power that they  
22   could then pursue two separate rate cases, they could  
23   have separate tariffs, and they could do all of the  
24   things that you're telling us they cannot do because  
25   they are structured the way they happen to be

1 structured.

2 A holding company that owns 100 percent of  
3 the shares of a regulated utility controls, does it  
4 not, the generating assets of was utility?

5 MR. COFFMAN: It could.

6 JUDGE THOMPSON: Perhaps it does. Right?

7 MR. COFFMAN: Yes.

8 JUDGE THOMPSON: Okay. Now, we've also had  
9 talk about water companies, and I will save time by  
10 assuring you that the definition of a water  
11 corporation at 386.020.58 is very similar to the  
12 definition of an electric corporation that we've just  
13 heard. Let's talk about Missouri American.

14 Now, we had a rate case last year with  
15 Missouri American, and they had, as I recall, seven  
16 noncontiguous service areas, all of which were  
17 operated by a single corporate entity and all of  
18 which were part of a single rate case. Do you recall  
19 that?

20 MR. COFFMAN: Yes, very much.

21 JUDGE THOMPSON: Could they have pursued a  
22 separate rate case for each of those seven areas?

23 MR. COFFMAN: We do not believe that they  
24 could.

25 JUDGE THOMPSON: You don't believe they



1     could?

2                   MR. COFFMAN:  No.

3                   JUDGE THOMPSON:  Even they are not  
4     connected?

5                   MR. COFFMAN:  That-- that's what we believe,  
6     and although I guess there has never been a Commission  
7     determination, I think there has been some inquiry in  
8     the past on behalf of Missouri American, and they've  
9     been told or encouraged that they should file them all  
10    together.  And that's always been our assumption that  
11    that's how you should do it.

12                   And if I could just for a second --

13                   JUDGE THOMPSON:  Sure.

14                   MR. COFFMAN:  -- respond to something  
15    Mr. Dottheim said.

16                   I agree with Mr. Dottheim that if we believe  
17    there needs to be a revenue requirement decrease, a  
18    complaint case needs to be filed.  But when there  
19    is -- but if you're talking about a particular  
20    reduction to a particular customer class, a particular  
21    region, I think it is proper for the Commission, in  
22    making sure that the total revenue requirement is  
23    achieved, it is sometimes appropriate and lawful for  
24    the Commission to order a decrease as the Commission  
25    did in the Missouri American case for some customer

1 classes in one division. That is the Joplin  
2 division.

3 I don't believe the Company appealed that  
4 decision, but I think that's -- it's so easy to fall  
5 into this -- into a real confusing dialogue when we  
6 start confusing revenue requirement and rate design.

7 I'm not sure that Mr. Dottheim and I see  
8 this exactly eye to eye. I thought that maybe he was  
9 saying that there could be no decrease to any  
10 customer class or region without a complaint case.  
11 I disagree with that. I think what the statutes  
12 provide for is a revenue requiring a decrease needing  
13 to have a complaint case. A rate increase for total  
14 revenue requirement basis has to be filed by the  
15 Company.

16 And I guess what's important here, perhaps,  
17 in whether we limit what rates are in play or not is  
18 burden of proof. And in considering all of these  
19 relevant factors in a rate increase request we believe  
20 that the utility company has the burden of proof and  
21 that it should not be allowed to shift the revenue  
22 requirement to other parties for selected parts of its  
23 territory.

24 I gave you more than your answer, but I had  
25 to get that off my chest.

1 JUDGE THOMPSON: I appreciate that,  
2 Mr. Coffman.

3 Mr. Swearengen, I wanted to address what you  
4 were saying about assigned but not recovered.

5 To borrow Mr. Coffman's metaphor, I think  
6 you're telling us that we need to cook the entire pie  
7 but that when it comes time to slice it, we can't  
8 slice any pieces for St. Joseph. Is that what you're  
9 telling us?

10 MR. SWEARENGEN: That's right.

11 JUDGE THOMPSON: Okay. How -- would you  
12 agree with me that the Commission's duty under the law  
13 is to set just and reasonable rates?

14 MR. SWEARENGEN: Absolutely.

15 JUDGE THOMPSON: So if the revenue  
16 requirement requires a rate design that would -- that  
17 would affect St. Joseph, the whole company, the whole  
18 pie, rate revenue requirement, how can the Commission  
19 set just and reasonable rates if it cannot disturb the  
20 rates in the St. Joseph area?

21 MR. SWEARENGEN: It can't disturb those  
22 rates unless one of two things happened: They are  
23 either put at issue by the Company or a complaint is  
24 brought, as a matter of law. That's the first  
25 requirement.

1 JUDGE THOMPSON: Okay. Do you have a  
2 citation, a case for that?

3 MR. SWEARENGEN: I can provide that, sure.

4 JUDGE THOMPSON: All right.

5 MR. SWEARENGEN: File a suspended statute.  
6 It's a Jackson County case.

7 JUDGE THOMPSON: I saw you shaking your  
8 head, Mr. Coffman. Do you disagree with that?

9 MR. COFFMAN: Yes, I do.

10 JUDGE THOMPSON: Okay.

11 MR. COFFMAN: I think that if you are an  
12 electrical corporation, you want a rate increase, you  
13 have -- everything has to be in play. You ask the  
14 Commission for an increase. You bear the burden of  
15 proof as a utility to prove up the total revenue  
16 requirement, and all rate design options are available  
17 to the Commission.

18 JUDGE THOMPSON: Okay.

19 MR. COFFMAN: And I think that that may  
20 be -- but it really is a revenue requirement concern  
21 that we're bringing this motion to you for. We --

22 JUDGE THOMPSON: I understand that.

23 MR. COFFMAN: And as I -- as we've learned,  
24 there are records still being kept separately for  
25 these two utilities. We've asked for some records

1 throughout the entire UtiliCorp Missouri operations,  
2 and we've had some difficulty in getting information  
3 in the St. Joe Light and Power area. Now, it hasn't  
4 reached a point that we feel we have to bring this to  
5 the Commission's attention for resolution, but I see  
6 some troubled waters ahead.

7 JUDGE THOMPSON: Well, you've have to pursue  
8 an appropriate remedy with respect to those troubled  
9 waters. That's outside the scope of what we're  
10 talking about today, I think.

11 MR. COFFMAN: It bears on burden of proof.  
12 I mean, it -- I think that if you want a rate  
13 increase, you have to prove it up for your entire  
14 company. That -- if you're going to bake the whole  
15 pie, the Company has to prove up all of the  
16 ingredients.

17 JUDGE THOMPSON: Any further questions from  
18 the Bench?

19 COMMISSIONER GAW: No.

20 JUDGE THOMPSON: Any further comments from  
21 the parties?

22 MR. SWEARENGEN: It's always a pleasure to  
23 be here.

24 JUDGE THOMPSON: Thank you-all for coming  
25 today. We appreciate the very able argumentation by

1 counsel.

2 We will be adjourned at this time.

3 WHEREUPON, the oral presentations were  
4 concluded.

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