

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

September 11, 2000
Jefferson City, Missouri
Volume 2

In the Matter of the Joint)
Application of UtiliCorp United,)
Inc. and The Empire District)
Electric Company for Authority) Case No. EM-2000-369
to Merge the Empire District)
Electric Company with and into)
UtiliCorp United, Inc., and, in)
Connection Therewith, Certain)
Other Related Transactions.)

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

SHEILA LUMPE, Chair,
CONNIE MURRAY,
ROBERT G. SCHEMENAUER,
KELVIN SIMMONS,
M. DIANNE DRAINER, Vice-Chair
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS, INC.

1 APPEARANCES:

2 JAMES C. SWEARENGEN, Attorney at Law
3 DEAN L. COOPER, Attorney at Law
4 GARRY W. DUFFY, Attorney at Law
5 Brydon, Swearengen & England, P.C.
6 P.O. Box 456
7 312 East Capitol Avenue
8 Jefferson City, Missouri 65102-0456

9 FOR: The Empire District Electric Company.

10 LESLIE JACKSON PARRETTE, JR., Attorney at Law
11 UtiliCorp United, Inc.
12 20 W. 9th Street
13 Kansas City, Missouri 66209

14 FOR: UtiliCorp United, Inc.

15 STUART W. CONRAD, Attorney at Law
16 Finnegan, Conrad & Peterson
17 1209 Penntower
18 3100 Broadway
19 Kansas City, Missouri 64111

20 FOR: ICI/Praxair.

21 JAMES B. DEUTSCH, Attorney at Law
22 Blitz, Bardgett & Deutsch
23 308 E. High Street, Suite 301
24 Jefferson City, Missouri 65101

25 FOR: Empire District Electric Retired
Employees.

WILLIAM A. JOLLEY, Attorney at Law
204 W. Linwood Blvd.
Kansas City, Missouri 64111

FOR: International Brotherhood of
Electrical Workers, Local 1474.

SHELLEY A. WOODS, Assistant Attorney General
P.O. Box 899
Supreme Court Building
Jefferson City, Missouri 65102

FOR: Missouri Department of Natural
Resources.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JEFFREY A. KEEVIL, Attorney at Law
Stewart & Keevil
1001 Cherry Street, Suite 302
Columbia, Missouri 65201

FOR: The City of Springfield, Missouri,
through the Board of Public
Utilities.

JOHN B. COFFMAN, Deputy Public Counsel
DOUGLAS E. MICHEEL, Senior Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102-7800

FOR: Office of the Public Counsel
and the Public.

DANA K. JOYCE, General Counsel
STEVEN DOTTHEIM, Chief Deputy General Counsel
KEITH R. KRUEGER, Deputy General Counsel
DENNIS L. FREY, Assistant General Counsel
P.O. Box 360
Jefferson City, Missouri 65102

FOR: Staff of the Missouri Public
Service Commission.

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

2 JUDGE WOODRUFF: Let's go on the record.

3 This is a hearing in Case No. EM-2000-369 in
4 the Matter of the Joint Application of UtiliCorp
5 United, Inc. and the Empire District Electric Company
6 for Authority to Merge Empire District With and Into
7 UtiliCorp United, Inc. and, in Connection Therewith,
8 Certain Other Related Transactions.

9 We're going to start today by taking entries
10 of appearance. Let's begin with UtiliCorp and Empire
11 District.

12 MR. SWEARENGEN: Thank you, your Honor. On
13 behalf of the Empire District Electric Company and
14 UtiliCorp United, Inc., let the record show the
15 appearance of James C. Swearengen, Dean Cooper and
16 Gary Duffy of Brydon, Swearengen & England, 312 East
17 Capitol Avenue, Jefferson City, Missouri.

18 And I would also like to enter the
19 appearance of Les Parrette, General Counsel of
20 UtiliCorp.

21 JUDGE WOODRUFF: Thank you. For Staff?

22 MR. DOTTHEIM: Steven Dottheim, Dana C.
23 Joyce, Nathan Williams, Bruce Bates, Dennis Frey and
24 Keith Krueger appearing on behalf of the Staff of the
25 Missouri Public Service Commission, P.O. Box 360,

1 Jefferson City, Missouri 65102.

2 JUDGE WOODRUFF: Thank you. And for the
3 International Brotherhood of Electrical Workers?

4 MR. JOLLEY: William A. Jolley, firm of
5 Jolley, Walsh, Hurley & Raisher, 204 West Linwood
6 Boulevard, Kansas City, Missouri 64111.

7 JUDGE WOODRUFF: And for Public Counsel?

8 MR. COFFMAN: John B. Coffman and Douglas E.
9 Micheel appearing on behalf of the Office of the
10 Public Counsel and the Public, P.O. Box 7800,
11 Jefferson City, Missouri 65102.

12 JUDGE WOODRUFF: And for the Department of
13 Natural Resources?

14 MS. WOODS: Shelley A. Woods, Assistant
15 Attorney General, P.O. Box 899, Jefferson City,
16 Missouri 65102, appearing on behalf of the Missouri
17 Department of Natural Resources.

18 JUDGE WOODRUFF: Thank you. And for ICI
19 Explosives and Praxair?

20 MR. CONRAD: Stuart W. Conrad and I believe
21 Jeremiah D. Finnegan on this one, your Honor, both of
22 the law firm of Finnegan, Conrad & Peterson,
23 1209 Penntower, 3100 Broadway in Kansas City, Missouri
24 64111. I'm in the process of filling out the
25 appearance sheet for the reporter. Thank you.

1 JUDGE WOODRUFF: Thank you. And for the
2 City of Springfield?

3 MR. KEEVIL: Yes. Appearing on behalf of
4 the City of Springfield, Missouri, through the Board
5 of Public Utilities, Jeffrey A. Keevil of the law firm
6 of Stewart & Keevil, LLC, address 1001 Cherry Street,
7 Suite 302, Columbia, Missouri 65201.

8 And Judge, if I could also, I would note
9 that as in the UtiliCorp/St. Joseph hearing, there may
10 be certain discrete issues in this hearing on which my
11 client is not taking a position, and I would ask leave
12 to be excused, have a standing leave to be excused if
13 I could.

14 JUDGE WOODRUFF: You certainly may have such
15 leave. And for the Empire Retirees?

16 MR. DEUTSCH: James B. Deutsch of the law
17 firm of Blitz, Bardgett & Deutsch, LC, 308 East High
18 Street, Suite 301, Jefferson City, Missouri 65101, for
19 the Empire District Electric Retired Employees.

20 JUDGE WOODRUFF: And I might make a note for
21 the record that we've been referring to Mr. Deutsch's
22 clients as the Empire Retirees. They, in fact, are a
23 group of individuals too numerous to name at this
24 point, so that we're clear on the record on that.

25 Anyone here from Union Electric?

1 (No response.)

2 All right. Then let's take up a preliminary
3 matter that was the Objections and Motion to Strike or
4 In the Alternative Motion to File Supplemental
5 Surrebuttal that was filed by UtiliCorp on
6 September 7th. Mr. Cooper, I believe this was your
7 motion. Do you have anything you want to state about
8 that?

9 MR. COOPER: I don't believe I have anything
10 in addition to the pleading that you've reviewed.

11 JUDGE WOODRUFF: Okay. I have reviewed the
12 pleading. And you offer supplemental surrebuttal
13 testimony from Robert Browning and from Myron McKinney
14 and Steven Pella; is that correct?

15 MR. COOPER: That is correct, your Honor.

16 JUDGE WOODRUFF: Does anyone wish to be
17 heard regarding this motion?

18 MR. DEUTSCH: Yes, your Honor.

19 JUDGE WOODRUFF: Mr. Deutsch?

20 MR. DEUTSCH: First of all, I would suggest
21 that the matter is not really ready to be ruled upon.
22 I have not offered the documents and the testimony
23 that the Company is objecting to. They are proposing
24 supplemental surrebuttal to testimony which has not
25 been offered.

1 I think at the time that it is offered,
2 because of the way that the Company has set the
3 schedule for the case where this issue, I believe,
4 will be heard on Thursday, that it would be at that
5 time that a proper proceeding would be held in order
6 to determine the admissibility of the evidence.

7 In lieu of that, I would simply point out
8 that the surrebuttal testimony for my client is
9 responsive, as it states on its face, to testimony in
10 rebuttal of other parties to the case. Therefore, I
11 believe the motion is not well taken in the sense that
12 it states that the surrebuttal testimony of Mr. Fuchs
13 violates any rule of the Commission.

14 And secondly, the attached document, the
15 Exhibit AF-2, I believe, that is also objected to that
16 deals with certain questionnaires qualifies as
17 evidence under Section 536.070 subsection 11 as a
18 survey dealing with multiple facts and multiple
19 parties too numerous in this case for presentation
20 individually, and Mr. Fuchs will be present, he will
21 be testifying, subject to cross-examination.

22 And, therefore, the attempt by the Company
23 to peremptorily have that evidence excluded is not
24 only premature but not well taken for the reason that
25 it is admissible and that the objections as stated in

1 the motion should go to the weight given to the
2 evidence rather than to its admissibility.

3 On that basis, I would recommend that the
4 Administrative Law Judge forego ruling upon the
5 evidence until the issue is presented as part of the
6 State's -- excuse me -- the Company's case dealing
7 with the Empire District Retirees and their benefits
8 and, in lieu of that, to deny the motion at least as
9 concerns testimony and evidence offered by Mr. Fuchs
10 on behalf of the Empire Retirees in his rebuttal.

11 JUDGE WOODRUFF: Thank you. Mr. Jolley?

12 MR. JOLLEY: Yes. I was unaware until this
13 morning of a motion to strike testimony and so forth.
14 So I haven't seen that motion.

15 We believe that Mr. Courtney's testimony is
16 responsive to rebuttal testimony. It is certainly
17 relevant to this case. We have no objection to the
18 introduction of additional surrebuttal testimony, but
19 beyond that we would ask that we put off an
20 opportunity -- that we be given an opportunity to
21 respond to the motion at an appropriate time.

22 JUDGE WOODRUFF: Mr. Cooper, would you like
23 to make any other response?

24 MR. COOPER: I guess first I would point out
25 that Mr. Deutsch has stated that this is not

1 appropriate until the testimony is offered into
2 evidence. The Commission's rules actually deal with
3 the filing of testimony. Because the Commission deals
4 with the filing of -- prefiling of written testimony,
5 what testimony is filed is important to how the issues
6 are developed and are important to a party's
7 opportunity to respond in this case.

8 As we cited in our motion, the Commission
9 has a rule that rebuttal testimony shall include all
10 testimony which explains why a party rejects,
11 disagrees or proposes an alternative to the moving
12 party's direct case. That rule 4 CSR 240-2.137C is
13 applicable in this case.

14 The failure to do that deprives the Company
15 an opportunity to respond to the allegations of the
16 intervenors, and I believe that's what's happened here
17 both with Mr. Courtney's testimony and Mr. Fuch's
18 testimony. There were new issues raised in what
19 purported to be surrebuttal. To stop at that point
20 deprives the Company of the opportunity to respond to
21 those allegations.

22 And because this is a filing issue as
23 opposed to an admission of testimony issue, I would
24 believe that it is appropriate for the Commission to
25 rule at this time.

1 JUDGE WOODRUFF: Thank you. The Commission
2 is going to go ahead and grant the Motion to File
3 Supplemental Surrebuttal. So that testimony is
4 considered filed. Any other objections that are --
5 that might be made to the testimony at the time it's
6 offered, the Commission is not going to make any
7 ruling on those at this time. So anyone who wants to
8 make those objections will need to raise them at the
9 time the testimony is offered.

10 All right. Any other preliminary matters?
11 Mr. Dottheim?

12 MR. DOTTHEIM: Yes. On Friday afternoon,
13 late Friday afternoon, the Staff filed a Motion to
14 Strike Certain Empire District Electric Rate Case
15 Direct, Supplemental Direct and Surrebuttal Testimony
16 and Establish a Separate Case on In-Service Criteria
17 or In the Alternative Permit Substitution of Staff
18 Replacement Pages on the Issue of In-Service Criteria.

19 The Staff late in the day provided copies to
20 counsel for the companies. Regardless of that fact,
21 the issue is not scheduled to be heard, the issues are
22 not scheduled to be heard until Thursday. The issues
23 are denominated premoratorium rate case.

24 So the Staff would suggest that the Company
25 in particular but the other parties have an

1 opportunity, and, of course, the Commissioners and the
2 RLJ, have an opportunity to review those materials
3 that were filed last Friday afternoon. I just
4 distributed copies to counsel that is here this
5 morning.

6 Also this morning I filed a Staff Motion to
7 File Replacement Pages to the Rebuttal Testimony and
8 Schedules of Steve M. Traxler. Those materials were
9 in the same packet of materials that Staff filed on
10 Friday. Those replacement pages, they are explained
11 in the Staff's motion. The replacement pages relate
12 to corrections and reflecting of resolution of certain
13 issues.

14 Mr. Traxler is scheduled to take the stand
15 today, and at that time the Staff would seek to
16 introduce those replacement pages.

17 As was done in the St. Joseph Light &
18 Power/UtiliCorp case, the changes are indicated in red
19 type in an effort to try to make it as clear as
20 possible what literally the changes are. That is also
21 what was done with the replacement pages of testimony
22 and schedules that were filed on Friday of David
23 Elliott.

24 JUDGE WOODRUFF: Okay. The Commission will
25 deal with those matters when they arise, then, if

1 you'd bring it to the Commission's attention.

2 MR. DOTTHEIM: Thank you.

3 JUDGE WOODRUFF: Any other preliminary
4 matters anyone wants to bring up? Mr. Jolley?

5 MR. JOLLEY: IBEW does not intend to
6 cross-examine all witnesses, and I too would ask leave
7 to be excused from those portions for which we have no
8 cross-examination.

9 JUDGE WOODRUFF: You are certainly granted
10 such permission. Ms. Woods?

11 MS. WOODS: The Department of Natural
12 Resources also does not intend to cross-examine all
13 the witnesses and would request that it be allowed to
14 leave during those portions.

15 JUDGE WOODRUFF: You are granted that
16 permission also.

17 MR. DEUTSCH: As long as everyone is asking
18 permission, I would also request permission to leave
19 for those witnesses that I do not intend to
20 cross-examine.

21 JUDGE WOODRUFF: You are certainly granted
22 such permission, Mr. Deutsch.

23 MR. DEUTSCH: Thank you, Judge.

24 JUDGE WOODRUFF: Mr. Conrad?

25 MR. CONRAD: Ditto.

1 JUDGE WOODRUFF: You are also granted
2 permission. Any other preliminary matters?

3 (No response.)

4 All right. Let's go off the record, then.
5 We'll come back in about seven minutes. I believe
6 it'll be 9:05 on that clock. Thank you.

7 (Discussion off the record.)

8 JUDGE WOODRUFF: Let's go on the record,
9 then. And we're here to take opening statements, and
10 we'll begin with UtiliCorp.

11 MR. SWEARENGEN: Thank, your Honor. May it
12 please the Commission? I understand this is the
13 inaugural hearing in this hearing room; is that
14 correct? So we're pleased to be here today on behalf
15 of UtiliCorp and Empire to be a part of this process.

16 I would like to take this opportunity to
17 introduce to the Commission Les Parrette, who is the
18 General Counsel for UtiliCorp who will be here today
19 sitting with us. Mr. Parrette, of course, is officed
20 in Kansas City, Missouri.

21 I think you are aware that this application
22 is before you as a result of an Agreement and Plan of
23 Merger entered into between the Empire District
24 Electric --

25 JUDGE WOODRUFF: Mr. Swearngen, can I

1 interrupt you for a moment?

2 MR. SWEARENGEN: Sure.

3 JUDGE WOODRUFF: Can everyone in the back
4 hear Mr. Swearengen?

5 UNIDENTIFIED SPEAKERS: No.

6 JUDGE WOODRUFF: If you'd like to be seated,
7 you can do that, be closer to the microphone?

8 MR. SWEARENGEN: How's that? Is that
9 better?

10 JUDGE WOODRUFF: Can you hear him back there
11 now?

12 UNIDENTIFIED SPEAKERS: Yes.

13 JUDGE WOODRUFF: Okay. Thank you.

14 MR. SWEARENGEN: As I was saying, this
15 application is before the Commission as a result of an
16 Agreement and Plan of Merger entered into between the
17 Empire District Electric Company and UtiliCorp United,
18 Inc. on May 10, 1999, and that agreement was brought
19 about by a number of factors.

20 From Empire's standpoint, the company was
21 prompted by developments which have been occurring in
22 the electric utility industry in recent years,
23 particularly those developments which have resulted in
24 increased competition in the markets for electricity.

25 As I'm sure you realize, Empire, which is

1 based in Joplin, Missouri and provides service in
2 southwest Missouri as well as portions of Kansas,
3 Oklahoma and Arkansas, is really one of the smaller
4 investor-owned electric utilities in the nation.

5 And as a consequence of its small size, the
6 Empire board of directors has been very concerned for
7 some time about the ability of the company not only to
8 compete effectively in the new utility environment but
9 also to continue to provide high quality service at
10 low rates.

11 As a result of those concerns, the board,
12 the Empire board concluded that the company should
13 combine with a larger utility as the best means to
14 enhance its prospects in this new environment. And as
15 a result of that determination, Empire negotiated the
16 merger agreement with UtiliCorp.

17 From Empire's perspective and also from
18 UtiliCorp's perspective for that matter, the merger
19 will bring about a combined company that will be well
20 positioned to succeed in the increasingly competitive
21 energy marketplace and at the same time provide
22 benefits to customers.

23 The increase in scale and market
24 diversification of the combined company will provide
25 added financial stability and strength which we

1 believe could not be achieved without the merger.

2 This financial stability and strength will ultimately
3 benefit Empire's customers through continued high
4 quality service at relatively low rates.

5 The merger agreement is Appendix 4 to the
6 Joint Application. It's also a schedule to Robert
7 Green's direct testimony, and it explains in detail
8 how the transaction will work, and I will not go into
9 that detail at this time. Simply to say, though, that
10 the total cost of the merger transaction is
11 approximately \$850 million.

12 From UtiliCorp's standpoint, UtiliCorp
13 entered into this transaction because, as in the case
14 of its proposed merger with St. Joseph Light & Power
15 Company, the Empire merger supports UtiliCorp's
16 overall strategy of becoming a more significant
17 regional electric utility. UtiliCorp believes that
18 the consolidation of smaller Missouri utilities into a
19 larger Kansas City based regional utility will provide
20 a more efficient and reliable utility network with
21 resulting benefits to all stakeholders.

22 In fact, this changing environment, the
23 proposed Empire UtiliCorp merger as well as the
24 proposed UtiliCorp/St. Joseph Light & Power Company
25 merger have provided this Commission with the unique

1 opportunity to help create a larger and stronger
2 Missouri-based utility with increased operational
3 efficiencies, better position to deal with the
4 evolving competitive electric utility environment and
5 better position to continue to provide relatively
6 low-cost, high-quality service. We believe it will
7 also provide a boost to the economic development of
8 this state.

9 As in the case of the UtiliCorp/St. Joe
10 merger, the UtiliCorp/Empire merger must, of course,
11 be approved by this Commission, and that's why we are
12 here today and for the remainder of the week.

13 Section 393.190 requires your authority to
14 complete the transaction, and as indicated in the
15 St. Joe case, we think the law is clear as to the
16 standard which you are to apply in determining whether
17 or not to approve the merger. The standard for
18 approval is the not detrimental to the public interest
19 test.

20 As you heard in July in connection with the
21 UtiliCorp/St. Joe case, there's a long line of court
22 and Commission cases dating back to 1934 which discuss
23 this standard. Without going through that litany of
24 cases, I will just once again refer you to City of
25 St. Louis vs. the Public Service Commission, a 1934

1 Missouri Supreme Court case which is found at 73 SW2d
2 393 which is the basic case.

3 My memory is, and I think yours will be,
4 that the not detrimental to public interest standard
5 was not disputed in connection with the
6 UtiliCorp/St. Joe merger case, and it should be an
7 issue in this case involving the UtiliCorp/Empire
8 merger.

9 The key point we think is that no public
10 benefit from a merger need result in order for you to
11 approve it. You just need to be satisfied that there
12 will be no public detriment.

13 With respect to detriment to the public, we
14 think it is also clear that this means higher rates
15 and/or a deterioration in the level of customer
16 service. This is, in fact, how you have defined and
17 applied the standard in the past, and I think it was
18 clear from the St. Joe case that we heard back in July
19 that this is how the Staff and Public Counsel and
20 other parties also define and apply the standard.

21 We think it's also clear that the public
22 involved is the consuming public, meaning the
23 ratepayers. And there are several cases that I can
24 cite to you, and we will in our Brief, that stand for
25 that proposition.

1 So it's our view that when you apply the no
2 detriment standard to the UtiliCorp/Empire
3 transaction, we think that there is absolutely no
4 question that the merger should be approved.

5 First we think there will be no evidence in
6 this case of detriment with respect to service. In
7 fact, the evidence will be that UtiliCorp can provide
8 safe and reliable utility service in what is now the
9 Empire service territory.

10 The second question is will higher rates
11 result? We think the answer to that question is no.
12 The evidence will be that after the premoratorium rate
13 case, which I will touch on in a minute, electric
14 rates will stay the same for five years under the
15 proposed rate freeze or rate moratorium.

16 Back in 1971 in a case before this
17 Commission which approved a merger involving Laclede
18 Gas Company, this Commission said, The evidence shows
19 that the proposed merger will not be detrimental to
20 the public interest. The status quo is to be
21 maintained at least for the immediate future with no
22 change in rates or conditions of service and no
23 substantial changes in methods of operation.

24 And we think that's really what we have here
25 with respect to the Empire/UtiliCorp merger. We will

1 have status quo or better in terms of service. We
2 will have status quo for five years with respect to
3 electric rates after the premoratorium rate case. And
4 we would submit that a five-year period surely exceeds
5 the immediate future under anyone's definition of that
6 term.

7 So in summary, under the proposed regulatory
8 plan which is somewhat similar to the plan you heard
9 about in the St. Joe case, Empire's present customers
10 will enjoy safe, reliable service. They will have
11 rate stability for five years after the premoratorium
12 rate case is decided, and they will have a guaranteed
13 \$3 million reduction in cost of service in connection
14 with the post-moratorium rate case.

15 Now, several arguments have been raised by
16 other parties against the proposed merger. For the
17 most part, these arguments can be boiled down into two
18 points; one, the cost of the transaction will exceed
19 benefits, and second, the proposed regulatory plan is
20 not in the public interest.

21 The cost exceeds benefits argument is
22 premised upon the Staff's claim or forecasts which
23 purport to show that total merger costs for the first
24 ten years after the merger is closed will exceed
25 merger savings. Of course, UtiliCorp and Empire

1 disagree with the Staff's conclusions on this point,
2 but we do not think it's critical to decide this issue
3 now in this merger case because of the regulatory plan
4 that we have proposed.

5 What is the regulatory plan and why is it
6 necessary? Well, simply stated, the regulatory plan
7 is just another way of saying how UtiliCorp plans to
8 operate the properties it acquires from Empire after
9 the merger is closed.

10 The regulatory plan is designed to make the
11 merger transaction economically feasible from
12 UtiliCorp's standpoint while at the same time
13 protecting current Empire customers from down-side
14 risks and allowing them to realize benefits from the
15 merger as those material -- excuse me -- as those
16 merger synergies materialize.

17 You must keep in mind in reviewing the
18 regulatory plan that it's UtiliCorp's shareholders who
19 have agreed to pay approximately \$850 million for
20 Empire, will invest that amount to acquire ownership
21 of the company. Of this amount, approximately 275 to
22 \$280 million represents a premium for the Empire
23 stock, and absent this premium, absent the proposal to
24 pay this premium to the Empire shareholders, the
25 merger agreement would not have been entered into.

1 So when you view it in that light, it can be
2 seen that the premium is really a precondition for the
3 merger to happen and a precondition to the unlocking
4 of the potential merger savings.

5 Also, because the entire financial risk of
6 the transaction is on the shoulders of Empire
7 shareholders, they're the ones who are paying the
8 premium, they need a reasonable opportunity to recover
9 this investment, and this is what the plan is designed
10 to accomplish.

11 Briefly, under the proposed regulatory plan,
12 Empire will be maintained as a separate operating unit
13 of UtiliCorp, just as the Missouri Public Service
14 division is now considered a separate operating unit.
15 Once the premoratorium rate case has been concluded,
16 which will probably be around October 1 of 2001,
17 rates, electric rates will be frozen for five years.

18 During this five-year rate freeze, UtiliCorp
19 will be prohibited under the plan from initiating an
20 electric rate case with certain exceptions which are
21 spelled out in the application and testimony. And
22 likewise, the Commission Staff will be prohibited from
23 filing a complaint against UtiliCorp's rates or
24 participating in a complaint brought by another party.

25 In year five of that moratorium, UtiliCorp

1 will file a rate case for the electric operations of
2 the Empire unit, and this is the case that we refer to
3 as the post-moratorium rate case.

4 This brings up what is perhaps the most
5 discussed aspect of the proposed regulatory plan, and
6 that is the fact that in the post-moratorium rate case
7 UtiliCorp wants to seek recovery of a portion of the
8 unamortized balance of the premium which it is paying
9 for the Empire stock, and the portion for which
10 recovery will be sought is referred to as the assigned
11 premium.

12 Now, we think that statements made by this
13 Commission in the past on the issue of premium
14 recovery show a willingness on the part of the
15 Commission to consider premium recovery on a
16 case-by-case basis.

17 And as we indicated in the St. Joe merger
18 case, there are two principal Commission decisions
19 which lead us to that conclusion. The first is a 1991
20 case involving a Kansas Power & Light and Kansas Gas &
21 Electric Company merger. In that case the Commission
22 said that, I quote, it does not wish to discourage
23 companies from actions which produce economies of
24 scale and savings which can benefit ratepayers and
25 shareholders alike. That is case EM-91-213, decision

1 September 24, 1991.

2 The second case is a 1995 Commission case
3 involving Missouri-American Water Company. Again, in
4 that case the Commission said that on a policy basis,
5 it is not necessarily opposed to consideration of an
6 acquisition adjustment. That's case WR-95-205,
7 decision November 21, 1995.

8 And also a third case I would refer you to
9 more recently on March 16 of this year, in case
10 WM-2000-222, a stock acquisition case involving
11 Missouri-American Water and United Water. In that
12 case you did not accept the Commission's Staff's
13 invitation to declare premium recovery off limits as a
14 matter of policy.

15 So based on those three cases, we take
16 encouragement that what we are asking for here is
17 consistent with your policy.

18 In the Empire/UtiliCorp case, we have a
19 merger, we have a situation where both companies wish
20 to accomplish a merger, an action which we believe
21 will produce economies of scale and savings which will
22 benefit ratepayers and shareholders alike. But to
23 accomplish this the UtiliCorp shareholders need a
24 reasonable opportunity to recover their proposed
25 investment, and consequently we have the regulatory

1 plan request that is before you.

2 Now, you will recall that in the St. Joe
3 case the Staff argued, and we anticipate that they
4 will argue here, that you have never authorized the
5 direct recovery of premium through rates, and that's
6 true. You have not ever done that.

7 To our knowledge, however, the issue has
8 only been contested in one rate case that we are aware
9 of, which was the 1995 Missouri-American Water Company
10 case that I mentioned previously, and a reading of
11 that case revealed that recovery was not allowed
12 because you found the water company had not met its
13 burden of proof. You did not say, however, that from
14 a policy standpoint premium recovery through rates is
15 per se inappropriate and should never be authorized.

16 In view of this, what we are asking you to
17 do in this case is to continue with what we believe to
18 be your policy set out in these prior cases, and that
19 is continue to have an open mind on the subject,
20 continue to look at the issue of premium recovery on a
21 case-by-case basis when the issue is raised in a rate
22 proceeding.

23 However, we are also asking for one
24 additional thing, and that is we want you to tell us
25 now in this merger case that if in that future

1 post-moratorium rate case, which will be decided five
2 or six years from now, we prove up merger synergies
3 equal to 50 percent of the assigned premium, that we
4 will get that assigned premium in rate base and the
5 annual amortization of the assigned premium will be
6 included in expenses for ratemaking purposes.

7 This is like the request that we made in the
8 St. Joe case. We want the same indication from you
9 now that if we meet this burden of proof, that we
10 will, in fact, get the requested ratemaking treatment
11 in other words, reaffirm what we believe to be your
12 present policy but go one step further. Say if we
13 meet our burden of proof of demonstrating merger
14 synergies in that future rate case, we will get the
15 requested rate treatment of the assigned premium.

16 And why do we want you to rule on that
17 question now? We want you to set up the rules now so
18 that the company, so that UtiliCorp will know what its
19 prospects will be for a reasonable opportunity to
20 recover its investment.

21 The thing that you need to keep in mind is
22 that even under the proposed regulatory plan, all of
23 the economic risk of this transaction rests with
24 UtiliCorp. After the premoratorium rate case, once
25 the rate freeze takes effect, there will be no rate

1 cases for five years, and then rates can change in the
2 future only with your approval. So clearly the risk
3 is on UtiliCorp.

4 Also as a part of the regulatory plan, we
5 are asking that, in addition to the five-year rate
6 moratorium and the assigned premium recovery, in the
7 post-moratorium rate case for ratemaking purposes the
8 return allowed on the assigned premium be based on a
9 UtiliCorp capital structure of 60 percent debt and a
10 40 percent equity and the return allowed on the
11 balance of the rate base be based on an Empire unit
12 capital structure of 47 percent debt and 53 percent
13 equity.

14 We are also requesting that in the
15 post-moratorium rate case the allocation of
16 UtiliCorp's corporate and intra-business unit costs to
17 UtiliCorp's Missouri Public Service operating division
18 exclude the Empire factors.

19 Finally, as a part of the regulatory plan,
20 as I indicated earlier, UtiliCorp is guaranteeing a
21 \$3 million reduction in cost of service in that
22 post-moratorium rate case if the regulatory plan is
23 adopted.

24 In addition to your approval of these
25 post-moratorium rate case details in the context of

1 this merger case, we are also asking that you approve
2 certain details concerning what we have referred to as
3 the premoratorium rate case. These conditions are
4 also a part of the regulatory plan. And by
5 premoratorium rate case I am referring to the electric
6 rate case which Empire will file later this year. I
7 think right now the target is November 1, which rate
8 case will be timed to recover costs associated with
9 Empire's State Line combined cycle plant which is now
10 under construction and which is anticipated to be in
11 service on or about June 1 of 2001.

12 Why does UtiliCorp seek a decision on these
13 issues outside the context of the premoratorium rate
14 case? Well, once again, the answer is UtiliCorp wants
15 assurance that the Commission's decision in the State
16 Line rate case, which will not be concluded until
17 after this merger is closed, will not jeopardize the
18 regulatory plan.

19 As I'm sure you're aware, a critical feature
20 of that regulatory plan is to allow UtiliCorp to
21 retain the merger savings during the five years of the
22 rate moratorium in order to offset the costs of the
23 transaction. Consequently, in the premoratorium State
24 Line rate case, UtiliCorp needs assurance that the
25 Commission in that case will treat Empire as a

1 stand-alone company as though the merger had not taken
2 place, and that's what the premoratorium rate case
3 details are designed to address.

4 For example, we are seeking your indication
5 that in that rate case you will use the Empire capital
6 structure. With respect to return on equity, you'll
7 use an Empire District stand-alone return on equity.
8 Nowhere in that proceeding will you recognize any
9 merger savings which may have occurred by that time.

10 In other words, in that rate case, in that
11 Empire rate case which we're going to file around the
12 1st of November of this year, we want the Commission
13 to act as though the merger hasn't happened and
14 thereby create a situation which will allow the merger
15 savings to flow to UtiliCorp during the five-year
16 moratorium which will follow your decision in that
17 case.

18 Now, we recognize that these requests
19 concerning both the pre and post-moratorium rate cases
20 are traditionally the types of issues which are
21 deferred to rate cases. However, we want to make it
22 perfectly clear that UtiliCorp needs your decision on
23 these matters now in order to determine if the
24 transaction makes economic sense. In other words, we
25 need to know whether or not UtiliCorp shareholders who

1 bear all of the financial risks of this transaction
2 will have a reasonable opportunity to recover their
3 investment.

4 Now, as in the St. Joe case, others will
5 argue here that you can't grant this request, you
6 can't make rate case type decisions in a non-rate-case
7 proceeding. And I think you will recall that, in
8 connection with the St. Joe case, I referred to a
9 specific instance in 1994, in fact, where you had done
10 that very thing.

11 In a 1994 case, GA-94-325, you granted
12 UtiliCorp a certificate to provide natural gas service
13 in Rolla, Missouri, and in that case, in its
14 application, in its evidence UtiliCorp argued that if
15 it could not provide that natural gas service to
16 Rolla, that it wouldn't make economic sense to
17 UtiliCorp to provide that service unless it got
18 approval on the front end for the subsequent
19 ratemaking treatment for its costs to convert the
20 Rolla customers from propane to natural gas.

21 And in granting to UtiliCorp the requested
22 certificate, you also granted the ratemaking request,
23 and you authorized UtiliCorp to account for the \$300
24 maximum per customer conversion cost above the line
25 and to include those costs in rate base.

1 And you went on to say, as you normally do,
2 you made no finding as to the prudence or ratemaking
3 treatment to be given any costs or expenses incurred
4 as a result of granting of the certificate except
5 those costs and expenses dealt with specifically in
6 the body of the Report and Order. And in your
7 decision you commended UtiliCorp for its candor in
8 stressing the make or break nature of the ratemaking
9 treatment of the conversion costs.

10 And that's exactly what we have here. We
11 are telling you the importance of these ratemaking
12 type decisions in this merger case, and we think that,
13 based on at least this one prior decision, it is clear
14 that our so-called ratemaking requests are not really
15 a radical departure from what you have been asked to
16 do and what you have, in fact, done in the past.

17 Now, I think there is some confusion on this
18 point. We're not asking you to actually set rates in
19 this merger case. When the premoratorium rate case is
20 filed and five years later when the post-moratorium
21 rate case is filed, you will make decisions in those
22 cases based on all relevant factors as you are
23 required to do. All we are asking you to do now is to
24 establish in advance some of the groundrules which
25 will apply to those cases.

1 So those, in essence, are the components of
2 the regulatory plan. In considering whether or not to
3 approve it, once again remember the UtiliCorp
4 shareholders are assuming the entire economic risk of
5 this transaction. They will pay the premium that will
6 make this merger and the subsequent merger savings
7 possible.

8 UtiliCorp entered into that transaction with
9 the expectation that, based on your prior actions, its
10 shareholders would have a reasonable opportunity to
11 recover their investment, a reasonable opportunity for
12 premium recovery. And this is what we think the
13 regulatory plan is designed to do. It will just give
14 UtiliCorp a reasonable chance.

15 By approving the regulatory plan, are you
16 guaranteeing premium recovery? I think the answer to
17 that question is no. Under the plan, under our
18 proposal, in future rate cases UtiliCorp will still
19 have the burden of proof to prove the synergies from
20 the merger equal the assigned premium for which rate
21 recovery is sought, and you will still have the right
22 and obligation to set rates based upon a consideration
23 of all relevant factors.

24 UtiliCorp will get the assigned premium in
25 rates only to the extent it can prove merger savings.

1 This rate treatment will not happen automatically.

2 The economic risk is with UtiliCorp.

3 Well, how's the public harmed from this
4 proposal? We don't believe the public will be harmed.
5 High quality service will be maintained, and after the
6 premoratorium rate case rates will be frozen for five
7 years. The evidence will be that during that
8 five-year period a rate increase request, at least
9 one, will be avoided. Then a guaranteed cost of
10 service reduction in the post-moratorium rate case of
11 \$3 million will result.

12 Are we asking you to bind future
13 commissions? Well, we understand you probably can't
14 do that. We recognize that when the premoratorium and
15 post-moratorium rate cases are decided, you or another
16 commission may not consider itself bound by your
17 decision here in this merger case. Others may want to
18 relitigate these rate issues, and perhaps they may be
19 allowed to do that.

20 However, the point is, just as in the Rolla
21 gas certificate case, UtiliCorp needs some reasonable
22 assurance in this merger case with Empire that the
23 transaction will make economic sense.

24 So what are we asking you to decide? We
25 want you to approve the merger with Empire, of course.

1 We want you to approve the regulatory plan and thereby
2 establish some of the groundrules on a going-forward
3 basis. And then we also want you to resolve now some
4 of the other issues which are set out in John
5 McKinney's surrebuttal testimony beginning at page 4.

6 For example, if you agree with the
7 Commission Staff that it is impossible under any
8 circumstances for UtiliCorp to track and later prove
9 up merger savings, we need to know this fact now.
10 Obviously if you don't think we can do that, there is
11 no way that UtiliCorp can meet its burden of proof and
12 the regulatory plan can't possibly work.

13 Also, UtiliCorp needs to know now if you
14 will allow it to use the \$100 million of potential
15 energy cost savings from off-system sales and joint
16 dispatch as merger-related savings. If you agree with
17 the Staff that most of these savings can be generated
18 now by a stand-alone Empire and a stand-alone
19 St. Joseph Light & Power Company and can never be
20 considered as merger related, we need to know this.
21 If UtiliCorp can't use these savings to meet its
22 burden of proof, the regulatory plan will not work.

23 We need to know the starting points to
24 measure merger savings for items such as energy costs,
25 number of employees and other costs that we have

1 pointed out. Also, we need to know the amount of
2 premium to be considered for ratemaking purposes, and
3 we think, as I indicated, it's approximately 275 to
4 \$280 million. Others say it is less than that, but we
5 need to know.

6 Finally, and in conclusion, UtiliCorp and
7 Empire think that they have a good plan and that it is
8 just and reasonable and will provide a fair sharing of
9 benefits for all parties. We hope that you will see
10 it that way and that your successors will also
11 continue to see it that way.

12 Once again, in summary, please keep in mind
13 that this is a no detriment state. Even with the
14 premium recovery which UtiliCorp will request in the
15 rate case five years in the future, post-moratorium
16 rate case, nothing will happen in that case unless you
17 or your successors let it happen. At that time the
18 Commission can consider the premium issue in
19 conjunction with other aspects of the merger,
20 including the guaranteed \$3 million reduction in cost
21 of service as well as all other relevant factors.

22 If the synergies do not develop as
23 estimated, then UtiliCorp will not recover all or
24 possibly any of the assigned premium, but the
25 customers will get a cost of service reduction in any

1 event. And in the meantime, don't forget that
2 Empire's customers will experience rate stability and
3 continued high quality service.

4 In this regard, it should be kept in mind
5 that for years Empire customers have enjoyed rates
6 that are among the lowest in the state and probably
7 30 percent below the national average. Empire has
8 always prided itself on its ability to provide first
9 class low-cost service. However, as energy markets
10 become more volatile and the industry becomes
11 increasingly competitive, it will be difficult for
12 companies of Empire's size to continue to provide such
13 high-quality service and rates at existing levels.

14 We believe that these customers, Empire's
15 present customers, will be better served by the
16 merging of Empire with UtiliCorp due to the economies
17 of scale which can only be achieved by larger
18 organizations.

19 As I indicated at the beginning, we believe
20 that is a unique opportunity to combine three Missouri
21 companies into one Kansas City based utility that will
22 serve the best interests of all constituencies.

23 If this agreement fails to be completed, the
24 eventual result we think will likely be the sale of
25 companies such as Empire to out-of-state or even

1 foreign interests, and a genuine opportunity to create
2 a strong, vibrant utility will be lost to the state of
3 Missouri and its consuming public.

4 Thank you for your attention.

5 JUDGE WOODRUFF: For Staff?

6 MR. DOTTHEIM: Thank you. May it please the
7 Commission? I'll try to be heard. If that's not
8 possible, I'll sit also.

9 JUDGE WOODRUFF: I think you're going over
10 the mic.

11 MR. DOTTHEIM: Okay. In the instant merger
12 case, as in the St. Joseph Light & Power/UtiliCorp
13 merger case, the Staff finds itself in an
14 unprecedented situation.

15 In prior merger cases, the Staff has
16 determined that excluding consideration of the merger
17 premium sought to be recovered from ratepayers, merger
18 savings exceeded merger costs. As a consequence, the
19 Staff recommended approval of the merger with
20 conditions, the principal condition being no recovery
21 for ratepayers of the merger premium.

22 For this merger and the St. Joseph Light &
23 Power/UtiliCorp merger, total merger costs exceed
24 total merger savings of the proposed merger without
25 consideration of the merger premium acquisition

1 adjustment. This is true for each of the ten years of
2 the regulatory plan proposed by the joint applicants.

3 As a consequence, the Staff cannot recommend
4 that the Commission approve the merger even if the
5 Commission were to accept all of the conditions
6 proposed by the Staff in its rebuttal testimony.

7 The Staff has proposed conditions on the
8 basis that if the Commission is disposed to approve
9 the proposed merger, the Staff conditions will
10 mitigate but not eliminate the detriment to the public
11 interest.

12 Given the low level of merger savings
13 associated with this transaction relative to the level
14 of identified merger costs, as well as UtiliCorp's
15 very high level of corporate costs and the possible
16 exposure of Empire to excessive corporate cost
17 allocations, the Staff cannot recommend that this
18 proposed merger be approved by this Commission.

19 Furthermore, the highly touted minimum
20 revenue requirement benefit of \$3 million revenue
21 requirement reduction for each year of years six
22 through ten of the Empire/UtiliCorp regulatory plan
23 constitutes a mere 3 percent of the Empire/UtiliCorp
24 estimated gross merger savings present value.
25 Approximately 97 percent of the Empire/UtiliCorp

1 estimated gross merger savings present value will be
2 retained by Empire/UtiliCorp under their proposed
3 regulatory plan.

4 This case as well as the St. Joseph Light &
5 Power/UtiliCorp merger case reveals a very fundamental
6 difference in the definition of not detrimental to the
7 public interest between the joint applicants and the
8 Staff. There's no dispute what the standard is.
9 There's a dispute as to how the standard is
10 appropriately applied.

11 The Empire/UtiliCorp merger case is unique
12 in an additional aspect. The joint applicants are
13 asking that the Commission make certain ratemaking
14 findings in this merger proceeding rather than in a
15 rate increase or an excess earnings complaint case.

16 Among the ratemaking determinations which
17 the joint applicants seek that the Commission make are
18 rate recovery treatment in future Empire rate
19 proceedings of 50 percent of the unamortized
20 acquisition adjustment resulting from the merger,
21 setting Empire's capital structure at a premerger
22 stand-alone level in future rate proceedings, ordering
23 a ten-year amortization of transaction costs and costs
24 to achieve freezing Missouri Public Service's
25 corporate allocation factors at pre Empire merger

1 levels and making certain findings regarding the
2 Empire premoratorium rate case respecting test year
3 in-service criteria, capital structure and other
4 areas.

5 All those determinations are being asked by
6 the joint applicant to be made by the Commission in
7 this proceeding, a merger case.

8 For the Commission to adopt the approach
9 proposed by the joint applicants may also raise a
10 number of legal questions, some of which may be very
11 similar to those that were first heard by the
12 Commission in the 1999 AmerenUE experimental
13 alternative regulation sharing credit case.

14 For example, if the Commissioners were to
15 accept the Empire/UtiliCorp regulatory plan, would
16 that create a contract which future commissions could
17 be held to?

18 Of course, the AmerenUE case and that issue
19 are pending in the circuit court, but there will not
20 be a final judicial determination -- there will not be
21 a final judicial determination prior to, presumably,
22 when the Commissioners will be rendering a decision in
23 both the St. Joseph Light & Power/UtiliCorp merger
24 case and in the Empire/UtiliCorp merger case.

25 The constant refrain in direct testimony in

1 this proceeding and surrebuttal testimony is
2 nonrecovery of merger premium discourages mergers.
3 There is an assumption by UtiliCorp and Empire that
4 the Commission should be encouraging mergers. Why in
5 particular should the Commission be encouraging this
6 merger?

7 Again, the understated theme is that the
8 surviving company is a Missouri-based company. The
9 Staff continues to believe that the Commission should
10 maintain a neutral stance towards mergers in general,
11 neither seeking to encourage utilities to combine or
12 taking steps to discourage potential combinations.

13 As previously noted earlier this morning,
14 based upon a Commission Report and Order in 1991 in
15 the KPL/KGE merger case, in a 1995 Commission Report
16 and Order in a Missouri-American Water/Missouri Cities
17 Water merger case and in a case heard earlier this
18 year and decided by the Commission, a
19 Missouri-American Water/United Water case, UtiliCorp
20 asserts that this Commission believes that merger
21 savings can be tracked and proven.

22 UtiliCorp is looking for an affirmation of
23 that position from this Commission. UtiliCorp is also
24 saying that so long as this Commission believes that
25 merger savings can be tracked and proven, it is not

1 necessary for UtiliCorp and Empire to determine and
2 present any specific tracking system to the Commission
3 in this proceeding.

4 UtiliCorp assures the Commission that it is
5 not necessary for UtiliCorp to determine and to
6 present to the Commission any specific tracking system
7 now because UtiliCorp will have the burden of proof in
8 the post-moratorium rate case to demonstrate a method
9 of tracking merger savings and that the method has
10 adequately tracked merger savings.

11 The joint applicants want the Commission to
12 commit up front to setting rates to recover merger
13 costs from customers. However, the part of the
14 regulatory plan that, in fact, purports to hold
15 customers harmless, the minimum revenue requirement
16 benefit, is premised upon development of a merger
17 savings tracking system that has yet to be proposed by
18 UtiliCorp in detail and has never been implemented
19 anywhere.

20 The Staff believes that development of a
21 workable merger savings tracking system based on what
22 the Staff has seen to date and the Staff's own
23 experience, the Staff believes that the development of
24 a workable merger savings tracking system is
25 essentially impossible to do.

1 In addition to seeking direct recovery of
2 50 percent of the unamortized acquisition adjustment
3 in rates in years six through ten following the
4 merger, the joint applicants seek to recover even more
5 of the merger premium through indirect means,
6 primarily through its frozen capital structure
7 proposal, which would deny Empire's customers any
8 benefits in rates from merger-related reductions in
9 the cost of capital.

10 It is UtiliCorp's position that a
11 significant portion of merger savings are to occur in
12 the areas of joint dispatch and off-system sales. The
13 Staff's position is that no more than 10 percent, if
14 even 10 percent, of the purported ten-year energy and
15 capacity savings quantified by the joint applicants
16 are related to the merger.

17 That is, UtiliCorp and Empire have not shown
18 that the increased sales opportunities estimated for
19 the merged company are likely to occur or would not be
20 available for the two companies on a stand-alone
21 basis.

22 To offset the shortage of merger savings
23 that the joint applicants will make available to
24 Empire customers, the joint applicants propose to
25 assign to Empire customers almost all the savings that

1 ordinarily would be applicable to Missouri Public
2 Service division customers. It is the Staff's
3 position that this shifting of savings is
4 inappropriate.

5 Further, assignment of almost all of the
6 merger savings to Empire under the joint applicants'
7 regulatory plan would unfairly serve to maximize
8 UtiliCorp's retention of merger savings because
9 Empire's proposed to undergo a five-year rate
10 moratorium.

11 Meanwhile, almost no savings are proposed to
12 be assigned to the Missouri Public Service division
13 for which future rate increase cases are planned to
14 occur within the next five years.

15 The joint applicants' own witnesses have
16 made clear that the opportunities for nonregulated
17 benefits are an important reason for the merger.
18 Nonetheless, they have not proposed to allocate any of
19 the acquisition adjustment to nonregulated operations,
20 which opens the possibility of regulated customers
21 cross-subsidizing UtiliCorp's nonregulated operations
22 as a result of the regulatory plan.

23 In concluding, I would ask to point out to
24 the Commissioners a couple of items that they might
25 consider in their hearing of this case, and that is,

1 it should be very clear that this is a ten-year plan.
2 It is not a five-year plan. It's not a six-year plan.
3 It is a ten-year plan that is being proposed by the
4 joint applicants. It's a ten-year plan that the joint
5 applicants are asking the Commissioners to commit to.
6 That duration of a regulatory plan in and of itself is
7 unprecedented.

8 Finally, in an area that the Staff has not
9 addressed but is before the Commission, and that is
10 the issues relating to the Retirees and Local 1474,
11 the Staff would suggest to the Commissioners that
12 possibly they should consider requesting those parties
13 and Empire/UtiliCorp to address the applicability of
14 Section 386.315.

15 Now, the Staff raises this without itself
16 suggesting whether Section 386.315 is applicable, but
17 this is an item that the Commissioners may want to
18 request that the other parties or any party that's
19 interested in doing so brief.

20 In particular with Section 386.315.1, I
21 would point to the very first sentence which states,
22 In establishing public utility rates, the Commission
23 shall not reduce or otherwise change any wage rate,
24 benefit, working condition or other term or condition
25 of employment that is the subject of a collective

1 bargaining agreement between the public utility and
2 the labor organization.

3 For ease of reference, as a last item, I
4 have copies of Section 386.315 which I'd like to
5 provide to the Commissioners and the Regulatory Law
6 Judge.

7 JUDGE WOODRUFF: You may do so.

8 MR. DOTTHEIM: Thank you very much.

9 JUDGE WOODRUFF: Thank you. Office of the
10 Public Counsel?

11 MR. COFFMAN: Thank you. See if I can do
12 this standing up. May it please the Commission?

13 The application filed in this case, as all
14 the parties agree, is based upon the Commission's
15 merger and acquisition statute 393.190 of Missouri
16 law. And as you've been reminded, this permits the
17 Commission to approve mergers if they are not
18 detrimental to the public. If there's evidence of a
19 detriment to the public, then such authorization shall
20 not be granted.

21 Now, we believe that initially in deciding
22 this case the Commission needs to set aside all of the
23 distracting testimony regarding the so-called
24 regulatory plan. It's something which the joint
25 applicants have now acknowledged is not a make or

1 break matter, and we believe it is something that is
2 clearly beyond the Commission's legal authority. We
3 believe the Commission needs to focus on whether the
4 underlying merger itself is detrimental to the public.

5 In this case, Public Counsel has put forward
6 substantial evidence of detriments resulting from this
7 underlying merger. Public Counsel will offer into the
8 record the testimony of Mark Burdette to show that the
9 proposed merger transaction would be detrimental to
10 the public because if UtiliCorp, being a more risky
11 company, despite being a larger company is more risky,
12 acquires the assets of Empire, then those assets would
13 be treated by the financial community as financially
14 more risky and inevitably would result in higher rates
15 for those customers currently served by Empire.

16 This financial reality is an established
17 fact, while on the other hand the applicants' claims
18 about future synergies and savings are based upon
19 speculation and estimates and have been shown through
20 extensive analysis of the Commission Staff to be
21 erroneously inflated.

22 No evidence has been prefiled into this case
23 addressing how this specific detriment could be
24 mitigated, and we believe on this point alone the
25 merger must be rejected.

1 Secondly, the market power impacts of the
2 proposed merger must be considered. We present the
3 evidence of Ryan Kind who carefully outlines the
4 likelihood of electric restructuring -- the likelihood
5 that electric restructuring is what's driving this
6 merger.

7 UtiliCorp's testimony mentions the ever more
8 competitive environment which has led up to this.
9 Mr. Swearngen in his opening statement talked about
10 increased competition which prompted the transaction
11 being made.

12 We don't believe there's much doubt that
13 market power will increase as a result of this case
14 and that the corresponding risk of harm is very real
15 and a detriment to the public interest. The market
16 power both horizontal and vertical that would be
17 accumulated by UtiliCorp with regard to generation and
18 transmission assets is significant and would suppress
19 potential benefits to consumers of any future retail
20 electric competition.

21 Consumers will also be harmed by the
22 increased retail market power resulting from the sale
23 of energy-related and information services after the
24 merger. Now, this retail market power is the type of
25 market power that we cannot count on the Federal

1 Energy Regulatory Commission to address.

2 Unless the recommended conditions of Staff
3 and Public Counsel are adopted for mitigating these
4 two harms, the various market power impacts of the
5 proposed merger will be seriously detrimental to the
6 public.

7 The Commission should not wait until it is
8 too late before addressing these harms lest the
9 ratemaking public on the western side of Missouri find
10 itself in the same situation confronting consumers in
11 San Diego currently.

12 Now, as the substantial list of issues in
13 this case illustrates, the applicants have come to you
14 requesting approval of much more than the underlying
15 merger. Now, this is not because other parties have
16 raised extraneous issues. It is because the joint
17 applicants have asked the Commission to decide matters
18 right now in this case that go beyond the merger
19 statute.

20 All this additional relief goes one step
21 beyond the Commission's legal authority in what it may
22 decide in a merger case.

23 They are essentially asking you to make
24 several determinations regarding future ratemaking
25 components, but to make those decisions right now in a

1 contested merger case. The applicants have asked you
2 to commit to the following ratemaking determinations,
3 among others.

4 The regulatory plan would impose a
5 moratorium preventing rates from being set upon the
6 actual cost of service for a period of five years.
7 They talk about the status quo being maintained, but,
8 of course, in this particular case the moratorium
9 doesn't go into place until they are potentially
10 increased through a premoratorium rate case.

11 Now, who exactly would be restrained by such
12 a moratorium and in what way? This has been an ever-
13 changing concept, and we do invite the Commission to
14 attempt to pin down the joint applicants as to exactly
15 what they want in this regard.

16 But regardless of how you interpret the
17 concept, we believe that it is unlawful on its face.
18 You cannot prevent utility companies from seeking rate
19 increases, as the courts in this state have said, and
20 you cannot prevent other parties from prosecuting a
21 complaint case if they believe a rate decrease is in
22 order.

23 A second ratemaking component for which the
24 joint applicants are seeking a predetermination is the
25 acquisition adjustment that would charge to ratepayers

1 five years from now 50 percent of yet an undetermined
2 acquisition adjustment.

3 Thirdly, they're asking for a commitment to
4 use a frozen capital structure in years six through
5 ten. This would be a capital structure that would not
6 likely reflect the merged company's actual capital
7 structure at that time and, again, another attempt to
8 obtain as much of the savings as they can, denying
9 ratepayers those savings.

10 No. 4, they are asking for a commitment to
11 use an estimate of the allocation of escalated
12 corporate overheads that are not likely to reflect the
13 actual costs. They are asking for a predetermination
14 for recovery of purported transaction costs and costs
15 to achieve the merger instead of having these costs
16 reviewed in the context of a general rate proceeding.

17 As to the regulatory plan, and to the best
18 of Public Counsel's knowledge, this Commission has
19 never ever engaged in such ratemaking in a contested
20 merger case in its more than 80-year history.
21 Repeatedly, case after case, the Commission has
22 deferred those decisions to a subsequent rate case.

23 And before you decide if it is a good idea
24 to allow these applicants to merge, we do want you to
25 make sure to focus on the fundamental legal principles

1 that we believe are at odds with the so-called
2 regulatory plan.

3 No. 1, the Commission's responsibility to
4 set just and reasonable rates includes the legal
5 requirement to consider all relevant factors. This
6 legal precedent has been well established in our
7 appellate courts, and Public Counsel believes that the
8 courts would prevent the imposition of the regulatory
9 plan.

10 No. 2, the Commission cannot bind itself or
11 future Commissions regarding any one of those relevant
12 factors as to a future rate case or rate complaint.
13 This legal precedent is also well established.
14 Nevertheless, the joint applicants are requesting
15 binding future commissions.

16 Yes, the Commission has approved a
17 Stipulation and Agreement in the Union Electric/CIPSCO
18 merger case mentioned by Mr. Dottheim. It included
19 many ratemaking agreements that bound the signatory
20 parties to that case, including the experimental
21 alternative regulatory plan, and even that matter, of
22 course, has caused considerable legal controversy, but
23 that was not a determination made in a contested
24 ratemaking case. That would be, in Public Counsel's
25 view, beyond the Commission's authority.

1 Mr. Swearengen mentioned the Rolla natural
2 gas case, the 1994 GA case. It's important to realize
3 that this was not a GM case. It was a certificate
4 case, not a merger case, and, of course, that case was
5 not appealed.

6 Now, if you disagree with Public Counsel's
7 legal analysis and you do believe that you have the
8 legal authority to consider all or some part of the
9 proposed regulatory plan, we are offering substantial
10 evidence as to why the various ratemaking components
11 of that regulatory plan would be detrimental to the
12 public interest. I hope you will give careful
13 consideration to the Public Counsel witnesses
14 regarding the detriments that we believe would be
15 inherent to that plan.

16 As to the acquisition adjustment, charging
17 ratepayers for the premium paid for the acquisition of
18 Empire is extremely unjust and a detriment if
19 predetermined in this case. Public Counsel's
20 testimony explains in great depth the inequities of
21 this proposal.

22 Recovery of an acquisition premium would --
23 together with a likelihood that Empire's generation
24 assets would be sold or monetized would together
25 result in a tremendous windfall to the shareholders.

1 Although the Commission has never allowed recovery of
2 an acquisition premium, the Commission has indeed made
3 statements that suggest it would be open minded to
4 considering such requests and did so in the Missouri-
5 American case mentioned.

6 But again, the Commission has never
7 considered that it would determine such things outside
8 of a rate case. Yes, it is apparently a case-by-case
9 analysis, but it is a rate-case-by-rate-case analysis,
10 not in a merger case.

11 The merger case involving Missouri-American
12 and United Water Missouri which has been mentioned by
13 the two previous speakers, I have here and I would
14 like to quote for you two sentences. The matter of
15 the acquisition adjustment is not -- is also not
16 properly before the Commission in this case. This is
17 a matter for a rate case as the applicants point out.
18 This is not a rate case.

19 The applicants in that case were represented
20 by the same law firm representing the joint applicants
21 in this case.

22 If the Commission says anything on this
23 issue, it should simply reaffirm its policy of not
24 allowing the recovery of any positive or negative
25 acquisition premium in rates and at the very least

1 reserve its decision to a future rate case as it has
2 done numerous times in the past.

3 The five-year moratorium. Freezing rates
4 and preventing the opportunity of having rates based
5 upon the actual cost of service in Public Counsel's
6 view is not only illegal, it is a serious detriment.
7 As we said in the St. Joseph/UtiliCorp merger, we do
8 not agree to such a term, and even if it were legal to
9 impose it, we -- to impose it, we believe it would be
10 a detriment in this case.

11 As to the synergies and tracking proposals,
12 Public Counsel's testimony explains in detail why the
13 merger savings tracking system would be a detriment.
14 It would likely overstate alleged merger savings. It
15 would unlikely be able to isolate the savings directly
16 related to the merger and distinguish those from other
17 inevitable savings. It would exclude synergies
18 related to nonregulated operations, and it would
19 establish a baseline based upon budgets which we
20 believe is unreasonable.

21 The frozen capital structure which I've
22 mentioned before is the subject of Public Counsel
23 evidence. This evidence shows that mandating a
24 capital structure that is not linked to the real
25 capital structure of the merged company for years six

1 to ten would be a serious detriment.

2 As to the transaction and transition
3 charges, these various charges are directly linked to
4 the efforts to increase shareholder value and thus
5 should remain the responsibility of the shareholders.
6 A commitment to charge these costs to ratepayers would
7 certainly be a detriment.

8 Now, if you do disagree with Public Counsel
9 regarding the legality and detrimental nature of the
10 merger, if you go ahead with what we believe would be
11 an ill-advised decision, we are proposing certain
12 conditions that would at least mitigate the detriments
13 that we see developing from such a merger.

14 If you feel that you must approve the
15 merger, we believe you should do it in conjunction
16 with a regulatory condition. It has been coined in
17 some places as OPC's regulatory plan. It is really
18 simply a regulatory condition that this -- that the
19 merged entity would have to follow traditional rate of
20 return regulation. These are groundrules that
21 everyone is well aware of.

22 It's pretty simple. Simply impose a
23 condition that, if the merger is to be approved, that
24 the merged company must file an electric rate case one
25 year after the closing of this proposed merger and the

1 final determination of the UtiliCorp/St. Joseph Light
2 & Power merger, whichever is later. The terms of this
3 condition are set out in the testimony of Mr.
4 Trippensee.

5 The Commission would simply set just and
6 reasonable rates at that time based upon the actual
7 costs, synergies and savings realized. You would be
8 able to properly review and consider all relevant
9 factors within a proper test year.

10 Market power conditions are set out in the
11 testimony of Mr. Kind. We believe that these
12 conditions would actually take care of the various
13 horizontal, vertical and retail market power
14 detriments. These conditions are essentially similar
15 to those agreed upon by Western Resources and Kansas
16 City Power & Light in the Order the Commission issued
17 in WR-97-515.

18 We also propose the condition that the
19 merged entity provide access to its books and records
20 and to those of its wholly-owned subsidiaries and that
21 the Commission commit to closely scrutinizing the
22 increasingly complex affiliate transactions that would
23 likely result from the proposed merger and which would
24 threaten ratepayers with cross-subsidization.

25 There are a variety of other merger

1 conditions for which Public Counsel has not taken a
2 position on at this time. This does not mean that we
3 feel that they are not important matters. We ask the
4 Commission carefully study those.

5 That's all that we have at this time. Thank
6 you very much.

7 JUDGE WOODRUFF: Thank you. For ICI
8 Explosives and Praxair?

9 MR. CONRAD: Good morning. And I'll try to
10 stay seated because I find that much of what I was
11 going to say has already been said.

12 I would comment that this is -- it's kind of
13 like the old saying, deja vu all over again. We seem
14 to again be presented with now two monopolists,
15 perhaps three, who would like the Commission's
16 permission to make their monopoly bigger and stronger
17 and more competitive.

18 Now, do you-all sense that there might be
19 something slightly out of square with that? Let me
20 suggest to you that there is. Not terribly long ago
21 utilities in this state, both gas and electric, used
22 to have customer service offices. Some of you are old
23 enough, like me, to remember those. And you could go
24 into those offices and you could buy a washer and
25 dryer, a refrigerator, a stove. You could buy lots of

1 household appliances, and you could buy them at pretty
2 good cost, discounts.

3 Well, it turned out that the reason that it
4 was cheaper to go there and also cheaper to have the
5 utilities come and service the appliances that you
6 bought from them was because the ratepayers were
7 subsidizing that.

8 One of the utilities that seems to be
9 indirectly concerned here, St. Joe Light & Power,
10 counsel for UtiliCorp mentioned it, used to have a
11 municipal bus line in St. Joe, and I remember it
12 because I rode it. And you could ride all the way
13 across St. Joe, north, south, east, west, with
14 transfers, for about 15 cents.

15 But at some point in time it dawned on
16 somebody that, you know, you can't operate a municipal
17 bus line for 15 to 20 cents a ride, and how was that
18 happening? Well, it was happening because the
19 ratepayers of St. Joe Light & Power were subsidizing.

20 Now, that -- those two cases are kind of
21 microcosms of what you're asked to do here. You're
22 asked to turn the clock back and create a situation in
23 which monopolies -- I would simply point to my
24 colleague at the bar here who within the first minute
25 of his opening statement said, Why are we doing this?

1 Well, because we want to increase our competitive
2 position. We want to better our competitive position.
3 That's fine.

4 Both the clients that I have here deal in a
5 competitive market. Both are the result of
6 acquisitions, mergers, spin-offs. Praxair was a
7 spin-off from Union Carbide back in 1992. These
8 companies are well familiar with what it means to be
9 involved in a competitive market.

10 We would submit that these monopolists
11 haven't a clue, because you don't go to a competitive
12 market and ask that market to finance your deal. If
13 the market will not already support your doing the
14 deal, you don't do the deal.

15 You don't come back to the regulatory side
16 of the business and ask the regulatory side of the
17 business to fund the acquisition any more than you ask
18 the ratepayers to subsidize appliances or appliance
19 services or municipal bus line. Now, appliances and
20 appliance services and municipal bus lines are all
21 good things, but they need to carry their own costs,
22 as do the rates.

23 We've got three concerns, and I'll just
24 briefly list those. One is the acquisition premium.
25 You seek detriment? If costs go down and rates don't

1 go down, there's your detriment. And if ratepayers
2 are burdened with who knows what, \$280 million of
3 premium, that's a detriment. And if you decide to do
4 that in this case, that's a detriment plain and
5 simple.

6 We have a concern about the rate freeze.
7 There again, it's a detriment. If costs go down and
8 rates don't go down, then we have a detriment. And
9 you have a detriment in this case, not just to the
10 ratepayers of Empire District, but also to UtiliCorp,
11 which is, remember, MoPub. They pay rates, too.

12 Up the road a ways is an air base called
13 Whiteman. It's the home of the B2 Bomber. The B2
14 Bomber was designed and has the terminology of the
15 stealth bomber for a couple of reasons. One, it's
16 designed such that it reflects the radar away and not
17 back to the transmitting and receiving antennas for
18 the radar, but the other aspect of it is it flies
19 underneath the radar. And that's what this stealth
20 rate case is trying to do is fly underneath your-all's
21 radar.

22 Counsel for UtiliCorp adroitly says, Well,
23 just deal with these couple little issues, couple
24 little issues like capital structure. Oh, that's a
25 small issue. Like cost of money. Well, that's a

1 small little issue. Just deal with those little
2 issues and then you can deal with this, you know, in
3 the future, either in some rate case, oh, I guess it's
4 something like six years out because the one that's
5 going to be filed in November you're supposed to
6 ignore the merger.

7 Well, there again, at least in mergers and
8 acquisitions that I've seen, there are several things
9 that go under the heading of due diligence. And when
10 you want to buy a company or merge with it, you do
11 what's called due diligence. And if it doesn't smell
12 right, you don't do the deal. You don't go and do the
13 deal and then say, Oh, by the way, could you guarantee
14 us this little increase up front? How silly to say a
15 rate freeze, but before we freeze your rates first
16 we're going to increase it. Give me a break.

17 Counsel says that this is furtherance of
18 UtiliCorp's policy to acquire the smaller utilities in
19 the state and bring them all together for economies of
20 scale. Presumably that's why they first went after
21 Kansas City Power & Light. Counsel says size matters.
22 Well, I have it on some authority that while size may
23 matter, it has more to do with how you deal with what
24 you have and how well you use it.

25 It sounds to me like Empire, and I think I

1 wrote this down correctly, is among the lowest cost
2 utilities in the state and 30 percent below national
3 average. That's pretty good for a small company. So
4 they must be using what size they have pretty well.

5 Lastly, the moratorium issue. Both Staff
6 Counsel and Public Counsel I think have addressed
7 that, and I'll just mention to you that it is ironic
8 with this company -- I wish I could remember exactly
9 the date, but the case involved Jackson County. I
10 think we cited it in an earlier brief. But the
11 members of the Commission at that time involved
12 Commissioner Sprague and Commissioner Pierce and two
13 or three others whose names unfortunately I can't
14 recall right now.

15 But MoPub, soon to be UtiliCorp, had come in
16 for an increase, I believe for it's Sibley station,
17 and that was quite controversial because Sibley has
18 always seemingly been pretty controversial given the
19 fact that it at various times hasn't run. But the
20 Commission in its wisdom at that point said, Well,
21 okay, we'll give you a rate increase, but we want this
22 level of rates to be fixed for the next two years.

23 Well, counsel at that time -- or UtiliCorp's
24 predecessor, MoPub, at that time was represented by
25 Gary Burlette, and Gary wasn't about to let a little

1 thing like a Commission Order stop him. So within a
2 year MoPub had filed again, and the Commission -- a
3 couple people had changed by then, I think -- went
4 ahead and processed the rate increase.

5 Jackson County -- I actually believe this
6 was maybe before the days of Public Counsel but right
7 on the very edge of that. Jackson County and a couple
8 of others said, Whoa, wait a minute. Wait a minute,
9 Commission. You said that you can't come in. You
10 imposed moratorium on them for two years. And they
11 wrangled that around. This case also involved whether
12 file and suspend is the appropriate method to use.

13 But as a result of that, the Missouri court,
14 Supreme Court over here -- I guess it's now over here
15 (indicating) -- en banc decision said, Commission, you
16 can't shut your doors, because to do so would create a
17 situation that the utility could be detrimented if its
18 costs go up or that the ratepayers could be
19 detrimented if its costs go down. Story made short.

20 We haven't got into the detail that Staff
21 and Public Counsel have with respect to the
22 non-regulatory-plan side of the merger. We accept
23 their proposition that the merger itself does not
24 stand, but our principal concerns are with those
25 aspects of the regulatory plan, and for those aspects

1 we think the regulatory plan should be rejected.

2 And if that means the merger doesn't go as
3 counsel seems to suggest, then it doesn't go, because
4 it wasn't economic in the first place.

5 Thank you.

6 JUDGE WOODRUFF: Thank you. International
7 Brotherhood of Electrical Workers?

8 MR. JOLLEY: May it please the Commission?
9 The International Brotherhood of Electrical Workers
10 intervened in this case because the interests of its
11 334 members who are all employees of Empire District
12 are different from those of the general public and the
13 other parties in this case and because the union
14 feared that the distinct interests of those employees
15 would not be accommodated or protected in the absence
16 of intervention.

17 The facts that are developed in this case
18 reveal that the union's fears are well founded. The
19 334 employees represented by the union have an average
20 seniority in excess of 16 years of service to Empire
21 District, meaning that combined these employees have
22 contributed over 5,000 years of service to Empire.

23 The interests of these employees if left to
24 the utility in the merger plan and without the labor
25 protective provisions sought by the union in this case

1 will be ignored, not only to the detriment of the
2 employees, but to the public interest as well.

3 On the other hand, protection of the
4 investment of shareholders is clearly a priority in
5 the merger plan. UtiliCorp is adamant that its
6 shareholders receive immediate benefit from the
7 merger, and it's been said here this morning that the
8 shareholders need a reasonable opportunity to recoup
9 or recover their investment.

10 The long-term investments and contributions
11 by Empire employees in the bargaining unit represented
12 by the union are as great, we believe, as those made
13 by shareholders and, in the public interest, should be
14 protected and given great weight by the Commission.

15 Contrary to what's been said this morning,
16 UtiliCorp's shareholders are not the only individuals
17 that would be making investments and incurring
18 economic risk in this merger. Empire employees,
19 particularly those losing their jobs as a part of the
20 merger plan if approved by the Commission without
21 labor protective provisions, will be incurring very
22 substantial economic harm, and there is no provision
23 for recoupment of their investment or their loss as a
24 result of the merger.

25 Not only have the bargaining unit members

1 represented by the union contributed over 5,000 years
2 of service to Empire, an average of 16 years on an
3 individual basis, to the success of Empire and,
4 therefore, to the success of the merged company if
5 approved by the Commission, they've invested their
6 lives, in several cases even the loss of life.
7 They've sustained serious injuries in the line of duty
8 on behalf of Empire.

9 They have frequently worked long hours,
10 frequently at excessive overtime in emergency
11 situations due to weather-caused outages, often in
12 very inclement weather and under adverse and unsafe
13 working conditions at personal sacrifice, not only to
14 themselves but their families and home lives, in order
15 to maintain and restore service to Empire's customers.
16 This should not go unrewarded or ignored.

17 In this case the union is seeking the
18 imposition by the Commission of labor protective
19 provisions that are essential and necessary and in the
20 public interest not only to protect and preserve the
21 substance long-term investments and contributions made
22 by the bargaining unit employees, but to assure the
23 safety of bargaining unit employees and the safe and
24 reliable delivery of service to the utility's
25 customers.

1 Current projections should the merger be
2 approved call for elimination of 50 bargaining unit
3 positions, a 15 percent reduction in the currently
4 constituted bargaining unit work force, which is
5 already working understaffed and which is insufficient
6 to provide and maintain regular and ongoing service.

7 The planned job elimination would result in
8 a 35 percent reduction in the number of electricians,
9 in a 16 percent reduction in the number of linemen,
10 and a 100 percent reduction in the number of the
11 utility dispatchers, and similar reductions as well in
12 the other classifications represented by Local 1474.

13 By the utility's own admission, while there
14 have been numerous studies and analyses by accountants
15 and business consultants and others as to investment
16 returns, shareholder risks and rewards, there have
17 been absolutely no studies made by UtiliCorp or Empire
18 District concerning the effect of these specific job
19 eliminations on either the safety of employees or the
20 ability of the utility if these reductions and job
21 eliminations are carried out to safely, reliably and
22 efficiently provide service to the utility's
23 customers.

24 To the extent that the applicants' estimates
25 of labor cost savings resulting from the elimination

1 of bargaining unit jobs represented by the union would
2 otherwise appear to satisfy the not detrimental to the
3 public interest standards, such estimates are at best
4 speculative and flawed.

5 The utility, if a merger is approved without
6 labor protective provisions, will be unable to provide
7 service in a safe and reliable manner and without
8 substantially increased risk of injury and death to
9 employees.

10 Empire's Myron McKinney has in his testimony
11 previously filed -- previously acknowledged that
12 Empire has a dedicated and skilled work force for
13 which it has provided enhanced training.

14 The utility after eliminating bargaining
15 unit jobs of employees who thereafter move on to other
16 employment will, we believe, be required to either
17 hire less trained, inexperienced employees or to
18 increasingly contract out bargaining unit work to
19 other employers at greatly increased cost for purposes
20 of providing both regular and emergency delivery of
21 service and power to customers.

22 The union is requesting the imposition by
23 the Commission of a requirement that there be no
24 elimination of bargaining unit jobs as a part of or as
25 a result of the merger.

1 In addition, since it appears that UtiliCorp
2 intends to require employees to pay the full cost of
3 medical insurance premiums, whereas Empire has been
4 paying the majority of those premiums in the past and
5 at present, the union requests that the Commission
6 require as a condition of approval of the merger that
7 UtiliCorp continue to maintain medical coverage,
8 medical insurance coverage for bargaining unit
9 employees with no increase in the percentage of
10 employee contributions over what is currently required
11 at Empire.

12 Similarly, the union requests that the
13 Commission impose as a condition of the merger a
14 requirement that UtiliCorp not terminate or adversely
15 change the retirement plan, retirement funding or
16 retirement benefits affecting current bargaining unit
17 members, or that at the very least the Commission
18 impose a requirement that the retirement benefits of
19 currently employed bargaining unit members be
20 grandfathered until their respective retirement.

21 The factual basis for the union's position
22 and its request for imposition of labor protective
23 provisions is outlined in the cross-surrebuttal
24 testimony of union president and business manager Bill
25 Courtney.

1 There's an old adage that there's safety in
2 numbers. When it comes to the question of
3 transmission and distribution of electrical power,
4 this adage is particularly applicable and the flip
5 side is every bit as applicable. In the absence of a
6 sufficient number of employees, there is no safety.
7 Empire's linemen and electricians all work with high
8 voltage lines and equipment.

9 All employees in the production department
10 work with high-risk electrical machinery, generators,
11 turbines, wiring, hydro equipment and the like. The
12 risks of injury and death are very real and within the
13 actual experience of bargaining unit employees.
14 Historically, by way of one example, rubber glove
15 duties, which is by all accounts extremely dangerous
16 work, is performed by three-men crews, two up in the
17 basket with the rubber gloves and one on the ground as
18 an extra pair of eyes.

19 Outside contractors retained by Empire use
20 three-man crews. Empire currently uses three-man
21 crews by and large, with some exceptions involving
22 only minor or no rubber glove work.

23 It is difficult to perceive how such work
24 can be safely performed with a 35 percent reduction in
25 the number of electricians and a 16 percent reduction

1 in the number of linemen, which numbers may, according
2 to UtiliCorp, be increased after further transition
3 team review.

4 Safety is simply too important to be left to
5 guesswork and speculation, and in the absence of any
6 studies by the merger applicants, risks to safety
7 should not and cannot be trivialized.

8 Also of concern to the Commission is the
9 ability of the utility to reliably provide service to
10 customers in the event the merger is approved. Empire
11 District already has an insufficient number of
12 employees to provide this service. It regularly
13 engages the service of outside contractors, not only
14 in normal day-to-day operations, but in emergency
15 situations as well.

16 With a contemplated reduction of bargaining
17 unit employees who are primarily responsible for the
18 ultimate delivery and restoration of electrical
19 service to customers, the need for utilization of
20 outside contractors and their employees will be
21 increased.

22 And in emergency situation involving major
23 power outages, which are not unusual occurrences in
24 the geographical area serviced by Empire District, not
25 only will costs increase, but the safety risks to

1 employees working short-handed due to the elimination
2 of the percentage of linemen and electricians
3 currently contemplated until outside contractors can
4 arrive on the scene will be unacceptable.

5 For these reasons, in accordance with the
6 cross-surrebuttal testimony of Bill Courtney, the
7 union requests the imposition of labor protective
8 provisions as a condition of approval of the merger.

9 This concludes the union's opening
10 statement, except as to note that UtiliCorp through
11 surrebuttal testimony of human resources president
12 Robert Browning has raised several legal issues in
13 connection with the union's request for labor
14 protective provisions.

15 First Mr. Browning asserts that the
16 Commission does not have the authority to impose labor
17 protective provisions, basing his belief in part on
18 the failure of proposed legislation in the last term
19 that would have established mandatory labor provisions
20 in the contract of -- in the context of utility work.

21 Secondly, Mr. Browning asserts that such
22 labor protective provisions would interfere with the
23 collective bargaining relationship with the unions and
24 would be preempted by federal labor laws. These
25 assertions relate to conclusions of law, and the union

1 anticipates responding to these assertions in its
2 post-hearing brief to the Commission rather than
3 through fact-based testimony or cross-examination in
4 the course of this hearing.

5 We'll, of course, be happy to answer any
6 questions that the Judge or the Commissioners may have
7 on this issue.

8 And finally, in connection with the
9 reference by Mr. Dottheim to 386.315, I think this too
10 is more of a legal issue rather than a fact-driven
11 basis for testimony or examination in this hearing,
12 but I would be happy to address that as well. I would
13 prefer to do so in the Brief.

14 JUDGE WOODRUFF: Thank you. Department of
15 Natural Resources.

16 MS. WOODS: Good morning, Commissioners.

17 JUDGE WOODRUFF: Would you like to come up
18 to a microphone?

19 MR. JOLLEY: I'll trade.

20 JUDGE WOODRUFF: That will be fine.

21 MS. WOODS: The Department of Natural
22 Resources is an intervenor in this case as well as it
23 was in the St. Joe case on the relatively narrow
24 issues of low income weatherization as well as other
25 energy efficiency issues.

1 We believe that the testimony that was
2 prefiled and that will be offered in this case
3 demonstrates that, absent the imposition of certain
4 conditions that the Department has laid out, this
5 merger will be detrimental to the public and will, in
6 fact, fail that standard set out in the statute and to
7 which this Commission has in the past held itself.

8 This merger again as proposed by the joint
9 applicants will result in a deterioration of services,
10 particularly to low income consumers, those who can
11 least afford it.

12 The joint applicants have suggested that
13 this forum is not the appropriate one to bring up
14 these issues and that another forum might be more
15 advantageous or more appropriate. Because of the
16 Department's belief and because we do believe that the
17 testimony and evidence will show that this merger will
18 be a detriment to the public, our position is that
19 this is a very appropriate forum in which to hear
20 those issues and decide them.

21 I have nothing further, and thank you.

22 JUDGE WOODRUFF: Thank you. City of
23 Springfield?

24 MR. KEEVIL: Thank you, Judge.

25 A few weeks ago there was an editorial type

1 cartoon on the Internet and possibly elsewhere which
2 some of you may have seen. The caption of the cartoon
3 was, Merger no-no No. 1, and the picture was a Concord
4 airplane with the word Firestone written across the
5 side of it.

6 Now, I would submit that in the utility
7 regulatory context a bigger merger no-no No. 1 would
8 be to approve a merger based on insufficient
9 information, and as in the St. Joe/UtiliCorp merger,
10 that's what the applicants here are asking you to do.

11 They have not, again as in the
12 St. Joe/UtiliCorp merger, provided any analysis of the
13 impact of their combined uses of the region's
14 transmission system upon other users of the
15 transmission system of the region such as my client,
16 City Utilities of Springfield. But I would like to
17 point out that that is not limited simply to my client
18 but would apply to all other users of the transmission
19 system of the region, Kansas City Power & Light,
20 AmerenUE, whoever.

21 You may ask yourself, Why should you care
22 about that? Well, we go back to the standard, not
23 detrimental to the public interest. That's what you
24 must find in order to approve the merger, and I submit
25 that the definition of public should not be as narrow

1 as Mr. Swearengen would have you define it. As I
2 understood his definition, only the ratepayers of
3 Empire and possibly the ratepayers of UtiliCorp should
4 be included in a definition of the public.

5 I submit that the public at large would be
6 the appropriate -- the Missouri public at large would
7 be the appropriate public to consider as you have held
8 in previous -- at least one previous case I'm aware
9 of, and that if you were to adopt Mr. Swearengen's
10 definition, arguably you could not consider the
11 interests of the Retirees or the Union or the
12 Department of Natural Resources or my client or
13 whoever in this case, and perhaps that's
14 Mr. Swearengen's intent here. I don't know. I don't
15 think it is.

16 But in any event, I believe that in
17 examining this merger you need to look at the impact
18 on the public at large, and when you do that you will
19 realize that there isn't sufficient information
20 provided by the applicants to show, as I said, the
21 effect of their merger on the regional transmission
22 system.

23 And I might also point out that Staff
24 witness Dr. Mike Proctor apparently agrees with my
25 client on this point and would in that regard refer

1 you to his cross-surrebuttal testimony.

2 Why should studies be done? Well, you have
3 to know first of all what is going to happen as a
4 result of the merger, and if the studies show
5 detrimental impacts, you need those studies then to
6 understand fully what upgrades to the transmission
7 system will be needed.

8 The applicants have been very vague in this
9 case as well as in the St. Joe case regarding their
10 commitment to make any transmission upgrades, and I
11 would ask that what you do in relation to these
12 studies is, as reflected both in the testimony of
13 Springfield's witness Russell and Staff's witness
14 Proctor, require these additional studies be done
15 prior to your approval of this merger if you are
16 otherwise inclined to approve the merger, allow the
17 other parties to respond to the applicants' studies,
18 and deal with -- deal with that matter in such a
19 fashion as reflected in those witnesses' testimonies I
20 referenced.

21 Now, I'm not going to go through each and
22 every issue of interest to my client or each and every
23 condition that we're asking you to impose. However, I
24 would like to address just one other matter, and that
25 is that, as in the St. Joe/UtiliCorp merger, we

1 believe that this proposed merger would allow the
2 applicants to gain unduly preferential access to
3 limited transmission facilities.

4 The reason for this, again as discussed in
5 Springfield witness Russell's testimony, is that
6 primarily the merger will result in what are now two
7 separate control areas of two legally separate
8 entities becoming one control area, and due to the
9 rules of the road, so to speak, regarding
10 transmission, they could use the creation of the one
11 control area to the detriment of other transmission
12 system users in the region.

13 Essentially, they could claim as a result of
14 the merger higher priorities for their uses of the
15 system, which would lead to curtailments and higher
16 costs for the other users of the system.

17 Again, I would refer you to Mr. Russell's
18 testimony where he sets forth the conditions. There
19 are other conditions set forth in there as well which
20 we believe address other detriment to Springfield as
21 well as other users of the transmission system, and I
22 believe those issues are scheduled to be heard on
23 Friday.

24 Thank you very much.

25 JUDGE WOODRUFF: Thank you. AmerenUE is not

1 here. So we'll go the Individual Empire Retirees.

2 MR. DEUTSCH: Thank you, Judge Woodruff,
3 members of the Commission.

4 We were late getting into this case. We
5 filed for intervention. I'd like to first thank the
6 Commissioners for their indulgence in allowing us to
7 intervene so late in the proceeding in order to
8 express our concerns about the merger and its effect
9 upon the interests of Empire Retirees.

10 Just to get it out of the way and so that
11 you will quit wondering who all these people behind me
12 are, I would like for all of the Empire retirees who
13 came up here from Joplin today to observe the hearing
14 if they could just stand up so you'll know who they
15 are as opposed to who the witnesses are going to be.
16 Thank you.

17 The good news is I'm not going to call upon
18 all of these people to testify. May not have to call
19 upon all of the witnesses that I have prefiled
20 testimony for.

21 We got into this case, we had a concern
22 which remains about the health insurance and payment
23 of health insurance premiums. Other concerns did
24 exist and do exist from the record, and because we
25 were allowed to intervene and because through

1 intervention we've been able to satisfy the lack of
2 information that was forthcoming prior to
3 intervention, we've been able to satisfy ourselves
4 that many of the other issues dealing with life
5 insurance and surviving spouse benefits and dental and
6 vision and many other questions that these folks had
7 have been resolved, although they may have to be
8 clarified by some questions during the proceeding.

9 So we end up basically with the question
10 that we came here to begin with dealing with health
11 insurance premiums. As I said, we had a lack of
12 information when we first got in and seeming inability
13 to comprehend what it was that the merger agreement
14 proposed to do.

15 We now understand what the merger agreement
16 proposes to do, and we find that it is quite harsh.
17 The merger plan proposes a range of approximately 400
18 to 900 percent increases in the health care costs for
19 Empire Retirees. 70 percent of the Retirees will
20 receive increases in their health care costs of
21 approximately 900 percent. 80 percent of
22 approximately 240 Retirees will receive increases
23 above 600 percent.

24 This is because, we're told, simply UCU,
25 UtiliCorp, does not subsidize insurance premiums as

1 Empire has always done. Until the early '90s Empire
2 paid all the costs, I believe, and now they subsidize
3 and there's a copayment provision.

4 To put it in dollar terms, a typical retiree
5 who now pays about \$325 per year for health insurance
6 premiums at the conclusion of the phase-in of this
7 plan will pay approximately \$4,600 per year. That
8 \$4,600 per year represents in many cases approximately
9 the amount of the pension that many of these retirees
10 receive from working and retiring from EDE.

11 To make matters worse, you might imagine
12 that these retirees are somewhat shocked at the effect
13 of the proposal on them. It also kind of institutes a
14 reverse reward system, a no good deed goes unpunished
15 approach to retirement, because those employees who
16 have worked longest, in some cases 40 years, their
17 entire working career, get the largest increase. They
18 get the 900 percent. The ones who didn't work quite
19 as long, who retired early, minimum time in service,
20 they get the lowest increases.

21 Over ten years -- and I would revert to
22 Mr. Dottheim's notion that we are talking about time
23 frames here, but, in fact, this is a ten-year plan.
24 Things are going to happen in one year, two years,
25 five years, six years. In fact, we're talking about a

1 ten-year plan according to what the company has laid
2 out. In ten years a typical retiree will have an
3 additional \$33,000 of health care costs, and all of
4 this is just to pay the premiums for the coverage.

5 Many of these retirees have worked their
6 whole lives for Empire District, as I said, 40 years,
7 the vast majority of them, in fact. They built this
8 company. They made this company prosperous. They
9 made it an attractive takeover target. They made it a
10 good buy for UtiliCorp.

11 Most of these retirees still live in the
12 service area and they are ratepayers. Keep that in
13 mind in deliberating the public interest here. These
14 are the ratepayers. They do have a role in paying for
15 the punishment that they're going to get.

16 To put it simply, these retirees cannot in
17 almost every case bear the financial burden that's
18 being placed upon them by the merger. These are
19 people who did it all by the book. They did it right.
20 They worked all their lives, raised their families,
21 paid taxes, bought homes, became members of the
22 community, and thought that they were getting to a
23 point where they could retire and put together their
24 financial future in a way that they thought it would
25 work.

1 Now it appears that the premise that that
2 was based upon, the major premise is being withdrawn,
3 and we would suggest for no good reason. And I would
4 also note that these people did not work those years
5 and did not pursue those benefits in order to fund
6 some kind of a plush lifestyle. These are truly the
7 middle class. This is the public. This is the public
8 whose interest is being looked at in order to
9 determine detriment.

10 These people simply wanted to make sure that
11 in their retirement they weren't a burden on anybody.
12 And now we hear in response to concerns about the
13 harsh result for them that maybe the federal
14 government will step up with Medicare funding or
15 prescription drug programs that both presidential
16 candidates at this point are certain to propose to
17 Congress and many other future activities that somehow
18 might eliminate the harm.

19 We would suggest that, of all of the parties
20 in this proceeding, we're the only ones who are not
21 here telling you that we don't like the plan because
22 of what it might do. The retirees have been told
23 absolutely with certainty what it will do. We know
24 what punishment we're facing.

25 These are people who cannot undo their

1 lives. They can't go back. Can they get another job
2 with EDE? Well, if the merger goes through, I hear
3 they're laying off rather than hiring. Can they go
4 back and save more money from their productive years
5 in order to cushion the effect that this merger's
6 going to have? Those years are gone. You can't
7 recapture them.

8 The harm here really rests upon members of
9 the public and in a context where only people who have
10 authority to either stop the harm or stop the merger
11 can do anything for my clients, the retirees.

12 We contend that the Empire Retirees deserve
13 a continuation of their current benefits because they
14 earned them. We view these benefits like deferred
15 compensation. It was a promise that was made and a
16 promise that ought to be kept, a promise that we think
17 is not too big a favor for the Commission to impose
18 upon the merger if it goes through.

19 We do also contend that if the letter, more
20 likely the spirit of Section 386.315 has relevance to
21 this proceeding if for no other reason as an
22 expression of the legislative intent with regard to
23 this type of issue in a case where public utility,
24 which is a regulated entity, which is a lot different,
25 as Mr. Conrad pointed out, to competitive nonregulated

1 entities, is going to participate in the life of this
2 state and make its return in that way, we don't
3 believe that the legislative intent reflected in the
4 statutes can be ignored as an element in determining
5 detriment to the public interest.

6 We believe that during the time that all of
7 these members, all of these retirees were working and
8 were employed at EDE, they achieved these benefits
9 through the process of collective bargaining. They
10 have, you will see from the evidence, not changed a
11 great deal. There's never been a controversy about
12 them until this time.

13 The only reason that it's a controversy now,
14 because we would expect in absence of a merger there's
15 been no indication that the benefits as enjoyed would
16 not continue. We have to assume that it is simply a
17 matter of corporate decision-making regarding merger
18 savings and a cold decision-making process at that.
19 We would suggest that a little more deliberation of
20 the human side of the equation should have been given
21 by the company.

22 We do not believe that anyone could
23 reasonably say that a merger that causes this enormous
24 financial loss and inflicts this much emotional harm
25 to this many of our most vulnerable people that are

1 affected by the merger is not detrimental to the
2 public interest. These people are the public. They
3 are the ones who need to be scrutinized for the
4 effect.

5 I hesitate to say it because I'm not quite
6 sure how it works, but I saw it in the testimony,
7 what's really irritating is how many times they're
8 going to have to pay for these benefits. The
9 employees thought that they were working to defer part
10 of their compensation into a promise of health care
11 and pay for it once.

12 They're ratepayers, and so all those years
13 that they were paying these rates and this Commission
14 was approving the rates, which included a component
15 for the return of the expenses of the health care,
16 they paid again.

17 Now they're being told they have to assume
18 the total payment themselves as part of their
19 retirement income of the premiums and, amazingly, as
20 ratepayers they have to fund the cost to achieve the
21 very reduction that's going to cost them the money.
22 How can that possibly be consistent with the public
23 interest?

24 Finally, I would note that the defects that
25 we see with the merger are really not necessary to be

1 debated because if you look at the proposed savings of
2 \$386 million that are alleged by UCU to be achieved
3 over ten years, the amount of money we're talking
4 about to impose a condition here is minuscule. This
5 is a tiny portion, a very small favor we're asking
6 from the Commission and we have asked from the
7 company.

8 We view not only that it is a very small
9 amount that the company could easily afford, but we
10 have proposed a revenue neutral, basically cost-free
11 solution, and that is to take what is currently an
12 excess in the pension fund, which is overfunded and
13 under the pension rules we believe listed as an asset
14 of the corporation, and apply it to continue the
15 current benefits in the health insurance area for
16 current retirees.

17 We see no reason, and apparently from its
18 surrebuttal testimony I don't think that the company
19 sees any reason, other than that it would prefer to
20 just have the costs, the reduction in costs and the
21 merger savings in order to put before you as an
22 additional reason why you ought to approve the merger.
23 However, again, we're talking about a relatively small
24 amount of money in order to save these people from
25 enormous injury.

1 We believe that the EDE retirees' benefits
2 should be grandfathered as a condition of the approval
3 of the merger. We've taken no position really on the
4 approval of the merger. We think that the
5 continuation of the current health insurance premium
6 subsidy by the merged company would be consistent with
7 the public interest, and for it not to be a condition
8 would make the merger clearly detrimental to the
9 public interest.

10 And we would note in that regard
11 analytically, or at least I would as I listen to the
12 opening statements, the company seems to want to have
13 it both ways here. They first want to talk about
14 detriment to the public interest in the most narrow
15 terms resorting to, of course, the 1934 Missouri
16 Supreme Court case and taking the most minute
17 description of what that is, which is basically, well,
18 if service doesn't deteriorate, if ratepayers can't be
19 shown to suffer, then it's in the public interest.

20 And I tend to dispute whether that's really
21 the test to be employed in any event, but as you
22 consider that, listen to what they have to say on the
23 other side, because they are proposing, as you can
24 hear from the other parties represented here, some
25 pretty novel ideas. They want to have the ratepayers

1 pay for the acquisition costs.

2 And I believe that you will find from the
3 evidence that the reason that they're making such
4 rather novel and extraordinary proposals is that there
5 has been change in the industry. There are effects
6 from deregulation, and UtiliCorp does want to get out
7 in front of the curve and they do want to combine and
8 consolidate. And there may even be a need for this
9 Commission, as I think that Mr. Swearengen is
10 proposing, to take a different approach, to take, as
11 he's proposed, a broader approach to approval of
12 mergers when they are a good idea, to apparently
13 ignore what Mr. Dottheim has suggested is the usual
14 test that if costs exceed the benefits, you just don't
15 do the merger.

16 Maybe they're right. Maybe Swearengen is
17 correct that you have to look beyond that and look to
18 the needs of the industry and the needs for
19 deregulation and what it's going to mean to us, but I
20 would suggest at the same time that a new approach to
21 the public interest and the effects of that kind of an
22 expansive analysis ought to also be considered and
23 that you ought to consider the public interest on the
24 broad level, what it's going to mean to these
25 retirees, what it's going to mean to the employees,

1 the people Mr. Jolley represents.

2 If, in fact, you're going to take an active
3 role in trying to help companies that you regulate to
4 meet the competition, go forward in the future, I
5 think there's a commensurate increase in the
6 responsibility, a commensurate expansion of the
7 detrimental to the public interest standard that you
8 have to take along with that in order to allow such a
9 new approach based solely upon what's good for the
10 industry to take hold in this state.

11 So I would recommend that if, in fact, you
12 do the one, you should do the other. And if you do
13 both, I believe that you would come to the conclusion
14 that a condition needs to be imposed on any merger
15 approval to continue the current benefits enjoyed by
16 EDE Retirees.

17 Thank you.

18 JUDGE WOODRUFF: Thank you. That concludes
19 the opening statements then. We'll take about a
20 15-minute break. Come back at 11:10 by my watch,
21 which would be about 11:15 on the clock in the hearing
22 room.

23 (A recess was taken.)

24 (EXHIBIT NO. 1 WAS MARKED FOR
25 IDENTIFICATION.)

1 JUDGE WOODRUFF: We'll begin with testimony
2 on the Company's overview and policy, I believe is the
3 first on the list.

4 MR. SWEARENGEN: I would call Myron McKinney
5 at this time, please. I have given three copies of
6 Mr. McKinney's direct testimony to the reporter. It
7 has been marked as Exhibit 1.

8 JUDGE WOODRUFF: I have Myron McKinney for
9 both direct and surrebuttal. Is that right?

10 MR. SWEARENGEN: Actually, there are three
11 pieces of his testimony, but the part he's on for this
12 morning is just Exhibit 1, the direct.

13 JUDGE WOODRUFF: Just the direct. Okay.

14 (Witness sworn.)

15 JUDGE WOODRUFF: You may proceed.

16 MR. SWEARENGEN: Thank you.

17 MR. CONRAD: If your Honor please, before we
18 start, we'd offer to speed the process, as we did in
19 the St. Joe case, and we would offer to stipulate that
20 all the witnesses when they're called would
21 acknowledge that the testimony that they have prepared
22 is their own and that the questions that would be
23 asked would be answered in the same way. Certainly
24 the witness can correct them, but I think that will
25 shorten the process up and move things right along.

1 JUDGE WOODRUFF: I have no problem with
2 that. Does anyone have any objection to that being a
3 standard procedure?

4 MR. SWEARENGEN: I think that --

5 JUDGE WOODRUFF: Does everyone understand
6 what was proposed?

7 MR. KEEVIL: Does that mean that is no
8 longer then a subject of inquiry of a witness?

9 JUDGE WOODRUFF: You mean if you had some
10 inquiry about whether or not they actually prepared
11 the testimony?

12 MR. KEEVIL: Yeah. Whether they prepared
13 the testimony and whether they are familiar with the
14 testimony and that sort of thing.

15 JUDGE WOODRUFF: No. You would still be
16 allowed to inquire about that.

17 MR. KEEVIL: So all we're agreeing to is
18 that each individual witness will say that the
19 testimony was prepared by him or her or under their
20 direct supervision?

21 JUDGE WOODRUFF: That is correct.

22 MR. KEEVIL: Okay.

23 MR. SWEARENGEN: I think I understand the
24 rules, and if I understand the rules, Mr. McKinney,
25 I'm going to tender you for cross-examination. You're

1 on your own.

2 JUDGE WOODRUFF: All right. And as I
3 understand the order of cross-examination that was
4 submitted by Staff, it looks like the International
5 Brotherhood of Electrical Workers would be first. Do
6 you have any questions for this witness?

7 MR. JOLLEY: I have several, if I might have
8 just a second, your Honor. I didn't realize I was
9 going to be first.

10 MYRON McKINNEY testified as follows:

11 CROSS-EXAMINATION BY MR. JOLLEY:

12 Q. Mr. McKinney?

13 A. Yes.

14 Q. On page 4 of your direct testimony, you
15 stated that you believe the merger will provide
16 opportunities for your customers, employees and
17 shareholders to achieve benefits that would not be
18 available if Empire were to remain an independent
19 company, and then several lines further down, in that
20 through the elimination of duplicate activities, there
21 will be reductions in operating and maintenance
22 expense.

23 And on page 8, this is related testimony for
24 purposes of my question, that Empire has a dedicated
25 and skilled work force for which it has provided

1 enhanced training over the last few years to assist
2 each employee in maximizing their skills. While the
3 transition teams have not concluded their activities
4 which will lead to the merger of the work forces,
5 needless to say certain duplicative activities will be
6 combined which will lead to the reduction of
7 positions.

8 However, other business units of UtiliCorp
9 will provide expanded opportunities for employees who
10 are able and willing to take advantage of them.
11 Several lines further, you believe the customers will
12 be better served by the merging of the three companies
13 due to the economics of scales which can only be
14 achieved by larger organizations with the ability to
15 spread risk over a larger organization and through the
16 elimination of duplicative functions and activities.
17 My questions have to do with that testimony.

18 It is correct, is it not, that the current
19 projections call for the elimination of around 270
20 jobs all told from among Empire's current employee
21 work force?

22 A. I think that's correct, yes.

23 Q. And that includes 50 bargaining unit jobs,
24 namely jobs that are represented by IBEW Local 1474?

25 A. Yes.

1 Q. And it's also true, is it not, that this
2 number of 50 could be increased or decreased based
3 upon further and final determination by the transition
4 team?

5 A. I think that's correct. The transition
6 teams have not completed all the work at this point.

7 Q. And it's also true, is it not, that under
8 the plan there's a likelihood that the remaining
9 employees who are currently employed by Empire, namely
10 those who do not suffer job elimination, will be
11 required to pay the cost of their health insurance
12 premiums at some point, whereas Empire currently pays
13 the majority share of health premium costs?

14 A. My understanding is that the employees who
15 remained on the payroll would, 18 months after the
16 closing of the merger, go on to the UtiliCorp health
17 care plan.

18 Q. And as far as payment of premiums, the
19 results of that would be what?

20 A. I'm not sure exactly what the payment of
21 premium is. I know UtiliCorp has a comprehensive
22 health care plan. I understand it's somewhat a
23 cafeteria plan and employees would have some selection
24 in the amount of coverage they would receive and how
25 much they would pay.

1 Q. But they would also pay a substantially
2 higher part of the premium than they currently pay as
3 an Empire employee; is that correct?

4 A. I'm not sure about that.

5 Q. In light of your testimony, and particularly
6 in connection with the job eliminations, what are the
7 opportunities of bargaining unit employees as a result
8 of the merger that would not be available to them if
9 Empire were to remain an independent company?

10 A. I think UtiliCorp has facilities in addition
11 to would be the Empire/St. Joe/MoPub property. They
12 have properties in Kansas City. They have properties
13 in Canada. They have properties overseas.

14 I think there's obviously a much larger work
15 force there that the opportunity would be to bid into
16 other jurisdictions. I'm not sure whether or not
17 their seniority would carry forward, but I think they
18 would have opportunity within the company to find
19 other jobs in other places.

20 Q. Now, as to the bargaining unit positions
21 particularly --

22 A. Yes.

23 Q. -- linemen, electricians, storage employees,
24 production workers, who am I missing here?

25 A. Meter readers.

1 Q. Meter readers. Is it fair to say that the
2 opportunities for advancement or placement with other
3 possessions of UtiliCorp around the country are
4 limited at best?

5 A. I don't know that I could concur with that.

6 Q. So that a lineman who loses his job can
7 maybe be placed by UtiliCorp at one of its locations
8 somewhere else?

9 A. I think UtiliCorp would be -- would be wise
10 to look at those people, and I think UtiliCorp
11 represent good managers. And if they have a skilled
12 work base that they can draw from to their other
13 locations, it would be a mistake on their part not to,
14 and I wouldn't expect them to make that mistake.

15 Q. Do you have any way of having an opinion as
16 to whether or not employees who lose their jobs at
17 Empire would be able to carry their seniority with
18 them when they hired into other units of UtiliCorp
19 elsewhere around the country?

20 A. I don't have any basis for an opinion on
21 that.

22 Q. And as to the bargaining unit employees who
23 do not suffer job elimination, what is the likelihood
24 of advanced career opportunities as a result of the
25 merger that they would otherwise not have if Empire

1 remained a stand-alone?

2 A. I think for the bargaining unit employees
3 that retain their jobs, again, there's a larger
4 organization there. My understanding is that jobs
5 from UtiliCorp are spread across the -- the openings I
6 should say are spread across the organization. They
7 would have opportunity to look at those in different
8 places. Certainly there should be no diminution of
9 opportunity for those employees.

10 Q. When you testified about the career
11 opportunities for Empire employees, by and large
12 should you not primarily have in mind administrative
13 type personnel with skills that have a broader range
14 of applicability than the specific skills of a lineman
15 or an electric or a production worker?

16 A. To be quite honest, that was the group I was
17 thinking more in terms of, but I don't know that the
18 groups are mutually exclusive.

19 Q. As to bargaining unit employees, and
20 particularly linemen, electricians, production
21 workers, meter readers, is there duplication in the
22 activities of Empire District employees with
23 activities of currently employed UtiliCorp employees?
24 I mean, do you have the same linemen climbing the same
25 poles?

1 A. Most poles would only hold one lineman at a
2 time, so I wouldn't think so, no.

3 Q. But UtiliCorp linemen are not climbing poles
4 that are currently climbed by Empire District
5 employees?

6 A. No.

7 Q. And they're not working in the same power
8 plants?

9 A. Not as a normal course of events.

10 Q. And they're not reading the same meters?

11 A. No.

12 Q. So is there by and large a duplicative set
13 of activities in connection with bargaining unit
14 employees that exists or a synergy that exists in
15 connection with bargaining unit employees between
16 Empire and UtiliCorp?

17 A. I think there are always synergy
18 possibilities. If you look at construction crews,
19 there may be opportunity to combine construction work.
20 I think there's an opportunity for synergy certainly.

21 Q. But have there been any studies to show what
22 those synergies would be, what those opportunities
23 would yield?

24 A. I think that's exactly what the transition
25 teams are doing now.

1 Q. Okay. Now, in response to Interrogatories
2 by IBEW, UtiliCorp responded that there have been no
3 studies as to UtiliCorp's ability to provide safe and
4 reliable service with the reduction of bargaining unit
5 personnel. Have there been any such studies since
6 that time, to your knowledge?

7 A. I can only speak to studies that might have
8 been done at Empire District, and there have been
9 none.

10 Q. Now, if the merger is approved and becomes
11 effective, will the service area currently serviced by
12 Empire employees continue to be serviced by what is
13 currently the Empire work force?

14 A. That's my understanding, with the
15 possibility that some of the areas on the northern
16 part of our service territory could possibly be
17 interfaced with the MoPub properties.

18 Q. And there's been -- have there been any
19 studies or determinations made as to that up to this
20 point?

21 A. I don't think there have been any formal
22 studies. Again, I think that's part of the transition
23 team has looked at that possibility.

24 Q. And are continuing to look at it?

25 A. Yes, sir.

1 Q. So assuming the service area currently
2 serviced by Empire's employees remains the same and if
3 jobs are eliminated within the bargaining unit
4 resulting in fewer bargaining unit employees
5 performing that work, production, power house
6 employees, linemen, electricians, meter readers, et
7 cetera, these remaining employees will be performing
8 more work, would they not, with decreased -- would
9 there be fewer people performing more work?

10 A. I don't know that you can necessarily come
11 to that conclusion. You would have fewer employees.
12 The assumption that the amount of work is the same,
13 then you might rely more on outside contractors to do
14 some portion of the work that's being done by
15 employees today.

16 Q. Now, currently Empire regularly utilizes the
17 services of outside contractors?

18 A. Yes, we do.

19 Q. And these are duplicative of tasks performed
20 by bargaining unit employees?

21 A. No, not in every case. For instance, high
22 voltage construction, we typically have contracted
23 that kind of work for a period of several years.
24 We've always augmented our work force with outside
25 contractors, but the tasks are not necessarily

1 duplicative. Some are. Some are not.

2 Q. Okay. And if, in fact, it turns out that
3 you are servicing the same area with the same amount
4 of work with fewer employees, it may result that you'd
5 have to increase the number of outside contractors to
6 make up for the slack?

7 A. I think that's a possibility, but that's
8 really a decision that UtiliCorp would have to make.

9 Q. And in your experience, is the use of
10 outside contractors more expensive from a labor cost
11 standpoint than the utilization of Empire's own
12 employees?

13 A. There are a lot of ways to slice that. If
14 you kept contractors on all the time, probably yes.
15 You bring them in for specific jobs at specific costs,
16 generally it's less expensive than trying to keep
17 employees on staff on a 24 or a 7 by 24, 365 day a
18 year basis. So it's a balancing act to try to keep
19 the costs in check.

20 Q. Would it be safer to say that over the
21 recent past at least Empire has, in fact, utilized the
22 services of outside contractors on a regular basis?
23 Maybe not the same contractor, but at any given point
24 in time you've got three or four outside contractor
25 crews working?

1 A. Most of the time that would be true. Most
2 of the time they're working on specific projects that
3 they have bid. We've determined that they can do
4 those jobs more efficiently than we could have done
5 them ourselves. We do have generally one or two what
6 we call time and material contractors on board doing
7 miscellaneous work.

8 Q. And outside contractor costs include
9 equipment, overnight travel, lodging, et cetera, in
10 addition to the wage paid to employees; is that right?

11 A. Generally, they bid the contract on a
12 contract basis or the time plus crews. I'm sure all
13 that gets worked in. We don't see it specifically,
14 though.

15 Q. But there's a bottom line number that you
16 believe takes those factors into account?

17 A. Yes. I might just add, Mr. Jolley, that
18 there are a number of contractors that live in our
19 area, that actually make their home in the Joplin
20 area. So not all those people are travelers.

21 Q. And some are?

22 A. Some are.

23 Q. Some are from outside the area and some are
24 within the area?

25 A. Right.

1 Q. But it is accurate to say that by and large
2 you regularly have three or four outside contractor
3 crews performing work that is similar, if not
4 identical, to work being performed by current Empire
5 employees?

6 A. You'd have to look at it over time.
7 Certainly at times you could find three or four
8 contractors. At times you might be down to one or
9 two.

10 Q. What is it now, do you know?

11 A. I'm not sure. I think three. That would be
12 subject to check.

13 Q. And just to clarify or to reconfirm, are you
14 aware of any studies as to whether the reduction in
15 bargaining unit employees who work in safety sensitive
16 positions will not have an adverse effect on the
17 safety of such workers and, therefore, safety to
18 customers?

19 A. I'm not aware of any studies of that type.
20 However, the model that UtiliCorp uses certainly
21 incorporates safety factors into their model. I think
22 their safety record is up to industry standards at the
23 very least. So I don't think that I could agree that
24 there's any immediate detriment to the safety of the
25 employees or the customers through the use of that

1 model.

2 Q. But we don't know, do we, what the UtiliCorp
3 experience is by way of how many employees in given
4 classifications, in fact, are working within a given
5 geographic area with a given number of jobs and tasks
6 to perform?

7 A. Not this morning we don't.

8 MR. JOLLEY: Might I have one moment,
9 please?

10 JUDGE WOODRUFF: Certainly.

11 BY MR. JOLLEY:

12 Q. Your outside contractors frequently are
13 called upon to perform tasks for Empire in connection
14 with the distribution and sometimes transmission of
15 electrical power?

16 A. Yes.

17 Q. To your knowledge, these contractor crews
18 insist on crews of at least three or four employees;
19 is that right?

20 A. I think typically they run three-man crews,
21 yes.

22 Q. Three-man crews. And this would be in part
23 due, would it not, to the fact that rubber gloving is
24 considered dangerous in many quarters and you've got
25 two up in the basket and one down as an extra set of

1 eyes; is that right?

2 A. I don't think I'd go that far. The reason
3 most of them run three to four-man crews is typically
4 they're doing heavier construction when we bring them
5 onto the system to do construction work, and it's
6 heavier construction, heavier equipment, bigger poles,
7 and I think that's the reason they're using three-man
8 crews. It's more construction type work. Where our
9 two-man crews might set a pole with a private line or
10 something of that nature. It's a difference in the
11 work as much as anything else.

12 Q. But the outside contractors use three-man
13 crews, do they not, for all work, including the kind
14 of work that your two-man crews perform?

15 A. I think that's probably right.

16 Q. And most of your crews, in fact, are
17 three-man crews?

18 A. Most of them. We do have some two-man.
19 Yes, that's correct?

20 A. And the rubber gloving work that's done by
21 two-man crews is generally lesser and less unsafe, if
22 there's such a concept, than the rubber gloving that's
23 done by your three-man crews; is that right?

24 A. I believe less unsafe would be safer, if I
25 understood your term right.

1 Q. Right.

2 A. I can't speculate or I can't agree to that.

3 Q. All right. If there is a 35 percent
4 reduction in linemen and a 16 percent reduction in
5 electricians, do you see how the work is going to get
6 performed in the same geographic area without reducing
7 to two-man crews?

8 A. I think the -- from what I understand, the
9 standard at UtiliCorp is a two-man crew.

10 Q. So it would not be out of sight for us to
11 speculate at least with some basis in fact that the
12 reduction in linemen and electricians, in fact, would
13 result in resort to two-man crews rather than
14 three-man crews?

15 A. That's not out of reason to speculate that,
16 no.

17 Q. And that's the way UtiliCorp does business?

18 A. That's my understanding.

19 Q. And if you have an insufficient number of
20 linemen and electricians and are required to utilize
21 an increasing amount of outside contractor work, these
22 outside contractors, in fact, require three-man crews
23 at a minimum?

24 A. I believe that's correct, that they do run
25 three-man crews.

1 Q. To your knowledge, linemen/electricians, the
2 training they've received, has that been training as
3 two-man crews or three-man crews at Empire?

4 A. I think the --

5 Q. Has they received -- strike that.

6 Has there been any training for work as a
7 two-man crew?

8 A. I can't answer that. I'm not sure. I know
9 we have done an extensive lineman training course
10 since I became president of the company. We've spent
11 a lot of money and a lot of time and effort, and
12 safety is certainly a large part of that training
13 process and we have done that.

14 I'll go on to say that just because you have
15 two-man crews doesn't dictate unsafe working
16 conditions. Typically what's done is, if you have
17 two-man crews and you have jobs that might be a little
18 more strenuous or challenge a two-man crew, you gang
19 crews and you end up with two two-man crews doing the
20 work. So to jump to the conclusion that two-man crews
21 is unsafe is an unwarranted jump.

22 Q. Because sometimes that is compensated for by
23 two two-man crews?

24 A. That's correct.

25 MR. JOLLEY: I have no other questions.

1 JUDGE WOODRUFF: Thank you. Before we go on
2 with cross-examination, I think in the confusion about
3 the stipulation about the qualifications, I don't know
4 that Exhibit 1 was ever offered into evidence. Do you
5 wish to offer it at this time?

6 MR. SWEARENGEN: I'll be glad to. I'll
7 offer Exhibit 1 into evidence.

8 JUDGE WOODRUFF: Exhibit 1 has been offered
9 into evidence. Are there any objections to its
10 receipt?

11 (No response.)

12 Hearing none, it will be received into
13 evidence.

14 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

15 MR. SWEARENGEN: Thank you.

16 JUDGE WOODRUFF: Thank you. All right.
17 Then the next cross-examination will be from the
18 Empire Retirees.

19 MR. DEUTSCH: Thank you, your Honor. For
20 the record, it's my understanding from the list of
21 issues that was filed by the Staff, from the schedule
22 matrix that has been produced by Mr. Swearengen, that
23 there's an agreement that Mr. McKinney will stand
24 cross-examination at this time on his direct
25 examination and that he intends to reappear, I believe

1 it is scheduled for Thursday, to testify as to his
2 surrebuttal and supplement surrebuttal testimony which
3 deals specifically with retiree health insurance.

4 I would ask clarification from the Bench if
5 I'm correct in that understanding, in which case I
6 have no questions with regard to Mr. McKinney's direct
7 testimony at this time.

8 JUDGE WOODRUFF: I see nods of acquiescence
9 in that from the attorneys. Does anyone have any
10 disagreement with that assumption?

11 MR. SWEARENGEN: That's been our
12 understanding, your Honor. He will be back Thursday.

13 JUDGE WOODRUFF: Okay. He will ask his
14 specifics questions then on Thursday.

15 MR. DEUTSCH: I have no questions, then.
16 Thank you.

17 JUDGE WOODRUFF: And Natural Resources?

18 MS. WOODS: I have nothing. Thank you.

19 JUDGE WOODRUFF: ICI and Praxair?

20 MR. CONRAD: Just a couple things, your
21 Honor.

22 CROSS-EXAMINATION BY MR. CONRAD:

23 Q. Good morning, Mr. McKinney.

24 A. Good morning, Mr. Conrad.

25 Q. Seems like old times, doesn't it?

1 A. Deja vu, yes.

2 Q. As I recall, the last couple, three rate
3 increases that you-all have had have been settled;
4 isn't that correct?

5 A. Yes, that's right.

6 Q. And you mentioned in earlier cross that you
7 were president. When did you take over for Mr. Lamb?

8 A. In March of 1997.

9 Q. Since then or even before that, I think you
10 occasionally appeared as what we've come to call the
11 policy witness for the company?

12 A. Yes.

13 Q. On those rate increases, do you recall ever
14 having testimony about the Hope and Bluefield cases?

15 A. Yes, I do.

16 Q. And the basic tenor of that testimony would
17 be that costs for the company had increased?

18 A. Yes.

19 Q. And that was why you were in asking for a
20 rate increase?

21 A. Generally, that costs had increased through
22 one reason or another, yes.

23 Q. And that if the costs had increased and the
24 company was not given a rate increase, that the
25 shareholders would be impacted adversely by that?

1 A. Yes.

2 Q. Now, let's talk for just a second about a
3 rate decrease. In your career with Empire, have you
4 ever you had your rates decreased?

5 A. Yes, as a matter of fact, we have.

6 Q. What was the basis for that?

7 A. 1996 tax reform act was a startling event
8 and diminution of regulatory lag. They rolled down
9 immediately.

10 Q. Well, I'm glad you mentioned regulatory lag
11 because that was on my pad here. Let's talk for a
12 second about that. During the period of time that
13 your company faces increased costs, and until the time
14 that additional rate relief is implemented, that's
15 what you're talking about on the regulatory lag,
16 correct?

17 A. Yes.

18 Q. And during that period of time --

19 A. Let me say, that's about the only way I've
20 ever experienced it, Mr. Conrad.

21 Q. Okay. But that's the regulatory lag that
22 you're talking about?

23 A. It could go the other way.

24 Q. And during that period of time, the
25 shareholders would be detrimentally impacted?

1 A. Yes.

2 Q. Now, turning back to that rate decrease
3 case, the reason for that, I take it, was a cost
4 reduction?

5 A. In taxes.

6 Q. So the overall cost structure of the company
7 that it was having to pay went down?

8 A. That's correct.

9 Q. And the regulatory lag that did not occur
10 then went to address what would have otherwise been a
11 detriment to the ratepayers, correct?

12 A. If you assume that all other things being
13 equal, yes.

14 Q. Now, if the regulatory plan here is
15 rejected, what are your expectations for the merger?

16 A. I think if the regulatory plan is rejected,
17 both UtiliCorp and Empire will have to look at the
18 situation and make an assessment at that point in
19 time.

20 Q. So it would not automatically result in the
21 rejection of the merger; is that correct?

22 A. That probably is more appropriately asked of
23 the UtiliCorp witnesses. They're the ones making the
24 investment.

25 Q. Well, be assured that we'll ask them in due

1 course, but I'm asking you right now from the
2 perspective of your company as a partner in the
3 merger.

4 A. Are we a partner in the merger, is that the
5 question?

6 Q. Yeah.

7 A. I want to be sure I understand.

8 Q. You are a partner in the merger, aren't you?

9 A. We are a merger partner.

10 Q. It concerns two --

11 A. Yes.

12 Q. -- joint applicants?

13 A. Yes, we are a joint applicant.

14 Q. What's your view on it?

15 A. On what?

16 Q. On if the question if the regulatory plan
17 that has been proposed were rejected by the
18 Commission, would you still go forward with the merger
19 from the perspective of Empire?

20 A. From the perspective of Empire, as long as
21 UtiliCorp is willing to close the deal at 29.50 a
22 share, we certainly will go forward with it. That's
23 my perspective.

24 Q. And the 29.50 per share is how much per
25 share above what the book value is?

1 A. The book value is around 13.50 to 13 -- I
2 think at the time we closed the merger it was about
3 13.75, 13.80, somewhere in that range.

4 Q. And the ultimate acquisition premium that
5 has been talked about at least in opening statements
6 would be determined at that time, is that correct,
7 when you close?

8 A. That's correct, yes.

9 Q. Where does that acquisition premium go?

10 A. Where does the premium go?

11 Q. Uh-huh.

12 A. Goes to the shareholders of Empire District,
13 many of whom are in this room.

14 Q. How many shareholders do you have for
15 Empire?

16 A. Around 11,000, I believe.

17 Q. Think they could all fit in here?

18 A. I doubt it.

19 Q. Speaking about growth, I understand that
20 you've experienced in the last few years some growth
21 in your service territory particularly down in
22 Branson?

23 A. That growth has slowed in the last two to
24 three years. In the early '90s we had some
25 significant growth in the Branson area, yes.

1 Q. Has it reversed?

2 A. Has the Branson area?

3 Q. Uh-huh.

4 A. No, it hasn't reversed. We're still

5 experiencing growth there, just not at the 12 to 14

6 percent rate that we had.

7 Q. Now, as you hook up -- is that growth

8 basically additional customers or growth of load of

9 existing customers?

10 A. Both actually. During the early '90s it was

11 probably more attributed to the growth of additional

12 customers.

13 Q. Well, let's look at that period for just a

14 moment, Mr. McKinney. When you added an additional

15 customer, was it typically residential or was it a

16 theater or was it some palatial home for somebody

17 moving from Nashville or what?

18 A. All of the above actually.

19 Q. Mostly, though, what?

20 A. A lot of commercial in the early '90s, and

21 that has shifted more to additional residential today.

22 Q. Now, the rates that you were charging those

23 people to hook them up and to provide service to them

24 were rates that were set by the Commission, right?

25 A. Rates --

1 Q. Set by this Commission?

2 A. I have to argue with that. The rates are

3 approved by the Commission.

4 Q. Okay.

5 A. They don't write the rates.

6 Q. In the sense -- well, I don't want to

7 quibble, but in the sense of the agreement that a

8 couple of the cases have resulted in, the Commission

9 approved the agreement that established a level of

10 rates?

11 A. That's correct.

12 Q. So by questioning that, you're not -- you're

13 not suggesting that the Commission has no authority

14 over rates?

15 A. Oh, heavens no.

16 Q. But that growth you indicate has subsided,

17 but it's still there. Has that growth been profitable

18 to the company?

19 A. I think it's becoming more profitable with

20 time. There was a tremendous amount of investment

21 that went in early on. It's those facilities that we

22 built are filling in that is becoming more profitable.

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

24 JUDGE WOODRUFF: Thank you. City of

25 Springfield?

1 MR. KEEVIL: No questions for this witness
2 on this issue.

3 JUDGE WOODRUFF: Thank you. Public Counsel?

4 MR. MICHEEL: Yes.

5 CROSS-EXAMINATION BY MR. MICHEEL:

6 Q. Mr. McKinney, is it true that Empire began
7 installing fiberoptic cables in 1996?

8 A. In that time frame, yes.

9 Q. And is it correct that those fiberoptic
10 cables were installed by Empire employees?

11 A. To some extent. I think some have been
12 installed by contractors as well.

13 Q. And is it correct that those fiberoptic
14 cables by and large have been installed in Empire
15 right of ways?

16 A. Yes.

17 Q. Is it correct that Empire's regulated
18 business has never been compensated for the
19 unregulated use of those fiberoptic cables?

20 A. I don't think that is correct.

21 Q. Is it correct that Empire initially
22 installed those fiberoptic cables related to their
23 regulated business?

24 A. That was the original installation of the
25 fiber, yes. Let me be perfectly clear, though, if I

1 might. Some has been added that is not related to our
2 business.

3 Q. But it's correct that Empire's fiberoptics
4 were intended to be used primarily by Empire?

5 A. In the beginning, that's true.

6 Q. And it's correct that the excess capacity of
7 the lines is being leased out; is that correct?

8 A. That's correct.

9 Q. And it's correct that the fiberoptic lines
10 are not included in rate base; is that correct?

11 A. That's correct.

12 Q. It's correct that no payments for the use of
13 the right of ways, poles, ducts, underground conduits
14 have been made by the non-utility operations; is that
15 correct?

16 A. I think that is correct, but it's subject to
17 check.

18 Q. What would we check?

19 A. I'd have to check with our records.

20 Q. Would you accept that you answered a Data
21 Request to us that said that very line? Have you
22 reviewed Mr. Kind's testimony?

23 A. I have. It's been some time.

24 Q. Okay. Is it correct that the company
25 received revenues in the amount of approximately

1 \$1.5 million for fiber services from 6/1/99 to
2 8/12/99?

3 A. I don't have that number in my head. I'm
4 sorry. If you're telling me we've submitted a Data
5 Request to that extent, I would accept that.

6 Q. So you wouldn't quibble if that's what your
7 Data Request responses say?

8 A. No.

9 Q. I believe Mr. Jolley talked to you about job
10 losses resulting from the merger. Did I hear you
11 correct when you said that there would be 270 jobs
12 lost as a result of the merger?

13 A. Yes.

14 Q. How many -- presently, how many employees
15 does Empire have?

16 A. Roughly 650, in that range.

17 Q. So over a third of the jobs will be lost; is
18 that correct?

19 A. Yes. I need to clarify one thing, though.
20 On the 271 jobs that are eliminated, there's 60 jobs
21 that are created as well. So the net loss is 211.

22 Q. So it's still approximately a third of your
23 current work force?

24 A. A little less than a third.

25 Q. Do you consider those reductions in jobs as

1 a benefit of the merger?

2 A. I have trouble classifying it that way. I
3 think it's a necessary part of mergers. I certainly
4 would -- to the employees involved, I wouldn't try to
5 pass that off as a benefit. It certainly isn't.

6 Q. So the one-third job loss wouldn't in your
7 mind be a detriment; is that correct?

8 A. It's an unfortunate fact of mergers and
9 acquisitions. That's -- when you put two
10 organizations together, there's some savings that come
11 out of it, and that's part of where those savings
12 arise.

13 Q. But it's not a benefit; is that correct?

14 A. It's not a benefit to the employee who's
15 losing his job.

16 Q. And so the converse of benefit is detriment;
17 is that correct?

18 A. In a very simple world, yes.

19 Q. Is it correct that there's an advisory board
20 that you negotiated as part of the merger agreement?

21 A. Yes.

22 Q. And what's the term of that advisory board?

23 A. Three years.

24 Q. Is it correct that the advisory board is
25 just as the name indicates, it's advisory, UCU does

1 not have to accept any of those recommendations?

2 A. I think that's right. It is advisory.

3 Q. So it's they will if they want to; is that
4 correct?

5 A. I think they certainly should. If they're
6 going to have an advisory board and set that board up
7 to get input from Empire service territory, I think
8 they would be foolish not to accept the
9 recommendations, but I don't know that they're
10 necessarily bound to.

11 Q. Are you going to sit on the advisory board?

12 A. I don't know.

13 Q. With respect to the approximately 200 people
14 that are losing their jobs, what's their severance
15 package?

16 A. Depends on where they are in the company,
17 how long they've worked for the company. It varies.

18 Q. Do you plan to be employed by UCU after
19 the -- assuming the merger closes?

20 A. At this point that's undetermined, but I
21 certainly have no guarantee of that.

22 Q. Do you have a severance package?

23 A. Yes, I do.

24 Q. Is your severance package comparable to the
25 severance package that the rank and file employees

1 will receive?

2 A. It's larger.

3 Q. Could you give me an idea of magnitude how
4 much larger?

5 A. My severance package is three years' salary.

6 Q. And could you give me a ballpark of what
7 your salary is?

8 A. Do I have to?

9 Q. Well, I think it's part of a public document
10 before the SEC, so I mean --

11 A. Yeah. It was \$206,000 in 1999.

12 Q. So you're going to be getting approximately
13 \$600,000; is that correct?

14 A. Pretax.

15 Q. And what's the average employee who's going
16 to lose their job, what are they going to receive?

17 A. I don't have that number.

18 Q. Do you think it's something less than the
19 \$600,000 you're going to receive?

20 A. I would suspect so, yes.

21 Q. Let me ask you this. There's been a lot of
22 talk about the regulatory plan. What input, if any,
23 did Empire have into the development of the regulatory
24 plan?

25 A. We met with UtiliCorp on at least a couple

1 of occasions in the development of the regulatory
2 plan, particularly with concerns about the State Line
3 rate case, getting that power plant in the rate base.

4 Q. Other than the, what we're calling the
5 premoratorium rate case, I think that's the euphemism
6 that we're utilizing in this proceeding, did you have
7 any other input, you being Empire, with respect to
8 that regulatory plan?

9 A. I think our contribution was primarily
10 restricted to the premoratorium rate case.

11 Q. And I guess your -- Empire's view of that
12 was there needs to be a rate case before the
13 moratorium so that the State Line plant can be placed
14 in Empire's current rate base; is that correct?

15 A. Well, really our concern with that is that
16 we're making a significant investment in the State
17 Line facility, and we need to get that in the rate
18 base with or without a merger.

19 MR. MICHEEL: Thank you very much for your
20 time, Mr. McKinney.

21 JUDGE WOODRUFF: Thank you. For Staff?

22 MR. DOTTHEIM: Yes, thank you.

23 CROSS-EXAMINATION BY MR. DOTTHEIM:

24 Q. Good morning, Mr. McKinney.

25 A. Good morning.

1 Q. Mr. McKinney, do you have a copy of the
2 Empire/UtiliCorp Agreement and Plan of Merger?

3 A. Not with me, I don't.

4 Q. What role did you play in the drafting of
5 that document?

6 A. In the drafting of the document? The
7 document was drafted by the attorneys. Mr. Fancher
8 and I were primarily responsible for reviewing the
9 drafts and agreeing to the language in the drafts.

10 Q. And you have agreed to the language in the
11 Agreement and Plan of Merger that was executed?

12 A. Yes.

13 Q. What is the present termination date of the
14 Agreement and Plan of Merger?

15 A. I believe the present termination date is
16 12/31/00, the end of this year.

17 Q. Can that date be extended?

18 A. It can be extended, it's my understanding,
19 by the consent of both boards of directors.

20 Q. If the Commission does not issue an Order by
21 December 31, 2000, what is your present expectation as
22 to what Empire would do in regards to possible
23 extension of the Agreement and Plan of Merger?

24 A. My supposition is that we would agree to an
25 extension.

1 Q. Empire is before a number of other state
2 commissions respecting the merger with UtiliCorp, is
3 it not?

4 A. Well, three others, yes.

5 Q. And those three others are Kansas, Oklahoma
6 and Arkansas?

7 A. That's correct.

8 Q. Could you provide the status of those
9 applications in those three other jurisdictions?

10 A. The three other jurisdictions are all
11 scheduled for hearing. Arkansas is scheduled for the
12 19th of this month. Oklahoma and Kansas are later.
13 They're in October, and I can't tell you the exact
14 dates today.

15 Q. Have any of those jurisdictions given any
16 indication that they would not render a decision until
17 after the Missouri Commission has rendered a decision
18 regarding the merger?

19 A. I don't think I've seen anything in the
20 testimony that would indicate that, no.

21 Q. Are you otherwise aware of an indication
22 that that is the fact in any of the other three
23 jurisdictions?

24 A. Just through rumors that I hear, but I have
25 no factual knowledge.

1 Q. Can you be more explicit as to what that
2 source of information is?

3 A. Just things that I hear reported from the
4 other staffs.

5 Q. And could you identify what you hear
6 reported from the other staffs in those three
7 jurisdictions?

8 A. Well, I think basically the staffs in the
9 other jurisdictions tend to look at the Missouri case
10 as the bellwether case. Obviously 87 percent of our
11 business is in Missouri, and that's where the emphasis
12 on the case is.

13 Q. I'd like to direct you to your testimony
14 that's been marked Exhibit 1, and in particular if I
15 could direct you to page 9, and I'd like to direct you
16 to the very first line on page 9. It's the
17 continuation of a sentence that begins on the prior --
18 on the prior page.

19 You state, do you not, As I have stated
20 previously, this is a unique opportunity to combine
21 three Missouri companies into one utility that will
22 definitely serve the best interests of all
23 constituencies, including the customer? You state
24 that, do you not?

25 A. Yes, I do.

1 Q. Are the three Missouri companies that you're
2 referring to Empire, St. Joseph Light & Power and
3 UtiliCorp?

4 A. Yes.

5 Q. What makes Empire District Electric a
6 Missouri company?

7 A. Well, we're chartered in Kansas, as you well
8 know, but our primary operation is in Missouri. Our
9 headquarters are in Missouri. 87 percent of our
10 business is in Missouri. So we do consider ourselves
11 a Missouri company.

12 Q. If you know, being chartered in Kansas, does
13 that cause Empire not to file certain financing
14 applications with the Missouri Commission?

15 A. I don't -- I'm honestly trying to recall if
16 there may be something there, and there may be. I'm
17 not sure.

18 Q. Thank you. What makes UtiliCorp a Missouri
19 company?

20 A. Well, a Missouri utility company, much the
21 same as Empire, that the MoPub operation is a Missouri
22 operation, has been for many, many years. It has been
23 one of the core units of UtiliCorp's business.

24 Q. Do you know whether UtiliCorp is
25 incorporated in Missouri?

1 A. No. I think they're in Delaware.

2 Q. What makes St. Joseph Light & Power a
3 Missouri company?

4 A. I don't know where they're incorporated, but
5 their operations are entirely in the state of
6 Missouri, to the best of my knowledge. All of their
7 employees, customers and revenues are in Missouri.

8 Q. I'd like to refer you again on page 9 to the
9 next sentence, The interests of all concerned will be
10 best served by the Commission assisting in the
11 culmination of this merger agreement.

12 How should the Missouri Commission assist in
13 the culmination of this merger?

14 A. I think they can certainly assist in the
15 culmination of it by approving the application as
16 presented and approving the regulatory plan as
17 presented.

18 Q. As a policy matter, should the Missouri
19 Commission be assisting in culminations of mergers?

20 A. I think if it's in the best interests of the
21 public, yes. If we can take three small Missouri
22 utilities and mold them into one utility that has more
23 breadth, more stature, more economies, is a bigger
24 player in the marketplace, certainly I think that the
25 Commission should look at that if customers are well

1 served by that.

2 Q. Thank you, Mr. McKinney. In the future if
3 you'd please just answer my questions yes and no and
4 if you need to qualify, your counsel can ask you on
5 redirect.

6 A. I'm sorry. I was just trying to be
7 complete.

8 Q. Thank you.

9 Again on page 9, you make reference in the
10 very next sentence that begins on line 4 to
11 out-of-state or even foreign interests when you make
12 reference to the sale of smaller utilities. How do
13 you define the term out-of-state interests?

14 A. I think my intent when I wrote this
15 testimony was utilities that are by and large operated
16 outside the state of Missouri, that are probably
17 chartered outside the state of Missouri.

18 Q. How do you define foreign interests?

19 A. Those that are are not chartered or
20 operating or not headquartered, I should say, in the
21 United States.

22 Q. Would it be detrimental to the public
23 interest for Empire District Electric to merge with a
24 non-Missouri company?

25 A. Not necessarily.

1 Q. You don't have a copy of the Agreement and
2 Plan of Merger?

3 A. Not with me, no.

4 Q. Might your counsel have a copy?

5 MR. SWEARENGEN: Steve, I didn't bring mine
6 with me.

7 MR. DOTTHEIM: Okay. I'll provide one,
8 then.

9 BY MR. DOTTHEIM:

10 Q. Mr. McKinney, I'm going to hand you a copy
11 of the UtiliCorp United and Empire District Electric
12 Company Agreement and Plan of Merger.

13 A. Uh-huh.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. Do you recall whether that's a schedule
17 that's attached to the direct testimony of
18 Mr. Robert K. Green?

19 A. I believe it is, yes.

20 Q. I'd like to direct you to page 48, page 48
21 of 55. Again, I believe that that document is a
22 schedule to the direct testimony of Mr. Robert K.
23 Green.

24 MR. DOTTHEIM: I have a copy of that page in
25 case the Bench may not have -- everyone on the Bench

1 may not have a copy.

2 BY MR. DOTTHEIM:

3 Q. Mr. McKinney, I'd like to direct you to
4 Section 701(b).

5 A. Yes.

6 Q. And if you would just review that section,
7 please.

8 A. Yes.

9 Q. Okay. In particular, I'd like to refer you
10 on line 5, starting --

11 A. I'm sorry, Mr. Dottheim. My copy doesn't
12 have the lines identified. You'll have to read where
13 to start.

14 Q. I'm sorry. Certainly. And the lines are
15 not numbered. I'd like to direct you to the clause
16 that begins, None of such approvals.

17 A. Yes, I'm with you.

18 Q. Okay. And it states on that line,
19 continuing further, None of such approvals are final
20 order -- excuse me. None of such approvals or final
21 orders shall require or be conditioned upon any
22 requirement that any other company, UCU or the
23 surviving corporation provide any undertaking or
24 agreement or change or dispose of any assets or
25 business operations or take or refrain from taking any

1 other action which would cause individually or in the
2 aggregate either, one, a UCU material adverse effect,
3 or two, and the sentence continues on. Did I read
4 that accurately?

5 A. Yes, I believe you did.

6 Q. Then I'd like to direct you three lines down
7 to the sentence that begins, For purposes of this
8 section, the determination of UCU material adverse
9 effect may, without limitation, include the failure of
10 the Public Service Commission of the State of
11 Missouri, MPSC, to articulate prior to closing its
12 policy on the extent to which the surviving
13 corporation may recover the premium (as defined below)
14 related to this transaction.

15 Did I read that sentence correctly?

16 A. Yes.

17 Q. Mr. McKinney, what is your understanding of
18 that sentence and clause I just read from Empire's
19 perspective?

20 A. From my perspective, what that means is that
21 UtiliCorp would like to have a determination by the
22 Commission as to whether or not the premium recovery
23 is going to be allowed prior to closing, and that is
24 one aspect that could be considered in the
25 determination of whether or not a material adverse

1 effect actually occurs.

2 Q. Is it your understanding that the Missouri
3 Commission has traditionally reserved ratemaking
4 questions concerning acquisition adjustments and other
5 merger costs to rate proceedings, not merger
6 applications?

7 A. Mr. Dottheim, that's certainly not an area
8 of expertise of mine.

9 Q. Mr. McKinney, if the Missouri Commission
10 were to decide in this merger proceeding to reserve
11 all rate questions concerning the acquisition
12 adjustment to a subsequent rate case, do you know or
13 have an opinion whether UtiliCorp would be entitled to
14 withdraw from the merger based on the language that
15 appears in Section 701(b)?

16 A. I don't know. I have an opinion that they
17 would look upon that very negatively.

18 Q. If UtiliCorp would decide to withdraw from
19 the merger based on that clause and on the Missouri
20 Commission not deciding in the merger case any
21 ratemaking issue relating to the acquisition premium,
22 do you know or have an opinion as to what action, if
23 any, Empire District Electric might take?

24 A. We'd have to make that assessment at that
25 time. We don't have a predetermined course of action

1 in that regard.

2 Q. Has Empire District Electric considered any
3 sort of recourse in that event?

4 A. We're not to that bridge yet, no.

5 Q. Mr. McKinney, do you know whether there's a
6 similar provision in the St. Joseph Light &
7 Power/UtiliCorp Agreement and Plan of Merger?

8 A. I think there's a similar provision. I
9 wouldn't profess to be totally familiar with it.

10 Q. That provision, does it contain similar
11 language to language in the sentence that I'll read
12 again, For purposes of this section, the determination
13 of UCU material adverse effect may, without
14 limitation, include the failure of the Public Service
15 Commission of the State of Missouri, MPSC, to
16 articulate prior to closing its policy on the extent
17 to which the surviving corporation may recover the
18 premium as defined below related to this transaction?

19 A. I don't believe that's the wording in the
20 St. Joe agreement.

21 Q. Do you know why that is not the wording in
22 the St. Joseph Light & Power/UtiliCorp Agreement and
23 Plan of Merger?

24 A. No, I don't.

25 Q. What is the acquisition premium amount

1 involving the Empire/UtiliCorp merger?

2 A. Is it \$175 million?

3 Q. I think I've heard it referred to earlier
4 today as 275 --

5 A. 275.

6 Q. -- to \$280 million.

7 A. Okay.

8 Q. Do you happen to know the acquisition
9 premium amount in the St. Joseph Light &
10 Power/UtiliCorp Agreement and Plan of Merger?

11 A. I don't know the amount. I know it's
12 significantly smaller just by number of shares.

13 MR. DOTTHEIM: If I could have a moment,
14 please.

15 JUDGE WOODRUFF: Certainly.

16 MR. DOTTHEIM: Thank you. I have no further
17 questions.

18 JUDGE WOODRUFF: We'll break for lunch
19 before we come back for questions from the Bench.
20 We'll come back at 1:30.

21 (The noon recess was taken.)

22 JUDGE WOODRUFF: Let's go back on the
23 record. And Mr. Myron McKinney is still on the stand,
24 and we're ready to begin with questions from the
25 Bench. Chair Lumpe?

1 QUESTIONS BY CHAIR LUMPE:

2 Q. Mr. McKinney, just a few questions here.
3 One of the interesting things to me is that the size
4 of Empire, we're considering it as a smaller company,
5 and yet its rates are among the lowest. If
6 restructuring were to occur, is the assumption that
7 rates would then rise?

8 A. I think the assumption is that if
9 restructuring occurs, that we'll be subject to a lot
10 of competition that we haven't been subject to before,
11 that the size company we are, a larger competitor
12 could actually come to our service territory and sell
13 below our cost as a loss leader type thing.

14 We don't have enough margin in our operation
15 to stand selling things below cost, and others in an
16 entirely open competition might be able to do that for
17 periods of time and steal your customers. That's been
18 one of our large concerns.

19 Q. Sometimes we hear because a company is
20 small, therefore it has higher rates. And in this
21 situation, in both the small companies the rates are
22 lower than the bigger company that they're merging
23 with. And if this is in preparation for competition,
24 I wondered if it was just a foregone conclusion then
25 that we would have higher rates with restructuring?

1 A. Part of the -- part of the effect of where
2 rates are today is where you are in the construction
3 cycle, and basically Empire in the last five years has
4 built a couple combustion turbines, but our baseload
5 generation, our Asbury plant, our Riverton plant and
6 even our Energy Center which is also peaking units,
7 are older facilities. So we're using those older
8 facilities, and as new facilities have to be
9 constructed, the incremental cost of the new
10 facilities is higher than the old one.

11 So that leads me to another concern, that we
12 would be able to keep our rates at the levels relative
13 to others that they are today.

14 Q. The other states that are part of the Empire
15 Company, and the question was asked that they're also
16 in the process. Is the plan the same in all those
17 states, the regulatory plan that's proposed and all of
18 that? Is it identical for the whole Empire company?

19 A. Yes, it is. It's the same regulatory plan
20 that's been filed in all four states.

21 Q. And did I understand correctly that anything
22 less than the \$29.50 per share is a deal breaker?

23 A. Well, that's the price that the transaction
24 is based on. We didn't talk about the collar. There
25 are collar provisions in the transaction that could,

1 in fact, let the price slip below 29.50 if UtiliCorp's
2 closing price were low enough. So that could happen.
3 That in and of itself wouldn't necessarily be a deal
4 breaker. That would actually be in concordance with
5 the merger agreement.

6 CHAIR LUMPE: Okay. I think those are all
7 the questions I have. Thank you.

8 JUDGE WOODRUFF: Commissioner Schemenauer?

9 COMMISSIONER SCHEMENAUER: Thank you.

10 QUESTIONS BY COMMISSIONER SCHEMENAUER:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Referring to your direct testimony and some
14 of the questions you had from the attorneys, you
15 indicated 271 jobs would be eliminated?

16 A. That's the -- that's a projection that, like
17 I said before, there's 271 positions that are
18 eliminated. There's 60 created. So there's a net of
19 211.

20 Q. Out of the 271, have you identified those
21 jobs?

22 A. Just in a preliminary way. The transition
23 teams have worked and they have preliminary reports,
24 but we don't have the final on that.

25 Q. Of the 211 net less or 210 net loss, will

1 that be through normal attrition or will you have to
2 lay some people off?

3 A. There will definitely be some layoffs, yes.

4 Q. And some transfers, you said?

5 A. I think there will be -- it will probably be
6 made up of three groups. There'll be some -- there
7 will be some elimination of jobs. There will be some
8 early retirements. Some people will opt to retire
9 rather than stay. Hopefully there will be some
10 transfers, some opportunity in UtiliCorp for other
11 employees.

12 Q. Okay. Are those -- any of those positions
13 vacant now?

14 A. In the Empire organization?

15 Q. In the --

16 A. Yes. Yes. We have actually about 60
17 positions that are vacant today.

18 Q. So the 60 vacancies are already generating
19 some synergies for somebody, right?

20 A. Well, we're not -- we have 60 positions
21 we're not paying today. I would say that we're asking
22 some people to do an awful lot of work.

23 Q. And did I understand earlier when you were
24 talking about three-man crews and two-man crews on the
25 electricians and linemen, that the normal procedure

1 for UtiliCorp United is to have a two-man crew and
2 Empire Electric a three-man crew?

3 A. I think the standard at UtiliCorp is to have
4 a two-man crew. We have a mixed standard. We have
5 three-man and two-man crews, depending on the area,
6 the work loads. So it's not unstandard, I guess is
7 the right term, for us to use two-man crews. We do
8 use them.

9 Q. If this merger failed to happen, would you
10 also reduce your standard to two-man crews instead of
11 three-man crews?

12 A. What we've been doing is evaluating crew
13 size and work to be done in the areas as we move
14 along. We certainly would continue anywhere we could
15 make an opportunity to create a two-man crew to do
16 that.

17 Q. So then the change from three-man crews to
18 two-man crews wouldn't necessarily be a synergy of
19 this merger; is that right?

20 A. Well, the synergy of creating two-man crews
21 is just a matter of trying to properly manage your
22 business, and anywhere you can you should try to do
23 that, yes.

24 Q. Well, when we're running the adding machine
25 on synergies and benefits of the merger, then why

1 would we include elimination of those jobs if it could
2 be done without the merger?

3 A. Not in all cases could it be done without
4 the merger. I think there are situations where
5 UtiliCorp may have facilities or may have people
6 available to create two-man crews that we might not,
7 specific areas.

8 Q. So you may borrow some crews from Kansas
9 City to come down to Joplin to work?

10 A. We might -- probably not from Kansas City.
11 We might be able to trade crews from Nevada, say, in
12 the northern part of our service territory that could
13 happen, yes.

14 COMMISSIONER SCHEMENAUER: That's all I had.
15 Thank you.

16 JUDGE WOODRUFF: Commissioner Simmons?

17 COMMISSIONER SIMMONS: Thank you.

18 QUESTIONS BY COMMISSIONER SIMMONS:

19 Q. Good afternoon, sir.

20 A. Good afternoon.

21 Q. I'm going to ask you a few questions down
22 the line of some of the employee-related issues that
23 you discussed earlier in your testimony.

24 A. Sure.

25 Q. Could you at least tell me as far as your

1 transition team is concerned, who's your transition
2 team, how are they put together and who sits on that
3 transition team?

4 A. There are -- actually, there are the
5 transition -- the steering -- to start at the top and
6 kind of work through it, there's a steering team that
7 is made up of three representatives from UtiliCorp and
8 two representatives from Empire. UtiliCorp is headed
9 up by Jim Miller, who's the senior VP that runs the
10 electric dis-- well, the UCU utility now. He has two
11 people that sit on that committee with him, Robert
12 Browning and Rick Correll, who are both senior VPs at
13 UtiliCorp.

14 From Empire District we have Tony Starke,
15 who's a VP, and Bill Gibson, who's a VP, sit on that
16 committee. They let me sit in as ex officio, but I
17 don't have a vote.

18 Q. Okay. With respect to the transition team,
19 were they given instructions to look at certain
20 employee-related issues or was this a broad, far-
21 reaching transition team to look at all issues in
22 relationship to the merger?

23 A. Inside the steering committee there are, I
24 believe, seven separate teams that look at different
25 aspects of the business. For instance, you have a

1 group that looks at power plants, another group that
2 looks at commercial operations, and that might be
3 broken into transmission and distribution issues and
4 customer offices and those sorts of things.

5 So in essence you have people who work in
6 the field doing that kind of work sitting on those
7 transition teams from both companies trying to work
8 together to determine what's the optimal mix of
9 employees in the facilities to still render good
10 quality customer service.

11 Q. Was there a group that specifically looked
12 at issues in terms of employee relations?

13 A. There is a group that deals with human
14 resource issues, yes.

15 Q. Would you say that, in looking at those
16 employee or human resource issues, was that transition
17 team ever given instruction as it relates to
18 bargaining agreements?

19 A. I don't know that they were given
20 instructions as it relates to bargaining agreements.
21 I know that early on UtiliCorp has agreed to comply
22 and enforce the provisions of the bargaining
23 agreements that are in effect.

24 Q. And that is with what's in effect with the
25 Empire District also?

1 A. Yes, with our employees as of today. There
2 was a new -- a new agreement negotiated in November of
3 last year, a three-year agreement. So that contract
4 is in effect, and UtiliCorp has agreed, of course,
5 that they would comply with the provisions of that
6 contract for the life of the contract.

7 Q. Just a moment. Do you know if that
8 transition team looked at the statute which is
9 numbered 386.315?

10 A. No, I really don't. I just -- I'm not aware
11 of that. I think that issue has come up fairly
12 recently in this proceeding, and I don't know whether
13 that transition team has looked at it or not.

14 COMMISSIONER SIMMONS: That's all the
15 questions I have. Thank you, sir.

16 JUDGE WOODRUFF: Commissioner Murray?

17 COMMISSIONER MURRAY: No questions.

18 JUDGE WOODRUFF: Then we'll go to recross
19 based on questions from the Bench, and beginning with
20 Electrical Workers.

21 RE CROSS-EXAMINATION BY MR. JOLLEY:

22 Q. Mr. McKinney, when you indicated there are
23 approximately 60 vacancies today, your earlier
24 testimony was that there's approximately 60 vacancies,
25 I guess, on a company-wide basis at Empire?

1 A. Yes.

2 Q. Do you have any idea how many of those
3 vacancies are within the bargaining unit represented
4 by Local 1474?

5 A. I don't.

6 Q. Are there any?

7 A. There are some, yes, absolutely.

8 Q. Would it be a small percentage of the 60, do
9 you know? If you don't know --

10 A. I don't know. I really don't. I know there
11 are some vacancies in the union group, yes.

12 Q. And I believe you indicated that because of
13 the 60 vacancies that have been -- because of the 60
14 vacancies that have arisen and the people who left not
15 having been replaced, right now you have a number of
16 people who are working very, very hard?

17 A. Yes.

18 Q. Including overtime?

19 A. Some overtime, yes.

20 Q. Well, then, my question would be, if the
21 plan calls for a reduction of 270 plus 60 new
22 vacancies and calls for elimination of 50 bargaining
23 unit jobs, and right now with unfilled vacancies of
24 only 60, can you explain how it is you're going to be
25 able to continue to deliver the service in the future

1 if this merger takes place at the reduced employee
2 level?

3 A. Well, obviously many of those jobs are in
4 duplicative positions, accounting, human resources,
5 staff functions that will get rolled up to UtiliCorp
6 automatically. So that's where the majority of it is.

7 Q. And that's in the non-bargaining unit
8 sector?

9 A. It's in the non-bargaining unit sector, yes.

10 Q. And I think I previously asked you questions
11 concerning the number of duplicative positions there
12 are in the bargaining unit between Empire and
13 comparable employees at UtiliCorp?

14 A. Yes.

15 MR. JOLLEY: I have no further questions.

16 JUDGE WOODRUFF: Thank you. And for the
17 Retirees?

18 MR. DEUTSCH: We have no questions at this
19 time.

20 JUDGE WOODRUFF: Natural Resources?

21 MS. WOODS: Nothing at this time. Thank
22 you.

23 JUDGE WOODRUFF: ICI and Praxair?

24 MR. CONRAD: Just one thing to get
25 clarified.

1 RE CROSS-EXAMINATION BY MR. CONRAD:

2 Q. Mr. McKinney, Chair Lumpe asked you about
3 why the rates were lower.

4 A. Yes.

5 Q. Do you -- and I acknowledge this would just
6 be off the top of your head. Do you have any idea how
7 long the rates have been lower?

8 A. I came to work for the company in 1967, and
9 since the early '70s our rates have been very
10 competitive to lower than the others. So we built the
11 Asbury station and put it on line in 1970. At that
12 point our rates were probably at the statewide level,
13 and since then others went up pretty rapidly after
14 that, and we've been able to keep our rates low since
15 the early '70s.

16 Q. Has a good part of that at least in recent
17 history been due to the company's decision not to
18 build base load but rather to go on the purchased
19 power market?

20 A. There was certainly a period of time when it
21 was cheaper to buy than it was to build. I don't know
22 that that's true today, but there was a period of
23 time, I think that was a good decision to make. We
24 have also built during that period, as you well know.

25 Q. Now, you mentioned that competition you

1 still felt could result in lower rates in response to
2 the Chair's questioning. In any of the proposals that
3 you have seen, have you seen any deregulation
4 proposals that would propose to deregulate the
5 distribution system?

6 A. No. I think the model is to deregulate the
7 generation side of the business, is what I've been
8 seeing to date.

9 Q. So the customers of Empire would still be
10 customers of Empire with respect to the distribution
11 system?

12 A. If the models that we have seen to date were
13 enacted in Missouri. To date nothing's been enacted
14 in Missouri. So I think my answer would be
15 speculative.

16 Q. And if I understand your testimony, then,
17 the competition that you're speaking of is at the
18 wholesale level today insofar as generation?

19 A. Today the competition is at the wholesale
20 level, period. FERC accounts are subject to
21 competition.

22 Q. Well, it's true that new generation is not
23 regulated, isn't it?

24 A. I think any reg-- any generation that came
25 on line in Missouri today would have to have a

1 Certificate of Convenience and Necessity.

2 Q. That might be true from the Missouri
3 Commission's perspective, but from FERC's perspective,
4 new generation isn't regulated; is that correct?

5 A. Let me think about that for a minute. Let's
6 back up and help me work through this. As I
7 understand it, FERC regulates wholesale transactions
8 today, and the generation that would feed wholesale
9 transactions might or might not be.

10 Q. I understand you pay people, Mr. McKinney,
11 to be expert on that and to advise you. The point I
12 guess I'm trying to get to here to put a fine point on
13 is, when you talk about competition at least today,
14 that's the only place that you're talking about where
15 there's competition?

16 A. That's the only place competition exists
17 today, yes.

18 Q. And in the future, at least insofar as the
19 proposals that you have seen, the only areas that
20 competition as you're using that term would apply
21 might then be in some expanded generation market?

22 A. On the energy side of the transaction, yes.

23 MR. CONRAD: Thank you. That's all.

24 JUDGE WOODRUFF: City of Springfield?

25 RECROSS-EXAMINATION BY MR. KEEVIL:

1 Q. Mr. McKinney, Commissioner Simmons asked you
2 some questions about, I think, what you referred to as
3 your steering committee?

4 A. Yes.

5 Q. When was that committee formed?

6 A. Actually, the steering committee was formed
7 in the negotiations for the merger.

8 Q. So that was premerger?

9 A. Yes. Well, it was -- it was merger. It was
10 in the merger agreement. The steering committee is
11 provided for in the merger agreement.

12 Q. What are the duties of the steering
13 committee?

14 A. Basically the duties of the steering
15 committee are to plan the integration of the two
16 companies if and when the merger is complete.

17 Q. Would you repeat who is on the steering
18 committee?

19 A. Yes. It's Jim Miller from UtiliCorp, Bob
20 Browning from UtiliCorp, Rick Correll from UtiliCorp,
21 Bill Gibson from Empire, and Tony Starke from Empire.

22 MR. KEEVIL: Thank you. That's all.

23 JUDGE WOODRUFF: Public Counsel?

24 MR. MICHEEL: Yes.

25 RECROSS-EXAMINATION BY MR. MICHEEL:

1 Q. Mr. McKinney, Commissioner Schemenauer asked
2 you some questions about the job loss. Do you recall
3 those questions?

4 A. Yes.

5 Q. Is it correct that former Empire employees
6 are not guaranteed any preferential treatment from UCU
7 when they seek a job?

8 A. What do you mean when you say former?

9 Q. Well, people that are going to be laid off
10 as a result of the merger transaction.

11 A. It's my understanding that the people that
12 would lose their -- whose positions are eliminated in
13 the transaction would apply or have the freedom to
14 apply for jobs that are created at UtiliCorp and would
15 be treated as inside employees vis-a-vis an outside
16 applicant.

17 Q. And is that part of the merger agreement?

18 A. In the merger agreement there's some wording
19 to the extent that work force reductions would be done
20 without regard for where the employees were based.

21 Q. And those folks that would be laid off,
22 those are not the technical jobs that you were talking
23 about with Mr. Jolley, those are more of the
24 accounting type jobs; is that correct?

25 A. Well, there's some across the spectrum of

1 the company as Mr. Jolley identified.

2 MR. MICHEEL: Thank you very much.

3 JUDGE WOODRUFF: Staff?

4 MR. DOTTHEIM: No questions.

5 JUDGE WOODRUFF: Thank you. Then redirect?

6 MR. SWEARENGEN: Thank you, your Honor.

7 REDIRECT EXAMINATION BY MR. SWEARENGEN:

8 Q. Mr. McKinney, as a follow-up to a couple of
9 questions that Mr. Conrad was asking you concerning
10 why you have been a low-cost provider of electricity
11 in Missouri, I think you said at least since the time
12 you came with the company, which was when did you say?

13 A. '67.

14 Q. You mentioned the Asbury plant, and when did
15 that come on line?

16 A. 1970.

17 Q. And how would you describe that type of
18 plant?

19 A. It was a coal-fired base load plant.

20 Q. And since that plant came on line in 1970,
21 can you just give a brief listing or summary of the
22 other generating plants that the company has brought
23 on line?

24 A. Yeah. In rough terms, in 1980 and '81 we
25 built two combustion turbines at the Empire Energy

1 Center.

2 Q. Would those be considered base load?

3 A. No. Those are peaking units. At the time
4 they were built they were oil-fired peaking units.
5 They've since been converted to natural gas. That was
6 1980. In the mid '80s we added two small used
7 turbines at the Riverton plant, Units 9 and 10. Those
8 are about 16 megawatts each. Those are natural gas
9 fired again peaking units that were added. No. 10
10 runs in combined cycle with one of the older
11 coal-fired units there.

12 In 1995 we added the first unit at the
13 Energy Center, which was a 103 megawatt gas or
14 oil-fired unit, again a peaking unit. And in 1997 we
15 added the second peaking unit there. It was a 153
16 megawatt unit.

17 Q. With respect to the State Line unit that has
18 been discussed earlier today that will be the subject
19 of the rate case that you're going to file later this
20 year, could you just briefly describe that unit?

21 A. The combined cycle unit that we're
22 constructing now?

23 Q. Yes.

24 A. Yes. The combined cycle unit takes the
25 original 150 megawatt steam turbine -- or I'm sorry,

1 gas turbine that was installed there in 1997. We're
2 installing a twin to that, another 150 megawatt gas
3 turbine, which is going in as we speak.

4 Once those two turbines are in place, then
5 there's a steam generator that hooks on the back of
6 those that recaptures the heat from those units, and
7 capturing the steam off that will raise the output of
8 those three units to 500 megawatts. And combined
9 cycle means that you combine the gas-fired peaking
10 units with the steam cycle and the steam generator.

11 Q. And that plant that you've just described
12 will be the subject of the rate case that will be
13 filed later this fall; is that correct?

14 A. Yes.

15 Q. How does the investment in that plant
16 compare to other investments that you have made in
17 plant over the years?

18 A. If I remember correctly, the Asbury plant,
19 which was 200 megawatts, went on for about \$26 million
20 in 1970. I'm not sure I recall all the numbers coming
21 up to that. But I know we move up to the 1997 peaker,
22 150 megawatt peaker, it was in the neighborhood of \$35
23 million for 150 megawatts. This unit's going to, our
24 share of it -- well, the total package will be in the
25 neighborhood of \$200 million. So it's a considerably

1 larger investment than anything we've done to date.

2 Q. You will not own all of that plant; is that
3 correct?

4 A. No. We've contracted with Western
5 Resources. They're buying 40 percent of the plant.

6 Q. Would I be correct in assuming, though, that
7 your interest in that plant is what, in fact, will
8 drive this rate case that you will file?

9 A. Yes, absolutely. Construction of that
10 magnitude, it's going to be just imperative that we
11 get it into rate base as soon as possible.

12 I might add that for the existing gas-fired
13 units, the movement in the natural gas market in the
14 last few months, it's going to be important to include
15 natural gas costs as well since there's an absence of
16 a fuel adjustment in Missouri.

17 Q. Now, as I mentioned in my opening statement
18 this morning, the premoratorium rate case, the State
19 Line rate case that you just talked about is taken up
20 in the proposed regulatory plan. That's your
21 understanding, is it not?

22 A. Yes, that's correct.

23 Q. In reality, what does the merger have to do
24 with that rate case, if anything?

25 A. In reality, that rate case has to go forward

1 with or without the merger.

2 Q. And why is that?

3 A. Well, the investment of the magnitude that
4 we're making in State Line is such that we need to get
5 that into rate base as soon as it's available for our
6 customers.

7 Q. Would that be true whether or not the merger
8 is consummated?

9 A. Absolutely, yes.

10 Q. You had several questions, I think, some
11 from Commissioner Schemenauer and from others, about
12 these 60 non-paying positions which now exist with
13 your company?

14 A. Yes.

15 Q. Can you just briefly describe how those
16 vacancies developed?

17 A. Yes. Since the merger was announced,
18 obviously there's a good deal of uncertainty among our
19 employees as to what the future holds, and most of
20 those vacancies have occurred as people have found
21 other jobs, other opportunities, and have moved on
22 rather than wait and see how the merger's going to
23 work out for them. So a good portion of those
24 vacancies have occurred as a result of the merger.

25 Q. Are you able to go out and find employees to

1 fill those positions?

2 A. To some degree we've tried to back fill, and
3 even when we're able to find employees, we're usually
4 not able to find employees with the qualifications and
5 the experience that the people leaving have taken with
6 them.

7 You know, the utility business is kind of
8 unique, particularly in the accounting and finance
9 areas. Utility accounting is somewhat different from
10 run-of-the-mill accounting type work.

11 Q. Between the present time and the time that
12 this merger might close, what do you anticipate with
13 respect to additional work force vacancies?

14 A. Unfortunately, I expect we'll continue to
15 experience vacancies, and I would expect that the
16 further we get down the road, the more vacancies we'll
17 experience.

18 Q. What does that do to your company from an
19 operational standpoint?

20 A. Well, it just makes it really difficult to
21 keep all the work done that needs to be done. I think
22 we're doing a very good and adequate job of caring for
23 our customers. Some of the internal things we might
24 have done before are the ones that suffer first.

25 Q. Can this type of circumstance continue

1 indefinitely from your viewpoint?

2 A. No. No, it really can't.

3 Q. And why is that?

4 A. Well, at some point in time if you continue
5 to lose good and valuable and experienced staff, you
6 just aren't able to do the job that you need to get
7 done. So we need to bring this merger to a
8 conclusion.

9 Q. Mr. Dottheim asked you about the possibility
10 of extending the December 31, 2000 termination date,
11 which is the termination date as described in the
12 merger agreement. Under what circumstances would you
13 consider recommending to your board that that happen,
14 that the termination date be extended?

15 A. I think if we were in a situation where we
16 had a good feeling that an Order was going to be
17 forthcoming very, very quickly and that Order had a
18 good chance of being favorable, I might recommend to
19 my board that we extend for 30 to 45 days, but not
20 beyond that.

21 Q. Now, when you say that Order, would that
22 apply to an Order from the Missouri Commission as well
23 as Orders from the Arkansas, Kansas and Oklahoma
24 commissions?

25 A. Yes. I need to see Orders coming from all

1 commissions within that frame.

2 MR. SWEARENGEN: That's all I have. Thank
3 you.

4 JUDGE WOODRUFF: Thank you. You may step
5 down.

6 (Witness excused.)

7 JUDGE WOODRUFF: You may call your next
8 witness.

9 MR. SWEARENGEN: Call Mr. Empson.

10 (Witness sworn.)

11 (EXHIBIT NO. 3 WAS MARKED FOR
12 IDENTIFICATION.)

13 MR. SWEARENGEN: Mr. Empson is here on his
14 surrebuttal testimony, which is Exhibit No. 3. I
15 would offer Exhibit No. 3 into evidence at this time
16 and tender the witness for cross-examination.

17 JUDGE WOODRUFF: Okay. Exhibit No. 3 has
18 been offered into evidence. Are there any objections
19 to its receipt?

20 (No response.)

21 Hearing none, it will be received into
22 evidence.

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

24 JUDGE WOODRUFF: And before
25 cross-examination begins, Mr. Empson, what is your

1 first name?

2 THE WITNESS: Jon, J-o-n.

3 JUDGE WOODRUFF: Let's go ahead and begin
4 with cross-examination, then, and we'll begin again
5 with IBEW?

6 MR. JOLLEY: I have no questions.

7 JUDGE WOODRUFF: The Empire Retirees?

8 MR. DEUTSCH: No questions of this witness.

9 JUDGE WOODRUFF: Natural Resources?

10 MS. WOODS: No questions. Thank you.

11 JUDGE WOODRUFF: ICI and Praxair?

12 MR. CONRAD: No questions.

13 JUDGE WOODRUFF: City of Springfield?

14 MR. KEEVIL: No questions on this issue of
15 this witness.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. MICHEEL: Yeah, I have questions.

18 JON EMPSON testified as follows:

19 CROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Mr. Empson, it says in your testimony you're
21 not an accountant, but it doesn't give your
22 background. So why don't you enlighten me?

23 A. Be glad to. I have an undergraduate degree
24 in economics from Carlton College, an MBA with a major
25 focus on economics from the University of Nebraska at

1 Omaha.

2 Q. And is it correct that in your surrebuttal
3 testimony you assert that the regulatory plan which
4 your client is presenting is not unique?

5 A. That is correct.

6 Q. Would you agree with me that there are no
7 regulatory plans like the proposed plan in Missouri?

8 A. I think there's elements of all this
9 regulatory plan that do exist in the state of Missouri
10 due to the composition of several principles and
11 practices that have been in existence for some time.

12 Q. That wasn't my question, Mr. Empson. Listen
13 closely. Is there a regulatory plan structured like
14 this plan in effect in Missouri?

15 A. There's not a single plan with all the
16 elements that we have in Missouri at this time.

17 Q. Are you aware of any merger cases where the
18 Commission has made ratemaking treatment within the
19 context of that merger case in Missouri?

20 A. No, I am not.

21 Q. So in that sense, this case would be unique;
22 is that correct?

23 A. In that sense, it would be unique.

24 Q. Has there ever been a five-year moratorium
25 granted within the context of a litigated merger

1 proceeding in Missouri?

2 A. I cannot answer that question. I do not
3 know.

4 Q. Assume with me that there never has been --
5 or let me ask you this. Are you aware within the
6 context of a litigated merger proceeding whether or
7 not there's ever been a moratorium entered?

8 A. Yes, there have been moratoriums on
9 settlements of cases.

10 Q. How about a litigated proceeding,
11 Mr. Empson?

12 A. I cannot answer that question.

13 Q. You didn't review that?

14 A. I did not.

15 Q. Has there ever been a ten-year merger plan
16 approved in a litigated proceeding?

17 A. I cannot answer that. To the best of my
18 knowledge, probably not.

19 Q. Has there ever been a ten-year settled
20 regulatory plan in the state of Missouri?

21 A. Not to my knowledge.

22 Q. So that would be unique; is that correct?

23 A. From your definition, yes.

24 Q. Let me ask you this. How do you define
25 unique?

1 A. The way I initially did it, the elements of
2 it are something that when you look at rate
3 proceedings have been addressed before. We're just
4 combining them into a single plan at this time.

5 Q. And I note you said in your answer rate
6 proceedings. This isn't a rate proceeding; is that
7 correct?

8 A. That's correct.

9 Q. Have there ever been, to your knowledge, a
10 frozen capital structure approved within the context
11 of a merger proceeding in Missouri?

12 A. A frozen capital structure per se, no.

13 Q. Would that make this plan unique?

14 A. Under your definition, yes.

15 Q. How about a frozen allocator, has there ever
16 been one of those in a litigated merger proceeding?

17 A. Not that I'm aware of.

18 Q. Would that make this case unique?

19 A. In your definition, yes.

20 Q. Is it correct, Mr. Empson, that there's been
21 no tracking system developed currently or presented by
22 UtiliCorp United in this proceeding?

23 A. I believe a tracking mechanism or proposal
24 has been prepared by witness Jerry Myers.

25 Q. And does that detail how each element of

1 merger savings, of the alleged merger savings will be
2 tracked?

3 A. Looking at the major finite buckets that
4 we're looking at in order to quantify what the merger
5 savings are, there is a methodology that both witness
6 Siemek and Myers do talk about.

7 Q. Would you agree with me that there are a lot
8 of components that go into that?

9 A. Into a tracking mechanism?

10 Q. Yes, sir.

11 A. Yes, there are.

12 Q. Would you agree with me that those
13 components of the tracking mechanism are based on some
14 part decisions that have to be made by the individuals
15 that are tracking them?

16 A. I'm not sure I understand your question.
17 From my perspective, what we're looking for is
18 starting with a benchmark of what those major activity
19 levels are so that we can measure over the next five
20 years the changes in those major activity levels.

21 So if you're dealing with, for example, the
22 generation side, there is a model that I believe we
23 use and the Commission does use that would say what
24 kind of dispatch would you have on this day and what
25 potential is there for off-system sales. So there is

1 no doubt a lot of elements, but I think it is
2 something that can be simplified and tracked.

3 Q. And would you agree with me that there are a
4 lot of subjective inputs into those elements?

5 A. I'm not sure I can agree with that comment.

6 Q. Are there a lot of inputs that go into those
7 elements?

8 A. There are elements that are inputs that go
9 into all the calculations, yes.

10 Q. And people can disagree about where the --
11 for example, we have a disagreement about what the
12 baseline should be, don't we, in this proceeding?

13 A. We have a disagreement on the baseline, but
14 once the baseline is established, I think we have
15 general agreement on how you would operate to
16 determine what the difference is from that baseline to
17 where it would be in five years.

18 Q. And we have a lot of disagreement in this
19 proceeding about what elements should be included to
20 arrive at the baseline; isn't that correct?

21 A. There are disagreements on what is in the
22 baseline, that is correct. Hopefully this proceeding
23 will clarify those and establish them.

24 Q. So you would agree with me that it can be
25 somewhat complicated in developing those things; is

1 that correct?

2 A. I think there can be disagreement, but I
3 think they can be resolved. I think we are close to
4 resolution on those issues.

5 Q. Would you agree with me -- or are you aware
6 of any case in Missouri where the Commission has
7 allowed acquisition premium recovery within the
8 context of a merger?

9 A. I am not aware of any decision allowing it
10 in the context of a merger.

11 Q. So this proceeding would be unique; is that
12 correct?

13 A. Unique in addressing it up front to define
14 what the rules are for this transaction.

15 Q. Would you agree with me that if the
16 Commission accepted your regulatory plan and
17 ultimately approved of the synergies, that this would
18 be the first case where the Commission had ultimately
19 required or allowed companies to directly recover an
20 acquisition premium from customers?

21 A. With the qualifier directly. I think
22 there's been other cases where it has been indirectly
23 done.

24 Q. My question went to directly.

25 A. Just wanted to make sure that word was

1 there.

2 Q. Is it correct that the shareholders of
3 UtiliCorp United did not vote on this proposed merger?

4 A. That is correct. It was passed by the board
5 in their fiduciary responsibility as representing the
6 shareholders.

7 Q. So the shareholders had no input on what the
8 purchase price was; is that correct?

9 A. That's correct.

10 Q. So where you state in your testimony that
11 the shareholders have agreed to invest \$900 million to
12 acquire the ownership of Empire, that's incorrect, is
13 it not?

14 A. It is not incorrect because the shareholders
15 are represented by a board of directors that have that
16 fiduciary responsibility so, in fact, represent our
17 shareholders.

18 Q. But the shareholders did not affirmatively
19 vote on this proposal; is that correct?

20 A. The shareholders as a group did not.

21 Q. Did the shareholders as a group approve the
22 proposed regulatory plan?

23 A. The shareholders as a group did not.

24 Q. So the company is unaware of whether or not
25 the shareholders specifically need recovery of the

1 merger premium; isn't it correct?

2 A. Again, the shareholders are represented in
3 our company by the board of directors. The board of
4 directors has that fiduciary responsibility, and in
5 most cases they exercise that.

6 So in this case I do not agree because the
7 board of directors are the ones that have given us the
8 direction in this case, and they represent the
9 shareholders' interests.

10 Q. So this merger proceeding was a decision of
11 the board of directors of UtiliCorp United and not the
12 shareholders; is that correct?

13 A. It was approved by the board of directors on
14 behalf of the shareholders.

15 Q. Let me ask you this. Did the ratepayers
16 request that this transaction be done?

17 A. Not that I'm aware of.

18 Q. Did UtiliCorp request the views of the
19 ratepayers when it decided to purchase Empire District
20 Electric?

21 A. Could you repeat that? I missed one word.

22 Q. Sure. Did UCU request the input of the
23 ratepayers of either Empire District Electric or UCU
24 when it decided to purchase Empire District?

25 A. No, it did not.

1 Q. You have an example at page 7 of your
2 testimony.

3 A. Yes, I do.

4 Q. I want to talk to you a little bit about
5 that example, and it's a leasing example; is that
6 correct?

7 A. It is a conceptual example that involves the
8 lease of office facilities, that is correct.

9 Q. And the decision in that example transaction
10 would take place in a rate case; isn't that correct?

11 A. I'm not sure which decision that you're
12 talking about in the transaction. The transaction
13 itself could happen outside of a rate case. Basically
14 what happened is if the two companies wanted to
15 combine and buy out a lease, they would do that, and
16 they would enjoy then the benefits of that transaction
17 and then in the rate case itself would request that
18 treatment.

19 Q. So the treatment would be determined in the
20 rate case, isn't that correct, in your example?

21 A. It could be, or it could be a condition
22 within a merger requirement. If we were going through
23 a merger, you might have that as one of the elements
24 where you're going to create synergies and you might
25 ask for preapproval before executing the final

1 documents.

2 Q. You also talk, I believe, at page 8 of your
3 example about a claw back. Do you see that testimony,
4 there, sir?

5 A. Yes, I do.

6 Q. Would you agree with me that the ratemaking
7 structure that we're operating here today has been
8 approved by the Missouri Legislature?

9 A. Yes, I would.

10 Q. And you understand that in Missouri we use
11 rate base rate of return regulation; isn't that
12 correct?

13 A. That is correct.

14 Q. And isn't it correct that the example that
15 you have starting on page 7 over to line 8 would be
16 traditionally what happens under rate base rate of
17 return regulation; isn't that correct?

18 A. The example being of a claw back that would
19 occur at some point in time?

20 Q. The example about the lease, yes, sir.

21 A. Not necessarily. Our point here is to draw
22 a parallel to what's going on with the premium. It
23 would be our understanding that you would embed the
24 costs of the buyout as in your rates as well as the
25 efficiencies that you're gaining to offset that.

1 So there would not be a claw back unless you
2 totally disregarded the buyout, and that was the point
3 of this example is to try to bring it down not into a
4 totally technically correct parallel, but in a
5 conceptual way how this premium could be handled.

6 Q. Well, in point of fact, in Missouri we use
7 rate base rate of return regulation; isn't that
8 correct, Mr. Empson?

9 A. That is correct. In this case the buyout
10 would be a legitimate cost of doing utility business,
11 and the savings that would be generated because of the
12 buyout would be a legitimate cost and they should both
13 be included. And we shouldn't be just looking at the
14 values that are being created without looking at the
15 cost that was incurred to create those values.

16 Q. And your company would be given an
17 opportunity to do that within the context of a rate
18 case; isn't that correct?

19 A. As long -- up until that time of the rate
20 case we'd enjoy those benefits, and at that time we
21 would file it in the context of a rate case if and
22 when that became necessary.

23 Q. You talk also at page 9 about some other
24 alternatives that UtiliCorp considered; is that
25 correct?

1 A. That is correct.

2 Q. Is it correct that the only regulatory plan
3 proposal that the company has set forward in any
4 concrete sense is the regulatory plan set out in your
5 direct testimony?

6 A. That is correct. There is a secondary plan
7 that Mr. Siemek has proposed when the -- the emphasis
8 was policed upon regulatory lag, on how we could
9 accommodation the interest of using more traditional
10 regulatory lag in order to accommodate concerns of the
11 OPC and the Staff.

12 Q. And Mr. Siemek proposed that in his
13 surrebuttal testimony; isn't that correct?

14 A. That is correct, in response to some of the
15 rebuttal testimony in this case.

16 Q. And so pursuant to Commission rules, no
17 other party's had an opportunity to respond to that;
18 isn't that correct?

19 A. Not until he takes his seat and is
20 cross-examined by you.

21 MR. MICHEEL: Thank you very much.

22 THE WITNESS: Thank you.

23 JUDGE WOODRUFF: Staff?

24 MR. DOTTHEIM: Yes. Thank you.

25 CROSS-EXAMINATION BY MR. DOTTHEIM:

1 Q. Good afternoon, Mr. Empson.

2 A. Good afternoon, Mr. Dottheim.

3 Q. If I could refer you to your surrebuttal
4 testimony, which has been marked as Exhibit 3, and I'd
5 like to direct you to page 6.

6 A. Yes.

7 Q. And I'd like to direct you to lines 11
8 through 15.

9 A. Are you on page 6, Mr. Dottheim? 11 starts
10 the -- a part of a sentence there, at least on my
11 copy. 11/13 -- or line 13.

12 Q. I'm looking at line 11 that starts with the
13 answer, UtiliCorp management must have guidelines --

14 A. Okay.

15 Q. -- established by the Commission.

16 A. Yes.

17 Q. And I'd like to direct you to the first two
18 sentences, the one that starts out 11 and the next
19 sentence which ends almost in the middle of 15. Can
20 you identify what UtiliCorp/Empire are proposing as
21 the starting point for the synergy categories?

22 A. What I'm raising here in this, this
23 discussion is more what I've seen in the rebuttal
24 testimony that's been filed. So the point for us is,
25 on determining electric off-system sales, what could

1 be done by the combined entities in agreement on that.

2 I think there's a disagreement between
3 Mr. DeBacker and Mr. Proctor on what level of
4 synergies, what level of off-system sales would be
5 generated by a stand-alone entity versus a merged
6 entity. So the exact number I can't give you. I'm
7 dealing here more with the concepts of each one.

8 Q. Do the synergy categories have starting
9 points?

10 A. There are starting points as defined in our
11 analysis by Mr. Siemek, and those starting points will
12 vary by category on what we feel is most relevant.

13 Q. Do you know what the starting points are for
14 determining the items that you have listed?

15 A. I could not list those for you today. I
16 would defer to Mr. Siemek on the exact starting
17 points.

18 Q. And by my reference to what you have listed,
19 electric off-system sales, joint dispatch, number of
20 employees, operating costs, normal cost increases, and
21 that's what your answer was in reference to?

22 A. Yes, sir.

23 Q. Thank you.

24 Mr. Empson, what role did you play in
25 developing the UtiliCorp/Empire regulatory plan?

1 A. My role was primarily as an overseer. When
2 we were looking at the transaction itself, one of the
3 first things we did was, I was asked the question
4 about premium recovery on general, what the trends are
5 nationwide, what we might expect out of the state of
6 Missouri. So before we advanced we had some comfort
7 level anyway that there would be a reasonable
8 opportunity and an open-mindedness on behalf of this
9 Commission to consider premium recovery.

10 After that, I had the job of assembling a
11 team of people that was primarily led by John McKinney
12 and Vern Siemek in developing the particulars to cover
13 the two things that I mentioned in my surrebuttal
14 testimony. One is to make sure we have a reasonable
15 opportunity on behalf of the shareholders to recover
16 that premium, and secondly to give benefits to the
17 customers.

18 Q. What role did you play in negotiating the
19 Agreement and Plan of Merger between UtiliCorp and
20 Empire?

21 A. I did not have a role in negotiations.

22 Q. Mr. Empson, would you happen to have a copy
23 of the UtiliCorp/Empire Agreement and Plan of Merger?

24 A. No, I do not.

25 MR. SWEARENGEN: I may have one here this

1 time.

2 BY MR. DOTTHEIM:

3 Q. I have one copy. If your counsel has
4 another copy, if I could ask him to provide it to you.

5 Mr. Empson, I'd like to ask you similar
6 questions to those that I asked Mr. McKinney this
7 morning. There is a termination date in the Agreement
8 and Plan of Merger, is there not?

9 A. Yes, there is.

10 Q. And what is that present termination date?

11 A. The end of this year, 12/31/00.

12 Q. Is there provision in the Agreement and Plan
13 of Merger for extension of that date?

14 A. That is my understanding.

15 Q. Do you happen to know what the present
16 intentions are of UtiliCorp if there's not an Order
17 forthcoming from the Missouri Commission by
18 December 31, 2000 respecting this merger application
19 of the joint applicants?

20 A. I cannot give you the definitive answer. I
21 will tell you that my input would be very comparable
22 to what Mr. McKinney said on the witness stand, is
23 that we have to look at how this transaction is
24 proceeding, what our feeling is for getting an Order
25 out from the Commission in a timely manner, and that

1 Order will give us a reasonable opportunity to recover
2 the premium.

3 Q. I'd like to direct you to page 48 of 55 of
4 the Agreement and Plan of Merger.

5 A. Okay.

6 Q. And I'd also like to direct you to the same
7 language that I directed Mr. McKinney to under
8 7.01(b), line 5 clause, None of such approvals or
9 final orders shall require or be conditioned upon any
10 requirement that any of the company, UCU or the
11 surviving corporation provide any undertaking or
12 agreement or change or dispose of any assets or
13 business operations or take or refrain from taking any
14 other action which would cause individually or in the
15 aggregate either, one, a UCU material adverse effect,
16 or two -- and the sentence continues.

17 A. Uh-huh.

18 Q. I'd like then to direct you to the next
19 sentence, which states, For purposes of this section,
20 the determination of UCU material adverse effect may,
21 without limitation, include the failure of the Public
22 Service Commission of the State of Missouri (MPSC) to
23 articulate prior to closing its policy on the extent
24 to which the surviving corporation may recover the
25 premium (as defined below) related to this

1 transaction.

2 Mr. Empson, what is your understanding of
3 that clause and that sentence as to how they operate
4 from the UtiliCorp perspective?

5 A. It would be my understanding, and you'll
6 have an opportunity maybe to ask Mr. Green tomorrow
7 for his opinion, but the corporation is going to be
8 spending around \$900 million to acquire Empire. Of
9 that, about \$270 million of it is in premium.

10 In order for us to advance this with our
11 board of directors for approval, we have to
12 demonstrate to them that we do, in fact, have a
13 reasonable opportunity to recover the premium with the
14 regulatory plan that's approved as part of the merger
15 transaction.

16 If we do not believe that the regulatory
17 plan that is approved gives us that reasonable
18 opportunity, then we'd have to sit down and look at
19 that, make recommendations to our board on what steps
20 or actions should be taken.

21 Q. Mr. Empson, is it your understanding that
22 the Missouri Commission has traditionally reserved
23 ratemaking questions concerning acquisition
24 adjustments and other merger costs to rate proceedings
25 and not merger applications?

1 A. I think when they're fully litigated --
2 there have been settlements that have occurred where
3 they did address types of ratemaking proceedings.
4 There was a sharing grid that has been approved. So
5 to me that was a similar type of a traditional
6 ratemaking decision that was made in a Stipulation and
7 Agreement. In a fully litigated case, I'm not aware
8 of where they've done that.

9 Q. In those cases that have settled, where
10 there was Stipulations and Agreements, can you
11 identify any case, Stipulation and Agreement, where
12 the merging companies were authorized to directly
13 recover any acquisition premium?

14 A. I cannot. Again, the qualifier being
15 directly. I think the -- what we have seen in the
16 testimony here is that there have been a lot of
17 efforts to give them an indirect opportunity, which I
18 think everybody acknowledges is appropriate.

19 Q. And what was that indirect opportunity
20 that's been provided that you're referring to?

21 A. That could be in a sharing grid that you be
22 able to exceed your allowed rate of return and retain
23 some of those dollars in order to recover the premium.
24 Could be rate freeze for a certain period of time in
25 order to do that.

1 Q. Might it be a moratorium?

2 A. Could be a moratorium.

3 Q. If the Missouri Commission were to decide in
4 this merger proceeding to reserve all ratemaking
5 questions concerning the acquisition adjustment to a
6 subsequent rate case, do you know or have some
7 expectation as to what approach UtiliCorp would
8 take in that instance given this provision in
9 Section 701(b)?

10 A. If the Commission were just to approve the
11 merger and that's it, the Order just said the merger
12 was approved and there was no indication of what
13 ratemaking treatment would be occurred from premium,
14 what the starting point is for synergies, I think I
15 would agree with what Mr. McKinney said, that that
16 would be a very serious thing for us to look at and
17 that we would probably sit down and make a
18 recommendation to the president of our company that,
19 given that lack of assurance, he ought to go back to
20 the board of directors and see if there was any
21 willingness, but I think it would obviously come to
22 the point of being a potential adverse impact on
23 UtiliCorp.

24 Q. Mr. Empson, do you know whether there is a
25 similar provision, and when I say similar provision, a

1 provision with similar or the same language in the
2 St. Joseph Light & Power/UtiliCorp Agreement and Plan
3 of Merger that makes direct reference to a decision
4 from the Missouri Public Service Commission addressing
5 recovery of the premium?

6 A. I don't believe that exact language is
7 there. There is a clause in there about material
8 adverse impact. Both of these agreements obviously
9 were negotiated with different companies, so you have
10 different language.

11 But the intent of our company would be that
12 the language is virtually the same, and we would have
13 that consideration to be given at the point in time a
14 decision is made by this Commission.

15 Q. Excuse me. I'm not quite sure I followed
16 you. Did you indicate that the language in the
17 St. Joseph Light & Power/UtiliCorp Agreement and Plan
18 of Merger is substantially the same or identical as
19 this sentence that begins, For purposes of this
20 section under Section 701(b)?

21 A. I did not mean to state that it was
22 substantially the same. It has the language in there
23 about material adverse impact, which in the minds of
24 our company when they were negotiating the deal, it's
25 my understanding that it has the same type of impact

1 on decisions coming from this Commission.

2 But again, Mr. Green will be here tomorrow,
3 and he personally was involved in the language and the
4 documents and could answer that better.

5 Q. Let me just ask you one other question on
6 that, and if you can't answer it, just indicate that.
7 Do you know whether the language in the St. Joseph
8 Light & Power/UtiliCorp Agreement and Plan of Merger
9 makes specific reference in section -- the comparable
10 Section 701(b) to the Missouri Public Service
11 Commission?

12 A. I don't believe it does. It talks about
13 material adverse impact.

14 MR. DOTTHEIM: I would like to ask at this
15 time, since I've asked Mr. Empson and Mr. McKinney and
16 I think it would be expected that I'm likely going to
17 ask Mr. Green tomorrow, regarding the St. Joseph
18 Light & Power/UtiliCorp Agreement and Plan of Merger,
19 I'd like to reserve an exhibit number and provide
20 copies of that document.

21 JUDGE WOODRUFF: It's my understanding that
22 that is already an attachment to another exhibit. Is
23 that --

24 MR. DOTTHEIM: I'm sorry. I'm referring to
25 the UtiliCorp/St. Joseph Light & Power --

1 JUDGE WOODRUFF: I'm sorry. Okay.

2 MR. DOTTHEIM: -- Agreement and Plan of
3 Merger, which is an attachment to Mr. Green's direct
4 testimony in again the St. Joseph Light &
5 Power/UtiliCorp merger case. It is not, that I'm
6 aware of, anywhere in the record in this proceeding.

7 JUDGE WOODRUFF: Okay. Your next number
8 then would be 718. Do you wish to offer that as an
9 exhibit at this time?

10 MR. DOTTHEIM: Yes. I offer that Agreement
11 and Plan of Merger dated as of March 4, 1999 between
12 UtiliCorp United, Inc. and St. Joseph Light & Power
13 Company as Exhibit 718.

14 JUDGE WOODRUFF: And you can provide copies
15 of that for the reporter?

16 MR. DOTTHEIM: Okay. Thank you.

17 JUDGE WOODRUFF: Exhibit 718 has been
18 offered into evidence. Is there any objection to its
19 receipt?

20 (No response.)

21 Hearing none, it will be received into
22 evidence.

23 (EXHIBIT NO. 718 WAS RECEIVED INTO
24 EVIDENCE.)

25 BY MR. DOTTHEIM:

1 Q. Mr. Empson, in your opinion, would UtiliCorp
2 be justified in seeking 100 percent direct recovery of
3 the merger premium from ratepayers?

4 A. That is a relative question depending on the
5 synergies that are being generated. The UtiliCorp
6 shareholders are making the investment. If through
7 making that investment the management can create
8 synergies to offset all of that premium and recover
9 higher than that, then they would be -- it would be a
10 legitimate effort to try to recover.

11 A standard that we had just recently in the
12 state of Kansas said that they could recover the
13 premium up to the level of synergies that are created,
14 and that is a reasonable way to set a standard.

15 Q. Mr. Empson, do you know whether UtiliCorp
16 and Empire can meet a standard, that standard here of
17 generating enough synergies so as to directly recover
18 100 percent of the premium?

19 A. You used the word again directly. Are
20 you -- is it a broader question than that or are you
21 looking at just the direct recovery of the premium?

22 Q. Direct recovery of the premium.

23 A. I think there is an exhibit in Mr. Siemek's
24 testimony, I believe it's Exhibit 5, that goes through
25 the calculation to show what the recovery would be,

1 and it shows that, in fact, in this case for Empire in
2 Missouri there is only between 65 and 74 percent of
3 the premium that is actually recovered through this
4 regulatory plan and that the shareholders, in fact,
5 are at risk for the remainder.

6 Q. Is that because sufficient synergies cannot
7 be generated to recover a hundred percent of the
8 merger premium?

9 A. With the information that we have available
10 today, it is showing that the total synergies from the
11 project that are going to be created will not recover
12 a hundred percent of the premium, but the regulatory
13 plan the way it's designed is designed to protect the
14 customers from any shortfall and have the shareholders
15 absorb it.

16 Q. I'd like to direct you to your surrebuttal
17 testimony, in particular page 6, lines 16 to 19 where
18 you state, Any attempt to speculate on what Empire
19 might have, could have or should have achieved during
20 the five-year rate freeze relating to these synergy
21 categories is irrelevant and a nonproductive exercise.
22 Did I read that correctly?

23 A. Yes, you did.

24 Q. Is it your belief that on a stand-alone
25 basis for the next five years Empire would be

1 unsuccessful in reducing its costs in any expense
2 category in providing electric service?

3 A. It would be my point that it would be
4 difficult to speculate whether they would reduce costs
5 or the costs would increase. What we need to do is
6 establish where those costs are today and then measure
7 the impact of the merger on those costs.

8 So, in fact, if we are -- there are certain
9 positions that are being eliminated, those are easily
10 identified and tracked. If there are values for the
11 off-system sales, those can be identified and tracked.

12 Q. Again, referring to the sentence that I just
13 read into the record, would you agree that any attempt
14 to speculate on what rate changes Empire would seek
15 over the next five years on a stand-alone basis would
16 be irrelevant and a nonproductive exercise as it
17 relates to this proceeding?

18 A. No, I would not. I think Mr. McKinney just
19 testified about the significant cost that's going to
20 be incurred to build the State Line Power Plant, and
21 that needs to be taken into consideration before you
22 go into a moratorium period.

23 Q. Are you aware of any projected rate cases by
24 Empire on a stand-alone basis after the State Line
25 combined cycle unit goes commercial and is brought

1 into rate base?

2 A. I'm not personally aware of that, but you
3 might address that question again to either
4 Mr. McKinney or Mr. Siemek.

5 Q. If UtiliCorp's proposed regulatory plan is
6 adopted, will UtiliCorp collect in Missouri through
7 its Missouri Public Service division rates at a
8 greater level of corporate allocated costs than will
9 be reflected in MPS's books for financial reporting
10 purposes?

11 A. Could you try that one once more on me?

12 Q. If UtiliCorp's proposed regulatory plan is
13 adopted, will UtiliCorp collect in Missouri Public
14 Service division rates a greater level of corporate
15 allocated costs than will be reflected in MPS's books
16 for financial reporting purposes?

17 A. Internally, I'm not sure exactly how it will
18 happen, but we are recommending in this proceeding
19 that we freeze the factors that impact the corporate
20 allocations. So, in fact, if we did that on our books
21 and reported it that way with the Commission decision
22 that's how we should manage the company, then in its
23 rates would be reflected the actual charges that are
24 being made.

25 Q. Mr. Empson, if UtiliCorp's proposed

1 regulatory plan is adopted, after year five will
2 UtiliCorp collect in Empire's rates the full level of
3 corporate allocated costs that will be reflected on
4 Empire's books for financial reporting purposes?

5 A. If I understand your question correctly,
6 yes, the Empire books will reflect the allocations
7 going to Empire for the UtiliCorp costs based upon
8 whatever factors might be used.

9 Q. Mr. Empson, I'd like to pose a hypothetical
10 for you. Okay. Assume that UtiliCorp engages in
11 future merger activity with a regulated utility in the
12 United States that has no operations of any kind in
13 Missouri.

14 Is it now UtiliCorp's policy that it will --
15 that it will seek to freeze for rate purposes the
16 corporate allocators applicable to its Missouri
17 divisions so that no impact of that out-of-state
18 transaction will be reflected in the rates of
19 UtiliCorp's Missouri division?

20 A. No, that is not the case. I tried to
21 explain that in the surrebuttal testimony, is we
22 looked at what was going on within a traditional
23 merger acquisition sequence, and so we have two
24 choices to look at in Missouri.

25 If we want to match the costs of the

1 transaction with the benefits that are going to be
2 incurred, then we would have left the allocation
3 factors alone. But if we are going to keep the costs
4 on the Empire side, we need to keep the benefits on
5 the Empire side in order to match costs and benefits.

6 So as typically has happened, when we
7 acquire property in another state, there is a benefit
8 coming to Missouri, but we also have never tried to
9 charge the costs of those transactions to the Missouri
10 ratepayers.

11 Q. On a going-forward basis, if such a
12 transaction occurred, would there still be the --
13 would allocation factors be developed so there still
14 would be a benefit coming to Missouri?

15 A. If we were to acquire a utility in the state
16 of Minnesota for example --

17 Q. Yes.

18 A. -- and that would impact, yes, there would
19 be, and there might be some discussion then if the
20 decision here -- I believe there's been some testimony
21 that there would be a willingness on the Staff's part
22 to consider assigning some of the costs of the
23 transaction against the benefits that would have come
24 to -- would come to MPS. At that point in time, you
25 might look at that as a different policy decision that

1 could be made within Missouri.

2 Q. You've indicated that you think some
3 discussions have occurred with the Staff regarding
4 that matter?

5 A. This was something, I believe, that came out
6 during the St. Joe hearing. I can't remember the
7 exact Staff witness that was on the stand, was asked
8 the question if there are benefits, should not we
9 consider costs, and I believe the answer was that is
10 something that would be given consideration.

11 Q. One moment, please.

12 Mr. Empson, can you identify who you have
13 talked with on the Staff who has told you or left you
14 the impression that the Staff and UtiliCorp are close
15 to agreement on operation of a savings tracking system
16 after a benchmark is ordered?

17 A. I might have spoken too broadly. My
18 understanding is there were certain costs that have
19 been identified by, I believe its Staff witness
20 Traxler, and said that under developing these costs,
21 then we could measure some growth or improvement in
22 these costs.

23 I know there's disagreement on the level of
24 off-system sales, but my understanding is there's an
25 agreement on the model that could be used to measure

1 the change in off-system sales. It's just whether or
2 not the entity Empire as a stand-alone can create them
3 themselves or they need to be part of a merged entity
4 to create those savings.

5 MR. DOTTHEIM: Thank you, Mr. Empson.

6 THE WITNESS: Thank you.

7 JUDGE WOODRUFF: We'll come up to the Bench
8 for questions starting with Chair Lumpe.

9 QUESTIONS BY CHAIR LUMPE:

10 Q. Mr. Empson, what is the difference between
11 savings and synergies?

12 A. I would say they're both the same. We try
13 to use synergy/savings in the same term as those that
14 are being generated through the merger transaction
15 itself. So typically we refer to those as synergies,
16 but they could be also outside of the transaction
17 itself.

18 Q. So there's not some unique feature to the
19 word synergy that's not incorporated in the word
20 savings?

21 A. I don't believe so. I apologize if I've
22 been confusing in the testimony.

23 Q. No. It's used throughout, and I thought
24 there was some unique thing that I just hadn't gotten,
25 and I've been using savings and wondered if I was

1 missing something.

2 Let me ask a couple of other questions here.

3 There's a suggestion that perhaps if you allow the
4 recovery of the acquisition premium, that there is an
5 incentive to overpay, and one might draw that
6 conclusion if the stock is worth 13 and you're willing
7 to pay 29.50. Why is that not an incentive to
8 overpay?

9 A. Basically, from a shareholders' perspective,
10 they need to make sure they're going to get a return
11 on the investment they're making. So they need to
12 look at the economics of the transaction. And if they
13 cannot generate significant enough synergies or
14 savings from the transaction to get a reasonable
15 return on that investment, then those investment
16 dollars should go somewhere else.

17 So they have a natural built-in inhibitor on
18 how much they can pay for properties based upon the
19 financial transaction that they're facing.

20 Q. And is your position that this is the level
21 that had to be paid in order to create the merger; is
22 that right?

23 A. That is correct.

24 Q. And no figure lower than that would have
25 encouraged Empire to want to join in this merger?

1 A. That is my understanding. Again, Mr. Green
2 will be here that was specifically involved in those
3 negotiations.

4 Q. There's a discussion of the benchmarks, and
5 I listened to the last question because I was curious
6 also about your statement of agreements, Staff and
7 company were coming to some sort of agreement.

8 Can these benchmarks and these merger-
9 related savings be so well-defined that we would not
10 be arguing about them from year to year?

11 A. I would hope so. If we can define the
12 starting point so we know how we're going to measure
13 them, I believe they can be because we're talking
14 about some fairly small finite numbers of, I'll call
15 buckets of cost. So I believe they can be, and that
16 would be our obligation to make sure they can be.

17 Q. Would it not get harder the further out you
18 get from the point or the day of the merger to measure
19 and determine what's merger and what's nonmerger?
20 Wouldn't it just get more and more difficult,
21 particularly going out to ten years?

22 A. Well, in this case we will first address it
23 in the sixth year, and I think what we need to do is
24 you start looking at the definitions and whatever can
25 be clearly identified as the synergies related or the

1 savings related to the merger as defined with the rate
2 order, you start offsetting that 50 percent of the
3 premium that we're asking for to be recovered.

4 Once we fill that 50 percent bucket, a
5 hundred percent of the value, whether it's merger or
6 non-merger-related, goes back to the customer during
7 that rate proceeding. Plus we're giving them a
8 guaranteed \$3 million less cost of service.

9 Q. Are you telling me that indeed it would not
10 be harder the further out you get, or does it get
11 harder? Is the benchmark so clear that I can just add
12 on every year and by year six I know where it is and I
13 can add on to the tenth year? Is it that clear?

14 A. I wish it could be crystal clear. I think
15 there'll be some disagreement perhaps, but I think if
16 you -- once you get the starting points and you know
17 what numbers that you're dealing with, you can
18 minimize that disagreement.

19 But it's important to define that up-front
20 starting point as clearly as possible and then how
21 you're going to measure it, because we have proposals
22 for how you would measure those differences in Mr.
23 Siemek and Mr. Myers' testimony.

24 Q. And you retreated a little bit from, I
25 think, your statement that Staff and the company had

1 come to some agreement on how this is going to be
2 done?

3 A. Correct.

4 Q. All right. You made a statement that you
5 would consider an extension if you got some feel of
6 where the Commission is going. How would you get that
7 feel?

8 A. Well, I guess our basic assumption is we're
9 going to have an Order come out before the end of the
10 year because I believe this Commission has been very
11 forthright in developing a procedural schedule that
12 lays out the ability for you to reach a decision by
13 the end of the year.

14 Otherwise, it would be more subjectivity,
15 I'm afraid, on how we believe the hearings went, any
16 actions that we could see that would give us either
17 positives or negatives on getting a favorable
18 decision.

19 It would be our hope that, consistent with
20 what Mr. McKinney said, that we would like to extend
21 it because we believe this transaction needs to move
22 forward and it's in the best interests of all
23 stakeholders to get it done.

24 Q. But if we gave the order first, and if I
25 hear you correctly that's what you're saying, what the

1 Order would say would give you that sense of where the
2 Commission was. What would be the purpose of an
3 extension if you didn't like the Order?

4 A. It's going to be a very subjective
5 determination, I believe, and it's going to be
6 something we all have to sit down and look at how the
7 hearings went and make some determination.

8 I think at this point in time our belief
9 would be that we would like to give it time to run out
10 if we had a pretty clear indication from the
11 Commission when they were going to issue the Order,
12 and that's the key point for us is having that finite
13 definition.

14 Q. There has been some discussion that indeed
15 there may be detriment to the MoPub customers. Why
16 would that not be relevant to this case?

17 A. The standard of no detriment could apply to
18 the MoPub customers. In our belief there is no
19 detriment to the MoPub customers because their rates
20 are staying the same. We're freezing the allocation
21 factor. So there is no detrimental impact to the
22 MoPub customers. In fact, a small part of the benefit
23 does flow to MoPub customers from the transaction.

24 Q. And there would be no rate increases
25 proposed for the MoPub division either?

1 A. Not as it relates to any of the merger
2 transaction itself. The rate cases that we would have
3 dealing with MoPub would be dealing with the purchased
4 power that we need to advance in the future.

5 CHAIR LUMPE: Thank you. That's all.

6 JUDGE WOODRUFF: Commissioner Murray?

7 COMMISSIONER MURRAY: Thank you.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. There's been quite a bit made of the fact
12 that the regulatory plan that UtiliCorp has proposed
13 is not exactly like anything else that we've ever
14 implemented in the past; is that correct?

15 A. That is correct.

16 Q. Do the utilities that we regulate operate in
17 the same environment that they operated in 20, 30
18 years ago?

19 A. Absolutely not. It is changing pretty
20 dramatically now with competition coming in.

21 Q. And are the utilities that we regulate
22 likely to operate in the same environment 10 or 15
23 years from now as they do today?

24 A. Most likely not.

25 Q. So in your opinion, would it be reasonable

1 that regulation may have to change along with the
2 changing environment?

3 A. Yes, I would agree. I think we're seeing
4 that in several jurisdictions that we cite in both
5 Mr. Green and Mr. McKinney's testimony.

6 COMMISSIONER MURRAY: Thank you. That's all
7 the questions I have.

8 JUDGE WOODRUFF: Vice Chair Drainer?

9 COMMISSIONER DRAINER: Let the others ask
10 theirs.

11 JUDGE WOODRUFF: Commissioner Schemenauer?

12 COMMISSIONER SCHEMENAUER: Thank you, your
13 Honor.

14 QUESTIONS BY COMMISSIONER SCHEMENAUER:

15 Q. Good afternoon, Mr. Empson.

16 A. Good afternoon.

17 Q. I have a few questions regarding the
18 acquisition premium and transaction/transition costs.
19 Did that total 270 million, is that approximately what
20 you said?

21 A. The premium cost that was paid is
22 approximately \$270 million. Then there are
23 transaction costs and transition costs that would be
24 on top of that cost.

25 Q. About 33 million or 60 million or --

1 A. If I recall correctly, it was probably close
2 to about \$30 million more, but I'm not precisely sure.
3 It's an exhibit again in Mr. Siemek's testimony.

4 Q. I was thinking 33 million.

5 Then you said the synergies or the savings
6 achieved from the merger would be something less than
7 that; is that correct?

8 A. Total synergies created will be less than
9 the premium cost incurred.

10 Q. Okay. Now, these figures that are presented
11 in all the testimony to us, are they figures for the
12 entire operation of Empire District Electric or are
13 they just for the Missouri operations?

14 A. I'm drawing a blank right now. I believe it
15 is for all of the Empire District. The premium paid
16 is for the entire Empire property. When you get down
17 to the specific numbers and dealing with synergies, I
18 assume it also covers all of the Empire District.

19 Q. So we don't really know what portion of
20 those costs would be applied to the Missouri
21 operations?

22 A. It might be in Mr. Siemek's testimony,
23 Commissioner. I cannot recall right now.

24 Q. I didn't read it anywhere. That's why I
25 asked you.

1 Okay. State Line Power Plant, did you
2 mention that was a base unit or a peaking unit?

3 A. My understanding from Mr. McKinney, it is a
4 base unit that's going to be put into service for
5 Empire.

6 Q. And it's not in service yet?

7 A. It's under construction at this time, is my
8 understanding.

9 Q. Okay. You indicated that the ratepayers
10 would be protected from paying any of the acquisition
11 costs or costs achieved if the synergies did not equal
12 those costs and that the shareholders would then bear
13 those costs. Did I understand that correctly,
14 according to your regulatory plan?

15 A. That is correct. We have five years of a
16 moratorium where a hundred percent of the cost of the
17 transaction is borne by the shareholders, and
18 UtiliCorp management is engaged in creating the
19 synergies to really fund that premium.

20 In year six, we've asked to have included in
21 the regulatory process or the rate case 50 percent of
22 the unamortized balance so we get a return of and on
23 that investment, and we will only get that if we can
24 demonstrate that the synergies at least equal that
25 amount.

1 If the synergies or the savings are less
2 than that, then we eat the difference, and we still
3 are guaranteeing a \$3 million rate reduction for the
4 customer -- or cost of service reduction for the
5 customers.

6 Q. This deficit balance from the merger cost, I
7 assume that would reside on the balance sheet
8 somewhere; is that correct?

9 A. I would assume it would be a cost that would
10 be borne by the shareholders somewhere. I don't know
11 exactly where it would be recorded.

12 Q. But it wouldn't be in rate base?

13 A. It would not be in rate base.

14 Q. And that cost, that lump sum would not be in
15 rate base the first five years either; is that
16 correct?

17 A. That is correct. We would be operating
18 trying to recover that cost through the synergies, but
19 it wouldn't have been allowed into rate base.

20 Q. Then do you think your company would want
21 that to be a stranded cost in the event of
22 restructuring?

23 A. No, I do not believe that our company would.
24 That would be something our shareholders would have to
25 bear.

1 Q. Okay. And then I assume the amount of this
2 deficit balance assigned to Missouri operations would
3 be a ratio of revenues generated from Missouri,
4 because certainly all of it wouldn't be assigned to
5 Missouri; is that correct?

6 A. It would be on some basis. I think we were
7 looking at the premium being assigned based upon the
8 synergies being generated and where those might reside
9 in the current cost of service, but that is being
10 worked on.

11 Q. Then if UtiliCorp decided to sell some
12 generating assets that they purchased from Empire and
13 they experienced a gain on the sale of those assets,
14 would it be logical to expect a recovery of some of
15 that deficit balance from the gain on the sale of the
16 assets?

17 A. By the shareholders themselves --

18 Q. Yes.

19 A. -- if there was some deficit balance? It's
20 my understanding in Missouri a gain on the sale of
21 utility asset is something that is attributed to the
22 shareholders.

23 In this case, if we were selling, if and
24 when the generating assets were sold, it would come
25 before this Commission, and the premium that would

1 have been assigned to those generating assets would
2 also be part of the sale. So if there was a gain
3 above the base load plus the premium that was assigned
4 to it, that incremental difference could, in fact,
5 help offset some cost that was incurred by the
6 corporation.

7 Q. So then am I understanding you correctly,
8 this deficit balance if it occurred, and you expect it
9 to occur as a result of this merger proceeding, you
10 would assign that to the assets part of it, and then
11 if you sold those assets you could recover part of it?

12 A. No. I think the deficit balance would
13 always reside with UtiliCorp, but the premium that is
14 associated with the generating assets would be
15 assigned to those assets. So when they are sold, in
16 fact, then the premium is being recovered at the time
17 of the sale.

18 Q. And that premium would be distributed to the
19 ratepayers?

20 A. The ratepayers at that point in time would
21 have then gained the recovery on the premium that had
22 been assigned to those assets.

23 Q. So I guess the point of all these questions
24 is, this deficit balance you're just stuck with
25 forever; is that correct?

1 A. That would be correct. If we cannot
2 generate sufficient synergies to offset it, then we
3 are holding that deficit balance.

4 COMMISSIONER SCHEMENAUER: Okay. Thank you.

5 If anybody can figure out if the total
6 amount of these acquisition premiums and costs to
7 achieve, if it's for the entire District Empire --
8 Empire District Electric Company or if it's all to the
9 Missouri operations, I'd like to know what portion of
10 it is subject to Missouri operations.

11 Thank you.

12 JUDGE WOODRUFF: Commissioner Simmons?

13 COMMISSIONER SIMMONS: Thank you, your
14 Honor.

15 QUESTIONS BY COMMISSIONER SIMMONS:

16 Q. Good afternoon, sir.

17 A. Good afternoon, Commissioner.

18 Q. I'm sorry. I'm without information on your
19 background, and I wanted to ask you, how long have you
20 been with the company?

21 A. I have been with UtiliCorp since 1986.
22 Prior to that I was with Enron or Northern Natural Gas
23 for about eight years.

24 Q. In your current capacity as Senior Vice
25 President, and I do have that information, how many

1 mergers or acquisitions have you been involved in as
2 it relates to UtiliCorp?

3 A. Step back for a minute. When I was first
4 with UtiliCorp, I was with People's Natural Gas.
5 People's Natural Gas engaged in acquisitions in the
6 state of Nebraska to buy properties owned by
7 Minnegasco and also in the state of Kansas. So there
8 was two transactions there.

9 And then as far as UtiliCorp, I became part
10 of UtiliCorp when they consolidated in 1994 as a staff
11 person and was involved in the KCPL merger that was
12 unsuccessful and then this proceeding today.

13 Q. So there have been a few that you have been
14 involved in?

15 A. Domestically and then was involved in some
16 on the International side.

17 Q. How many mergers have you been involved in
18 where the purchased company's shareholders voted for a
19 merger but the purchasing company's shareholders did
20 not vote for the transaction?

21 A. None.

22 Q. Would that be the case here, though?

23 A. Oh, you mean -- I thought you meant they
24 voted against it. All the other small ones that we
25 were involved in in Kansas and Minnesota did not

1 require any of our shareholders to vote for. So when
2 we bought Minnegasco's property in Nebraska and
3 Kansas, that did not require a shareholder vote.

4 Q. Is that unique in the industry or is that
5 just normal course of business? How would you
6 characterize that?

7 A. I believe it's on the level of the
8 transaction that defines whether you have to go to the
9 shareholders. I'm not sure that specific level, and I
10 don't know if it's unique in the industry, but that's
11 the standard that's kind of applied in the utility
12 industry.

13 COMMISSIONER SIMMONS: Thank you, sir.
14 That's all the questions I have.

15 JUDGE WOODRUFF: Vice Chair Drainer?

16 QUESTIONS BY COMMISSIONER DRAINER:

17 Q. Good afternoon.

18 A. Good afternoon, Commissioner.

19 Q. I just have a couple questions, and I know
20 you're basically here as a policy witness, but with
21 respect to your regulatory plan and the premium, is it
22 your position or belief that there will be a premium
23 to share or savings to share or that there'll be a --
24 excuse me -- after the premium, that there will be a
25 savings actually to share?

1 A. Well, we have basically guaranteed that no
2 matter what happens in year six there will be
3 \$3 million reduction in the cost of service no matter
4 what the level of trued-up synergies are. And if we
5 can true-up synergies that exceed what the premium
6 allocation is, then that value also flows back to the
7 customers when it's in excess of that \$3 million
8 guarantee.

9 Q. And I guess what I'm asking you is, do you
10 believe that that will happen, that there'll be
11 something above the 3 million based on the projections
12 you've seen?

13 A. Given that we are only putting 50 percent of
14 the premium in, I believe there is an opportunity for
15 some higher benefits to flow to the customers if we
16 can perform. Again, I'm not down far enough into the
17 numbers to talk as an expert in that area.

18 Q. But you believe they are there?

19 A. Well, I know the 3 million guarantee is
20 there, and I believe that we wouldn't make this
21 investment if we didn't feel we could at least fund
22 the 50 percent to give the value back to our
23 shareholders. So I do believe there's some excess
24 there.

25 Q. Okay. Do you also believe or have you had

1 discussions since the last merger case and with this
2 one that UtiliCorp would be able to put together a
3 database or data collection with Staff that would
4 actually show the savings?

5 A. I believe we can if we can clearly define
6 that up front benchmark. I've had one experience with
7 that in a case recently where we did not do a good
8 enough job defining it up front. We had problems then
9 in quantifying it. But I think if we do make that
10 effort we can.

11 Q. Okay. Then as a follow-up to that, do
12 you -- based on that experience where you did not do a
13 good enough job, do you believe now that you have
14 presented evidence in this case, that your company
15 has, which highlight or give a guideline of what
16 exactly needs to be captured that would be good
17 enough?

18 A. I believe there is because we're a hundred
19 percent at risk if we cannot. So it's up to us to
20 make sure that we can define that and track it and
21 demonstrate that to this Commission in order to
22 recover that 50 percent of the premium.

23 Q. And that's demonstrated in whose testimony?

24 A. Mr. Myers and Mr. Siemek talk about that.

25 Q. And you believe that they have presented

1 testimony thorough enough to give us a guideline?

2 A. That's the comfort that our management has,
3 that we believe we can deliver on what we're saying in
4 our plan for Mr. Myers and Mr. Siemek.

5 Q. Okay. Thank you.

6 And then I came in where you were discussing
7 your crystal ball with another Commissioner on how the
8 environment may change in the next few years. We
9 don't really know how it will change, do we?

10 A. We don't. We know it's going to be changing
11 over time, and the pace varies by state jurisdiction
12 on actions that are taken by customers or state
13 commissions or state legislators, but we don't know
14 for sure.

15 Q. We're also seeing some changes with respect
16 to California and New York and some issues that have
17 arisen this summer that there may even be some
18 movement back. So not that we'll go all the way back,
19 but it is very unique to each state, isn't it?

20 A. It is very unique to each state.

21 Q. Okay. With respect to your regulatory plan
22 and this merger, I heard the Office of the Public
23 Counsel, Mr. Coffman, in his opening statement
24 basically stated that the reg-- he said, We now know
25 that UtiliCorp does not consider the regulatory plan

1 to be a make or break matter.

2 And so I guess my question to you is, if
3 this Commission were to find that the merger were in
4 the public -- or not detrimental to the public, and
5 basically that is all we found in this case, is that
6 acceptable or is there a deal breaker in there we're
7 not aware of?

8 A. I'm not sure where Mr. Coffman got the
9 understanding that it was not a make or break part of
10 this transaction. The language is important to us,
11 and I would say that if the merger in and of itself is
12 all that is approved with no regulatory plan or no
13 indication on what the shareholders can expect as far
14 as recovering the premium, it would be highly unlikely
15 that the transaction could move forward.

16 Q. If the Commission were to find that the
17 merger were not detrimental to the public, with
18 respect to the premium were to give the company an
19 opportunity to present it in a rate case and that
20 there -- would also direct that there would be an
21 appropriate guideline set up so that you could have a
22 method that's approved for capturing this savings to
23 be reviewed in the case, would that give you any
24 comfort?

25 A. It would give a lot more comfort. Obviously

1 it's into the details of just how you would provide
2 those guidelines and when they would take effect and
3 the time frames that we would be involved in. But as
4 you have indicated, the guidelines are something
5 that's very important to this transaction.

6 Q. And you've told me that Mr. Myers and
7 Mr. Siemek have testimony. So if in this case we were
8 able to develop what are the issues that need to be
9 captured, I guess what concerns me is you can't ask a
10 company to count every paperclip.

11 A. I think that was the key for us is to go
12 into some of the bigger buckets and say, Here's
13 something we're looking at, off-system sales. We know
14 where we are today. We've got some modeling that we
15 can do in the out years. Let's come to an agreement.
16 We'll use that model. We start today. We start
17 looking at how the model impacts that, run it
18 consolidated, nonconsolidated. Let's see if we can't
19 come to an agreement that that's the framework that we
20 use, or we know that jobs, in fact, are jobs -- there
21 will not be two presidents anymore. There will not be
22 two vice presidents of finance.

23 So we can track some of those very
24 specifically and target them, and then hopefully we'll
25 get down to the point where the differences will be

1 much more minor and that we've captured the bulk of
2 them.

3 Q. And I guess that would be the point is, can
4 we through this case develop the record to show the
5 major cost areas or expense areas or buckets as you
6 say. And if we're able to do that, then if you knew
7 that that was going to be reviewed, but that this
8 Commission would not make a determination on premium
9 until the case.

10 A. You have to look at the whole economics of
11 this transaction, Commissioner. Right now we have
12 proposed a model that has a five-year freeze that
13 gives us an opportunity plus the 50 percent.

14 So when we get done with the guidelines that
15 are being provided by the Commission and whatever
16 assurance is there, we'd look at the economics of it,
17 and if we can make it work under a Commission designed
18 and approved model, we'll sure try to make it work.

19 COMMISSIONER DRAINER: Thank you. I have no
20 other questions. I appreciate your answers.

21 JUDGE WOODRUFF: I have one question.

22 QUESTIONS BY JUDGE WOODRUFF:

23 Q. I'd like you to define a term for me. You
24 used it in your testimony as well as today during
25 cross-examination. That's the term claw back. Can

1 you define that for me?

2 A. Basically, it's something that's come out of
3 one of our international transactions, but it's like a
4 show-cause that would be issued and the benefits
5 clawed back before you could realize the total value
6 of the transaction.

7 So the example I was using here is that if
8 we did a buyout on a lease and they did not allow the
9 lease to be recovered but they clawed back all the
10 efficiencies to lower the costs, then we'd have been
11 detrimentally impacted by that transaction. So it's
12 mainly a pulling away of the value from the
13 shareholders of the company.

14 JUDGE WOODRUFF: Thank you. We'll go back
15 to recross then for questions from the Bench, and
16 we'll begin with IBEW.

17 MR. JOLLEY: We have no questions, your
18 Honor.

19 JUDGE WOODRUFF: Retirees?

20 MR. DEUTSCH: No questions.

21 JUDGE WOODRUFF: Natural Resources?

22 MS. WOODS: No questions.

23 JUDGE WOODRUFF: ICI?

24 MR. CONRAD: Wouldn't you know it.

25 RE CROSS-EXAMINATION BY MR. CONRAD:

1 Q. A couple follow-ups, Mr. Empson, on some
2 things that the Bench asked you. First of all, clear
3 up one just kind of personal point for me. I
4 understood you in response to Commissioner Simmons
5 that you used to work for Northern Natural?

6 A. That is correct.

7 Q. Do you remember Mary Kay?

8 A. Mary Kay Miller?

9 Q. Yeah.

10 A. She is still there at Enron. Yes, I do.

11 Q. I'll see Mary Kay tomorrow. I'll give her
12 your best.

13 A. Thanks.

14 Q. That is if you prefer.

15 A. I'll leave that up to your discretion.

16 Q. Well, then, I'll just not mention it at all.

17 Chair Lumpe asked you about the Order that
18 you would expect. Do you recall that --

19 A. Yes, I do.

20 Q. -- line of questioning?

21 Let me take you back, because when she asked
22 that question, that caused me to go back and look at
23 this language a little bit more closely. I'm looking
24 at 48, page 48 that I think staff counsel had directed
25 you to, the middle of D. where it starts, For purposes

1 of this section. Are you with me?

2 A. Yes.

3 Q. A material -- the determination of a UCU
4 material adverse effect may include the failure of the
5 PSC to articulate prior to closing its policy on the
6 extent to which the surviving corporation -- I guess
7 that would be you-all -- may recover the premium.

8 If the articulation of that policy was no,
9 not never, no how, would they have articulated the
10 policy?

11 A. As you know from my background, I'm not a
12 lawyer. So I do not wish to try to interpret what the
13 lawyers meant by that language in the agreement. I
14 really couldn't tell you.

15 Q. Well, in another response you said the
16 language was important. And I guess it seemed to me
17 that the Commission by articulating its policy
18 negatively and saying no, not ever, no how, would have
19 articulated prior to closing its policy on the extent
20 to which the surviving corporation may recover the
21 premium.

22 A. Then I believe we'd have the material
23 adverse impact. But again the issue there, we really
24 need to deal with the lawyers that crafted that
25 language to get a detailed explanation. I cannot

1 interpret the language.

2 Q. I think they may have gotten a little too
3 crafty on that.

4 Now, Commissioner Schemenauer identified --
5 or your responses to his questions identified, I
6 think, a premium plus this 30 million transaction and
7 transition cost of about -- a total of about
8 300 million then. Is that consistent with your
9 recollection?

10 A. That was the calculation.

11 Q. Is that a whole company number?

12 A. The best of my knowledge, that is a whole
13 company number for all of Empire.

14 Q. So that's not -- that's not a Missouri or
15 Kansas?

16 A. Well, my understanding is Mr. Schemenauer
17 was asking me to clarify that through a witness that
18 would come up, and Mr. Siemek can clarify that. But
19 it's my understanding it is a total company number.

20 Q. But in connection with that same set of
21 questions, you indicated that the synergies which we
22 talked about earlier with Chair Lumpe, namely the
23 savings, would be less than that 300 million?

24 A. Yes. There is an exhibit --

25 Q. How much less?

1 A. Again, Mr. Siemek has the exhibit. My
2 recollection is that, with the proposal that we have,
3 will be right around -- for Empire in years six
4 through ten, somewhere around 74 percent of that
5 premium recovered. But again, it would be best to
6 validate that with Mr. Siemek when he's here.

7 Q. So about 210, 200 million, something like
8 that. A hundred million dollars is this unrecovered
9 pot that Commissioner Schemenauer identified that we
10 weren't going to have in rate base, it was just going
11 to be out there somewhere forever, right?

12 A. There's a calculation in there because you
13 start with the synergies and you have the costs
14 incurred to achieve that give you the net synergies
15 that are going against the premium. So I think the
16 pot of the calculation is smaller, but the total
17 dollars that we're dealing with there are the same,
18 but some of them have already been directly deducted
19 from the synergies themselves.

20 Q. Okay. I guess what I'm trying to have -- or
21 I'm having difficulty then understanding is why your
22 company would pay, fiduciaries and all that, why you
23 would pay \$300 million for assets that you would never
24 be able to recover \$100 million of. I mean, is this
25 one of those things where you lose a little bit on

1 each one you sell and then make it up on the volume or
2 what?

3 A. Is that a --

4 Q. Well, you can answer it if you like. I
5 just --

6 A. I'm not sure I can answer the question.

7 Q. I mean, we can call it that. We can call it
8 a testosterone factor. We can identify it however you
9 like.

10 MR. SWEARENGEN: Is there a question?

11 BY MR. CONRAD:

12 Q. Is that what it is? Do you plan on ever
13 making that back up?

14 A. When we ran the economic model, we show this
15 is an accretive transaction if we can get the
16 regulatory plan approved the way that it is designed
17 in this case. Otherwise, we would not be doing the
18 transaction obviously.

19 Q. An accretive transaction?

20 A. On an earnings per share basis for our
21 shareholders.

22 Q. Now, when I was in law school we talk about
23 accretion and avulsion. Accretion had to do with
24 where the Missouri and Mississippi River deposited
25 some unearned property on somebody's riverbank and

1 suddenly their 40 acres became 40 plus or minus but it
2 kept kind of accreting. Avulsion was the opposite,
3 and that was where the river changed course and
4 suddenly your 40 acres belonged to Kansas or Illinois
5 in the case of Mississippi.

6 Is that what you're thinking about in
7 accretion?

8 A. I believe you need to spell the term and
9 define it for me in a little different manner than
10 what we're used to in financial terms, Mr. Conrad.

11 Q. Okay. Let me ask you then one more, I
12 think, about -- the presiding officer asked you about
13 the claw back. What prevents -- well, excuse me.

14 Vice Chair Drainer asked you a little bit
15 about the make or break nature of the regulatory plan,
16 and you responded that you wouldn't have, for example,
17 two presidents anymore?

18 A. I did that as an example, yes.

19 Q. Well, now, Mr. McKinney was up here earlier
20 and said that he didn't know whether he was going to
21 have a job with UCU, but that if he didn't have a job
22 with UCU he got three times his annual salary.

23 So now, you may not have two presidents, but
24 you might have salaries, at least for three years.
25 Would you agree with me?

1 A. You would take that cost of the transaction
2 or the transition cost, I believe in our case it's
3 amortized over ten years. So on an annual basis, when
4 you take three years amortized over ten, it's less
5 than the cost of service we currently would have into
6 effect for that company.

7 Q. So that would fall into this 30 million?

8 A. That is correct.

9 Q. And out of that, he gets about \$600,000?

10 A. I do not know what Mr. McKinney gets out of
11 that.

12 Q. Finally, let's go to claw back. What
13 prevents, in your view, my clients from coming in here
14 in year one after you started to reap some of the
15 so-called benefits or synergies and saying that your
16 rates are now out of line and they should be reduced
17 and we file a complaint and that's processed by the
18 Commission? What prevents that from happening?

19 A. Again, it's my understanding that nothing
20 prevents that. That's one of the risks again the
21 shareholders are taking in this transaction. That can
22 be managed and it will not happen. But if it does
23 happen, again it's an adverse impact on the
24 shareholders.

25 MR. CONRAD: Thank you.

1 JUDGE WOODRUFF: And City of Springfield?

2 MR. KEEVIL: Very briefly.

3 RECROSS-EXAMINATION BY MR. KEEVIL:

4 Q. Mr. Empson, I believe it was Chair Lumpe
5 asked you some questions regarding UCU's willingness
6 to extend the merger past the December 31st, 2000
7 date.

8 My question, I guess, first question is,
9 when was the Agreement and Plan of Merger between
10 UtiliCorp and Empire executed?

11 A. As of May 10, 1999, the Agreement and Plan
12 of Merger.

13 Q. Okay. And when was the case that we're here
14 today on account of filed by UtiliCorp and Empire?

15 A. I can't remember the exact date.

16 Q. Okay. Do you have a copy of your testimony?
17 Or you didn't file direct.

18 Would you accept December 1999 as the
19 approximate date of that?

20 A. I'll accept that if that's -- if you're
21 referring to someone's specific testimony.

22 Q. I'm looking at Mr. Myron McKinney's direct
23 testimony. It says December 1999 on it. I take that
24 to mean that it took the companies approximately seven
25 months between the date of the execution of the

1 Agreement and Plan of Merger to file this case. Would
2 my math be roughly correct there, Mr. Empson?

3 A. Not necessarily just to file the case. I
4 believe there had to be a shareholder vote on the part
5 of Empire's shareholders. So they had to get
6 appropriate notification and a vote taken before they
7 could proceed.

8 So we didn't really start preparing the
9 filing itself in totality until we had some assurance
10 that the shareholders were going to approve it. But
11 that is a time frame from the time of signing to get
12 all the other things to put in place to file the plan
13 that did take place.

14 Q. Was receipt of Empire shareholders'
15 approval, to your knowledge, a prerequisite for the
16 companies doing what?

17 A. It is my understanding that it was a
18 prerequisite to go ahead with the merger. You had to
19 have that approval before you could advance it. But
20 again, I'm not a lawyer to represent what exactly it
21 was.

22 Q. What was the shareholder approval received,
23 then?

24 A. I'm sorry. I do not know. You need to talk
25 to Mr. McKinney about that, Myron McKinney.

1 MR. KEEVIL: Thank you. No further
2 questions.

3 JUDGE WOODRUFF: Okay. Public Counsel?

4 MR. MICHEEL: Yes.

5 RECROSS-EXAMINATION BY MR. MICHEEL:

6 Q. Mr. Empson, Chair Lumpe asked you some
7 questions about synergies and savings. Do you recall
8 those questions?

9 A. Yes, I do.

10 Q. Does UtiliCorp include in their revenue
11 enhancements, for example, increased off-system sales
12 opportunities, increased revenues from sales of
13 nonregulated projects and the gain on sales of
14 generation assets as something that should be included
15 in the synergies/savings?

16 A. Do you want to take them one at a time on
17 what you listed?

18 Q. Sure.

19 A. Go ahead.

20 Q. How about off-system sales, is that a
21 synergy or savings?

22 A. The off-system sales from the combined
23 entity is shown as a synergy in this case.

24 Q. Okay. How about increased revenues from
25 nonregulated products and services?

1 A. That is not included, to the best of my
2 knowledge.

3 Q. How about any gain on the sale, assuming
4 that you would sell, for example, generation assets,
5 would that be a savings or a synergy?

6 A. I think we answered a Data Request on that,
7 that right now there are no plans to say that we would
8 be selling that. So those were not incorporated into
9 the benefits.

10 Q. You also talked with Chair Lumpe about the
11 tracking. Do you recall those questions?

12 A. Yes, I do.

13 Q. Has the Office of the Public Counsel come to
14 some agreement with UCU regarding tracking?

15 A. Not to the best of my knowledge.

16 Q. And are you aware that Public Counsel
17 believes that tracking out the ten-year plan is really
18 not a worthwhile endeavor?

19 A. I'm aware of that.

20 Q. You also spoke with Chair Lumpe about the
21 Missouri Public Service allocation factor. Do you
22 recall those questions?

23 A. Yes, I do.

24 Q. Is it correct that, according to Mr. Siemek,
25 holding the Empire allocation factor constant is an

1 attempt to indirectly recover the merger premium?

2 A. Yes, it is.

3 Q. So is it correct that absent merger or
4 absent freezing, that MPS customers would be paying
5 more for rates, all else remaining the same?

6 A. I didn't follow the question. By freezing
7 it, MPS customers are paying exactly the same amount
8 that they would have paid if the transaction had not
9 occurred.

10 Q. And that would be more, isn't that correct,
11 assuming you folded in Empire into that allocation?

12 A. That would be the same amount. The costs
13 are being allocated out and the factor's not being
14 included, so they're paying the same amount whether
15 the merger takes place or not.

16 Q. Commissioner Schemenauer asked you about the
17 gain on sale of assets and generation. Do you recall
18 those questions?

19 A. I do.

20 Q. What amount of the premium has been assigned
21 to the generation assets?

22 A. I can't tell you exactly how much has been.

23 Q. Has the company done any studies to indicate
24 what amount of the premium they're paying related to
25 those generation assets?

1 A. Not to the best of my knowledge.

2 Q. Is UtiliCorp willing to make a commitment in
3 this proceeding that it will assign some of the
4 premium to its nonregulated assets?

5 A. The premium that we -- we're looking at the
6 synergies that are created being the driver for the
7 assignment of the premium. So in this case, if we're
8 looking at the electric generation of its primary
9 driver of the synergies, then it would be receiving a
10 significant part of the premium.

11 Q. Commissioner Drainer asked you some
12 questions about the make or break nature of your
13 regulatory plan. Do you recall those questions?

14 A. Yes, I do.

15 Q. Is it correct that in Mr. McKinney's
16 surrebuttal testimony he indicates that your company
17 would consider other regulatory plans?

18 A. As I indicated in the conversation and
19 questions from Commissioner Drainer, we're looking at
20 the final result, and if we can make the economics
21 work with another alternative, it gives our
22 shareholders that same assurance, of course we'll look
23 at it.

24 Q. So approval of the as-filed regulatory plan
25 is not a make or break deal; isn't that correct?

1 A. The approval of a regulatory plan that gives
2 us the financial assurance that we need is a make a
3 break deal.

4 Q. I said the as-filed regulatory plan.

5 A. The as-filed can be modified as long as it
6 gives us the same assurances.

7 Q. Let me go back to the MPS allocator that I
8 believe Chair Lumpe had asked you. If you include the
9 MPS allocation with all other companies, would its
10 allocated costs be less than they are now for
11 ratemaking purposes?

12 A. Please try that one again.

13 Q. Okay. If you include the MPS allocation
14 with all other companies, all other UtiliCorp Missouri
15 companies, would its allocated costs be less than they
16 are now?

17 A. Right now, the MPS allocators are in the
18 formula and so they are going to be staying in the
19 formula, so the costs are the same. So there is no
20 before and after impact.

21 Q. Well, if you include -- let's assume that
22 the St. Joe merger is approved and the Empire merger
23 is approved. All right. It's your company's
24 contention that cost will be reduced; is that correct?

25 A. Which cost category are you referring to

1 now?

2 Q. Corporate costs.

3 A. The overall corporate costs might increase
4 some because we're assuming some other
5 responsibilities that are coming from Empire and
6 St. Joe, but the factors that -- the dollars that
7 would be set out to MPS will not -- the factors will
8 not change and they will not be adversely impacted.

9 MR. MICHEEL: Thank you very much.

10 JUDGE WOODRUFF: Staff?

11 MR. DOTTHEIM: Yes, just a few questions.

12 RECROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. Mr. Empson, I'd like to refer you back to an
14 answer that you gave.

15 JUDGE WOODRUFF: Mr. Dottheim, you need to
16 use your microphone.

17 MR. DOTTHEIM: Sorry.

18 BY MR. DOTTHEIM:

19 Q. Mr. Empson, I'd like to refer you back to an
20 answer that you gave in response to a question from
21 Commissioner Drainer, and I think you responded that
22 UtiliCorp had a recent experience where UtiliCorp did
23 not do a good enough job of benchmarking. No?

24 A. If I said that, it was an incorrect
25 statement.

1 Q. Correct me if I've misstated what you said,
2 and I apologize.

3 A. The experience we had is when UtiliCorp
4 acquired the Centel properties in Kansas, the
5 Commission -- in 1991. The Commission issued an Order
6 to the Staff to open up an investigation to set the
7 benchmarks. They issued Data Requests to us. We
8 defined what those benchmarks were going to be and the
9 categories of the savings that would be incurred.

10 They did follow-up DRs and then dropped the
11 proceeding in 1993. So we had assumed that those
12 definitions that we had provided to them through the
13 DRs were going to be the starting point for measuring
14 the synergies, because in the Order there they said we
15 can collect the premium up to the amount of synergies
16 that are being generated. So we were highly motivated
17 to make sure that we understood what those definitions
18 were and we could produce them.

19 We just had a rate case over there where the
20 definition of one element, that was coal savings for
21 the Jeffrey Energy Plant, they no longer accepted that
22 even though we gave it in '93 as a merger-related
23 savings. So I said we didn't do a good enough job of
24 defining the initial benchmarks up front in agreement
25 with the Staff because we should have probably pushed

1 harder to get a docket finalized.

2 Q. As a consequence, were there significant
3 differences of opinion in that Kansas proceeding as to
4 the amount of merger-related savings related to that
5 acquisition?

6 A. There are differences of opinion. We had
7 our -- we went from 1991 until year 2000 with
8 basically no change in rates, where a hundred percent
9 of whatever synergies were generated were maintained
10 within the company, and then during that rate
11 proceeding they agreed to put 50 percent of the
12 premium into our rates and not allow the remaining 50
13 percent.

14 Q. Those differences of opinion, did that
15 involve UtiliCorp, the Staff and other parties as far
16 as the amount of alleged merger-related savings
17 related to the acquisition?

18 A. Yes, it did, going back just on not a clear
19 enough definition of the starting point.

20 Q. Are you familiar with -- and this goes to a
21 number of questions from the Bench regarding the
22 December 31, 2000 termination date in the Agreement
23 and Plan of Merger.

24 Are you familiar with Mr. Robert K. Green's
25 1999 year-end conference call to rating analysts which

1 occurred on February 8, 2000?

2 A. I believe I've read it in some of the
3 testimony that was provided by Staff. Beyond that,
4 no.

5 Q. Do you know whether anyone on the part of
6 UtiliCorp or Empire District Electric has disputed
7 what's reported in the Staff's testimony respecting
8 what Mr. Green said at that February 8, 2000 year-end
9 conference call?

10 A. I really don't know.

11 Q. Do you recall whether Mr. Green said, and I
12 quote, Okay. Merger activity. We filed -- we filed
13 the St. Joe rate case in October. We filed Empire in
14 December. The hearing on St. Joe is scheduled for
15 July 10th, and we expect a hearing in the Empire
16 transaction maybe in December of this year. We would
17 hope to close St. Joe certainly this year, and Empire,
18 it would be nice if we can get it closed this year.
19 That might push into the first quarter of next year.

20 Do you recall reading a transcript or
21 reading Staff testimony which contained that direct
22 quote from Mr. Robert K. Green?

23 A. I vaguely remember. I didn't spend a lot of
24 time on comments made about Mr. Green's testimony, but
25 he'll be here tomorrow and I'm sure you can address

1 them specifically with him.

2 MR. DOTTHEIM: Thank you.

3 JUDGE WOODRUFF: Anything else from Staff?

4 MR. DOTTHEIM: No.

5 JUDGE WOODRUFF: And redirect?

6 MR. SWEARENGEN: Just a couple to try to
7 clean up, your Honor.

8 REDIRECT EXAMINATION BY MR. SWEARENGEN:

9 Q. Mr. Empson, Chair Lumpe was asking you
10 earlier about the termination date, the December 31,
11 2000 termination date in the agreement, and under what
12 circumstances that might be extended.

13 Let me ask you this. If this Commission
14 issues an Order prior to that time, you will then
15 know, will you not, whether or not you can go ahead
16 and close the transaction?

17 A. Yes, we will.

18 Q. Now, if for some reason this Commission
19 hasn't issued an Order by the end of this year, what
20 will you then do?

21 A. You as me personally or generically for
22 UtiliCorp? But as I indicated before, we need to look
23 at the circumstances and decide. It would be our hope
24 that we would sit down and if we had some certainty of
25 when the Order was coming out, that we would wait for

1 that Order, but that's not my decision. That would be
2 Mr. Green's decision and the board of directors.

3 Q. And what circumstances would you look at at
4 that time? This Commission hasn't issued an Order.
5 Do you have any idea at all what you would consider or
6 look at in making that decision?

7 A. I think we would sit down in general and
8 talk about it with our regulatory group and see how we
9 believe the hearing was going and if there were issues
10 that we did not anticipate or arguments we did not
11 anticipate and then make a recommendation.

12 Q. Mr. Conrad was, I think in response to --
13 you used a term accretive to shareholders, and
14 Mr. Conrad provided us with a nice lecture on property
15 one, but I never did hear you define that term,
16 accretive. Could you give us a definition of that?

17 A. Generates earnings that are positive on an
18 earnings per share basis. So it makes a contribution,
19 a favorable contribution to earnings per share.

20 Q. Were you with Peoples Natural Gas Company
21 when it was acquired by UtiliCorp?

22 A. I was with Northern Natural Gas at that
23 time, which was the predecessor owner of Peoples
24 Natural Gas.

25 Q. And then you went with Peoples after the

1 UtiliCorp acquisition; is that correct?

2 A. Approximately one year after that.

3 Q. Finally, the Public Counsel asked you a
4 series of questions taking issue with your use of the
5 term unique in defining UtiliCorp's regulatory plan.
6 Would you turn for a minute to the top of page 2 of
7 your surrebuttal testimony?

8 A. Yes.

9 Q. There in line 1 you make the statement, I am
10 frustrated by the attempts to characterize UtiliCorp's
11 regulatory plan as unique or complex in shifting the
12 risk to customers to pay for the acquisition premium.

13 Would you please explain the context in
14 which you make that statement?

15 A. Well, the references are -- the staff makes
16 references using the word unique in some of their
17 testimony. So to me, the basic principles that we're
18 dealing with here are things that have been before
19 regulatory bodies before.

20 When we're dealing with a rate freeze,
21 divisional capital structure, the concept of what
22 we're doing on the factor being frozen as far as the
23 allocator are things that are not what I would
24 consider unique. In fact, they are usually some
25 things that we have looked at in other proceedings.

1 Q. And what about the latter portion of that
2 statement, shifting the risk to customers to pay for
3 the acquisition premium?

4 A. The concern -- and I cite several examples
5 here of where they are talking about the customers are
6 now assuming the risk. It is my firm belief that the
7 shareholders are bearing 100 percent of the risk of
8 this transaction. They're making the initial
9 investment. They've made the decision to pay a
10 premium of \$270 million.

11 And the burden now is on UtiliCorp
12 management to create the values necessary to offset
13 that premium and the risk that is on the shareholders.
14 If we cannot do that, then the shareholders bear the
15 financial burden, not the customers, because we have
16 guaranteed the customers during the first five years
17 the rates will not go up, and in year six they'll have
18 a \$3 million reduction in cost of service. So they
19 are totally protected in this case.

20 MR. SWEARENGEN: Thank you. That's all I
21 have.

22 JUDGE WOODRUFF: You may step down, then.

23 (Witness excused.)

24 JUDGE WOODRUFF: We'll take a break until
25 four o'clock.

1 (A recess was taken.)

2 (EXHIBIT NOS. 4 AND 5 WERE MARKED FOR
3 IDENTIFICATION.)

4 JUDGE WOODRUFF: We'll go on the record.

5 Mr. McKinney, before I swear you there's
6 another matter we need to take care of. Have a seat.

7 Mr. Conrad, I believe there's a matter you
8 wanted to bring up?

9 MR. CONRAD: There is. Are we on the --

10 JUDGE WOODRUFF: We are on the record now,
11 yes.

12 MR. CONRAD: It's been my understanding that
13 there were no objections to our putting Mr. Meade's
14 testimony in. It would be marked as Exhibit 500, and
15 I have three copies of it to provide to the reporter,
16 your Honor.

17 (EXHIBIT NO. 500 WAS MARKED FOR
18 IDENTIFICATION.)

19 MR. CONRAD: Pursuant to earlier discussion
20 and the waiver of cross by all parties, including the
21 Bench, I would move the admission of that testimony
22 into the record.

23 JUDGE WOODRUFF: Exhibit 500 is being
24 offered into evidence. Are there any objections to
25 its receipt?

1 (No response.)

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

4 (EXHIBIT NO. 500 WAS RECEIVED INTO
5 EVIDENCE.)

6 JUDGE WOODRUFF: All right. Now we'll move
7 over to Mr. McKinney, and UtiliCorp has called John
8 McKinney; is that correct?

9 MR. SWEARENGEN: That's correct. Mr. John
10 McKinney is on the witness stand.

11 (Witness sworn.)

12 JOHN McKINNEY testified as follows:

13 DIRECT EXAMINATION BY MR. SWEARENGEN:

14 Q. Mr. McKinney, Exhibit 4 is your direct
15 testimony; is that correct?

16 A. That's correct.

17 Q. Are there any changes or corrections you
18 need to make to that exhibit?

19 A. Yes. On page 29, line 1, the very first
20 word is debt. It should be changed to equity. And
21 then following that, equity should be changed to debt.
22 I inverted the words on the capital structure. So it
23 should read debt and then equity.

24 Q. Are there any other changes that you need to
25 make to your direct testimony, Exhibit 4?

1 A. No, there are not.

2 Q. You understand that your surrebuttal
3 testimony has been marked as Exhibit 5?

4 A. Yes, I understand that.

5 Q. Are there any changes you need to make to
6 that piece of testimony?

7 A. No, there are not.

8 MR. SWEARENGEN: Your Honor, while we were
9 off the record, Commissioner Schemenauer had some
10 questions about how these various numbers were
11 allocated among the four states in which Empire
12 operates. We do have an exhibit that purports to show
13 that. Mr. McKinney can sponsor it. I would like to
14 have it marked, have him identify it at this time.

15 I will not offer it until everyone has had
16 an opportunity to review it, and Mr. McKinney will be
17 on the stand today. He'll be back on the stand at
18 other times this week. If it's agreeable with
19 everyone, if people have questions to him about that
20 document, they can ask them at that time.

21 JUDGE WOODRUFF: That would be fine. That
22 would be Exhibit No. 27.

23 (EXHIBIT NO. 27 WAS MARKED FOR
24 IDENTIFICATION.)
25 BY MR. SWEARENGEN:

1 Q. Mr. McKinney, you have in front of you what
2 has been marked for purposes of identification as
3 Exhibit 27, a three-page document. Can you explain
4 what that is, please?

5 A. Yes. Exhibit No. 27 is entitled Summary of
6 Synergy Benefits, net of Costs to Achieve,
7 UtiliCorp/Empire District Electric. Page 1 is years
8 one through five average. Page 2 is the average for
9 years six through ten, and page 3 is the allocation
10 basis that were used on the exhibit.

11 This exhibit takes Mr. Siemek's Schedule 1
12 and then breaks those numbers down on a state-by-state
13 basis and then between electric retail and wholesale
14 for the states that have those operations.

15 Q. And was this document prepared by you or
16 under your direction and supervision?

17 A. Yes, it was.

18 Q. And is it your belief that it addresses the
19 questions that Commissioner Schemenauer raised
20 earlier?

21 A. Yes. From my understanding of hearing the
22 question, I believe this addresses that question.

23 MR. SWEARENGEN: Thank you. I'm not going
24 to offer the exhibit at this time. I'm going to wait
25 until counsel have had an opportunity to review it and

1 inquire.

2 I will offer into evidence Exhibits 4 and 5
3 and tender the witness.

4 JUDGE WOODRUFF: Based on past practice from
5 the previous case we heard back in July, you're
6 offering these exhibits now, but I'll make a ruling
7 upon them and ask for objections at the last time he
8 testifies.

9 MR. SWEARENGEN: That's fine.

10 JUDGE WOODRUFF: And that was Exhibits 2 and
11 4 that were offered?

12 MR. SWEARENGEN: Exhibits 4 and 5.

13 JUDGE WOODRUFF: 4 and 5. I'm sorry. All
14 right. Let's go ahead and go to cross-examination,
15 then, and we will begin with IBEW.

16 MR. JOLLEY: Judge Woodruff, if I read the
17 schedule of issues and witnesses correctly,
18 Mr. McKinney is testifying here as to his surrebuttal
19 testimony at pages 27 to 30 and will testify later on
20 the overall regulatory plan and specifically with
21 surrebuttal 5 to 27, and that's the time I prefer to
22 cross-examine him. I don't have any questions at this
23 time.

24 JUDGE WOODRUFF: The Empire Retirees?

25 MR. DEUTSCH: We have no questions of this

1 witness.

2 JUDGE WOODRUFF: Natural Resources?

3 MS. WOODS: I have no questions.

4 JUDGE WOODRUFF: ICI/Praxair?

5 MR. CONRAD: Your Honor, we don't have
6 anything for Mr. McKinney on those pages or on this
7 issue at this time.

8 JUDGE WOODRUFF: And City of Springfield has
9 exercised their option to not be here. So we'll go on
10 to Public Counsel.

11 MR. MICHEEL: Nothing on this witness with
12 respect to these issues.

13 JUDGE WOODRUFF: For Staff?

14 MR. DOTTHEIM: No questions on this issue.

15 JUDGE WOODRUFF: Then we'll come up to
16 questions from the Bench. Chair Lumpe?

17 CHAIR LUMPE: Mr. McKinney, what is the
18 specific issue here? Oh, merger costs and benefits.
19 Okay. Thank you. I have no questions.

20 JUDGE WOODRUFF: Commissioner Schemenauer?

21 COMMISSIONER SCHEMENAUER: Thank you.

22 QUESTIONS BY COMMISSIONER SCHEMENAUER:

23 Q. I guess the only question I have would be
24 the same one I asked Mr. Empson. Do you expect to
25 obtain enough synergies to offset the entire

1 acquisition premium and merger benefits or merger
2 costs?

3 A. In years six through ten, yes. In the first
4 five years, I believe our exhibits show that we will
5 not generate enough synergies to cover the costs of
6 the acquisition or the premium. Mr. Siemek's
7 Schedule 1 I believe shows that. On average in years
8 six through ten, yes, we do.

9 Q. So there won't be any deficit balance left
10 at the end of ten years on the balance sheet, is
11 that --

12 A. No. Each year the premium will be written
13 off on a 40-year amortization basis. In the first
14 five years, that premium will be written off to
15 expense. We're requesting, of course, above the line.
16 The Staff is recommending below the line, but it will
17 be written off.

18 At the end of the 40-year period or the
19 ten-year period, there'll be 30, 40 of it's left. If
20 we are deficient in one year, we don't put that in a
21 deferred account and try to come back later.

22 Q. So your proposition is to expense that
23 unamortized balance that wasn't recovered as an
24 expense in that year; is that correct?

25 A. Well, each year 1/40 of the premium would be

1 amortized off to expense. If we do not -- for
2 example, let's say on the \$40 million premium, to be
3 amortized \$1 million a year, in the first year say we
4 only created \$800,000 worth of synergies. We would
5 not take that 200,000 and defer it for a later
6 recovery. It would just flow straight through to the
7 bottom line.

8 Q. And it would be recovered in expenses from
9 the ratepayers?

10 A. The 200,000 that would be shortfall would go
11 to the shareholders. They would pick up that. It
12 would flow through to net income.

13 Q. If you wrote it off as an expense above the
14 line, isn't --

15 A. Excuse me. I'm not being clear. During the
16 moratorium period is what I'm talking about. During
17 the rate moratorium period when the rates are frozen,
18 the shareholders are protected from any of that flow-
19 through going to them because we're freezing the rates
20 on current levels on the -- after the premoratorium
21 rate case. So any premium that we write off in that
22 five-year period does not hit the customer.

23 Q. But in the -- in the additional 35 years, if
24 it's a 40-year moratorium, it does hit ratepayers?

25 A. Well, in years six through ten we're

1 amortizing it to operating expense, but our position
2 is there will be sufficient synergies to cover. If
3 there are not, it doesn't go into the operating
4 expenses the customers pay. We're guaranteeing that
5 we will cover that premium by at least \$3 million on a
6 total Empire basis. If we don't do that, the
7 customers don't pay it. Our shareholders do.

8 Q. So it's written off as an expense below the
9 line, is that what you're saying?

10 A. It will be written off above or below. In
11 the rate case it just wouldn't be allowed to be
12 recovered.

13 Q. And then that takes care of ten years.
14 There's 30 years left on the amortization of the
15 premium.

16 A. The regulatory only covers the first ten.
17 After that, we would have to readdress the issue
18 before this Commission.

19 COMMISSIONER SCHEMENAUER: Okay. Thank you.

20 JUDGE WOODRUFF: Any recross based on
21 questions from the Bench? I'll just throw it out to
22 the group? All right. Hearing none -- I'm sorry. Go
23 ahead.

24 RE CROSS-EXAMINATION BY MR. DEUTSCH:

25 Q. Hi, Mr. McKinney.

1 A. Good afternoon.

2 Q. Commissioner Schemenauer brought to my
3 attention a question that I thought I understood in
4 looking at your Exhibit 27. Have you got that in
5 front of you? Now I'm not so sure. Maybe you can
6 explain it for me.

7 A. Yes.

8 Q. Looking at page 1, average years one through
9 five, line 5 under Roman Numeral I operating costs,
10 that's conversion to UtiliCorp benefits, right?

11 A. That's the title on that line, yes.

12 Q. What is that?

13 A. The details of that, Mr. Browning is our
14 witness and will be happy to explain that when he
15 appears. It is conversion costs of the benefits. The
16 details of different ones of these, the company is
17 offering different witnesses that will be able to
18 explain them for you.

19 Q. Is the amount that's shown next to that
20 entry on the first page, which I believe is
21 4.316 million, do you see that --

22 A. Yes, I do.

23 Q. -- total?

24 A. Yes.

25 Q. What is that number?

1 A. It's a savings that is coming, per the
2 title, from employee benefits.

3 Q. And that's from the curtailment of EDE
4 employee benefits?

5 A. I can't respond any further than just what
6 the title is referring.

7 Q. Okay.

8 A. Mr. Robert Browning will be happy to address
9 that.

10 Q. I thought he could, but you were responding
11 to the question from Commissioner Schemenauer about
12 what the schedule of the savings were going to be and
13 how they handle. I thought you might be able to help
14 me out there.

15 A. I'm sorry.

16 MR. DEUTSCH: I have no other questions.

17 JUDGE WOODRUFF: Anyone else have any
18 recross?

19 (No response.)

20 Then redirect?

21 MR. SWEARENGEN: I have no redirect. I
22 guess just to keep everything straight, I will go
23 ahead and offer Exhibit 27 with the understanding that
24 you will not rule on it until everyone's had an
25 opportunity to inquire later in the proceedings.

1 JUDGE WOODRUFF: Okay. That's what we'll
2 do, then.

3 MR. SWEARENGEN: Thank you.

4 JUDGE WOODRUFF: And you may step down.

5 (Witness excused.)

6 MR. SWEARENGEN: Mr. Siemek I believe is the
7 next witness.

8 (Witness sworn.)

9 JUDGE WOODRUFF: You may inquire.

10 MR. SWEARENGEN: Mr. Siemek has two pieces
11 of testimony. His direct testimony is Exhibit 6. His
12 surrebuttal is Exhibit 7. I will give three copies of
13 each to the reporter.

14 (EXHIBIT NOS. 6 AND 7 WERE MARKED FOR
15 IDENTIFICATION.)

16 JUDGE WOODRUFF: Are you then offering 6 and
17 7?

18 MR. SWEARENGEN: At this time I would offer
19 into evidence Exhibits 6 and 7 and tender Mr. Siemek
20 for cross-examination.

21 JUDGE WOODRUFF: Thank you. Beginning with
22 cross-examination then with IBEW?

23 VERN SIEMEK testified as follows:

24 CROSS-EXAMINATION BY MR. JOLLEY:

25 Q. Mr. Siemek?

1 A. Yes, sir.

2 Q. I have a few questions concerning your
3 direct testimony, and I refer first of all to page 11
4 of that testimony, beginning halfway across line 8 in
5 which you state that, Actual synergies and severances
6 will depend on the specific personnel decisions
7 reached. Positions can be eliminated by various
8 methods that do not necessarily eliminate personnel,
9 such as filling other positions vacated by attrition
10 or retirement or by transferring personnel to
11 positions in other parts of the company.

12 My question, as I indicated, deals with that
13 testimony. Specifically as to the bargaining unit
14 positions, those employees in positions and
15 classifications at Empire District that are
16 represented under contract with Local 1474, and
17 specifically as to the 50 positions projected for job
18 elimination, which of those contemplated positions
19 that will be eliminated will not or likely will not
20 necessarily eliminate personnel? Do you understand my
21 question?

22 A. Well, could you restate it, please?

23 Q. Okay. I have -- in response to
24 Interrogatories, UtiliCorp provided information as to
25 a number of bargaining unit positions to be eliminated

1 as well as specific classifications and numbers within
2 each classification. There will be 15 linemen
3 eliminated, for example.

4 A. Uh-huh.

5 Q. Does the elimination of these 15 linemen
6 fall into this category that you're describing of
7 position eliminations that will not result in the
8 elimination of personnel?

9 A. I would expect that some of those 15
10 positions would be qualified under these -- under
11 these types of eliminations of positions. Some of
12 those 15 may be vacated by attrition, which would just
13 be people leaving the company, or by retirements or
14 early retirements or possibly by transferring those
15 personnel to positions in other parts of the company.

16 Q. Okay. Let's assume that there are no
17 current vacancies among Empire's linemen right now,
18 and that when all is said and done, 15 jobs are
19 eliminated in that classification. Historically and
20 traditionally, any upward mobility is within
21 bargaining unit lines of progression. You become a
22 lineman supervisor, for example, or move up within
23 that line of progression.

24 Wouldn't it be true that it's very unusual
25 and contrary to history and practice for a lineman or

1 a stores clerk or a production employee to move into
2 an office position dealing with cost accounting or all
3 of these other jobs in which you may have movement?

4 A. Well, the other jobs are not limited to
5 office positions or the other examples that you spoke
6 of. The other potential vacancies could be in
7 storerooms. They could be in engineering support,
8 construction design, construction engineers. They
9 could be --

10 Q. Construction engineers?

11 A. Well, I use the term -- I'm thinking of
12 construction --

13 Q. Bargaining unit positions?

14 A. -- supervisors.

15 Q. A bargaining unit position you're referring
16 to?

17 A. I don't draw much of a distinction between
18 bargaining and not bargaining. I'm not very
19 comfortable with the difference. I come from a
20 non-union environment originally, and my experience
21 with operations didn't lead me to focus on the
22 difference between bargaining and nonbargaining.

23 Q. Well, would you agree that most of the
24 possible movement of current bargaining unit employees
25 whose jobs are eliminated and the potential movement

1 of them into other positions is within the ranks
2 generally described as the bargaining unit rather than
3 Kansas City, rather than other departments of
4 UtiliCorp?

5 A. I'm not sure I would be comfortable saying
6 that because I believe there have been movement among
7 all different categories of jobs within UtiliCorp,
8 between other subsidiaries for example.

9 Q. Do you have any direct knowledge concerning
10 movement of a stores clerk, a lineman, a powerhouse
11 employee into totally different types of positions
12 within UtiliCorp?

13 A. I don't recall any specific instances, but I
14 don't track that either for UtiliCorp.

15 Q. Would that be Mr. Browning more likely to
16 track that?

17 A. He would be more likely than I to know that,
18 but I'm not sure he tracks that specifically either.
19 And I do know there are -- there have been transfers
20 made at what I would call the craft level, if that's
21 equivalent to the non-union or to the union or
22 bargaining.

23 Q. From craft to craft?

24 A. Well, from craft from one geographic
25 location to another.

1 Q. Okay. Now, in connection with movement of
2 personnel from one geographic location to another,
3 does UtiliCorp have a policy of paying moving
4 expenses, temporary lodging expenses, protection
5 against delays in real estate transactions and the
6 like for people in classifications such as those
7 represented by the bargaining -- in the bargaining
8 unit here?

9 A. I don't know the specifics of the UtiliCorp
10 policy in that area. I know there are programs such
11 as you described, but I'm not sure what the -- whether
12 they cover all employees or not.

13 Q. You don't know what --

14 A. Again, that would be Mr. Browning would be
15 better able to answer that.

16 Q. And do you know whether UtiliCorp, when it
17 comes to fill positions, vacancies, I assume they give
18 some preference to individuals who are already
19 employed ahead of outsiders, ahead of non-employees;
20 is that correct?

21 A. I believe the -- again, Mr. Browning would
22 be better able to answer that, but I think generally
23 positions are posted within the company first, and if
24 there aren't qualified applicants, then -- or
25 generally if there aren't qualified applicants from

1 inside, then they open it to the public.

2 Q. And would you say that, generally speaking,
3 the first criterion is skill, ability and training?
4 The ability to fill the job is the first criteria in
5 filling a vacant position?

6 A. Well --

7 Q. Can somebody do the job and is that person
8 equipped to do the job now?

9 A. I would think that's generally the case when
10 you're filling a position.

11 Q. Are you aware of any training that's been
12 given to bargaining unit employees of Empire to better
13 equip them, to train them for filling positions
14 outside the bargaining unit which they've never filled
15 before?

16 A. I am not aware of what training Empire has
17 provided.

18 Q. Are you aware whether UtiliCorp is prepared
19 to provide that training or has indicated as a part of
20 its plan that it will provide such training to
21 adversely affected employees?

22 A. That would be a question better addressed to
23 Mr. Browning.

24 Q. Pages 11 to 19 of your direct testimony, you
25 describe some of the synergies in UCU's and Empire's

1 operations. An earlier witness testified that the
2 term synergy is somewhat synonymous of the word
3 savings. Would you agree with that?

4 A. Well, my own definition is synergies is --
5 synergy is actually more a broad term than savings.

6 Q. Okay.

7 A. When I describe synergies, I include revenue
8 enhancements like the off-system sales. So I prefer
9 to use the word synergies when I'm working with this.

10 Q. Just so I can understand your testimony, I'm
11 going to give you two examples. Example one, one
12 individual is terminated, loses his job at Empire even
13 though no one else at UtiliCorp fulfills that job.
14 That's example one.

15 A. Uh-huh.

16 Q. A lineman who works in Joplin, there's
17 nobody from UtiliCorp that's doing that lineman's job
18 in Joplin, but one lineman loses a job.

19 My second example is, two employees, one
20 each at UtiliCorp and one at Empire that are
21 performing identical work, some cost control function,
22 a marketing function where it's been determined one
23 person could do that job. In both cases there's a
24 savings by the elimination of a job, correct?

25 A. By the elimination of a position, yes.

1 Q. Assuming in both cases one job is
2 eliminated?

3 A. Yes.

4 Q. So there's a savings in each example. Is
5 there a synergy in both examples?

6 A. Yes, because in my definition, synergies
7 include savings but are more expansive and include
8 revenue enhancements in addition to savings.

9 Q. Now, are you familiar with whether the
10 projected job eliminations at Empire District among
11 bargaining unit employees, the 50 projected job
12 eliminations, whether they fall into my example one
13 where there is no duplicative function being performed
14 by somebody at UtiliCorp, or by and large do they fall
15 into my second example where there is duplication, two
16 people doing the same job?

17 A. Well, I'm not sure I would categorize them
18 exactly in No. 1 because I think in your description
19 you said no one else is doing the work that that
20 position or that person was performing. The work
21 that -- the work for the most part would still have to
22 be completed.

23 The work does not become less unless you can
24 through efficiencies of tools or work management or
25 whatever additional skills can be brought to the

1 table, the work generally would still have to be
2 performed.

3 Q. By people working in the Empire current --
4 I'm sorry. By people working in the current Empire
5 District geographical area?

6 A. Well, for the most --

7 Q. You don't have people in the current
8 UtiliCorp area coming in and doing the lineman work in
9 Joplin; is that correct? Is that correct?

10 A. I would -- I would not think that would
11 generally be the case, although it could happen.

12 Q. And has it ever happened, to your knowledge?

13 A. I believe that --

14 Q. Other than in an emergency outage situation
15 where crews are coming in from everywhere to help
16 restore service?

17 A. That's the example that I would have
18 thought.

19 Q. Okay. On a regular routine situation,
20 you're not aware of any such situation?

21 A. Of Missouri Public Service people coming
22 into Empire territory?

23 Q. Today. This afternoon it's 85 degrees.
24 There's no brown outs. There's no ice storms.
25 There's no wind storms. There's no floods. Today you

1 don't have UtiliCorp people from Missouri Public
2 Service from Sedalia, for example, down performing
3 lineman's work in the Joplin area, correct?

4 A. Not to my knowledge, although I can envision
5 circumstances in which that might happen.

6 Q. Do you know if it's -- are you telling me
7 that you are aware that it's ever happened?

8 A. I've experienced crews from outside of a
9 particular geographic location within UtiliCorp who
10 were brought in on a non-emergency basis.

11 Q. Contract crews or from other utilities?

12 A. Actually from --

13 Q. Outside contractors or from other utilities?

14 A. From our own utility.

15 Q. Do you have any knowledge if it's ever been
16 the case in connection with Empire District?

17 A. I don't -- I don't know of any instances in
18 which that has happened.

19 Q. Are you aware of -- are you aware of any
20 instance in which that has happened in connection with
21 UtiliCorp sending people in to work in the power plant
22 at Riverton or any of the other power plants of Empire
23 District?

24 A. I'm not aware of any examples of that. I
25 would not be.

1 MR. JOLLEY: I have no other questions.

2 JUDGE WOODRUFF: Okay. The Empire Retirees?

3 CROSS-EXAMINATION BY MR. DEUTSCH:

4 Q. Really, I think it's a matter of
5 clarification, Mr. Siemek. I asked the last witness
6 about Exhibit 27, and he told me to talk to
7 Mr. Browning. I assume if I asked you about it,
8 you'll tell me to talk to Mr. Browning, too?

9 A. Well, for the particular -- for the details
10 of the information that you were seeking, that's true,
11 although there is a VJS-4 that's part of my direct
12 testimony that is one layer down from what
13 Mr. McKinney referred to.

14 So in my direct testimony, if you look at
15 Schedule VJS-4, there are five, six lines that
16 detail -- that provide in more detail the background
17 behind the number you were asking about, but that
18 information is all from Mr. Browning. So any
19 questions in more depth would have to go to
20 Mr. Browning.

21 Q. That's really what I was inquiring about is
22 whether you just took somebody's numbers and put them
23 on here or whether you were the one that invented the
24 numbers that I'm looking at on these pages through
25 your analysis of what the, for instance, conversion to

1 UtiliCorp benefits savings would be.

2 A. Well, I did invent one of the numbers.

3 Q. Which one?

4 A. The payroll tax savings, which is a detail,
5 one of the -- one of several lines that roll forward
6 to the conversion to UtiliCorp benefits.

7 Q. Okay. Let's say on the employee --

8 A. Yes.

9 Q. -- side?

10 A. Yes.

11 Q. Anything else that you created on there?

12 A. No. The other information was from
13 Mr. Browning.

14 MR. DEUTSCH: Then I have no questions of
15 this witness.

16 JUDGE WOODRUFF: Natural Resources?

17 MS. WOODS: I don't have any questions for
18 this witness.

19 JUDGE WOODRUFF: Praxair?

20 MR. CONRAD: Nothing on this issue, your
21 Honor. Thank you.

22 JUDGE WOODRUFF: And City of Springfield is
23 absent. Public Counsel?

24 MR. MICHEEL: Yes, your Honor. Thank you.

25 CROSS-EXAMINATION BY MR. MICHEEL:

1 Q. Mr. Siemek, if I heard you correctly, your
2 definition of synergies includes revenue enhancements;
3 is that correct?

4 A. Yes.

5 Q. So, for example, you would include as an
6 synergy an increase in off-system sales; is that
7 correct?

8 A. As a synergy, yes.

9 Q. And you'd include, for example, an increase
10 in revenue from sales of nonregulated products and
11 services; is that correct?

12 A. Well, I did not because I found no evidence
13 of that.

14 Q. But if as a result of this merger, for
15 example, UCU is able to leverage the 300 miles of
16 fiber that Empire has and increase that, that would be
17 a synergy; is that correct?

18 A. Well, it depends on -- it would be a
19 synergy, but I would point out that we included only
20 50 percent of the premium cost, and so we have in
21 effect allocated a significant amount of premium to
22 nonregulated synergies indirectly or implicitly.

23 Q. And what percentage have you allocated to
24 the nonregulated items?

25 A. Well, at -- based on Schedule VJS-1, I would

1 say roughly 50 percent, although that is reduced
2 somewhat by the MPS allocation factor issue.

3 MR. MICHEEL: Thank you very much,
4 Mr. Siemek.

5 JUDGE WOODRUFF: For Staff?

6 MR. DOTTHEIM: No questions for this issue.
7 Mr. Siemek is shown on 9/13 for estimated merger
8 savings with the same pages, and Staff will have
9 questions at that time.

10 JUDGE WOODRUFF: Again, I'm sorry, what --
11 you need to use your microphone.

12 MR. DOTTHEIM: I apologize.

13 JUDGE WOODRUFF: You're indicating he's
14 going to come back and testify again on the same pages
15 on --

16 MR. DOTTHEIM: Yes. Mr. Siemek is going to
17 come back on 9/13 on estimated merger savings. He's
18 the first company witness shown towards the bottom of
19 the page for 9/13, estimated merger savings, and he
20 has the same page numbers for that appearance, and at
21 that time the Staff will have questions.

22 JUDGE WOODRUFF: Okay. Thank you very much.
23 We'll come up then to the Bench for questions. Chair
24 Lumpe?

25 CHAIR LUMPE: Yes.

1 QUESTIONS BY CHAIR LUMPE:

2 Q. Mr., is it Siemek?

3 A. Siemek, yes.

4 Q. Siemek. Okay. On page 15, I think it's of
5 your surrebuttal, and tell me if this is something
6 you're going to address at another date, you talk
7 about a case that dealt with merger-related synergies
8 and drew some conclusions from that. What was that
9 case?

10 A. That was the Western -- West Plains Energy
11 case in Kansas.

12 Q. That's the one that was referred to
13 earlier --

14 A. Yes, ma'am.

15 Q. -- in Kansas?

16 A. Yes, ma'am.

17 Q. Okay. I didn't know if it was in Missouri.

18 A. No.

19 Q. Okay. And do you have a clear rule of thumb
20 that you could give me on how you distinguish between
21 merger and nonmerger savings? I'm particularly
22 interested in your earlier discussion that synergies
23 is larger than savings, and so what all might you be
24 including then?

25 A. Well, generally my definition is that the

1 synergies that are -- synergies or slash savings that
2 are accomplished as a result of the merger certainly
3 are then merger-related synergies. Synergies that
4 generally would not occur without the merger, and I
5 know there are differences of opinion as to what might
6 have happened or what could have happened in that
7 companies typically attempt to be cost effective and
8 efficient and realize as many savings as possible
9 during the normal course of operations.

10 But in this case, I believe that most of the
11 synergies and savings that we have identified are
12 not -- are generally not available to the companies on
13 a stand-alone basis. A significant amount of the
14 synergies in this case -- I should defer to
15 Mr. DeBacker on the off-system sales as to why these
16 are not available unless the two companies are
17 combined.

18 From the general and administrative areas, I
19 know that you really -- the synergies there are really
20 because we're able to combine a smaller company with a
21 larger company, and so you're able to eliminate, if
22 you would, a layer of supervision and management that
23 you don't need any longer if you're not a stand-alone
24 company, that you can't -- you can't eliminate that
25 unless you've merged the entities.

1 A good example might be finance and
2 treasurer function. Empire as a stand-alone company
3 needs to raise capital for the State Line combined
4 cycle plant is a good example. If they were part of
5 UtiliCorp, we already have a set of finance and
6 treasurer people whose full-time responsibility is to
7 raise capital for projects like that. So we don't
8 need both groups, and those synergies are only
9 possible in a merger.

10 Q. The lineman example that there's a vacancy
11 there and on a stand-alone basis perhaps Empire would
12 not replace that person, would you call that a merger
13 related one then?

14 A. Well, it depends on the scale. To some
15 extent, where you're looking at a reorganization of
16 the functions that are accomplished at one time
17 because -- either because you've added additional
18 tools for the linemen to perform their jobs so that
19 they can perform basically the same amount of work
20 with less staff. Those are likely merger related.
21 There are examples where you might eliminate --

22 Q. Is this where it gets tricky and we argue --

23 A. It can be.

24 Q. -- about if it is or isn't?

25 A. Yes, it can be. If you -- if you retire --

1 or if one or two linemen retire each year and you
2 decide to convert a crew from three to two-man, to a
3 two-man crew, that's -- that likely could be
4 accomplished absent the merger, but you wouldn't be
5 able to do that on the scale that we're proposing
6 here.

7 So that's where -- that's where it is
8 confusing, and you can get into arguments about what
9 might have happened had you remained independent, as
10 independent companies.

11 Q. Would MoPub be adding personnel?

12 A. Well, there are -- I believe the position
13 rollup is that there are about 60 new positions being
14 created. Some of those are, I believe, within the
15 Empire service territory. Some are within MoPub.
16 Some are within UtiliCorp. So I'm not -- I can't
17 answer exactly which ones are in MoPub, but there are
18 some that are created elsewhere than the Empire
19 territory.

20 Q. One other question. I think it's in your
21 direct where you talk about some of the synergies
22 depend on completion of the St. Joe merger. Would you
23 discuss that further, and assume maybe that the
24 St. Joe merger doesn't occur. What synergies would be
25 lost then?

1 A. Well, the biggest area of interaction where
2 the three-way merger affects the level of savings are
3 in the off-system sales, because the operating
4 capabilities of each of the plants are different
5 between St. Joe, Empire and MoPub. And if you have
6 only two of those entities there, you get different
7 operating characteristics and different
8 interconnections with the grid.

9 So if only two of those are accomplished,
10 then the level of synergies is different than if you
11 have all three. That's probably the primary area
12 where the synergies are different.

13 When we looked at the general and
14 administrative areas, for example, the finance and
15 treasurer before, really we're adding two smaller
16 companies onto a larger company. So the level of
17 synergies in those areas is virtually unchanged
18 whether it's two-way or a three-way merger.

19 Q. But the off-system sales would be the issue
20 that if you only did one of the mergers, then the
21 savings would be lost; is that right?

22 A. Well, it depends on which way.

23 Q. Which one?

24 A. Yes.

25 CHAIR LUMPE: Okay. Thank you. I think

1 that's all the questions I have.

2 JUDGE WOODRUFF: Commissioner Schemenauer?

3 COMMISSIONER SCHEMENAUER: Thank you.

4 QUESTIONS BY COMMISSIONER SCHEMENAUER:

5 Q. Good afternoon, Mr. Siemek.

6 A. Good afternoon.

7 Q. I just had one area I need to clear up in my
8 head, I guess, get my numbers straight. The total
9 acquisition premium I think we established at
10 270 million, approximately?

11 A. Approximately, yes.

12 Q. And the transition/transaction costs about
13 33 million?

14 A. Yes, sir.

15 Q. And we've got this expense sitting out here
16 that we want to recover through synergies, and then I
17 see some charts in your schedules and in Exhibit 27
18 also on in the next ten years how you expect to
19 generate those synergies to offset those costs.

20 A. Yes, sir.

21 Q. The numbers I see for years one through five
22 and six through ten, those are expected actual costs
23 in those years; is that correct?

24 A. Are you looking at Schedule VJS-1,
25 Commissioner?

1 Q. I'm looking at --
2 A. Or Exhibit 27?
3 Q. Well, either one, because they relate. I
4 mean, you can find numbers on both of them.
5 A. Okay.
6 Q. So either one, are those actual costs that
7 you expect to -- or synergies you expect to save?
8 A. Yes. The upper portion of both of those
9 schedules should be the synergies, the savings.
10 Q. Then over here in this \$303 million amount
11 of money that we're trying to recover, are you adding
12 in years one through ten a carrying cost to that if
13 you're not figuring present value of the savings?
14 A. We are adding carrying costs on the
15 270 million of the acquisition premium.
16 Q. And --
17 A. But not on the 33 million.
18 Q. Not on the 33 million. What kind of a
19 carrying cost are you adding to the 270? Is it your
20 rate of return?
21 A. Yeah. It's our -- it's the rate of return
22 based on the last Missouri Public Service rate case,
23 which I believe was ten-seven-five equity and a
24 40 percent equity component of the capital structure.
25 Q. So then we don't have to fool with present

1 value at all if we have a carrying charge?

2 A. That's right.

3 COMMISSIONER SCHEMENAUER: That's all I
4 needed to know. Thank you very much.

5 JUDGE WOODRUFF: Okay. Recross based on
6 questions from the Bench, beginning with IBEW?

7 MR. JOLLEY: None, your Honor.

8 JUDGE WOODRUFF: Retirees?

9 MR. DEUTSCH: No questions.

10 JUDGE WOODRUFF: Natural Resources?

11 MS. WOODS: No questions?

12 JUDGE WOODRUFF: Praxair?

13 MR. CONRAD: No questions.

14 JUDGE WOODRUFF: Springfield's not here.
15 Public Counsel?

16 MR. MICHEEL: Yes, just a couple.

17 RECROSS-EXAMINATION BY MR. MICHEEL:

18 Q. Commissioner Schemenauer was asking you
19 about the carrying costs on the acquisition premium.
20 Do you recall those questions?

21 A. Yes.

22 Q. And are those amounts shown on your
23 Schedule VJS-1?

24 A. The return amount is. It's line Roman
25 Numeral VI, No. 1 is return on premium.

1 Q. And if I understand that right, it's
2 approximately \$29.3 million in years one through five?

3 A. That's the average for years one through
4 five, yes.

5 Q. And then years six through ten, the average
6 is 25.4 million; is that correct?

7 A. Yes, sir.

8 Q. Chair Lumpe asked you some questions
9 regarding the question and answer on page 15 of your
10 direct testimony. Do you recall those?

11 A. Yes.

12 Q. And I think in response to that answer you
13 say that some groundrules must be set out; is that
14 correct?

15 A. I'm sorry. I don't remember a discussion on
16 groundrules.

17 Q. Well, she asked you a question on your
18 surrebuttal testimony at page 15, and I think it was
19 relating to the Kansas case.

20 A. She asked me to identify that it was the
21 Kansas case, yes.

22 Q. And then in response to that question you
23 said, The Commission will be setting groundrules for
24 all parties; is that correct?

25 A. Yes, in my surrebuttal.

1 Q. And what groundrules are you asking be set
2 in this case?

3 A. Well, the starting point of the synergy
4 measures. As you may recall, that we've asked for the
5 '99 budget as a starting point for other operating and
6 maintenance costs. We've asked for the, I believe
7 it's called the real time program in Mr. DeBacker's
8 testimony for the generation-related synergies,
9 including off-system sales. And we've asked for a
10 year-by-year cost comparison on benefits, which is
11 Mr. Browning -- in Mr. Browning's testimony. Those
12 are some of the groundrules.

13 Q. And those groundrules would be carried
14 through to the post-moratorium rate case; is that
15 correct?

16 A. That's -- they're primarily intended for the
17 post-moratorium rate case.

18 Q. And they'd also be included in the
19 premoratorium rate case?

20 A. Well, the premoratorium rate case I probably
21 should defer to Mr. Fancher because some of those
22 issues don't require a measurement in the
23 premoratorium rate case, to my recollection.

24 MR. MICHEEL: Thank you.

25 JUDGE WOODRUFF: Staff?

1 MR. DOTTHEIM: No questions.

2 JUDGE WOODRUFF: Redirect?

3 MR. SWEARENGEN: Just one, your Honor.

4 REDIRECT EXAMINATION BY MR. SWEARENGEN:

5 Q. Mr. Siemek, there was a discussion you had
6 about a situation or an example where you were aware
7 that crews had been brought in, I think, on a
8 non-emergency basis from one UtiliCorp operating
9 division to another?

10 A. Locations, yes.

11 Q. Can you give a little bit more specific
12 detail with respect to those circumstances?

13 A. Well, there are probably more than one
14 instance, but I specifically recall statewide
15 construction crews being set up in Iowa. We have
16 probably 130,000 customers in about 110 towns in Iowa.
17 They're spread all across the state. And the
18 construction crews were UtiliCorp employees, but the
19 locations that they worked in were not the same
20 locations.

21 So they would normally be in -- in more
22 cases than not they would be in a location other than
23 their home location. So I would -- I would expect to
24 find them frequently in some other location than their
25 home location.

1 I believe we have similar situations in
2 Kansas where there might be even -- and particularly
3 certain highly skilled requirement jobs on, say,
4 transmission lines where the crews aren't necessarily
5 associated with the particular location that they
6 actually work in because they're spread -- their
7 expertise is needed over a wide area, and the best way
8 to get that expertise, the most cost efficient way is
9 to have them travel.

10 Q. Now, all these crews that you're talking
11 about are UtiliCorp crews?

12 A. Yes.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. I think you also indicated, however, you are
16 not aware of any instance in which a UtiliCorp crew on
17 a non-emergency basis had gone to the Empire service
18 territory to help do any work there or run the Asbury
19 plant or what have you; is that true?

20 A. That's correct.

21 Q. Is that something that you would expect to
22 happen on a regular basis?

23 A. I would not expect that to happen on a
24 regular basis. It may have occurred. It may have
25 occurred during the current situation where we are --

1 before we have approval of the merger, there may have
2 been instances where UtiliCorp crews might come in to
3 help out in part because of the vacancies at Empire.

4 I'm not aware of any specific instances, but
5 I know that in several areas that's been considered,
6 not necessarily in bargaining unit positions or crews,
7 but in accounting or finance or billing or other areas
8 like that.

9 MR. SWEARENGEN: Thank you. That's all I
10 have.

11 JUDGE WOODRUFF: You may step down, then.

12 (Witness excused.)

13 JUDGE WOODRUFF: It's nearly five o'clock,
14 so we're going to end there today. We'll come back at
15 8:30 with testimony from Staff witnesses.

16 MR. SWEARENGEN: Mr. Green will be here. If
17 we can put him on first, we'd appreciate it.

18 JUDGE WOODRUFF: That will be fine.

19 WHEREUPON, the hearing of this case was
20 adjourned until 8:30 a.m., September 12, 2000.

21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Opening Statement by Mr. Swearengen	27
Opening Statement by Mr. Dottheim	51
Opening Statement by Mr. Coffman	60
Opening Statement by Mr. Conrad	72
Opening Statement by Mr. Jolley	79
Opening Statement by Ms. Woods	88
Opening Statement by Mr. Keevil	89
Opening Statement by Mr. Deutsch	94

COMPANIES' OVERVIEW AND POLICY

COMPANIES' EVIDENCE:

MYRON McKINNEY

Cross-Examination by Mr. Jolley	108
Cross-Examination by Mr. Conrad	125
Cross-Examination by Mr. Micheel	133
Cross-Examination by Mr. Dottheim	139
Questions by Chair Lumpe	152
Questions by Commissioner Schemenauer	154
Questions by Commissioner Simmons	157
Recross-Examination by Mr. Jolley	160
Recross-Examination by Mr. Conrad	163
Recross-Examination by Mr. Keevil	165
Recross-Examination by Mr. Micheel	166
Redirect Examination by Mr. Swearengen	168

JON EMPSON

Cross-Examination by Mr. Micheel	176
Cross-Examination by Mr. Dottheim	188
Questions by Chair Lumpe	207
Questions by Commissioner Murray	213
Questions by Commissioner Schemenauer	214
Questions by Commissioner Simmons	220
Questions by Commissioner Drainer	222
Questions by Judge Woodruff	228
Recross-Examination by Mr. Conrad	229
Recross-Examination by Mr. Keevil	237
Recross-Examination by Mr. Micheel	239
Recross-Examination by Mr. Dottheim	244
Redirect Examination by Mr. Swearengen	248

1	MERGER COSTS/BENEFITS	
2	COMPANIES' EVIDENCE:	
3	JOHN McKINNEY	
	Direct Examination by Mr. Swearengen	253
4	Questions by Commissioner Schemenauer	257
	Recross-Examination by Mr. Deutsch	260
5	VERN J. SIEMEK	
6	Cross-Examination by Mr. Jolly	263
	Cross-Examination by Mr. Deutsch	274
7	Cross-Examination by Mr. Micheel	275
	Questions by Chair Lumpe	278
8	Questions by Commissioner Schemenauer	283
	Recross-Examination by Mr. Micheel	285
9	Redirect Examination by Mr. Swearengen	288
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

MARKED REC'D

EXHIBIT NO. 1		
Direct Testimony of Myron McKinney	105	124
EXHIBIT NO. 3		
Surrebuttal Testimony of Jon Empson	175	175
EXHIBIT NO. 4		
Direct Testimony of John W. McKinney	252	
EXHIBIT NO. 5		
Surrebuttal Testimony of John W. McKinney	252	
EXHIBIT NO. 6		
Direct Testimony of Vern J. Siemek	263	
EXHIBIT NO. 7		
Surrebuttal Testimony of Vern J. Siemek	263	
EXHIBIT NO. 27		
Summary of Synergy Benefits, net of Costs to Achieve, UtiliCorp/Empire District Electric Company	254	
EXHIBIT NO. 500		
Rebuttal Testimony of David Meade	252	253
EXHIBIT NO. 718		
Agreement and Plan of Merger Dated as of March 4, 1999 between UtiliCorp United Inc. and St. Joseph Light & Power Company		199