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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

September 12, 2000
Jefferson City, Missouri
Volume 3

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.

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ASSOCIATED COURT REPORTERS, INC.

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

2 (EXHIBIT NOS. 14 AND 15 WERE MARKED FOR
3 IDENTIFICATION.)

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

5 I believe Mr. Green was going to be the
6 first up today.

7 MR. SWEARENGEN: That's correct, your Honor.
8 I would call Mr. Robert Green to the witness stand at
9 this time. He has two pieces of testimony. His
10 direct testimony has been marked as Exhibit 14, and
11 his surrebuttal testimony has been marked as
12 Exhibit 15.

13 (Witness sworn.)

14 MR. SWEARENGEN: At this time I would offer
15 into evidence Exhibit 14 and Exhibit 15 and tender
16 Mr. Green for cross-examination.

17 JUDGE WOODRUFF: Okay. He's been tendered
18 for cross-examination, so we'll begin with IBEW.

19 ROBERT GREEN testified as follows:

20 CROSS-EXAMINATION BY MR. JOLLEY:

21 Q. Good morning, Mr. Green.

22 A. Good morning.

23 Q. Would you acknowledge that, if the merger is
24 approved, that UtiliCorp will have an obligation to
25 provide safe and reliable service in the area

1 currently serviced by Empire?

2 A. Absolutely.

3 Q. And would you further acknowledge that its
4 failure to do so would be detrimental to the public
5 interest?

6 A. Not -- in practical terms, yes, not being
7 familiar with maybe the technical definition of that.

8 Q. Would it be accurate to say that, in
9 entering into the merger agreement, that UtiliCorp
10 concluded or held the belief that Empire is currently
11 providing and has been providing safe and reliable
12 service in its area with its existing complement of
13 bargaining unit employees?

14 A. Yes, I think that's true.

15 Q. And given your acknowledgement of the
16 obligation of UtiliCorp to provide safe and reliable
17 service to that area if the merger is approved and
18 that from a practical standpoint it would be
19 detrimental to the public interest if it were to fail
20 to do so, would you acknowledge that due diligence
21 would be required to determine whether safe and
22 reliable service could be provided by UtiliCorp in the
23 Empire area after a reduction of 50 bargaining unit
24 jobs, including the jobs currently projected for
25 elimination?

1 A. Clearly in our transition plan work we're
2 undertaking due diligence to determine just that issue
3 and many others.

4 Q. Okay. So you would acknowledge that you
5 would be required to determine whether you could
6 provide safe and reliable service after those cuts are
7 made?

8 A. We clearly would do so --

9 Q. Okay.

10 A. -- as a course of business.

11 Q. So when you state that you either would do
12 so or have done so, who on behalf of UtiliCorp has
13 done so?

14 A. A number of people involved in the
15 transition process. It's led by Vickie Heider, but,
16 you know, Steve Pella I believe is going to be
17 testifying on this issue more specifically. There's a
18 whole transition organization in place to address this
19 issue as well as others.

20 Q. Are you aware that in response to
21 Interrogatories submitted by UtiliCorp -- in response
22 to Interrogatories submitted by IBEW Local 1474, that
23 UtiliCorp stated that it has conducted no studies to
24 determine whether safe and reliable service could be
25 provided with the projected elimination of bargaining

1 unit jobs?

2 A. I'm not personally familiar with that
3 specific response, but certainly we've operated
4 utility properties in many jurisdictions in the U.S.
5 and internationally and have a deep understanding of
6 what is required to deliver safe and reliable service.

7 Q. So is that to say that you concluded that
8 Empire District had too many bargaining unit
9 employees, more than was necessary to provide safe and
10 reliable service?

11 A. In our transition plan, we'll determine what
12 is -- what is required to deliver safe and reliable
13 service.

14 Q. Well, tell me where I'm missing the point
15 here. You have already projected as a part of the
16 plan the elimination of 50 bargaining unit jobs. That
17 tells me that you've concluded that there are 50 jobs
18 too many.

19 A. Before I would comment on that plan, that's
20 not something I've read recently or have in my hand.
21 So I don't want to -- I don't want to answer specific
22 to that plan that I'm not specifically familiar with.

23 But what I will tell you is, in determining,
24 you know, the adequate staffing levels for the
25 organization, we clearly would put in place an

1 organization that could deliver safe and reliable
2 service and have done so in many service territories.

3 Q. You've done so in many territories, I
4 understand, but we don't --

5 A. I think our safety record speaks for itself.

6 Q. But we don't know what the employee
7 complement in your other facilities is given the
8 number of customers, the number of lines to maintain,
9 et cetera, do we?

10 A. I don't know what you know. I can't speak
11 to that.

12 Q. All right. Who would be more knowledgeable
13 as to -- on the question as to the basis for
14 concluding that safe and reliable service could be
15 provided by UtiliCorp following the elimination of 50
16 bargaining unit jobs?

17 A. As I said earlier, I believe Steve Pella has
18 offered testimony on that point and will be testifying
19 in this proceeding.

20 Q. Thank you. Who made the actual
21 determination to reduce bargaining unit jobs by 50?

22 A. The recommendation comes out of the
23 transition organization made up of UtiliCorp employees
24 as well as Empire employees.

25 Q. So it was a joint team effort?

1 A. Yes.

2 Q. Which specific transition team was that, do
3 you know?

4 A. I don't know which -- there's a transition
5 organization in place. I can't name all the members
6 of the team, but certainly Mr. Pella can probably list
7 the majority of the members of the team.

8 Q. Do you know the actual amount of dollar
9 savings contemplated to be realized as a result of the
10 reduction of 50 bargaining unit jobs?

11 A. I couldn't quote the number for those 50
12 jobs you're thinking of specifically, no.

13 Q. If I were -- and I don't know either, but if
14 I were to say that 50 jobs at \$50,000 a year,
15 including benefits and tax rollup, would I be far off
16 to say it's two and a half million dollars or so?

17 A. I wouldn't want to speculate without being
18 familiar with the facts.

19 Q. There was some testimony yesterday that
20 Mr. McKinney, if his job is eliminated, would receive
21 a three-year salary payout. Are you familiar with
22 that?

23 A. I'm generally familiar with that. Not
24 specifically familiar with the detail.

25 Q. And it was testified to yesterday that this

1 payout is allocated -- that this payout as a result of
2 his job elimination is allocated as a cost of the
3 merger. Would you agree with that?

4 A. That would be standard in any transaction
5 we've been involved with where there's been a
6 separation payment of some sort, which is typical in a
7 transaction like this.

8 Q. Okay. I'm going to -- I'm going to use the
9 term golden parachute and use that term to describe
10 the three-year severance package that Mr. McKinney is
11 slated to receive.

12 Are there other executives, other personnel
13 who are slated to receive comparable treatment in the
14 event their jobs are eliminated, in addition to
15 Mr. McKinney?

16 A. I can't speak specifically to that. I think
17 there probably are, but I can't name them. There's
18 probably better people to ask that question of.

19 Q. And those people would be?

20 A. I mean, the Empire management team,
21 Mr. Pella, Mr. Siemek is probably more familiar with
22 the specific line items of our transition costs. It's
23 not something I'm introducing in my testimony or am
24 here to testify about.

25 Q. Can you state whether the elimination of

1 bargaining unit jobs is allocated as a merger savings,
2 but the elimination of Mr. McKinney's job and perhaps
3 others is, in fact, a merger cost? Is that accurate?

4 A. Well, there are costs and savings associated
5 with the elimination of any position.

6 Q. And the savings that are attributed as a
7 result of the elimination of Mr. McKinney's job is
8 what?

9 A. His salary and benefits once he's gone
10 wouldn't be -- wouldn't exist for the company.

11 Q. After three years of payout?

12 A. Correct.

13 Q. On page 26 of your direct testimony, you
14 stated, beginning at line 9 that, This intra-Missouri
15 consolidation, and I believe you're referring to the
16 consolidation of three utilities, which would include
17 St. Joe, also preserves jobs in the state which would
18 no doubt be lost if a non-Missouri-based utility or
19 company were involved.

20 You went on to testify that, Finally the
21 disciplined growth strategy of UtiliCorp will continue
22 to provide opportunities to enhance the career
23 advancement of all employees evidenced by our
24 announcement earlier this year to create UtiliCorp's
25 energy training headquarters in downtown Kansas City

1 and adding approximately 200 new jobs to the Missouri
2 economy.

3 You're familiar with that testimony?

4 A. I am.

5 Q. As specifically relating to bargaining unit
6 positions, and with the jobs that are currently held
7 by employees represented by the union, Local 1474 and
8 its contract with Empire, upon what do you base your
9 testimony that the merger preserves jobs that would
10 otherwise be lost?

11 A. Well, I don't think my testimony is specific
12 to bargaining unit employees, but in any deregulating
13 industry, there is a transition companies go through
14 where jobs evolve and change.

15 We're fortunate today to enjoy a substantial
16 increase in jobs associated with the unregulated
17 merchant activity, but also a significant increase in
18 jobs associated with bargaining unit employees through
19 our affiliate Quanta Services. I mean, they literally
20 cannot find enough good linemen to fill their open
21 positions.

22 So there's tremendous opportunity in a
23 changing marketplace, and we think UtiliCorp has
24 positioned itself to offer that opportunity to
25 employees, whether they be existing employees or new

1 employees that come into our organization, but those
2 jobs inevitably are going to come in a slightly
3 different shape and form.

4 But frankly, Quanta Services can't find
5 enough good bargaining unit employees to hire today as
6 they rebuild the nation's energy grid. So there is
7 opportunity, but it does come in a different shape and
8 form, and I think that's true for anybody in today's
9 economy.

10 Q. Well, to the extent that you testified that
11 this merger preserves jobs that would otherwise be
12 lost, in the absence of this merger, Empire would
13 continue to service its same geographic area; is that
14 correct?

15 A. Presumably.

16 Q. And with the same geographic area and the
17 same number of customers and the same number of lines
18 to maintain, same amount of power to be generated, do
19 you really maintain that bargaining unit jobs in that
20 scenario would be lost if this merger didn't take
21 place?

22 A. Now, again, you're getting back to
23 bargaining unit jobs specifically in that.

24 Q. I'm focusing only on --

25 A. And that's not my testimony. What the

1 testimony is directed to is jobs in total, and if an
2 out-of-state company or a foreign company came and
3 acquired Empire, the jobs in Missouri would be
4 dramatically reduced because a lot of the
5 administrative and support jobs would be relocated to
6 their headquarters location, and a lot of the
7 supervisory talent would be headquartered outside of
8 the state, potentially outside of this country.

9 So there is a dramatic difference in terms
10 of jobs, whether we're able to put together a Missouri
11 transaction that keeps jobs in Missouri versus
12 becoming consolidated into a company based in another
13 state or country.

14 Q. So I take it you do not mean to imply that
15 specifically bargaining unit jobs would be lost in the
16 absence of a merger?

17 A. In the absence of a merger, I mean, it
18 depends what the alternative scenario is. If it's an
19 acquisition by a foreign utility or an out-of-state
20 utility, I think you'd see the same reductions that
21 you see with this transaction, and you'd see a lot of
22 jobs move out of the state or out of the country.

23 Q. So to the extent that you seek to imply that
24 bargaining unit jobs would be lost in the absence of a
25 merger, that is based on conjecture and speculation as

1 to what might happen in some other scenario down the
2 road; is that correct?

3 A. Whatever -- I don't know what scenario
4 you're trying to describe, but if we're comparing it
5 to an alternative scenario, you'd have to describe it.

6 Q. One scenario is that they stand alone, and
7 they're not purchased and they're not acquired by an
8 in-state or out-state utility company.

9 A. Right.

10 Q. That is a scenario. That's the status quo
11 as a matter of fact.

12 MR. SWEARENGEN: Your Honor, I'm going to
13 object to any further questions along those lines
14 because that's not what his testimony is talking
15 about. His testimony's talking about the alternative
16 if some other company, domestic or foreign, would make
17 this acquisition. That's the point Mr. Green is
18 making.

19 JUDGE WOODRUFF: I'm going to overrule the
20 objection. You are tending to get a little
21 argumentative, so you might --

22 MR. JOLLEY: I think I've got enough on
23 that, your Honor.

24 JUDGE WOODRUFF: Okay.

25 MR. JOLLEY: Might I have a moment, please?

1 JUDGE WOODRUFF: Sure.

2 BY MR. JOLLEY:

3 Q. You testified that in UtiliCorp's
4 operations, other than Empire, good linemen are hard
5 to find, there's a shortage of linemen. Am I
6 characterizing your testimony accurately?

7 A. Yeah, that's fair. In this country, in
8 North America there are a shortage of skilled linemen.

9 Q. In UtiliCorp's other utility operations,
10 does that result in a higher usage than you would
11 prefer of outside contractors to perform linemen's
12 work due to a shortage of linemen employees?

13 A. A higher usage? No.

14 Q. No?

15 A. No. The shortage is not specific to
16 UtiliCorp or utilities. The shortage is with respect
17 to all companies that perform line construction and
18 maintenance.

19 Q. Do UtiliCorp's other utilities regularly
20 utilize the service of outside contract crews to
21 perform linemen-type work similar, if not identical,
22 to the work performed by your own employees?

23 A. Sure. I think every utility in the country
24 does.

25 Q. And is it contemplated that, after the

1 reduction of linemen that's currently contemplated in
2 the Empire service area, that this would continue to
3 be the case in Empire, in the Empire District?

4 A. That we would use some contract linemen?

5 Q. Correct.

6 A. Again, I can't speak specifically to the
7 transition work, but inevitably we would use some
8 contract work force.

9 MR. JOLLEY: I have no other questions.

10 JUDGE WOODRUFF: Empire Retirees?

11 CROSS-EXAMINATION BY MR. DEUTSCH:

12 Q. Good morning, Mr. Green.

13 A. Good morning.

14 Q. My name is Deutsch. I have a couple of
15 questions. I represent the Empire Retirees. Do you
16 know who they are? Do you understand who that group
17 is?

18 A. I think I do.

19 Q. And what's your understanding of who they
20 are?

21 A. The employees that have retired from Empire
22 over the years.

23 Q. We heard some testimony yesterday from
24 Mr. McKinney indicating that he was kind of the, as
25 the CEO of Empire might be expected, that he was the

1 lead guy in the negotiations of this merger agreement
2 between UtiliCorp and Empire. Would you have been his
3 counterpart on the UtiliCorp side?

4 A. No, not directly.

5 Q. Did you participate in the merger
6 activities, the merger negotiation?

7 A. Yes, at times.

8 Q. What was your role in that negotiation?

9 A. I worked with our negotiating team and
10 occasionally talked directly to Mr. McKinney, but the
11 majority of the negotiation went on between
12 Mr. McKinney and members of Empire management and our
13 negotiating team.

14 Q. Okay. So you were not, how would you
15 describe it, much involved in the merger negotiations?

16 A. I was involved in the material terms and in
17 constant touch with our negotiating team with respect
18 to acceptable parameters and current status.

19 Q. And were you the final word on decisions as
20 to issues that would come up that were in dispute,
21 requests from one side to, let's do it this way or
22 let's do it that way?

23 A. Ultimately our board is the final word, but
24 I certainly was part of the process and consulted with
25 our CEO and made a recommendation to our board.

1 Q. And who was the CEO you consulted with?

2 A. Richard Green.

3 Q. Your brother?

4 A. Yeah. Yes.

5 Q. Is he going to testify in this proceeding?

6 A. No, he's not.

7 Q. Did he participate in the negotiations?

8 A. No. I consulted with him after discussing
9 matters with our negotiating team.

10 Q. So the chain of command would have been
11 negotiating team to you to Richard Green to board?

12 A. Yes.

13 Q. Okay. Did you have any knowledge or
14 information or participate at all in the negotiation
15 of the disposition of certain EDE employee benefits,
16 particularly the health insurance matter?

17 A. No. I was not directly involved in those
18 discussions.

19 Q. Did anybody from your negotiating team ever
20 come back and say that Mr. McKinney wants to have a
21 different arrangement for his employees than what we
22 are proposing?

23 A. No, I don't remember that ever happening.

24 Q. Did they ever come back to you and say,
25 Mr. McKinney's insisting that the Empire employees,

1 retirees continue on the same insurance program that
2 EDE currently offers rather than the one that UCU
3 currently offers?

4 A. I do not remember that specifically, no.

5 Q. Do you remember that ever being an issue at
6 all?

7 A. I remember it was an issue, and it was
8 handled by our negotiating team and our benefits
9 specialists.

10 Q. And do you recall what the handling of that
11 issue was?

12 A. No. I did not get down into the specifics
13 of that particular issue.

14 Q. Did you look upon the health insurance
15 situation as a major issue in the negotiation as to
16 whether a merger would go forward or not depending
17 upon the disposition or treatment of health insurance
18 by UtiliCorp after the merger concerning EDE Retirees
19 or employees?

20 A. It's clearly a significant issue, one of a
21 multitude of issues that are negotiated in a
22 transaction like this.

23 Q. Why was it a significant issue?

24 A. Benefits for employees are always a
25 significant issue.

1 Q. Significant in this context because of the
2 savings to be achieved if they don't have any or
3 significant because of the need to provide them?

4 A. I think probably significant primarily
5 because of the importance to employees.

6 Q. Employees like benefits, don't they?

7 A. They do.

8 Q. And companies don't like paying for
9 benefits?

10 A. I wouldn't agree with that at all.

11 Q. Okay. So the significance of health
12 insurance and who pays for it was perhaps not as major
13 an issue of cost savings or cost of the merger as, oh,
14 for instance the severance payments to be made to key
15 persons at EDE?

16 A. Can you restate your question? I'm not --

17 Q. You testified earlier that, pursuant to
18 questions by Mr. Jolley, that you are aware that there
19 was a golden parachute for a number of employees of
20 Empire should their jobs be eliminated after the
21 merger; isn't that right?

22 A. Yes.

23 Q. Was that an issue that you recall coming up
24 in the negotiations?

25 A. It was not a significant point of protracted

1 negotiation, but clearly a point we were aware of.

2 Q. It was your understanding from whatever was
3 discussed concerning those golden parachute payments,
4 that these were payments to be made to people who
5 would no longer be employees if they were made; is
6 that correct?

7 A. Correct.

8 Q. So going back to the importance of benefits,
9 you're talking in that case about the importance of
10 payments to be made to people who would no longer be
11 employees of the organization; is that right?

12 A. Are you talking about the Empire retirees?

13 Q. No. I'm talking about the Empire officers
14 with the parachute payments. They would no longer be
15 employees?

16 A. Well, not necessarily. I mean, we --
17 potentially they would no longer be employees, but as
18 we acquire companies we're always looking for talented
19 management that might play another role in UtiliCorp.

20 Q. Do you have any idea how much the severance
21 payments to the officers, the key persons pursuant to
22 their three-year parachute agreements would be, what
23 the cost of that is?

24 A. I've looked at it. I couldn't quote it
25 specifically this morning.

1 Q. If you didn't have to pay that as part of
2 the merger, wouldn't that be a savings to UtiliCorp?

3 A. Sure. By definition, yeah.

4 Q. But it never came up in the negotiation,
5 this deal that that would be a -- something to propose
6 as far as achieving some savings through the merger?

7 A. No. It came up. It's clearly one of the
8 points that are negotiated, but there are a multitude
9 of points negotiated in any transaction, and that was
10 one of the points. And if you look at where that came
11 out, I think you'll find it's -- it's well within
12 reason against any other transaction of this sort
13 inside or outside of this industry.

14 Q. It appears that if it came up at all the
15 resolution was to just go ahead and honor the
16 agreements and pay it, right? I mean, there was no
17 codification?

18 A. No, I didn't say that. I don't know if you
19 have personal knowledge.

20 Q. You said that it was an item that came up in
21 negotiation?

22 A. Correct.

23 Q. And I'm asking you, well, what was that
24 negotiation?

25 A. I was not -- I did not negotiate that point.

1 So I can't describe the negotiation that occurred
2 around that specific point.

3 Q. But you know it came up?

4 A. Sure.

5 Q. So tell me what your knowledge is, then.
6 What do you know about what came up?

7 A. It's one of the issues out of a multitude of
8 issues that gets negotiated in a transaction like
9 this. Our negotiating team dealt with the issue,
10 negotiated it, and that's what I know.

11 Q. You're not aware of what the negotiation
12 was; you just know that it happened?

13 A. Right. I wasn't a party to it. I can't --
14 yes. Correct.

15 Q. You got no report back from the
16 negotiating --

17 MR. SWEARENGEN: Your Honor, I'm going to
18 object to any further questions along this line. He's
19 answered the question. He said he wasn't a part of
20 the negotiating team. He's got general knowledge of
21 what the results are. At this point he's arguing with
22 the witness.

23 JUDGE WOODRUFF: I'm going to overrule the
24 objection.

25 BY MR. DEUTSCH:

1 Q. I'm just really trying to find out what it
2 is that you know about this negotiation. We've talked
3 to Mr. McKinney. I think I understand what he knew
4 about the negotiations.

5 A. The negotiating team negotiates this point.
6 It's one point out of a multitude of points. They
7 would have come back to me and given me a status
8 report. I would have seen where they were on this
9 issue, and the result, it was well within reasonable
10 bounds for an issue like this, and I -- you know, we
11 would have moved on.

12 Q. Okay. Using that standard of reasonable
13 bounds, what reports did you receive about the
14 disposition of insurance, health insurance benefits
15 for EDE employees and retirees?

16 A. I would have looked at an overall cost
17 figure for the compensation and benefits transition as
18 recommended by the negotiation team.

19 Q. Do you recall what that recommendation was?

20 A. No. I can't specifically restate their
21 recommendation on that particular point.

22 Q. Do you recall at the outset whether UCU had
23 a position that was different than what the negotiated
24 outcome was?

25 A. No. I mean, there'll be other people

1 testifying that I think are more familiar with those
2 specifics.

3 Q. UCU has done a number of acquisitions over
4 the years; isn't that right?

5 A. Yes.

6 Q. Am I correct in my assumption that there
7 isn't really a cookie cutter type of merger that they
8 all get negotiated and they all are on their own
9 terms?

10 A. Absolutely. Every transaction is a function
11 of a unique negotiation and situation.

12 Q. Isn't it true that you have done
13 acquisitions in the past where the issue of
14 disposition of employee and retiree benefits were
15 handled differently than the terms of the agreement
16 for Empire?

17 A. I really can't speak to that. Undoubtedly
18 other transactions were handled somewhat differently,
19 but I can't compare and contrast different
20 transactions on those details.

21 Q. But basically you would agree that that's an
22 issue that gets negotiated in every merger and,
23 therefore, gets negotiated perhaps differently?

24 A. Yes.

25 Q. So the outcome and the terms of the merger

1 that was agreed to in the Empire/UCU merger were
2 basically just what came out of that particular
3 negotiation?

4 A. Yes, like any negotiation, and there are a
5 multitude of points being negotiated.

6 Q. So what is the role of the -- of policy?
7 Does UCU have a policy with regard to the provision or
8 continuation of health care benefits for retirees and
9 employees of acquired companies that says that they
10 have to be treated a certain way, or does that just
11 get negotiated with each deal as the acquisition
12 occurs?

13 A. We have a policy for the way we treat
14 employees of UtiliCorp, and then we would negotiate
15 with respect to the transition on that issue and
16 others.

17 Q. By the way, after the merger, will Empire be
18 essentially a subsidiary of UtiliCorp?

19 A. I believe the technical answer is no. My
20 counsels' shaking their head affirmatively, so that
21 gives me confidence.

22 Q. UCU currently has subsidiaries within its
23 corporate family, doesn't it?

24 A. We do, but the regulated utilities are not
25 subsidiaries, and that's a result of our structure and

1 a number of utility legislative requirements.

2 Q. Will the name of Empire change to UtiliCorp?

3 A. Not initially, and we have no current plans
4 to change it.

5 Q. Are you aware of -- first of all, let me ask
6 you, did you participate in any way in the St. Joe
7 Light & Power acquisition?

8 A. I would have participated in the same way.

9 Q. Are you aware of the method of disposition
10 of health insurance, health care benefits for
11 employees and retirees in that particular case?

12 A. Not specifically.

13 Q. Are you aware that the retirees and
14 employees at St. Joe Light & Power, according to their
15 merger agreement, essentially were grandfathered into
16 the benefits that they had enjoyed under the
17 administration of St. Joe Light & Power?

18 A. Not specifically as we sit here.

19 Q. You didn't know that?

20 A. I knew it at one -- I'm sure I was briefed
21 on it and knew it at one time, but I couldn't have
22 told you that this morning with certainty.

23 Q. But that was --

24 A. And I can't confirm that with certainty as
25 we sit here. I prepared for the Empire transaction,

1 and a lot of these details, you've got to understand,
2 are handled by the transition team and the people
3 responsible for those areas, and so I can't quote
4 details in that regard.

5 Q. Okay. Without details, though, you're aware
6 generally, aren't you, that the merger agreement
7 proposed for St. Joe Light & Power, the almost
8 identical provision, same number 6.13 in the agreement
9 to the EDE agreement, that it is different and says
10 that those St. Joe Light & Power employees will get
11 the same benefits they had when they were with St. Joe
12 Light & Power. You know that, don't you?

13 A. I think I've just said, I can't confirm that
14 language with certainty. If you're trying to state
15 that, fine, but I can't confirm that with certainty.

16 Q. But let me clarify that hopefully no lawyer
17 would write it the way I said it. That's not exactly
18 what it says. I'm characterizing it to find out
19 whether you are at least aware that the benefits have
20 been grandfathered in for the St. Joe Power & Light.
21 If you don't know that, if that's, you know, the first
22 you've heard of that, that's fine. I'm just trying to
23 find out what your level of knowledge is.

24 A. It's not the first I would have heard of
25 that. You seem fairly confident about it, but I'm

1 telling you, as we sit here this morning, I can't
2 confirm that with certainty.

3 Q. Okay.

4 A. And there's -- if you need to confirm that,
5 there's a number of people you can confirm that with.

6 Q. And I think we will as the proceeding goes
7 on, but I didn't set the schedule for your testimony,
8 so I have to ask my questions while I get the chance
9 because I don't want you to have to come back.

10 A. I appreciate that.

11 Q. Do you have any idea what the total savings
12 to the company, the merged company after the merger
13 will be on any time period for the curtailment of
14 health insurance benefits for retirees of EDE?

15 A. No, I can't quote that number.

16 Q. Okay. Do you have any idea what the total
17 savings that your team has proposed in this proceeding
18 over the ten-year period, the next ten years after the
19 merger, are supposed to be for the transaction, the
20 savings that you will achieve through synergies and
21 cost savings?

22 A. Yeah, there's a number of scenarios. Vern
23 Siemek's testimony lays it out in a schedule, and
24 that's where I direct you rather than me try to quote
25 the --

1 Q. So you would adopt his quotes as to what the
2 merger savings over the next ten years is going to be?

3 A. Absolutely.

4 Q. And if it was, for instance, \$383 million
5 over the next ten years, that's what he says, then
6 you'd agree with him?

7 A. I would agree with Mr. Siemek. He is our
8 witness on that issue.

9 Q. Do you have any idea what the cost to
10 achieve the merger savings as to curtailment of costs
11 concerning health care benefits is computed to be by
12 your staff? Have you looked at that?

13 A. No, I can't quote that number. I think you
14 just asked that question a couple questions ago. No.
15 They can.

16 Q. Okay.

17 A. But I can't give you that number right now.

18 Q. This is --

19 A. Unless --

20 Q. Go ahead.

21 A. Unless you're asking a different question.
22 That's why I'm --

23 Q. I am.

24 A. Okay.

25 Q. The first question I asked you was what the

1 savings would be.

2 A. Okay.

3 Q. And you testified you don't really know; is
4 that right?

5 A. Right, I can't quote the number.

6 Q. Okay. There are certain costs to achieving
7 savings.

8 A. Okay.

9 Q. And there has been a figure given of about
10 \$2.7 million in testimony as to the costs for
11 achieving savings in the area of curtailment of
12 benefits. I was wondering if you agree with that
13 figure?

14 A. I would agree with what our witnesses
15 testified.

16 Q. You deal with the issue of benefits for your
17 own employees in the course of running your business,
18 I assume?

19 A. Yes.

20 Q. Do you agree that benefits for retirees are
21 really a form of deferred compensation?

22 A. I've always referred to benefits for
23 retirees as just that, benefits for retirees.

24 Q. Would you agree that a retire-- an employee
25 has to qualify for retirement benefits?

1 A. I believe so.

2 Q. Has to be there a certain length of time?

3 JUDGE WOODRUFF: Mr. Deutsch, if I could
4 interrupt you for a moment. I have a request from the
5 Commissioners. They need to leave for agenda in a few
6 moments, but they'd like to ask Mr. Green some
7 questions before they leave. So I'll allow you to
8 come back and ask you r-- continue with your
9 cross-examination after they've asked their questions.

10 MR. DEUTSCH: My pleasure.

11 JUDGE WOODRUFF: Commissioner Schemenauer?

12 COMMISSIONER SCHEMENAUER: Thank you, your
13 Honor.

14 QUESTIONS BY COMMISSIONER SCHEMENAUER:

15 Q. I just have one question, Mr. Green, as soon
16 as I find the right page of your testimony. On to
17 your direct testimony on page 25, you're talking about
18 incentive regulation and taxpayers to more creative
19 approaches to merger transactions, and you answer the
20 question and you said, In fact, UtiliCorp would like
21 to work with the Commission to jointly address these
22 issues in the 2000 Missouri Legislature.

23 And my question is, to date, has UtiliCorp
24 done any preliminary work or arrangements with the
25 Staff or with legislators on this project, that you

1 are aware of?

2 A. We've certainly had discussions. I'm not
3 sure what you mean by preliminary work. And by
4 introducing some of these regulatory frameworks, we're
5 trying to foster a dialog to create a regulatory
6 environment that better aligns the interests of the
7 Commission, the Staff and the companies, to drive
8 efficiencies and provide world-class service at, you
9 know, low cost to the ratepayers of Missouri.

10 Q. Have you drafted a bill or bill language
11 that you approached any legislators yet to introduce
12 or done any work in that area?

13 A. We are participating in the drafting of a
14 bill with other utilities in the state.

15 Q. And it's not just your project, then, it's
16 all the utility companies or several utility
17 companies?

18 A. Today, that is the way we're directing our
19 efforts.

20 Q. Okay. And do you know whether or not you've
21 contacted any Senators or Representatives regarding
22 your proposed legislation?

23 A. I'm sure we've talked to a number of
24 legislators about the concept of incentive regulation
25 and the benefits it could bring to the state.

1 Q. Okay. And this is just pertaining to
2 mergers and acquisitions or is this restructuring
3 legislation?

4 A. It would pertain to restructuring.

5 Q. And also --

6 A. As well as mergers and acquisitions.

7 COMMISSIONER SCHEMENAUER: Thank you.
8 That's all I have.

9 QUESTIONS BY COMMISSIONER DRAINER:

10 Q. Good morning, Mr. Green.

11 A. Good morning.

12 Q. I just have a couple questions also. First,
13 I want to ask from your surrebuttal testimony and your
14 direct, with respect to many of the issues that have
15 been brought up by a couple of the parties on
16 transmission and reliability, it's your position that
17 this is FERC jurisdiction and, therefore, that is not
18 really an issue for this merger but is more an issue
19 to be handled at the national level?

20 A. Yes, that's correct.

21 Q. All right. With respect to the acquisition
22 adjustment, in your surrebuttal testimony you
23 basically state that in the past this Commission has
24 been open to reviewing acquisition adjustments or
25 premium adjustments on a case-by-case basis. Is that

1 what you're asking in this case?

2 A. Absolutely.

3 Q. And finally, with respect to the issues that
4 are being brought to you this morning on employee
5 retirement issues, especially with respect to their
6 health care, based on the questions that you've been
7 asked and seeing how important this issue is to the
8 Empire retired employees, is this one that your
9 company would consider -- reconsider in how it is a
10 part of this merger, or do you believe that the issue
11 has been resolved by UtiliCorp and that it sits as it
12 is?

13 A. There are a multitude of issues in a
14 transaction like this. This is an important issue,
15 and there are trade-offs between all these issues.
16 It's currently an issue that is of discussion between
17 the Empire management team and their retirees, and I
18 don't think it would be appropriate for me to comment
19 further at this time.

20 COMMISSIONER DRAINER: All right. Thank
21 you. I have no other questions for you.

22 I would like to tell our many members of the
23 public that are here today that, as I know you are not
24 normally here, first I welcome you for coming.

25 Second, I want to let you know that the

1 Commissioners have meetings on Tuesdays and Thursdays
2 where they have to get together and discuss all the
3 other cases we've heard and are now making rulings on.
4 So when you do not see the Commissioners here, it's
5 not that they are not taking all this in. That's why
6 we have the transcript. We can't be in two places at
7 once. We have to get upstairs to a meeting, but we
8 will have the transcript that we can read on all the
9 questions and answers.

10 Again, we welcome you here, and now we'll go
11 to our other meeting. Thank you very much.

12 JUDGE WOODRUFF: Thank you. All right.

13 Mr. Deutsch, back to you then.

14 CROSS-EXAMINATION (RESUMED) BY MR. DEUTSCH:

15 Q. Okay. Following up on what Commissioner
16 Drainer was inquiring about, I take it from what
17 you've said that -- well, I'll just ask you. This
18 employee -- excuse me -- retiree health insurance, do
19 you regard this as a deal-breaking consideration as to
20 whether it is changed or not?

21 A. Again, I'd offer the same answer. I mean,
22 the transaction that we've negotiated is comprised of
23 a number of issues. This is one very important issue,
24 and there are trade-offs between all those issues, and
25 those trade-offs are something that the Empire

1 management team and board of directors needs to -- is
2 dealing with and in dialog with their retirees. And I
3 don't think it's appropriate for me to dive into it
4 any further.

5 Q. Well, as an officer of UtiliCorp, let me put
6 it this way. If this Commission were to come out with
7 a final order ruling that said that your merger can go
8 forward, your regulatory plan's great. The only thing
9 that they want is a condition that the EDE retirees
10 will continue their current benefits and you're going
11 to fund them, would your recommendation to the board
12 be that you say, No, we just don't want to do the
13 merger, or would you go ahead?

14 A. I really can't -- that's a hypothetical, and
15 I'd have to look at the totality of the situation at
16 the time. Again, I think that would be a question for
17 the Empire board and management more than UtiliCorp.

18 Q. So your answer is not yes and it's not no.
19 Maybe?

20 A. My answer is on the transcript.

21 Q. Very good, Mr. Green.

22 Let me also ask, my understanding is that
23 there was an issue with regard to the disposition or
24 handling of the pension fund for Empire District
25 Electric, which I'm now told that that issue has been

1 settled between Staff and the Company. Are you
2 familiar with that issue at all?

3 A. No.

4 MR. DEUTSCH: That's all the questions I
5 have.

6 JUDGE WOODRUFF: Thank you. Natural
7 Resources?

8 MS. WOODS: No questions. Thank you.

9 JUDGE WOODRUFF: Praxair I believe is not
10 here today. City of Springfield?

11 MR. KEEVIL: Yes, very briefly.

12 CROSS-EXAMINATION BY MR. KEEVIL:

13 Q. Good morning, Mr. Green.

14 A. Good morning.

15 Q. I have just a few questions, and they're
16 very similar to questions I asked you in the
17 UtiliCorp/St. Joseph Light & Power Company merger
18 case, No. EM-2000-292. So if they sound familiar,
19 that's probably why.

20 In the KCM-2000-292 case, you stated -- I'm
21 looking here at a copy of the transcript. You stated
22 that, and forgive me if I mischaracterize, that
23 there -- you are aware of some interest by other state
24 utility regulatory commissions in taking an active
25 role in electric transmission reliability issues. Do

1 you recall that?

2 A. Yes.

3 Q. Okay. Do you still believe that to be an
4 accurate statement?

5 A. Yes.

6 Q. You also stated in the UtiliCorp/St. Joe
7 case that you are aware of some utility regulatory
8 commissions which approve electric utility plans for
9 their transmission systems. Do you recall that, sir?

10 A. Yes.

11 Q. And do you still believe that to be an
12 accurate statement?

13 A. Yes.

14 Q. To your knowledge, does UtiliCorp or any of
15 its subsidiaries or divisions operate in any of those
16 states which approve electric utility plans for
17 transmission systems?

18 A. I believe so, yes.

19 Q. Okay. That's very close to what you said
20 the last time. Actually, last time you --

21 A. That's reassuring.

22 Q. You said, Most likely so, but you could not
23 recite what sort of jurisdiction each state in which
24 you operate has over transmission. Would that be your
25 answer here today also?

1 A. Yes.

2 Q. Okay. By that I assume, as I did last time,
3 that in your opinion the various state jurisdictions,
4 or perhaps I should turn that around, the jurisdiction
5 of the various states over transmission varies from
6 state to state. Would that be your belief?

7 A. Yes.

8 Q. Again, in that case, the UtiliCorp/St. Joe
9 merger case, I believe you indicated that, despite
10 having a background in the legal profession, you are
11 not testifying -- or you were not in that case
12 testifying as a legal expert; is that correct?

13 A. Absolutely.

14 Q. And is that the same here today? Are you
15 here in this case testifying as a legal expert?

16 A. I am not.

17 Q. All right. Do you intend for any of your
18 testimony then in this case to be construed as giving
19 a legal opinion or legal conclusion?

20 A. Absolutely not.

21 MR. KEEVIL: All right. Thank you, sir. No
22 further questions.

23 JUDGE WOODRUFF: Public Counsel?

24 CROSS-EXAMINATION BY MR. MICHEEL:

25 Q. Mr. Green, are you involved in the planning

1 process at UCU that considers overall corporate
2 initiatives such as merger and acquisitions?

3 A. Yes.

4 Q. Could you briefly describe for me how the
5 strategic planning process works at UtiliCorp?

6 A. That's a big question. I'm trying to think
7 about how to be concise in my answer.

8 We look at a variety of potential scenarios
9 in the industry, in the marketplace, taking into
10 account deregulation and increased competition and new
11 entrants, a variety of fundamentals that affect the
12 dynamics of the marketplace, and then we try to craft
13 strategies that we believe will enhance shareholder
14 value, create value.

15 And we try to do that in a focused way and
16 pursue a limited number of strategies with focus and
17 develop detailed operating plans and execute against
18 those plans to drive shareholder value and enhance
19 customer service, which ultimately creates more
20 opportunity for our employees.

21 Q. Are strategic and business plans created on
22 an annual basis as part of that process, Mr. Green?

23 A. That's an interesting question. Business
24 plans are created on an annual basis, but the reality
25 is they're dynamic and they change every week. And so

1 the planning process really is a dynamic one, and it
2 is -- the pace of change in our marketplace, our plans
3 are real time, but clearly we have annual events that
4 sort of reset those plans, but they quickly evolve.

5 Q. Are you a member of the UtiliCorp Monday
6 Morning Group?

7 A. I was.

8 Q. Does the group meet regularly to discuss,
9 among other things, the overall strategic direction of
10 the company?

11 A. Generally.

12 Q. You're no longer a member of the Monday
13 Morning Group?

14 A. That group as it existed doesn't exist
15 today.

16 Q. Do you still meet regularly, though, with a
17 group of high-level UCU individuals to talk about the
18 strategic direction of the company?

19 A. We do.

20 Q. Does the group have a name or --

21 A. Staff meeting.

22 Q. Does that group engage in strategic -- in
23 the strategic and the business planning process?

24 A. Yes.

25 Q. Do you provide guidance and feedback to the

1 people at UtiliCorp who engage in the strategic and
2 business planning process?

3 A. Yes.

4 Q. Do you review and provide feedback to
5 strategic and business plans developed by UCU
6 personnel?

7 A. I do, along with the entire senior
8 management team.

9 Q. Do you have a copy of your surrebuttal
10 testimony with you, sir?

11 A. I do.

12 Q. And I'm focusing, I guess, on page 3 of your
13 surrebuttal testimony there, starting on line 21,
14 where you ask a question, Give me an example of an
15 issue raised that is only the unsupported opinion of
16 the author. Do you see that?

17 A. Yes.

18 Q. And then you proceed to state that
19 Mr. Kind's assertion that one of the six factors
20 driving the merger was UCU's desire to prevent its
21 neighboring utilities from expanding their footprint
22 in UCU's backyard by acquiring St. Joe or Empire is an
23 unsupported opinion; is that correct?

24 A. That's correct.

25 Q. And you finally state that you know of no

1 facts to support this conclusion; is that correct?

2 A. That's correct.

3 Q. Is it your testimony today that UtiliCorp
4 has never considered mergers or alliances with
5 neighboring utilities as a defensive measure?

6 A. My testimony here is that that was not a
7 factor or consideration in the St. Joe or Empire
8 transaction.

9 Q. So in the past you have considered mergers
10 or alliances as a defensive measure; is that correct?

11 A. As I sit here, I can't -- I can't
12 specifically recall an instance where that was a
13 driver in the decision.

14 MR. MICHEEL: Your Honor, at this point I'd
15 like to get a document marked as an exhibit, and it's
16 a highly confidential document. So we'll need to go
17 through that process, and I'll have several questions
18 regarding that document.

19 JUDGE WOODRUFF: Okay. Can you ask the
20 questions without revealing confidential information?

21 MR. MICHEEL: No, I cannot.

22 JUDGE WOODRUFF: You're asking us to go into
23 executive session, then?

24 MR. MICHEEL: Yes, I am.

25 JUDGE WOODRUFF: Closed session. Okay.

1 Let's go ahead and mark your document, then we'll need
2 to go into session.

3 MR. MICHEEL: I think this would be marked
4 Exhibit 204.

5 (EXHIBIT NO. 204HC WAS MARKED FOR
6 IDENTIFICATION.)

7 JUDGE WOODRUFF: At this time we're going to
8 have to go into a closed session, which means anyone
9 that does not have authorization to view highly
10 confidential documents needs to leave the room. We'll
11 try to make this brief and let you know when you can
12 come back in.

13 JUDGE WOODRUFF: Ask everybody to look
14 around, make sure there's no one here that's not
15 supposed to be here.

16 (REPORTER'S NOTE: At this time, an
17 in-camera session was held, which is contained in
18 Volume No. 4, Pages 340 through 358 of the
19 transcript.)
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1 JUDGE WOODRUFF: Let's go back on the
2 record.

3 I do have an announcement to make concerning
4 some matters that were brought up earlier. For both
5 Mr. Kehm and Mr. Jackson, the Commissioners indicated
6 that they will not have questions for them. So they
7 will not need to appear, assuming the parties do not
8 have questions.

9 MR. SWEARENGEN: I would ask again with
10 respect to Mr. Kehm, if anyone has any questions for
11 him, please let me know.

12 MR. DEUTSCH: I have no questions for him.

13 MR. JOLLEY: The union will have no
14 questions.

15 MR. SWEARENGEN: Thank you.

16 JUDGE WOODRUFF: Thank you. All right.
17 We're back with Mr. Green on the stand, and Public
18 Counsel asking questions.

19 BY MR. MICHEEL:

20 Q. Is it correct, Mr. Green, that UCU assumed
21 the Commission would provide it with reasonable
22 opportunity to recover the acquisition premium?

23 A. Yes.

24 Q. Is it correct that UCU believes the
25 Commission articulated a policy and standard for

1 premium recovery in EM-91-213 and WR-95-205 and
2 SR-95-206?

3 A. Yes, assuming those are the correct numbers.

4 Q. Why don't you turn to page 15 of your direct
5 testimony. I'm looking at, I think, lines 12 and 13.

6 A. It appears to be correct.

7 Q. I think you have 204 there, but I think
8 that's a typographical error.

9 A. All right. I think we know which cases
10 you're talking about.

11 Q. And what merger transaction was the subject
12 of EM-91-213?

13 A. That was a water case, I believe, that we've
14 cited.

15 Q. EM.

16 A. EM.

17 Q. 91-213. Let me represent to you that E
18 stands for electricity generally.

19 A. I think you did that in the last case.

20 Q. I think it was the R we had the problem with
21 last time.

22 A. Okay.

23 Q. Do you know what companies were the subject
24 of that merger proceeding?

25 A. No, I can't give you the names of the

1 parties to that proceeding.

2 Q. Did you review that Report and Order in
3 preparing your testimony?

4 A. Yes, I did.

5 Q. You also have a quote from that Report and
6 Order at page 15 of your direct testimony; is that
7 correct?

8 A. That is correct.

9 Q. And you say that the Commission did not wish
10 to discourage companies from actions which produce
11 economies of scale and savings which can benefit
12 ratepayers and shareholders alike; is that correct?

13 A. That's correct.

14 Q. And is it correct also that the quote you
15 have there related to the concept of sharing, the
16 savings sharing plan?

17 A. I think it referred to the concept of
18 realizing the benefits of mergers and economies of
19 scale and savings which benefit ratepayers requires
20 the purchaser to earn a return on the premium in some
21 form or fashion.

22 Q. Is it correct that in that merger proceeding
23 KP&L was not requesting explicit recovery of the
24 acquisition adjustment in that proceeding, only a
25 program of sharing merger savings between shareholders

1 and ratepayers with each receiving 50 percent?

2 A. Again, I can't recite the specifics of that
3 case as we sit here. The purposes of that cite in my
4 testimony is to establish the prior practice in the
5 Commission to recognize the importance of allowing a
6 return to be earned on premium paid to allow the
7 benefits to flow to customers.

8 Q. Has the Commission ever allowed explicit
9 acquisition premium recovery within the context of a
10 merger proceeding, Mr. Green?

11 A. I don't believe this Commission has ever --
12 by explicit, what do you mean?

13 Q. Said you can recover the acquisition premium
14 in rates. For example, you can recover the assigned
15 merger premium in rates.

16 A. No, I don't believe the Commission has done
17 that, but they have effectively allowed that and have
18 stated an understanding of the importance of allowing
19 an effective recovery on the merger premium to allow
20 the ratepayers to enjoy the benefits of a transaction
21 like this.

22 Q. And they've done that within the context of
23 a rate proceeding; isn't that correct?

24 A. Not necessarily. But again, you're diving
25 into some regulatory details that are better posed to

1 John McKinney, but, you know, a rate -- a lot of the
2 ways premium is recovered is not necessarily through,
3 quote, a rate case.

4 Q. Is it correct that in the EM case that you
5 cite, the Commission made a specific finding that
6 nothing in the Order shall be considered a finding as
7 to the reasonableness of the expenditures herein
8 involved or the value of ratemaking purposes of the
9 properties herein involved or as an acquiescence to
10 the value placed on said properties by Kansas Power &
11 Light Company?

12 A. You'd have to show me that for me to confirm
13 that.

14 MR. SWEARENGEN: Your Honor, that case is
15 going to speak to itself and I would object to any
16 further questions about what it says or doesn't say.

17 MR. MICHEEL: Well, your Honor, he's quoted
18 from the case in his direct testimony. I think
19 that's --

20 JUDGE WOODRUFF: What is the relevance of
21 asking him details about the case? We understand what
22 he said about the case, but can you explain why it's
23 relevant to ask him details about the case?

24 MR. MICHEEL: Sure. It's relevant to
25 indicate that the Commission in the context of a

1 merger proceeding, unlike this proceeding, has never
2 allowed companies to recover the acquisition premium,
3 and that's what they're requesting in this proceeding.

4 JUDGE WOODRUFF: I think you've asked him
5 that question and he's answered it, has he not?

6 MR. MICHEEL: Well, he's equivocated. I
7 don't think he's answered that question.

8 MR. SWEARENGEN: Well, I don't know that the
9 case stands for that proposition. I think the case
10 speaks for itself, and I would renew my objection.

11 MR. MICHEEL: I'll just move on, your Honor.
12 That's fine.

13 JUDGE WOODRUFF: I'll go ahead and grant the
14 objection then so it's clear on the record. Go ahead
15 and move on.

16 BY MR. MICHEEL:

17 Q. Let me ask you about the water case that you
18 cite, WR-95-205 and SR-95-206. That was a rate case,
19 was it not, Mr. Green?

20 A. I believe it was.

21 Q. And is it correct within the context of that
22 rate case the Commission denied Missouri-American's
23 request to recover the acquisition premium?

24 A. Again, I'd have to see the case as we sit
25 here. I pulled a quote to make a point in my

1 testimony. I have not memorized the case and cannot
2 recite it here as we sit this morning.

3 Q. So you don't know whether or not the
4 Commission allowed acquisition premium recovery in
5 that case?

6 A. Before I gave an answer on the record, I
7 would want to look at the case.

8 Q. And you did not review the case in preparing
9 your testimony, is that your testimony?

10 A. No, I didn't say that at all. I said I
11 can't recite that as we sit here this morning. I
12 reviewed the case in preparing my testimony which was
13 filed months ago. So I don't have any current, you
14 know, memory of the entire case.

15 Q. Let me --

16 A. Nor am I using the entire case in my
17 testimony.

18 Q. Let me ask you, is your regulatory plan a
19 ten-year plan?

20 A. It is.

21 Q. And it seeks to bind the Commission and the
22 Commission's staff; is that correct?

23 A. In a practical sense, yes.

24 MR. MICHEEL: Thank you very much,
25 Mr. Green.

1 JUDGE WOODRUFF: Staff?

2 MR. DOTTHEIM: Yes, thank you.

3 CROSS-EXAMINATION BY MR. DOTTHEIM:

4 Q. Good morning, Mr. Green.

5 A. Good morning.

6 Q. Mr. Green, could you identify what is
7 UtiliCorp's current stock price?

8 A. No, but I could tell you at close yesterday,
9 it was about 27 7/8.

10 Q. Okay. I'd like to refer you to your direct
11 testimony, in particular page 9, line 2. Excuse me.
12 It really starts on page 8, and it -- the sentence
13 starts on line 14, and it continues to page 9, line 2,
14 and I -- excuse me.

15 A. Okay.

16 Q. And I'd like to direct you in particular to
17 the portion of the sentence that starts on line 22 and
18 carries over to the end of the sentence in particular,
19 The failure of the Commission prior to the closing of
20 the merger to articulate its policy on the extent to
21 which UtiliCorp, the surviving corporation, may
22 recover the premium as defined in the merger
23 agreement.

24 Do you know whether in the UtiliCorp/Empire
25 Agreement and Plan of Merger that event is referred to

1 as a UtiliCorp material adverse effect or a company
2 material adverse effect?

3 A. Well, I'm just reading the language. It
4 says a material adverse effect on the financial
5 condition, income, assets, business or prospects of
6 the business operations presently owned by Empire. So
7 the way I read it, the adverse impact would be with
8 regard to Empire and that business.

9 Q. Okay. Do you have the schedule to your
10 direct testimony, the Agreement and Plan of Merger?

11 A. I do.

12 Q. If I could direct you to that document, and
13 in particular I'd like to direct you to page 48 of
14 your Schedule RKG-1, page 48 of 55.

15 A. Okay.

16 Q. And I'd like to refer you in particular to
17 Section 7.01(b), and I'd like to refer you to the
18 clause that starts on line 5 and reads, None of such
19 approvals or final orders shall require or be
20 conditioned upon any requirement that any of the
21 company, UCU or the surviving corporation provide any
22 undertaking or agreement or change or dispose of any
23 assets or business operations or take or refrain from
24 taking any other action which would cause individually
25 or in the aggregate either (i) a UCU material adverse

1 effect or (ii), and then the sentence continues on.

2 I'd also like to refer you to the next
3 sentence, which reads, For purposes of this section,
4 the determination of UCU material adverse effect may,
5 without limitation, include the failure of the Public
6 Service Commission of the State of Missouri (MPSC) to
7 articulate prior to closing its policy on the extent
8 to which the surviving corporation may recover the
9 premium (as defined below) related to this
10 transaction.

11 Have I read those portions of that paragraph
12 correctly?

13 A. Yes.

14 Q. Could you provide -- well, let me ask you,
15 what role did you play, if any, in the development of
16 the Agreement and Plan of Merger between UtiliCorp and
17 Empire?

18 A. The role would have been the same as I
19 described earlier. I was -- there as a negotiating
20 team, and they reported to me on a regular basis their
21 progress.

22 Q. Well, what is your understanding of
23 Section 7.01(b), in particular the sections, the
24 portions that I just read?

25 A. I mean, it is a condition that requires just

1 what it says, the Commission to state their position
2 on the recovery of premium because that's -- that's
3 essential for this transaction to make sense, and
4 without it, I don't see how we can go forward.

5 Q. Is that item a UCU material adverse effect
6 if it does not occur?

7 A. Again, I don't want to draw a legal
8 conclusion here, but I think that would -- there's a
9 UCU material adverse event in Section 1, and here when
10 we talk about a material adverse effect on the
11 financial condition, income, assets, business
12 prospects or business operations presently owned and
13 operated by the company, we're talking about Empire.

14 Q. Do you know whether there's a -- the term is
15 used in this document a company material adverse
16 effect?

17 A. What's the question?

18 Q. Do you know whether there is a term in this
19 document that is, instead of a UCU material adverse
20 effect, is a company material adverse effect?

21 A. No, not right now.

22 Q. Okay. If I could direct you to page 9 of 55
23 and if I could direct you to Article III at the bottom
24 of the page, the second sentence.

25 A. Yes.

1 Q. The term company material adverse effect
2 appears in that paragraph at the bottom of page 9,
3 does it not?

4 A. Yes.

5 Q. And if I could refer you to page 1 of 55.

6 A. Page 1?

7 Q. Yes.

8 A. The very first sentence, the Empire District
9 Electric Company is identified as the company, is it
10 not?

11 A. It is.

12 Q. And UtiliCorp United, Inc. is identified as
13 UCU?

14 A. Correct. So I think that would confirm my
15 interpretation of that earlier provision.

16 Q. Do you know what is the present termination
17 date, if there is a present termination date, of the
18 Agreement and Plan of Merger?

19 A. December 31st, this year.

20 Q. Can that date be extended?

21 A. Can it be extended?

22 Q. Yes.

23 A. I suppose the termination date in any
24 agreement can be extended.

25 Q. Do you know whether there is a provision in

1 the Agreement and Plan of Merger which would permit
2 the extension of that date?

3 A. I don't have specific knowledge of that
4 provision. I'd have to flip through the document. I
5 think it would -- I don't have definite knowledge. I
6 think it would require both parties' agreement.

7 Q. I'd like to refer you to page 52 of 55, and
8 I'd like to refer you to Section 8.05, Extension;
9 Waiver. To your knowledge, would that provision
10 indicate that the December 31, 2000 termination date
11 can be extended by UtiliCorp and Empire District
12 Electric?

13 A. What's your question? I mean, this
14 basically, I think, confirms what I said. It will
15 require mutual agreement.

16 Q. Do you know whether there are any present
17 plans of UtiliCorp to extend or agree to an extension?

18 A. There are none.

19 Q. Let me also ask you if I could ask you again
20 to turn back to page 48. If the Commission issues an
21 Order in the merger case wherein it defers to a
22 subsequent rate proceeding the determination of any
23 recovery of the premium, do you know whether there is
24 any plan on the part of UtiliCorp to proceed with the
25 proposed merger?

1 A. Ultimately that wouldn't be my decision.
2 That would be our board's decision. But it would be
3 very difficult to imagine moving forward not
4 understanding whether you were going to earn a return
5 on \$270 million of investment, I think for any prudent
6 businessman.

7 Q. And that would be your recommendation to the
8 board?

9 A. With respect to what?

10 Q. To whether the board should proceed forward
11 or seek to proceed forward with the merger, the
12 proposed merger.

13 A. If there was no indication whether we could
14 earn a return on any of the premium, I think my
15 recommendation would be pretty clear and simple that I
16 don't see how a prudent businessman could move forward
17 not knowing if they were going to earn any return on
18 \$270 million of investment.

19 Q. I think you've indicated that there's no
20 present plan to extend the effective date -- excuse
21 me -- the termination date of the Agreement and Plan
22 of Merger beyond December 31, 2000; is that correct?

23 A. That's correct.

24 Q. If the Commission does not issue a Report
25 and Order respecting the proposed merger, what would

1 be your recommendation to the board regarding any
2 extension or nonextension of the termination date of
3 the Agreement and Plan of Merger?

4 A. I don't think I can answer that question in
5 a vacuum. I mean, there would be a number of factors
6 to be weighed in determining whether that made sense
7 for UtiliCorp.

8 Q. Can you identify any of those factors?

9 A. I mean, at a conceptual level, the factors
10 would be, you know, whether we saw value to be gained
11 in extending the termination date.

12 Q. At the moment, would you see yourself any
13 value to extending the termination date?

14 A. Today, as we sit here, I see no need. I
15 think the Commission has said they can rule in
16 December, and so as we look at the -- as we look at
17 the timetable and the situation, we don't see any need
18 and we haven't discussed it.

19 Q. Can you cite me to any document regarding
20 what I think you've just said, that you believe the
21 Commission has given an indication that they can issue
22 an Order in this proceeding regarding the proposed
23 merger by December 31, 2000?

24 A. No, I can't, and maybe that's our, you know,
25 our hope or, you know, interpretation of where we're

1 headed.

2 Q. So if I understand you correctly, it would
3 be your recommendation to the board that if the
4 Commission doesn't issue an Order by December 31, 2000
5 regarding the proposed merger, that the Agreement and
6 Plan of Merger should not be extended?

7 A. No, I didn't say that. I said we'd have to
8 take a look at the situation at that time and see if
9 it made sense to extend it.

10 Q. Okay. Thank you.

11 JUDGE WOODRUFF: Anything else,
12 Mr. Dottheim?

13 MR. DOTTHEIM: No. I'm sorry. I didn't
14 mean to indicate that I've completed my
15 cross-examination.

16 JUDGE WOODRUFF: I wasn't sure. Proceed.

17 BY MR. DOTTHEIM:

18 Q. Mr. Green, do you recall your -- whether
19 your prepared direct testimony in the St. Joseph
20 Light & Power company case, you had as an attachment
21 the Agreement and Plan of Merger between UtiliCorp and
22 St. Joseph Light & Power?

23 A. I believe I did, but I can't be certain.

24 Q. Do you recall the comparable section in that
25 Agreement and Plan of Merger, the comparable section

1 to Section 7.01(b)?

2 A. Generally. The wording's somewhat
3 different. It's the same idea.

4 Q. Mr. Green, I'm going to hand you a copy of
5 the Agreement and Plan of Merger dated as of March 4,
6 1999 between UtiliCorp United, Inc. and St. Joseph
7 Light & Power that was Schedule RKG-1 to your direct
8 testimony in Case No. EM-2000-292, the case regarding
9 the proposed merger of UtiliCorp and St. Joseph
10 Light & Power. Mr. Green, do you recognize that
11 document?

12 A. Yes.

13 Q. I'd like to ask you to turn to page 37 of 43
14 and I'd like to direct you in particular to
15 Section 7.01(b). That section within Article VII,
16 Conditions to Merger, Section 7.01, Condition to Each
17 Party's Obligations, (b) is denominated Waiting
18 Periods; Approvals, is it not?

19 A. Yes.

20 Q. And I'd like to direct you back to your
21 Schedule RKG-1 in the instant proceeding, the
22 Agreement and Plan of Merger between UtiliCorp and
23 Empire, again to Section 7.01(b).

24 Is the sentence which I referred you to
25 previously, in particular the sentence that makes

1 specific reference to the Missouri Public Service
2 Commission of the State of Missouri articulating prior
3 to closing its policy on the extent to which the
4 surviving corporation may recover the premium, is that
5 sentence contained in Section 7.01(b) of the Agreement
6 and Plan of Merger between UtiliCorp and St. Joseph
7 Light & Power?

8 A. The language is somewhat different. The
9 idea is the same. Where you -- what's the question?

10 Q. The question is -- well, in particular, let
11 me ask you, the sentence that appears in the Agreement
12 and Plan of Merger between Empire and UtiliCorp, that
13 sentence being, For purposes of this section, the
14 determination of UCU material adverse effect may,
15 without limitation, include the failure of the Public
16 Service Commission of the State of Missouri (MPSC) to
17 articulate prior to closing its policy on the extent
18 to which the surviving corporation may recover the
19 premium (as defined below) related to this
20 transaction. Does that sentence appear in Section
21 7.01(b) of the Agreement and Plan of Merger between
22 UtiliCorp and St. Joseph Light & Power?

23 A. No, that specific sentence isn't in this
24 agreement.

25 Q. Can you provide an explanation or reason why

1 that sentence is not in the St. Joseph Light &
2 Power/UtiliCorp Agreement and Plan of Merger?

3 A. These two agreements are products of two
4 different negotiations. They mean the same thing.
5 The Empire language gets a bit more specific.

6 Q. When you say they mean the same thing, is
7 that your determination based upon your professional
8 background and training as an attorney?

9 A. No. I'm not rendering any legal conclusions
10 or advice here. That's my interpretation as a
11 businessman.

12 Q. Now, I'd like to refer you to your direct
13 testimony, and in particular I'd like to refer you to
14 page 5, lines 11 to 12. Excuse me. I'm sorry. I
15 meant to direct you to page 5 but lines 1 to 2 where
16 you make reference to the electric combined cycle
17 generation plant now under construction in Cass
18 County, Missouri by UtiliCorp's Aquila Merchant Energy
19 Partner business?

20 A. Yes.

21 Q. Is that the Aries Power Plant that you're
22 referring to?

23 A. Yes.

24 Q. Is that a 600 megawatt natural gas fired
25 combined cycle unit being constructed in Pleasant

1 Hill, Missouri?

2 A. Yes.

3 Q. Is the Aries power plant an exempt wholesale
4 generator?

5 A. Yes, I believe it is.

6 Q. And Missouri Public Service has a power
7 purchase contract, does it not, respecting a portion
8 of the output of that facility from June 2002 to
9 May 31, 2005, if you know?

10 A. Yes, it does. That was approved by this
11 Commission.

12 Q. Has that power plant 50 percent ownership
13 been acquired by Calpine Corporation in January of
14 this year?

15 A. Yes.

16 Q. I'd like to refer you again to your direct
17 testimony, page 14, in particular line 19 to page 15,
18 line 2.

19 A. Yes.

20 Q. And you state therein, do you not, that in
21 establishing its bid price in making its decision to
22 acquire Empire District, UtiliCorp assumed that the
23 Commission would provide UtiliCorp with reasonable
24 opportunity to recover the acquisition premium?

25 A. We did.

1 Q. Okay. By an opportunity to recover the
2 acquisition premium, do you mean an opportunity to
3 recover all of the merger premium?

4 A. No. We haven't -- you know, it would be
5 consistent with what we filed in our regulatory plan.

6 Q. Do you know whether you filed in your
7 regulatory plan recovery of all of the acquisition
8 premium?

9 A. We haven't asked to include all the -- just
10 50 percent of the acquisition premium in rate base.

11 Q. Is that the portion of the acquisition
12 premium that you are seeking direct recovery of?

13 A. Yes.

14 Q. Is UtiliCorp also seeking indirect recovery
15 of the acquisition premium?

16 A. Yes. I mean, through the rate moratorium,
17 that effectively will occur.

18 Q. Should customers receive their share of
19 merger savings only after the acquiring company
20 receives a reasonable return on its merger investment?

21 A. Absolutely. That's what allows the benefits
22 to flow. With any efficiency there's an up-front
23 investment to allow the benefits to flow, and that's
24 what's required here.

25 Q. I'd like to refer you to page 17 of your

1 direct testimony, in particular starting on line 19
2 where you state, do you not, that the proposed merger
3 is in the best interests of the customers and in the
4 public interest of the state of Missouri?

5 A. Yes.

6 Q. Are the best interest of customers and the
7 public interest of the state of Missouri two different
8 things?

9 A. No, not necessarily, but there might be
10 instances where they're slightly different. I would
11 think they would largely overlap.

12 Q. Is this an instance where they're slightly
13 different?

14 A. No. I mean, I think this transaction is
15 clearly in the best interests of the state of Missouri
16 as well as customers for, you know, essentially the
17 same reasons, to lower rates in the long term, create
18 efficiencies and retain jobs in the state in a
19 competitive energy company to fuel a competitive
20 energy infrastructure in our economy.

21 Q. I'd like to refer you to page 20 of your
22 direct testimony, in particular lines 4 to 23 where
23 you're quoting from, I believe, a Commission decision
24 respecting Minnegasco's Nebraska properties; is that
25 correct?

1 A. Yes.

2 Q. Those are the decisions of what regulatory
3 body?

4 A. Well, their rate area is in Nebraska, and
5 it's a somewhat different regulatory regime than
6 Missouri, but it's a process we go through with
7 customers and communities there to settle regulatory
8 issues.

9 Q. And can you identify the regulatory agency
10 involved, if there is a regulatory agency?

11 A. The regulatory agency, I mean, I think
12 you're probably familiar with the Nebraska framework,
13 but it's the communities come together in a
14 negotiating process along with other interested
15 parties, customers, and we arrive at a rate
16 determination, not unlike this proceeding.

17 Q. Is there something comparable to a five-
18 member commission in Nebraska?

19 A. They don't have a five-member commission in
20 Nebraska.

21 Q. What do they have?

22 A. I mean, I think I described it, and if you
23 want more detail we can get it. You're probably aware
24 of it. But communities come together and hire
25 resources to represent their interests. Customer

1 groups come together, and there's a long-established
2 process which we resolve issues and set rates, and
3 these are agreements that have been reached with all
4 the interested parties, customers, communities. All
5 the same parties involved in this proceeding came to
6 this conclusion.

7 Q. I'd like to refer you to page 25 of your
8 direct testimony, line 9 to 10. You state therein
9 that UtiliCorp is looking to address in the 2000
10 Missouri legislature incentive regulation and tax
11 barriers to merger transactions, do you not?

12 A. Yes.

13 Q. Is UtiliCorp looking to address in the next
14 legislative session stranded costs?

15 A. I think clearly that would have to be part
16 of any restructuring legislation.

17 Q. And is that part of the effort which I think
18 you identified earlier this morning that UtiliCorp is
19 engaged with with other electric utilities in the
20 state?

21 A. Correct.

22 Q. And that legislation that I think that you
23 referred to is being drafted, that would cover
24 stranded costs?

25 A. It very well could.

1 Q. Do you know whether that draft legislation
2 leaves to the Missouri Commission the determination
3 respecting stranded costs or whether any stranded cost
4 determinations are made by the Missouri Legislature
5 rather than the Missouri Public Service Commission?

6 A. We haven't come to any final determination
7 of that language or finalized -- finalized it at this
8 time.

9 Q. I'd like to refer you to page 26 of your
10 direct testimony, lines 9 and 10. You state, do you
11 not, that this intra-Missouri consolidation also
12 preserves jobs in the state which would no doubt be
13 lost if a non-Missouri-based utility or company were
14 involved?

15 A. Yes.

16 Q. If UtiliCorp were a non-Missouri-based
17 utility, would its proposed merger with Empire
18 District Electric be detrimental to the public
19 interest?

20 A. You'd have to look at that particular
21 situation and weigh all the factors.

22 Q. And what factors, when you say all the
23 factors, would you have to weigh?

24 A. Well, you'd have to weigh a multitude of
25 factors. The point that you're citing deals with the

1 retention in jobs, and if an out-of-state or foreign
2 company were to purchase Empire District or any other
3 utility in the state of Missouri, there would be a
4 substantial job loss relative to a situation where we
5 put together three utilities in Missouri to create a
6 competitive economic development tool.

7 Q. Let's take the hypothetical where there's no
8 job loss but the purchasing company -- and let's say
9 the purchasing company is a non-Missouri company.
10 Would the fact that the acquiring company, even though
11 there's no job loss, would that be a proposed merger
12 that was detrimental to the public interest because
13 the acquiring company is not a Missouri-based company?

14 A. The fact that they're not based in Missouri
15 is not the detrimental factor. It's the reality of
16 what they would do with jobs that creates a detriment
17 relative to the opportunity we have here to create a
18 competitive Missouri energy company.

19 Q. I'd like to refer you to your surrebuttal
20 testimony, in particular page 3, lines 3 to 4. You
21 state there, do you not, that, in fact, UtiliCorp is
22 guaranteeing at least \$3 million -- a \$3 million
23 reduction in the cost of service in the sixth year
24 post merger, do you not?

25 A. Yes.

1 Q. If instead of a \$3 million reduction in the
2 cost of service in the sixth year post merger
3 UtiliCorp guaranteed only at least a \$1 reduction in
4 Empire District Electric's cost of service in the
5 sixth year post merger, would that merger be not
6 detrimental to the public interest?

7 A. You'd have to look at other factors, but any
8 savings is, quote, a benefit, but there are a number
9 of noneconomic benefits I think that need to be
10 considered as well.

11 Q. All other factors being equal, the only
12 difference being instead of a \$3 million reduction in
13 the cost of service being guaranteed, it would be a
14 \$1 million -- excuse me -- it would be a \$1 reduction
15 in the cost of service.

16 MR. SWEARENGEN: Let me ask just a question
17 for clarification. When you say all other factors
18 being equal, you're assuming that there is no
19 detriment to the public?

20 MR. DOTTHEIM: I'm assuming -- I'm asking
21 for Mr. Green to define detriment to the public. I'm
22 saying all other considerations, that is loss of jobs,
23 any other factors are the same. The only -- the only
24 difference is the amount of the guaranteed reduction.

25 THE WITNESS: If your question is, is that a

1 net detriment, I'd say saving a dollar is not a net
2 detriment. But again, in determining that detriment
3 you have to look at more than pure economics in
4 savings.

5 BY MR. DOTTHEIM:

6 Q. Instead of a \$1 or any reduction in the cost
7 of service, all other factors being equal, that what
8 was guaranteed was no change in the cost of service in
9 the sixth year post merger, would that merger, all
10 other factors being equal, be not detrimental to the
11 public interest?

12 A. You know, we're fortunate in this case that
13 we're able to realize \$3 million in savings, and
14 clearly that's -- that's a big benefit.

15 In terms of no detriment, if the savings
16 were zero, there's a whole host of other benefits that
17 come along with a transaction like this, so in terms
18 of retaining jobs, creating a competitive energy
19 company for the future of the state and an economic
20 development tool. So, you know, in the end of the day
21 I couldn't call that a -- certainly wouldn't call that
22 a detriment. I'd call that a big benefit.

23 Q. So then your answer is?

24 A. I think I answered the question. You said,
25 Is that a detriment. I said no, I didn't see that as

1 a detriment. I saw that as a big benefit when you
2 look at all the other factors involved.

3 Q. All other factors being involved and there's
4 no change in the cost of service in the sixth year
5 post merger, that transaction would not be detrimental
6 to the public interest?

7 A. I'm not hearing you describe anything I
8 would define as a detriment --

9 Q. Fine.

10 A. -- in that scenario.

11 Q. One last hypothetical involving this. All
12 other factors being equal, but there's a dollar
13 increase in the Empire District Electric cost of
14 service in the sixth year post merger, would that make
15 the merger detrimental to the public interest?

16 A. All other factors being equal as we've
17 described them in this -- in this situation, I think
18 you'd really have to look at the tremendous benefits
19 created by retaining jobs in the state, creating an
20 all-Missouri competitive energy company that can be
21 used as an economic development advantage and say
22 that's -- that's a big benefit.

23 And what's -- what's fortunate about this
24 win/win transaction is, not only do we have all those
25 powerful noneconomic benefits, but we have a

1 guaranteed \$3 million savings.

2 Q. Mr. Green, I'd like to refer you to page 5
3 of your surrebuttal testimony, in particular lines 1
4 and 2 where you state, do you not, that, Whether by
5 UtiliCorp's initiative or as part of a changing
6 industry, the breakup of the integrated Missouri
7 jurisdictional utility would require Commission
8 approval.

9 Would some of the restructuring legislation
10 that was proposed in the last Missouri legislative
11 session have removed from Missouri Public Service
12 Commission jurisdiction authority over electric
13 utility actions to divest or sell their generating
14 assets?

15 A. I can't speak to all that legislation and
16 those specific provisions.

17 JUDGE WOODRUFF: Off the record for a
18 moment.

19 (Discussion off the record.)

20 JUDGE WOODRUFF: Let's go back on the
21 record.

22 BY MR. DOTTHEIM:

23 Q. Mr. Green, I'd like to refer you to pages 15
24 to 16 of your direct testimony and page 11 of your
25 surrebuttal testimony where you make reference to the

1 KPL/KGB merger in Case No. EM-91-213 and the Missouri
2 American Water Company acquisition of Missouri Cities
3 Water Company in Case Nos. WR-95-205 and SR-95-206.

4 Do you know whether either of those two
5 Reports and Orders bind this Commission in this
6 pending case?

7 MR. SWEARENGEN: Objection. Calls for a
8 legal conclusion.

9 JUDGE WOODRUFF: Sustained.

10 BY MR. DOTTHEIM:

11 Q. And again, Mr. Green, you're not testifying
12 as an attorney based on the testimony that you filed
13 as direct and surrebuttal testimony in this
14 proceeding, correct?

15 A. I am not testifying as a legal expert or an
16 attorney.

17 Q. I'd like to refer you to page 13 of your
18 surrebuttal testimony, in particular lines 7 through
19 10 where you state, If we find at a later date that a
20 total outsourcing arrangement makes economic sense for
21 our customers, we will seek the appropriate approvals
22 from the Missouri Commission. You state that, do you
23 not?

24 A. Yes.

25 Q. What approvals will UtiliCorp seek from the

1 Missouri Commission in that instance?

2 A. With respect to Quanta, you know, an
3 outsourcing to Quanta I think would be viewed as a --
4 probably viewed as a -- possibly viewed as an
5 affiliate transaction that would require Commission
6 approval, and then the Commission obviously reviews
7 our -- the prudence of our costs in our rate cases.

8 Q. Okay. Again on page 13, I'd like to refer
9 you to line 2 of your surrebuttal testimony where
10 you're referencing Quanta outsourcing, and you state
11 that the preferred status requires Quanta to come in
12 with a low bid, do you not?

13 A. The low bid considering, you know, the big
14 picture and not just short-term cost.

15 Q. I'd like to hand you a copy of an agreement,
16 a Strategic Alliance Agreement between Quanta and
17 UtiliCorp. Can you identify that document?

18 A. Yes. It looks like a Quanta Services S3.

19 Q. And I'd like to refer you to page 1 of the
20 agreement, Section 1, the first sentence, which
21 states, UtiliCorp will use the company subject to the
22 company's ability to perform services in designated
23 locations as a preferred contractor in outsource
24 transmission and distribution infrastructure
25 construction and maintenance and natural gas

1 distribution construction and maintenance in all areas
2 serviced by UtiliCorp provided that the company
3 provides such services at a competitive -- at a
4 competitive cost that is demonstrably equal to or
5 better than current market rates for such services
6 when the quality of the company's services is
7 considered.

8 Did I read that sentence correctly?

9 A. Yes.

10 Q. And I'd like to refer you to page 14 of your
11 surrebuttal testimony, line 5, the sentence,
12 Outsourcing and deregulation are unrelated concepts.
13 You make that statement, do you not?

14 A. Yes.

15 Q. I'd like to hand to you a copy of an article
16 that appeared in the April-June 2000 issue of Leaders
17 Magazine, and it's an article featuring an interview
18 of you as president and chief operating officer of
19 UtiliCorp. Can you identify that document?

20 A. It's just what you said.

21 Q. And I'd like to direct you to the second
22 page, the sixth full paragraph on that page that
23 begins, This is an attractive market for UtiliCorp
24 because we believe utilities are going to outsource
25 most of their construction and maintenance activities.

1 We've already seen it happen in Australia and New
2 Zealand, and we believe this knowledge will be
3 transferred to the United States where the market
4 isn't as mature in terms of deregulation. Ultimately,
5 we think we've positioned ourselves well in what's
6 going to be a terrific market for the next ten years
7 and beyond.

8 You state that, do you not?

9 A. Yes.

10 Q. And that in part was an answer you gave in
11 response to a question that appears above it, You
12 recently announced an investment in Houston-based
13 Quanta Services which specializes in the construction
14 and maintenance of energy and telecommunications
15 networks. What was the rationale beyond that
16 decision? That was the question to which you were
17 responding, was it not?

18 A. It was.

19 MR. DOTTHEIM: Thank you, Mr. Green. You've
20 been very patient.

21 JUDGE WOODRUFF: I'll come up to questions
22 from the bench, then. Chair Lumpe.

23 QUESTIONS BY CHAIR LUMPE:

24 Q. Let me apologize for not hearing all the
25 questioning that went before, Mr. Green.

1 I think in your surrebuttal testimony you
2 state, and perhaps you can clarify for me if you
3 don't, that all we really need to decide is whether
4 this is detrimental or not, and the two criteria you
5 suggest are, can you provide comparable service and at
6 fair rates. Am I -- do I have that correct?

7 A. That's basically it, and I think in other
8 testimony we've -- we've laid out the fundamental
9 criteria, was it an arm's length negotiation, is it --
10 does it deliver fair rates, reliable customer service.

11 Q. So based on those two things, that was the
12 only decision we made that it's not detrimental based
13 on those two criteria, that would be sufficient?

14 A. I'm not sure sufficient for what. I mean,
15 what we need, what our shareholders require, our board
16 demands and Wall Street demands is some assurance that
17 we're going to earn a fair and reasonable return on
18 our investment. I mean, that's ultimately what we
19 need.

20 Q. So that there are other things that you
21 require rather than all we have to decide is the not
22 detrimental?

23 A. I think that's fair.

24 Q. Okay. On page 12 of your direct, and it's
25 about line 22 through about line 25, Based on

1 financial projections, et cetera, the merger at that
2 price would be favorable to the shareholders and allow
3 a rate reduction for Empire customers. Is that
4 something we can guarantee?

5 A. We can -- we are prepared to guarantee a
6 \$3 million reduction in the cost of service, yes.

7 Q. But that may not be a rate reduction for the
8 customer?

9 A. Yeah. Five years down the road, there might
10 be other costs that have driven the revenue
11 requirement up, but what we can guarantee is the rates
12 will be \$3 million less than they would have been
13 without --

14 Q. Than they might have been?

15 A. Than they might have been without the
16 transaction.

17 Q. Okay. I just wanted to clarify that.

18 CHAIR LUMPE: I think that's all. Thank
19 you.

20 JUDGE WOODRUFF: Vice Chair Drainer?

21 QUESTIONS BY COMMISSIONER DRAINER:

22 Q. I just have a couple follow-up questions.
23 With respect to a question I had heard earlier on was
24 Empire going to be a subsidiary of UtiliCorp, in
25 reality isn't it going to be just an operating

1 division of UtiliCorp?

2 A. Yeah. Technically it would not be a
3 subsidiary in our structure and it would be an
4 operating division of UtiliCorp.

5 Q. Okay. And finally, with respect to some
6 concerns and some of the testimony on market power
7 issues, under our jurisdiction we deal with retail
8 market power. Isn't Empire today regulated by this
9 Commission and has rate of return regulation?

10 A. Who are you --

11 Q. Empire.

12 A. Empire?

13 Q. Empire, yeah.

14 A. Yes.

15 Q. Okay. Thank you. And UtiliCorp with its
16 other operating divisions that operate here in
17 Missouri like MoPub are under rate of return
18 regulation, are they not?

19 A. They are.

20 Q. So in reality, any type of retail pricing
21 that your company would have even with the mergers
22 would still be regulated by this utility?

23 A. It will be.

24 Q. And you cannot just increase prices or
25 reduce prices in a predatory manner without coming

1 before this Commission; isn't that correct?

2 A. That's correct.

3 Q. And you do have to file tariffs with us for
4 all of your prices that you offer your customers --

5 A. That is correct.

6 Q. -- in Missouri, correct?

7 So having stated all that, aren't market
8 power issues something that one might be more
9 concerned about if you were not a regulated monopoly?

10 A. Yes.

11 COMMISSIONER DRAINER: Thank you. I have no
12 other questions.

13 JUDGE WOODRUFF: Commissioner Schemenauer?

14 COMMISSIONER SCHEMENAUER: I have no further
15 questions.

16 JUDGE WOODRUFF: Thank you. I have no
17 questions. So we'll go to recross based on questions
18 from the Bench, beginning with IBEW?

19 MR. JOLLEY: No questions.

20 JUDGE WOODRUFF: Empire Retirees?

21 MR. DEUTSCH: No questions.

22 JUDGE WOODRUFF: Thank you. Natural
23 Resources?

24 MS. WOODS: No questions. Thank you.

25 JUDGE WOODRUFF: Stewart's not here.

1 Springfield?

2 MR. KEEVIL: No questions.

3 JUDGE WOODRUFF: Public Counsel?

4 MR. MICHEEL: Yes.

5 RECROSS-EXAMINATION BY MR. MICHEEL:

6 Q. Mr. Green, Chair Lumpe asked you a question
7 about the \$3 million revenue reduction. Do you recall
8 those questions?

9 A. Yes.

10 Q. Is it correct that prior to the moratorium
11 going into effect the company's going to have a
12 premoratorium rate case and increase customer rates?

13 A. There's a premoratorium rate case to take
14 into account the State Line power plant, which I think
15 you can understand needs to be accounted for in rate
16 base. It's a multi-hundred-million-dollar power plant
17 that needs to earn a return. And then it's post that
18 rate case that we freeze rates for five years and then
19 guarantee a \$3 million reduction in the cost of
20 service.

21 Q. So first rates increase and then there's a
22 rate freeze; is that correct?

23 A. The State Line power plant is included in
24 rate base, and then we freeze rates, and then we
25 guarantee a \$3 million cost of service reduction.

1 Q. Well, let me ask you this. When you include
2 the State Line power plant in rate base, do you
3 believe that will increase rates?

4 A. Most power plants do.

5 MR. MICHEEL: Thank you.

6 JUDGE WOODRUFF: Staff?

7 MR. DOTTHEIM: No questions.

8 JUDGE WOODRUFF: Thank you. You may step
9 down. One more thing. This is the last time he'll be
10 appearing?

11 MR. SWEARENGEN: Yes.

12 JUDGE WOODRUFF: We'll need to deal with his
13 exhibits.

14 MR. SWEARENGEN: And I have one or two
15 questions.

16 JUDGE WOODRUFF: I'm sorry. Redirect, yes.

17 MR. SWEARENGEN: Thank you.

18 REDIRECT EXAMINATION BY MR. SWEARENGEN:

19 Q. Mr. Green, earlier this morning Mr. Deutsch
20 was asking you about your involvement in the
21 negotiation process which led to this agreement
22 between UtiliCorp and Empire, and my understanding was
23 you testified that you were not involved in the
24 day-to-day front line work in negotiating the
25 agreement on behalf of UtiliCorp; is that correct?

1 A. That's correct.

2 Q. And so I can take it from that, can't I,
3 that you had no specific knowledge of any position or
4 positions which Empire may have taken with respect to
5 any of the issues involved in the negotiating process?

6 A. That's correct.

7 Q. Specifically with respect to the issue that
8 Mr. Deutsch is concerned about, and that is the
9 retirees' health care costs, Mr. Myron McKinney,
10 Empire's president, has testified in his surrebuttal
11 testimony with respect to this negotiation process,
12 and he testifies that, and I quote, UtiliCorp has not
13 chosen to subsidize health care costs for its retiree
14 group and has no provision for additional health care
15 insurance at the time a retiree becomes age 65 and
16 Medicare becomes the primary insurer.

17 This difference in philosophy became a
18 significant matter in the merger negotiations. In
19 fact, at a negotiation session held on April 7, 1999,
20 UtiliCorp was informed that making provisions for the
21 health care of Empire retirees was a deal-breaker and
22 that there must be some agreement which incorporated a
23 compromise for this group. After considerable
24 discussion over the next several days, a compromise
25 agreement was reached which is reflected in the merger

1 agreement, end quote.

2 And my question to you, at the time of the
3 negotiation process, you were unaware of that position
4 taken by UtiliCorp; is that correct?

5 A. That's correct.

6 Q. All you knew about it was that the issue was
7 resolved in some fashion as reflected in the merger
8 agreement; is that a fair statement?

9 A. That's a fair statement.

10 MR. SWEARENGEN: Thank you.

11 JUDGE WOODRUFF: Anything further?

12 MR. SWEARENGEN: Nothing further.

13 JUDGE WOODRUFF: And I apologize for trying
14 to shut you off before.

15 All right. Exhibits 14 and 15 were offered
16 into evidence. Are there any objections to their
17 receipt into evidence?

18 (No response.)

19 Hearing none, they will be received into
20 evidence.

21 (EXHIBIT NOS. 14 AND 15 WERE RECEIVED INTO
22 EVIDENCE.)

23 JUDGE WOODRUFF: And now Mr. Green, you may
24 step down.

25 (Witness excused.)

1 JUDGE WOODRUFF: I believe that concludes
2 the consideration of the Companies' overview and
3 policy. We'll go back to merger costs and benefits.
4 I believe we're ready for Staff's witnesses; is that
5 correct?

6 MR. DOTTHEIM: That's correct. Staff would
7 call as its first witness Mr. Mark L. Oligschlaeger.

8 (Witness sworn.)

9 MR. DOTTHEIM: At this time I'd like to have
10 marked as an exhibit what's been identified or
11 indicated as being premarked as Exhibit 712, the
12 rebuttal testimony of Mr. Mark L. Oligschlaeger.

13 (EXHIBIT NO. 712 WAS MARKED FOR
14 IDENTIFICATION.)

15 JUDGE WOODRUFF: Mr. Oligschlaeger will be
16 testifying again on subsequent issues?

17 MR. DOTTHEIM: That's correct.

18 JUDGE WOODRUFF: I'll show it as offered at
19 this time and will rule on it after he's completed his
20 other testimonies. You may inquire.

21 MARK OLIGSCHLAEGER testified as follows:

22 DIRECT EXAMINATION BY MR. DOTTHEIM:

23 Q. Mr. Oligschlaeger, you have a copy of what's
24 been marked as Exhibit No. 712?

25 A. Yes, I do.

1 Q. And that's your rebuttal testimony in this
2 proceeding?

3 A. Yes, it is.

4 Q. Do you have any corrections to make?

5 A. Yes, I have several. On page 3, line 15,
6 there is a parenthetical. The entire parenthetical
7 should be stricken. In other words, what appears
8 there as, open parentheses, before one even gets to a
9 consideration of the acquisition premium, close
10 parenthesis, comma, should be stricken.

11 In the footnote at the bottom of page 3, on
12 the fifth line, the word coy, c-o-y appears. That
13 should be replaced by the word copy, c-o-p-y.

14 On page 10, line 5, the reference to the
15 year 2000 should be replaced with 1999.

16 On page 21, line 11, the seventh word that
17 appears on that page is misspelled. It should be
18 replaced by the word dilutive, d-i-l-u-t-i-v-e.

19 On page 42, line 6, the number 5 million
20 should be replaced by the number 550,000.

21 And on page 51, line 12, the reference to
22 Schedule 3 beginning of that line should be replaced
23 by Schedule 2.

24 MR. DOTTHEIM: With those corrections, I
25 would tender Mr. Oligschlaeger for cross-examination.

1 JUDGE WOODRUFF: Okay. For
2 cross-examination, we'll begin with Natural Resources.
3 MS. WOODS: No questions. Thank you.
4 JUDGE WOODRUFF: IBEW?
5 MR. JOLLEY: No questions.
6 JUDGE WOODRUFF: Empire Retirees?
7 MR. DEUTSCH: No questions.
8 JUDGE WOODRUFF: Praxair is not here. City
9 of Springfield?
10 MR. KEEVIL: No questions.
11 JUDGE WOODRUFF: Public Counsel?
12 MR. MICHEEL: No questions.
13 JUDGE WOODRUFF: Union Electric is not here.
14 UtiliCorp?
15 MR. SWEARENGEN: Thank you.
16 CROSS-EXAMINATION BY MR. SWEARENGEN:
17 Q. Mr. Oligschlaeger, I understand you're going
18 to be back on the stand a couple times later on, and I
19 may get into some of those areas here. If I do, I
20 apologize. I'll try not to.
21 First of all, I understand you're testifying
22 this morning on --
23 JUDGE WOODRUFF: Just so the record is
24 clear, there is construction going on upstairs.
25 BY MR. SWEARENGEN:

1 Q. You're testifying this morning on the
2 subject of merger costs and benefits generally; is
3 that true?

4 A. That is correct.

5 Q. And your testimony presents the Staff's
6 recommendations regarding the treatment of the merger
7 costs and benefits associated with this proposed
8 merger; is that a fair statement?

9 A. It presents an overview, yes, of our
10 recommendations.

11 Q. Would I be fair in characterizing your
12 testimony generally as very similar to the testimony
13 you filed in the case involving the UtiliCorp/
14 St. Joseph Light & Power Company merger?

15 A. In general, that would be a fair
16 characterization.

17 Q. Now, let me ask you this question. Am I
18 correct in understanding that it's your opinion, it's
19 the Staff's opinion that the costs of this proposed
20 merger between UtiliCorp and Empire will exceed the
21 benefits?

22 A. When measured under -- or estimated using
23 reasonable assumptions, that is our opinion, yes.

24 Q. I think it's on page 5 of your rebuttal
25 testimony, you make the statement that -- you say

1 that, The UtiliCorp/Empire merger, as with the
2 UtiliCorp/St. Joseph Light & Power Company merger, on
3 its face does not seem to make economic sense; is that
4 correct?

5 A. That is correct.

6 Q. And when you say that it doesn't seem to
7 make economic sense, do you mean that it doesn't seem
8 to make economic sense to UtiliCorp?

9 A. When I included the words "on its face,"
10 that means based upon the evidence or the material
11 that we have been able to review and to attempt to
12 understand the merger, the evidence concerning merger
13 savings and costs that are available to us.

14 UtiliCorp may well be making additional
15 assumptions in the area of nonregulated savings and
16 benefits and other areas and so on in which it would
17 make economic sense for them overall.

18 Q. So when you say it doesn't make economic
19 sense on its face, you were talking about the Staff's
20 view of the transaction? It doesn't make economic
21 sense to the Staff based on what you know about the
22 transaction?

23 A. Based on the evidence that has been provided
24 to us, yes.

25 Q. But on the other hand, you recognize that it

1 could make economic sense to UtiliCorp; is that a fair
2 statement?

3 A. Yeah. I think my earlier response indicated
4 that if you make assumptions in other benefit areas
5 beyond those provided to us through testimony and
6 evidence in this case, yes, it could make economic
7 sense.

8 Q. Setting aside those other areas for a
9 minute, just taking the proposal on its face but
10 including the proposed regulatory plan, do you think
11 that the proposed merger could make economic sense to
12 UtiliCorp if the proposed regulatory plan is approved
13 by the Commission?

14 A. Well, I believe Mr. Siemek has a schedule in
15 his -- attached to his surrebuttal testimony which
16 purports to show UtiliCorp's view of the economics of
17 the overall regulatory plan and how much of the merger
18 premium it will allow UtiliCorp to recover over the
19 first ten years of the plan.

20 While we wouldn't necessarily agree with all
21 of his quantifications and numbers, just using the
22 numbers that were supplied by Mr. Siemek, his schedule
23 clearly shows that over the ten years the regulatory
24 plan will not -- would not allow UtiliCorp to recover
25 100 percent of the merger premium.

1 Q. So I want to make sure I understand your
2 testimony. You're saying, even given Mr. Siemek's
3 testimony and approval of the application and the
4 proposed regulatory plan, it would still be your view
5 that the application -- that the proposed merger,
6 excuse me, the proposed merger does not make economic
7 sense to UtiliCorp?

8 A. If all UtiliCorp is assuming is benefits in
9 the regulated areas, the merger savings laid out in
10 Mr. Siemek's direct Schedule 1, I would say it does
11 not make economic sense.

12 Q. And that would include -- your answer would
13 be the same assuming, for example, that UtiliCorp's
14 position on all the issues are adopted by the
15 Commission, for example energy cost savings being
16 considered appropriate merger savings?

17 A. Okay. If you're saying that somehow the
18 overall regulatory plan can take a merger that
19 otherwise wouldn't make economic sense and make it a
20 winner for UtiliCorp, I would agree that that is a
21 possibility. The Staff wouldn't recommend that the
22 Commission allow that to take place.

23 Q. And that's because you disagree with the
24 assumptions and forecasts that UtiliCorp has
25 presented; is that a fair statement?

1 A. Yes.

2 Q. Thank you.

3 Let me ask you this question. If the
4 proposed regulatory plan or some other regulatory plan
5 which would give UtiliCorp a reasonable opportunity to
6 recover its investment is not approved, do you think
7 this merger will close?

8 A. I have no way of knowing.

9 Q. Turn to page 4 of your testimony, if you
10 would, please, and I'm looking at lines 8 through 11.
11 Am I correct in understanding that, based on your
12 testimony there, you recognize the fact that under the
13 proposed regulatory plan, Empire's existing customers
14 will, in fact, receive some of the merger savings?

15 A. What I am stating there, that if the
16 regulatory plan is approved as is or as proposed by
17 the joint applicants and the company's estimates of
18 merger savings and costs are accurate, we believe that
19 would be the result.

20 Q. And you indicate there that, assuming all
21 that to be true, only approximately 3 percent of the
22 gross merger savings would be passed on to Empire's
23 customers. Is that your testimony?

24 A. On a net present value basis, yes.

25 Q. Is it your opinion that, assuming all of

1 this is true, that this 3 percent doesn't represent
2 enough benefits flowing to Empire's customers?

3 A. I would not characterize that as a fair or
4 reasonable allocation of merger benefits between
5 shareholders and customers over a ten-year period.

6 Q. Would you agree, however, that under the no
7 detriment standard that Empire's customers do not have
8 to realize a benefit from the proposed merger in order
9 for the Commission to approve it?

10 A. That is correct. However, customer rates
11 are not set, to my knowledge, based upon the no
12 detriment standard.

13 Q. Is it your understanding that this merger
14 application includes a request to set rates?

15 A. I believe the company is seeking some
16 ratemaking determinations to be made in this
17 proceeding. I don't believe they are seeking or can
18 seek direct rate changes through this application.

19 Q. On page, I believe it's page 50 of your
20 testimony, I think it's there you recognize that the
21 present Missouri Public Service customers will receive
22 some benefit under the proposed regulatory plan; is
23 that a fair statement?

24 A. I believe there is one relatively minor
25 category of merger savings that is being allocated

1 50 percent between MPS and Empire, and I believe
2 that's in the generation capacity savings area.
3 Taking it in isolation, you could call that a benefit.
4 However, we think there are definitely offsetting
5 detriments or drawbacks as well to the overall
6 regulatory plan as it applies to MPS.

7 Q. With respect to the Commission's approval of
8 this merger, under the no detriment standard there
9 would be no requirement, would there, that MPS
10 customers actually receive a benefit from the merger;
11 is that a correct statement?

12 A. Based on my understanding, that is correct.

13 Q. And you say, however, that in spite of that
14 and in spite of the small benefit that you recognize
15 that will flow to the MPS customers, you think there
16 are some other detriments for them somewhere down the
17 road; is that correct?

18 A. Yes, particularly as it pertains to the
19 frozen capital -- or frozen corporate allocator.

20 Q. And those detriments, if they are
21 detriments, in fact, would be reflected in higher
22 rates at some point in the future for the MPS
23 customers. Is that where you would see the detriment?

24 A. It would -- where I see the detriment is the
25 adoption of the regulatory plan would lead to MPS

1 rates being set at higher than actual cost levels in
2 order to allow indirect recovery of the merger premium
3 in this case.

4 Q. And that could only happen if the Commission
5 would, in fact, do that in a rate case involving
6 Missouri Public Service; is that correct?

7 A. That is true. I believe the company's
8 seeking to have the Commission adopt that proposal,
9 however, in this case.

10 Q. Do you have any reason to believe that, if
11 the merger is closed, Empire's customers would not
12 continue to receive safe and reliable service?

13 A. We are not alleging that the merger in and
14 of itself would cause any shortfall in safe and
15 adequate service. However, we are proposing that
16 certain standards be set in customer service areas and
17 monitored. That will be an issue later on in this
18 hearing.

19 Q. At page 51 of your rebuttal testimony, would
20 you turn to that, please. There, beginning on line
21 14, you indicate that, To leave issues involving
22 merger costs and savings to future rate proceedings
23 will mean that the Commission will have to deal with
24 subjective and contentious arguments about actual
25 levels of merger savings and costs, the adequacy of

1 reporting methods of tracking costs, et cetera.

2 Let's assume for a minute that you are
3 correct, that the Commission approves the merger,
4 approves the proposed regulatory plan, and in
5 approving the proposed regulatory plan sets the
6 groundrules for recovery of the assigned premium in
7 future rate cases just as UtiliCorp has requested in
8 its application.

9 Assuming those things happen, there would
10 then be a rate freeze for five years; is that not
11 true?

12 A. Under the proposal, yes.

13 Q. And at the end of the rate freeze we would
14 have what we have called the post-moratorium rate
15 case?

16 A. That's my understanding.

17 Q. Assuming that in that rate case there are
18 numerous contested issues over the matters which you
19 have mentioned concerning actual levels of merger
20 savings and costs, and perhaps other issues as well,
21 would you not agree that UtiliCorp would have the
22 burden of proof on those issues?

23 A. It's my understanding that the, at least
24 generally from a layman's perspective, the party
25 seeking increased rates would have the burden of proof

1 to justify that request.

2 Q. And the Commission would hear the evidence
3 in that rate case and make its decision and set rates;
4 is that a fair statement?

5 A. That's the way it works now.

6 Q. Would you agree that those rates would be
7 presumed to be just and reasonable?

8 A. Once the Commission would establish new
9 rates, would they presume to be just and reasonable?

10 Q. Yes.

11 A. That's once again my layman's understanding.

12 Q. And would you agree that the rates that
13 would be set in that post-moratorium rate case could
14 include recovery of the assigned premium if UtiliCorp
15 meets its burden of proof?

16 A. That would be up to the Commission, but that
17 is a possibility.

18 Q. And so my question is, if in that
19 post-moratorium rate case, after hearing all of the
20 evidence, the Commission sets rates for customers of
21 the Empire operating unit and these rates are presumed
22 to be just and reasonable, how can it be said that
23 those customers would suffer any detriment?

24 A. Well, ultimately the question of detriment
25 is one for the Commission to decide. We have raised

1 matters in this proceeding as we find appropriate to
2 raise our concerns which we believe rise to the level
3 of detriment.

4 If the Commission ultimately disagrees with
5 the Staff or other parties and finds that there is no
6 detriment now or in a future rate proceeding, then
7 that would be their decision.

8 Q. So the answer to my question would be, if we
9 go through that process that I just described, you
10 would agree that it could not be said that those
11 customers are suffering detriment?

12 A. My understanding is that it is -- well, once
13 again, it's possible that if a certain party would
14 disagree with the Commission's course of action in a
15 rate case or even in a merger application, those
16 parties would have the right to take the Commission to
17 court and appeal the decision.

18 But absent that possibility, once again the
19 Commission has the -- makes the determination of what
20 is detrimental and what is not.

21 Q. And in the post-moratorium rate case, which
22 I'm really focusing on, where detriment I suppose is
23 really not an issue, once the Commission sets rates,
24 you would agree that they're presumed to be just and
25 reasonable; is that not true?

1 A. I believe I stated that.

2 MR. SWEARENGEN: That's all I have. Thank
3 you.

4 JUDGE WOODRUFF: I'm going to come up to the
5 Bench, then, for questions from Chair Lumpe.

6 QUESTIONS BY CHAIR LUMPE:

7 Q. Mr. Oligschlaeger, there was some discussion
8 about the MoPub customers. There's no guarantee in
9 here that there wouldn't be a rate case for MoPub
10 itself, is there?

11 A. It's my understanding based upon statements
12 made by UtiliCorp witnesses in the St. Joseph Light &
13 Power merger proceeding that there's at least one and
14 perhaps two rate cases planned or projected for the
15 next five years.

16 Q. And if the allocations are frozen, say, in
17 St. Joe and Empire, could not the -- could not the
18 MoPub customers be picking up some costs that they
19 otherwise would not?

20 A. If a rate case is processed for the MPS
21 division and the company's frozen corporate allocator
22 proposal is accepted, then the Commission would set
23 rates based upon an overall level of cost that would
24 be above the costs, as I understand it, reflected on
25 MPS's books. That extra recovery will serve as an

1 indirect recovery of the merger premium, and I believe
2 it's intended to serve as an indirect recovery of the
3 premium.

4 Given that MPS customers will be financing
5 in a real way the merger premium yet receiving no
6 direct benefits in rates except for what I would call
7 an immaterial level of savings in the generation
8 capacity area, I would describe that -- or I believe
9 and the staff believes that that situation is
10 detrimental.

11 Q. That's just what I wanted to clarify, that
12 potentially that could be detrimental to them if that
13 were larger than the small savings that you talked
14 about earlier?

15 A. Yes.

16 CHAIR LUMPE: All right. Thank you.

17 JUDGE WOODRUFF: Vice Chair Drainer?

18 COMMISSIONER DRAINER: I have no questions.

19 Thank you.

20 JUDGE WOODRUFF: Commissioner Schemenauer?

21 COMMISSIONER SCHEMENAUER: I just have one.

22 Thank you.

23 QUESTIONS BY COMMISSIONER SCHEMENAUER:

24 Q. Good morning, barely I guess.

25 A. Good morning.

1 Q. On page 5 of your rebuttal, you discussed
2 the high levels of administrative and general costs
3 that UtiliCorp has, and is this high levels compared
4 to other utilities in the state? Is that what you're
5 referring to?

6 A. Staff witness Traxler probably would be
7 better able to answer the details of how UtiliCorp
8 compares to other electric and gas utilities in the
9 area of A&G costs. That would be one aspect of it.

10 The other aspect of it is, over time we have
11 seen a significant increase, an increasing trend in
12 A&G costs for UtiliCorp as they have expanded or as
13 they've tried to implement their overall corporate
14 strategy of expansion and branching out into different
15 areas and so on.

16 Q. Okay. I'll save that for Mr. Traxler, then.

17 COMMISSIONER SCHEMENAUER: Thank you.

18 JUDGE WOODRUFF: Commissioner Simmons?

19 COMMISSIONER SIMMONS: I have no questions,
20 your Honor. Thank you.

21 JUDGE WOODRUFF: We'll go back to recross,
22 then. Natural Resources?

23 MS. WOODS: Nothing, thank you.

24 JUDGE WOODRUFF: IBEW?

25 MR. JOLLEY: No questions.

1 JUDGE WOODRUFF: Empire Retirees?

2 MR. DEUTSCH: No questions.

3 JUDGE WOODRUFF: Praxair is not here. City

4 of Springfield?

5 MR. KEEVIL: No questions.

6 JUDGE WOODRUFF: Public Counsel?

7 MR. MICHEEL: Yes.

8 RECROSS-EXAMINATION BY MR. MICHEEL:

9 Q. Mr. Oligschlaeger, Chair Lumpe talked to you

10 and asked you some questions regarding the MoPub

11 customers and frozen allocation factor. Do you recall

12 those questions?

13 A. Yes, I do.

14 Q. Do you know what the dollar value of that

15 frozen allocation factor may be to the MoPub

16 customers?

17 A. I think the answer to that question can be

18 found on Schedule 3 to Mr. Traxler's rebuttal

19 testimony, and I believe it indicates that over a

20 ten-year -- over the ten-year period of the regulatory

21 plan, MPS would collect approximately 50 to

22 \$51 million more in rates under the frozen corporate

23 allocators proposal than if that proposal was not

24 adopted.

25 Q. And do you know if that number is including

1 the St. Joe merger also?

2 A. I don't believe it is, but you should ask

3 Mr. Traxler.

4 MR. MICHEEL: Thank you, Mr. Oligschlaeger.

5 JUDGE WOODRUFF: Okay. UtiliCorp?

6 MR. SWEARENGEN: No questions. Thank you.

7 JUDGE WOODRUFF: Redirect?

8 MR. DOTTHEIM: No redirect.

9 JUDGE WOODRUFF: Then Mr. Oligschlaeger, you

10 may step down.

11 (Witness excused.)

12 JUDGE WOODRUFF: And at this time we're

13 going to go ahead and break for lunch. Let's come

14 back at 1:15.

15 MR. SWEARENGEN: Do I understand that

16 Mr. Green can be excused?

17 JUDGE WOODRUFF: I believe so.

18 MR. SWEARENGEN: Thank you.

19 (A recess was taken.)

20 JUDGE WOODRUFF: Let's go ahead and go on

21 the record.

22 I believe staff is ready to call the next

23 witness.

24 MR. DOTTHEIM: Yes. The Staff would call as

25 its next witness Mr. Steve M. Traxler.

1 JUDGE WOODRUFF: Is he not here?

2 MR. SWEARENGEN: Move to strike.

3 (Laughter.)

4 MR. DOTTHEIM: Maybe I could have marked

5 his --

6 JUDGE WOODRUFF: Go ahead.

7 MR. DOTTHEIM: -- testimony.

8 JUDGE WOODRUFF: I'm sure he'll be here

9 shortly.

10 MR. DOTTHEIM: So I have three copies of

11 Mr. Traxler's rebuttal testimony, which is

12 Exhibit 716. There's both a highly confidential and a

13 nonproprietary version.

14 And Mr. Traxler has replacement pages which

15 were the subject of a Staff motion filed yesterday

16 morning requesting leave to file replacement pages to

17 his rebuttal testimony.

18 JUDGE WOODRUFF: Why don't we go ahead and

19 mark those Exhibit 719.

20 MR. DOTTHEIM: There are an HC version and a

21 nonproprietary version.

22 JUDGE WOODRUFF: Of the replacement pages?

23 MR. DOTTHEIM: Yes. But in actuality, even

24 though there's an HC version, in all of Mr. Traxler's

25 testimony, if I recall correctly, the only highly

1 confidential item is on the very last page of his
2 testimony, on page 70, and page 70 is not in the
3 replacement pages, but --

4 JUDGE WOODRUFF: Are you going to offer the
5 highly confidential version of the replacement pages,
6 then? It's up to you. If you want to, we'll just
7 mark it as 719HC.

8 MR. DOTTHEIM: Yes. I think everything
9 considered, that might be the least confusing thing to
10 do because, in actuality, all the pages in the highly
11 confidential version were stamped HC when only the one
12 page that has the highly confidential information
13 should have been stamped HC. So because of that
14 manner in which the testimony was filed, both the HC
15 and the NP version I think make sense in this case.

16 (EXHIBIT NO. 716, 716HC, 719 AND 719HC WERE
17 MARKED FOR IDENTIFICATION.)

18 JUDGE WOODRUFF: Okay. And let the record
19 reflect that Mr. Traxler has arrived and is at the
20 witness chair.

21 Ms. Woods, did you have something?

22 MS. WOODS: Yes, I do, your Honor. Due to
23 some failure to communicate, Mr. Colton was told that
24 he did not need to appear to testify, and he has
25 turned around and gone back to Boston. So I have been

1 told by Public Counsel, ICI, Praxair, UtiliCorp and
2 Staff that they do not have any questions for him. I
3 don't know whether -- the Retirees apparently don't
4 have any questions for him, nor do IBEW have any
5 questions for him.

6 So I think the only question that remains is
7 whether the Bench does.

8 JUDGE WOODRUFF: Okay. I will inquire of
9 the Commissioners when I get an opportunity.

10 MS. WOODS: Thank you.

11 JUDGE WOODRUFF: Doesn't look like we're
12 going to get that far today anyway, unless we made
13 some special arrangements for you. So we'll let you
14 know as soon as we can.

15 JUDGE WOODRUFF: Back to Mr. Traxler, then.
16 There was the motion to allow for the filing of
17 replacement pages. Does anyone have anything they
18 want to say about that motion, any response?

19 (No response.)

20 I'm hearing nothing. The motion will be
21 granted and the replacement pages are considered
22 filed. Okay. You may inquire. Well, he needs to be
23 sworn.

24 (Witness sworn.)

25 JUDGE WOODRUFF: Now you may inquire.

1 STEVEN M. TRAXLER testified as follows:

2 DIRECT EXAMINATION BY MR. DOTTHEIM:

3 Q. Mr. Traxler, you've caused to be filed your
4 rebuttal testimony that's been marked as 716HC and
5 716NP?

6 A. Yes, I did.

7 Q. And you had caused to be filed yesterday
8 some replacement pages to 716HC and 176NP which have
9 been marked 719HC and 719NP. Could you just provide a
10 brief explanation as to the basis for the -- could you
11 provide a brief explanation as the basis for the
12 filing of the replacement pages?

13 A. Yes, I will. The changes were essentially
14 the same as the need for replacement changes in the
15 St. Joe Light & Power merger case. The Staff and the
16 Company initially in direct testimony, the Staff took
17 issue with the lack of commitment on the company's
18 part to calculate the FASB 87 pension costs based on
19 the premerger funded status of the Empire pension fund
20 as opposed to the combined pension fund assumption
21 under a merger assumption.

22 Consistent with the St. Joe Light & Power
23 case, the company agreed to the Staff's calculation.
24 So we have settled that issue based on the Staff's
25 recommendation.

1 The second reason for the change, which is
2 consistent with the St. Joe Light & Power filing,
3 initially the Staff was using a 5 percent assumption
4 in escalating savings in the administrative and
5 general transmission and distribution functions.
6 Mr. Siemek took issue with that. We considered his
7 testimony and agreed with him that the assumption
8 should be 2 1/2 percent. So that was a settlement, if
9 you will, with regard to the escalation rate used only
10 for the savings projected for those functions.

11 We still have an issue between the Staff and
12 the Company with regard to the escalation assumption,
13 escalation if you will regarding UtiliCorp's corporate
14 costs allocated back. He's still using a 2 1/2
15 percent assumption. We think it should be 5 percent.

16 There's also some corrections on Schedule
17 SMT-7, the average assumptions. There was a
18 mathematical error, lines 5, 6 and 7. The average
19 increase on line 5 for UtiliCorp costs allocated to
20 MPS for the years 1996 to 1999 is now reflected to be
21 45.7 percent.

22 The average increase of MPS's allocated
23 costs from UCU for the period 1997 through 1999 was
24 20 percent. That average increase for the years 1998
25 to 1999 is 6.2 percent. Those were simply

1 mathematical mistakes on the schedule.

2 MR. DOTTHEIM: Okay. Thank you,
3 Mr. Traxler. I tender Mr. Traxler for
4 cross-examination.

5 JUDGE WOODRUFF: Did you want to offer his
6 exhibits at this time?

7 MR. DOTTHEIM: Yes. Excuse me. I'd like to
8 offer at this time Exhibit 716HC, 716NP, Exhibit 719HC
9 and 719NP.

10 JUDGE WOODRUFF: All right. Thank you. All
11 right. Mr. Traxler has been tendered for
12 cross-examination. We'll begin with Natural
13 Resources.

14 MS. WOODS: I have no questions. Thank you.

15 JUDGE WOODRUFF: IBEW?

16 MR. JOLLEY: No questions.

17 JUDGE WOODRUFF: Empire Retirees?

18 MR. DEUTSCH: Yes.

19 CROSS-EXAMINATION BY MR. DEUTSCH:

20 Q. Hi, Mr. Traxler. I'm Jim Deutsch.

21 A. Good afternoon.

22 Q. I represent the Empire Retirees. Do you
23 have your rebuttal testimony with you?

24 A. Yes, sir, I do.

25 Q. Turn to page 22.

1 A. Okay. I'm on 22.

2 Q. On page 22 you are discussing health care
3 benefits and in particular describing FAS 106?

4 A. That's correct.

5 Q. Are you familiar with Financial Accounting
6 Standard 106?

7 A. Yes, I am.

8 Q. Could you explain what that is?

9 A. Financial Accounting Standard 106 is a
10 financial accounting standard for accrual accounting
11 for financial reporting purposes for post-retirement
12 benefits other than pensions.

13 Q. Are you familiar with the summary statement
14 that accompanies Financial Accounting Standard 106?

15 A. I have -- at some point in time I've read
16 the entire thing. I haven't read the entire thing
17 recently.

18 MR. DEUTSCH: I'd like to mark an exhibit.

19 JUDGE WOODRUFF: Go ahead.

20 (EXHIBIT NO. 811 WAS MARKED FOR
21 IDENTIFICATION.)

22 BY MR. DEUTSCH:

23 Q. Okay. Mr. Traxler, you have been handed
24 what's been marked as Exhibit 811. Does that look
25 familiar?

1 A. At some point in time I read this entire
2 thing, but it's been a while, yes.

3 Q. Could you tell us what that is?

4 A. It is a -- it's a general description
5 summary, if you will, of the accounting pronouncement,
6 kind of an overview.

7 Q. Okay. The first paragraph of the statement
8 there --

9 A. Yes, sir.

10 Q. -- could you read that for us?

11 A. This statement establishes accounting
12 standards for employers' accounting for
13 post-retirement benefits other than pensions
14 (hereinafter referred to as post-retirement benefits).
15 Although it applies to all forms of post-retirement
16 benefits, this statement focuses principally on
17 post-retirement health care benefits. It will
18 significantly change the prevalent current practice of
19 accounting for post-retirement benefits on a
20 pay-as-you-go cash basis by requiring accrual, during
21 the years that the employees renders the necessary
22 service, of the expected cost of providing those
23 benefits to an employee and the employee's
24 beneficiaries and covered dependents.

25 Q. You have a mention in there that it changes

1 the method of cash basis accounting that was used
2 prior to the adoption of FAS 106; is that right?

3 A. Prior to adoption of this accounting
4 pronouncement, the pay-as-you-go or cash basis was
5 what was used for financial reporting.

6 Q. In fact, I think it's in the testimony of
7 the company that that was the basis that they used was
8 a cash basis, pay-as-you-go system prior to
9 approximately 1993 when this was adopted?

10 A. That would be true for both financial
11 reporting and ratemaking purposes.

12 Q. But since 1993 they have utilized FAS 106,
13 the company that is, EDE?

14 A. That's true for financial reporting. There
15 was also a -- the Legislature passed actual
16 legislation in 1994 that required adoption of FASB 106
17 for ratemaking purposes.

18 Q. And that statute you mentioned, isn't that
19 Section 386.315?

20 A. Yes, sir, that's correct.

21 Q. It's been mentioned and identified, I think
22 marked as an exhibit in this case earlier by the Staff
23 counsel. You may not --

24 A. Subject to check.

25 Q. That last section there is interesting to

1 me. It requires accrual during the years the employee
2 renders the necessary service of the expected cost of
3 providing those benefits to an employee and the
4 employee's beneficiary and covered dependents.

5 I take that to mean that, under an accrual
6 basis, an obligation to pay has accrued during the
7 period of time for a future event?

8 A. I would agree with you, sir, that the
9 liability represents in the accounting profession a
10 commitment at the current time by the management of
11 the company to provide those benefits to retirees
12 during their lifetime after retirement.

13 Q. On that note, why don't you read paragraph
14 2. I won't make you read too much more.

15 A. The Board's conclusion in this statement
16 results from the view that a defined post-retirement
17 benefit plan sets forth the terms of an exchange
18 between the employer and the employee. In exchange
19 for the current services provided by the employee, the
20 employer promises to provide, in addition to current
21 wages and other benefits, health and other welfare
22 benefits after the employee retires. It follows from
23 that view that post-retirement benefits are not
24 gratuities but are part of the employee's compensation
25 for services rendered. Since payment is deferred, the

1 benefits are a type of deferred compensation. The
2 employer's obligation for that compensation is
3 incurred as employees render the services necessary to
4 earn their post-retirement benefits.

5 Q. They describe that as being a type of
6 deferred compensation. Is that what I heard you read
7 there?

8 A. Yes, sir.

9 Q. Do you agree with that?

10 A. Yes, I do.

11 Q. Following on down on page 2, there's a
12 listing that comes under the heading of what this
13 statement is supposed to do in order to improve
14 financial accounting, and there's a subsection B there
15 on top of --

16 A. Top of the page?

17 Q. -- the second page of the document,
18 Exhibit 811.

19 A. Yes, sir.

20 Q. Could you read that?

21 A. To enhance the relevance and
22 representational faithfulness of the employer's
23 statement of financial position by including a measure
24 of the obligation to provide post-retirement benefits
25 based on a mutual understanding between the employer

1 and its employees of the terms of the underlying plan.

2 Q. Mutual understanding --

3 A. That's correct.

4 Q. -- of the terms of the underlying plan.

5 What about C, could you read that for me?

6 A. To enhance the ability of users of the
7 employer's financial statements to understand the
8 extent and effects of the employer's undertaking to
9 provide post-retirement benefits to its employees by
10 disclosing relevant information about the obligations
11 and cost of the post-retirement benefit plan and how
12 those amounts are measured.

13 Q. Now, I heard you right there that it's --
14 they mention the effects of an employer's undertaking
15 to provide post-retirement benefits to its employees?

16 A. That's correct.

17 Q. Do you agree with that?

18 A. Yes, I do.

19 Q. Then the next section right below that talks
20 about pension accounting, and I believe on page 22 of
21 your testimony you also went into the Financial
22 Accounting Standard 87 that deals with accounting for
23 pensions. And I think it's particularly instructive
24 because of your discussion of pensions in there if you
25 would please just finally now read that paragraph

1 under Similarity to Pension Accounting.

2 A. The provisions of this statement are similar
3 in many respects to those in FASB Statement No. 87,
4 Employer's Accounting for Pensions, and No. 88,
5 Employer's Accounting for Settlements and Curtailments
6 of Deferred (sic) Pension Plans and for Termination
7 Benefits. To the extent the promise to provide
8 pension benefits and the promise to provide
9 post-retirement benefits are similar, the provisions
10 of this statement are similar to those prescribed in
11 Statements 87 and 88, different accounting treatment
12 is prescribed only when the Board has conducted -- or
13 concluded, I'm sorry, that there is a compelling
14 reason for different treatment. Appendix B identifies
15 the major similarities and differences between this
16 statement and employers' accounting for pensions.

17 Q. Just in your judgment in looking at that
18 statement and with your knowledge of having examined
19 the accounting -- the accounts under FAS 87 and 106,
20 is there a substantial difference that you see that
21 would cause a deviation from adhering to that
22 particular statement?

23 A. No, sir. The only -- the primary difference
24 between the two is simply the assumption differences
25 required for service costs. Under pension accounting

1 that is a much more certain, under defined benefit
2 pension plan it's a much more certain, known and
3 measurable liability.

4 Whereas, the accrual under FASB 106 requires
5 a projected assumption about future health care costs
6 as much as 25 years in the future. So it's more
7 subjective in nature in our opinion.

8 Q. But that deviation aside which does not
9 relate to the nature of the obligation, is it true
10 that the pension is a similar nature to the obligation
11 for other post-retirement benefits such as health care
12 after the enactment of FAS 87 and 106?

13 A. I would agree that both represent a
14 commitment by the employer. However, with regard to
15 defining benefit pension plan, you have federal
16 regulations under ERISA which require funding by that
17 obligation. You don't have that requirement for
18 post-retirement benefits under FASB 106.

19 Q. And, in fact, in examining the records of
20 Empire, their obligation is not fully funded, is it?

21 A. No, it isn't. According to Mr. Browning,
22 the funded level at the date stated in his testimony
23 was approximately 7 million out of 17, about a
24 \$10 million shortfall.

25 Q. On the other hand, there is a funded amount

1 in the FAS 106 account that is maintained for health
2 care costs?

3 A. Yes. The use of a VEBA trust, which is the
4 funding mechanism, require that those funds are only
5 available for the purpose intended, which is to pay
6 retiree benefits. They can't be used for any other
7 purpose.

8 Q. And then finally, if you take a look on the
9 third page of the Exhibit 811, under the heading
10 Recognition and Measurement, the very last paragraph
11 that begins there on that page, why don't you just
12 read that into the record for us?

13 A. An objective of this statement is that the
14 accounting reflect the terms of the exchange
15 transaction that takes place between an employer that
16 provides post-retirement benefits and the employees
17 who render services in exchange for those benefits.
18 Generally the extant written plan provides the best
19 evidence of that exchange transaction. However, in
20 some situations an employer's cost-sharing policy, as
21 evidenced by past practice or by communication of
22 intended changes to a plan's cost-sharing provisions,
23 or a past practice of regular increases in certain
24 monetary benefits may indicate that the substantive
25 plan - the plan as understood by the parties to the

1 exchange transaction - differs from the extant written
2 plan. The substantial plan is the basis for
3 accounting.

4 Q. Thank you. I take it from that particular
5 statement what the accounting board is saying is that
6 you go by what the company does and not what the
7 company says?

8 A. I would agree, if there are -- if the
9 actual -- what's the word I'm looking for?

10 Q. Substance of the transaction?

11 A. If the transaction is somewhat different
12 than the written plan, then the actual -- the way they
13 actually carry out the plan is the determining factor.

14 Q. And that would involve things like a
15 continuous practice of providing certain types or
16 funding of retirement -- post-retirement benefits
17 throughout a long period of time of the company?

18 A. I would say that example would apply in
19 either case. In other words, that would be defined in
20 the written text and also the practice of the company.

21 Q. But something like, for instance, the
22 providing of subsidies for the payment of premiums
23 would be a variable that, without something in writing
24 saying specifically how that's to be done for now and
25 forever, would be judged by the historical practice of

1 the company?

2 A. I would agree that's an example.

3 MR. DEUTSCH: Your Honor, I'd like to offer
4 into evidence, and I think it's probably subject to
5 official notice, EDE Retirees Exhibit 811. Ask that
6 it be received.

7 JUDGE WOODRUFF: 811 has been offered into
8 evidence. Are there any objections to its receipt?

9 (No response.)

10 Hearing none, it will be received into
11 evidence.

12 (EXHIBIT NO. 811 WAS RECEIVED INTO
13 EVIDENCE.)

14 MR. DEUTSCH: No more questions.

15 JUDGE WOODRUFF: Thank you. And next is
16 Praxair and they're not here. City of Springfield is
17 not here. Public Counsel?

18 MR. MICHEEL: No questions.

19 JUDGE WOODRUFF: And UtiliCorp?

20 MR. SWEARENGEN: We have no questions.

21 Thank you.

22 JUDGE WOODRUFF: Come up to the Bench, then.
23 Commissioner Schemenauer?

24 COMMISSIONER SCHEMENAUER: No questions.

25 JUDGE WOODRUFF: Commissioner Simmons?

1 COMMISSIONER SIMMONS: I don't have any
2 questions, your Honor.

3 JUDGE WOODRUFF: I have no questions. So
4 there's no recross. Any redirect?

5 MR. DOTTHEIM: No redirect.

6 JUDGE WOODRUFF: Mr. Traxler, you may step
7 down.

8 (Witness excused.)

9 JUDGE WOODRUFF: And I believe that
10 completes merger costs and benefits, and we'll move on
11 to regulatory plan - overall, starting with UtiliCorp.

12 MR. SWEARENGEN: John McKinney.

13 JUDGE WOODRUFF: Welcome back to the stand,
14 Mr. McKinney. I believe you were sworn yesterday.

15 THE WITNESS: Yes, I was.

16 JUDGE WOODRUFF: You're still under oath.
17 You may inquire.

18 JOHN McKINNEY testified as follows:

19 DIRECT EXAMINATION BY MR. SWEARENGEN:

20 Q. Mr. McKinney, your direct testimony is
21 Exhibit 4, your surrebuttal Exhibit 5; is that
22 correct?

23 A. That's correct.

24 Q. And you have copies of those with you?

25 A. Yes, I do.

1 MR. SWEARENGEN: Tender the witness.

2 JUDGE WOODRUFF: All right. Starting with
3 IBEW?

4 CROSS-EXAMINATION BY MR. JOLLEY:

5 Q. Good afternoon, Mr. McKinney.

6 A. Good afternoon.

7 Q. I would like to first direct your attention
8 to page 6 of your surrebuttal testimony, beginning on
9 line 14 where you state that, Again, there is no
10 evidence in this case to show that UtiliCorp cannot or
11 will not provide safe and reliable service -- provide
12 safe and reliable electric and water service in the
13 Empire service area. The level of service presently
14 enjoyed by Empire's customers will not deteriorate as
15 a result of the merger.

16 Several lines down, Also there is
17 evidence -- I'm sorry. I think just those four lines
18 ending with "as a result of the merger".

19 A. All right.

20 Q. Is your statement that there is no evidence
21 that UCU cannot or will not provide safe and reliable
22 service to the Empire area one that is based upon your
23 own independent analysis and review or is it one
24 that's based upon conclusions that have been reached
25 by others and which you have adopted?

1 A. It's based on my review of the evidence that
2 I've seen in this case and my own independent
3 knowledge of the industry.

4 Q. Now, specifically referring to the delivery
5 of safe and reliable service as that service is
6 delivered by bargaining unit employees?

7 A. All employees.

8 Q. Well, I'm specifically referring to
9 bargaining unit employees.

10 A. Yes, I understand that.

11 Q. The production employees, the transmission
12 and distribution employees, the meter reading
13 employees, all the classifications represented by the
14 union.

15 A. Yes.

16 Q. What is the evidence that you relied upon in
17 connection with those individuals, those jobs, in your
18 ability to be able to provide service after 50 of
19 those jobs are eliminated?

20 A. UtiliCorp specifically in Missouri and
21 Missouri Public Service provides very good service and
22 safe and reliable service to our customers. We're
23 able to do that with two-man crews. We're able to do
24 that with the way we are staffed.

25 We are planning on moving that concept, as

1 Mr. Pella has testified, into the Empire area, and I
2 have no doubts that our safe and reliable service and
3 your service record and your safety record that we
4 have in our Missouri Public Service territory will
5 continue on into the Empire territory. We will
6 tolerate nothing less.

7 Q. So your statement that there's no evidence
8 is based upon the fact that there's no evidence
9 anywhere else where UtiliCorp transacts business and,
10 therefore, there shouldn't be any evidence here in the
11 Empire District; is that correct?

12 A. I have seen no evidence, no.

13 Q. Okay. Were you here when, I believe,
14 Mr. Green testified --

15 A. Yes, I was.

16 Q. -- this morning?

17 And did you hear him testify, and I hope I'm
18 accurately summarizing, that UtiliCorp had concluded
19 when it entered into the merger that Empire District
20 was, in fact, now and has been providing safe and
21 reliable service to its service area?

22 A. I'm sure it has been, yes.

23 Q. That if the merger is approved, UtiliCorp
24 will have an obligation to continue to provide safe
25 and reliable service in that area?

1 A. That's correct.

2 Q. And that from a practical standpoint, it
3 would be detrimental to the public interest if it
4 should fail to do so?

5 A. I believe that's what Mr. Green said.

6 Q. And you agree with that?

7 A. Yes.

8 Q. Now, given the fact that they are currently
9 providing safe and reliable service in the Empire
10 service area, what evidence did you look for that by
11 eliminating 50 bargaining unit jobs, bargaining unit
12 jobs in the transmission and distribution department,
13 in the production department and meter reading
14 department, that that safe and reliable service would
15 continue to be delivered?

16 A. You're talking about four departments.
17 Let's talk about those four departments a little bit.
18 Mr. Pella will be able to provide you a lot more
19 details, but just my general knowledge, in the meter
20 department, let's say we're talking meter testing.
21 Meter testing can be done on the Empire location or it
22 can be done at our consolidated location where we test
23 meters. Meters would continue to be tested very
24 safely that way.

25 Q. And how many meter testers are you planning

1 on eliminating?

2 A. I don't know.

3 Q. One?

4 A. You have the statistics, I believe, there in
5 the record.

6 Q. Okay.

7 A. Two-man crews. We use two-man crews very
8 effectively now. When we need more than two men to do
9 a job, we call in two crews. This is very common in
10 Missouri Public Service territory. We've been very
11 successful with it. There's many jobs, as I believe
12 you heard the other day, that can be done with a
13 two-man crew.

14 We're not about to endanger the lives of our
15 crews or the safety of the public. When more than two
16 men are necessary, we'll call those crews in. In the
17 long run, we feel that's sufficient and that's safe
18 and that's how we've operated our properties.

19 Q. Have you done any studies in connection with
20 two-man crews in the Empire service area after -- let
21 me finish the question -- after you have eliminated
22 bargaining unit positions among linemen and
23 electricians as to what the impact will be on doubling
24 your crews instead of having three-man crews doing
25 rubber gloving work in those instances, pulling

1 another two-man crew off of some other job that
2 they'll be working on and putting it onto a four-man
3 crew?

4 A. Getting into those type details, Mr. Pella
5 can respond. I can respond from general knowledge of
6 how we operate today, we operate in Missouri Public
7 Service territory. The territories aren't that much
8 different.

9 I know southern Missouri is somewhat
10 mountainous, but we've had other territories that we
11 do two-man crews in that are mountainous, and we've
12 been very successful in providing safe and reliable
13 service in those territories.

14 Q. Do you utilize any three-man crews?

15 A. That you'll have to ask Mr. Pella.

16 Q. To your knowledge, when UtiliCorp determined
17 to eliminate 50 bargaining unit positions, was there,
18 A, a specific analysis of each Empire job
19 classification, the workload in each classification,
20 the number of Empire employees working in that
21 classification, a determination of the future workload
22 after the merger, and then a resulting determination
23 as to how many bodies could be cut, or B, if you know,
24 did UCU utilize some required savings benchmark and
25 agree that you could realize X number of dollars in

1 savings by eliminating X number of jobs?

2 A. Mr. Pella is our witness. I couldn't answer
3 that question.

4 Q. Who made the actual determination as to the
5 number of bargaining unit jobs to be eliminated?

6 A. I believe you heard Mr. Green talk this
7 morning of the transition teams that worked on that
8 effort.

9 Q. Can you give me the name of somebody who's
10 going to be testifying here?

11 A. I believe Mr. Green told you Mr. Pella would
12 be.

13 Q. Do you know the actual dollar savings that
14 UtiliCorp attaches to the elimination of 50 bargaining
15 unit positions?

16 A. I do not have that information. Mr. Siemek
17 is testifying and Mr. Pella on the savings.

18 Q. Would you acknowledge that, in connection
19 with an obligation to deliver safe and reliable
20 service, that safety involves not only the safety to
21 the general public but also safety to employees?

22 A. Most definitely. We're very proud of our
23 safety record, as Mr. Pella I believe has offered some
24 testimony.

25 Q. But you don't have a safety record that's

1 been developed in the Empire area; is that correct?

2 A. We've never operated in that area.

3 Q. There's some testimony earlier about what I
4 term the golden parachute, namely the severance
5 package that is being offered to Mr. Myron McKinney in
6 the event that his job is eliminated, and I asked some
7 questions as to whether there were other executives or
8 other Empire personnel who will receive similar
9 packages, not necessarily in the same amount, but
10 severance packages in the event their jobs are
11 eliminated.

12 Do you happen to know how many UtiliCorp
13 executives or other personnel are receiving these
14 types of severance packages?

15 A. I don't believe there's any UtiliCorp
16 personnel receiving them.

17 Q. I'm sorry. I misspoke. Empire.

18 A. There are others, and I believe those are
19 laid out in the documents, proxy documents that were
20 sent out to the various shareholders and other
21 documents. Mr. McKinney or Mr. Fancher I'm sure could
22 provide you with that information. My testimony
23 doesn't address that issue.

24 Q. So you don't know?

25 A. No.

1 Q. To the extent that the severance packages of
2 such individuals represent a cost to be amortized over
3 a period of years, are you aware of how much cost has
4 been attributed to these severance packages?

5 A. No. It would be a net savings in the long
6 run and in the short run. The first year we would see
7 a savings from those type of packages, because you
8 would take the severance packages, amortize them over
9 ten years, but in year one you'd have elimination of a
10 hundred percent of the salary.

11 So by taking, as you talked about Mr.
12 McKinney's, which is a three-year, take his, divide it
13 by ten, the number I believe yesterday, that would be
14 60,000 cost in year one, less his salary. So we would
15 have a net savings of 140,000 on one individual in
16 year one.

17 Q. Do you know what the severance packages are
18 for bargaining unit employees?

19 A. No, I do not.

20 Q. If I were to tell you that they get one week
21 of pay for each year of service, would you dispute
22 that?

23 A. It's subject to whatever they've negotiated,
24 I'm sure.

25 Q. Now, in UtiliCorp's responses to IBEW

1 Interrogatories, it was stated that UtiliCorp has
2 conducted no specific studies to determine that it can
3 safely and reliably deliver service with a job
4 elimination of 50 bargaining unit jobs. Has that
5 changed?

6 A. In what regard are you talking to?

7 Q. Have you subsequent to submitting those
8 responses to Interrogatories caused such a study to be
9 made?

10 A. Not a study specifically for that purpose.
11 I believe, of course, the transition teams that you've
12 been told about of course have always considered that
13 as they're doing their work, but it is not a study
14 that is specific for that purpose. It is specific for
15 many purposes.

16 Q. There's no written evidence submitted in
17 this proceeding or any testimony that we've heard so
18 far that would indicate that studies were made that
19 involved the effects of the elimination of 50
20 bargaining unit positions, including linemen,
21 electricians and production workers and others, on the
22 ability to safely deliver -- safely and reliably
23 deliver service in the Empire area; is that correct?

24 A. I believe there's testimony in Mr. Pella's
25 testimony he believes we can do so, but specific

1 studies for that specific single purpose, no.

2 Q. And is it true -- strike that.

3 In response to IBEW Interrogatories, it was
4 stated that there are no planned job additions within
5 the bargaining unit represented by IBEW Local 1474.
6 Do you concur with that?

7 A. I'm not familiar with that Interrogatory
8 response. I'm sorry.

9 Q. Are you familiar with the post-retirement
10 health benefits that are provided to UtiliCorp
11 retirees?

12 A. Somewhat, as being a UtiliCorp employee.

13 Q. Employee yourself. When a UtiliCorp
14 employee retires, what is the cost sharing as between
15 UtiliCorp and that employee in connection with retiree
16 health benefits?

17 A. At what age?

18 Q. 55, 65. You tell me. 55, 60, 65.

19 A. At 55, the employee would pick up the cost
20 of the health insurance package.

21 Q. The whole cost?

22 A. Yes.

23 Q. Okay. And when does that change?

24 A. It doesn't. Well, when you go on Medicare,
25 of course you would pick up Medicare, which everybody

1 in our country has the benefit of. And then you would
2 pick up a tie-in package if you wanted to, which would
3 be at a different cost.

4 Q. At your cost?

5 A. Yes.

6 Q. An individual cost?

7 A. That's correct.

8 Q. And if an employee retires at age 60?

9 A. Would be the same.

10 Q. 65?

11 A. 65 I believe you can qualify for Medicare.
12 I'm not quite close enough yet to look into that, but
13 I think you can.

14 Q. Does UtiliCorp absorb the cost of retiree
15 health benefits for any of its retirees?

16 A. I couldn't respond to that. Mr. Browning
17 will be able to respond to that when he appears.

18 Q. Would it be fair to say that when UtiliCorp
19 employees contemplate retirement and decide to retire,
20 they know going in what their health benefit is going
21 to be and what their cost will be in getting that
22 benefit?

23 A. I can't speak for all retirees. I know I
24 will look into it when I consider it.

25 Q. UtiliCorp makes that information available

1 to individuals contemplating retirement, correct?

2 A. Yes. If you contact human resources, that
3 information is available and it's available to
4 anybody.

5 Q. To your knowledge, this is not a situation
6 where UtiliCorp has told individuals contemplating
7 retirement, We will pay all or a portion of your
8 retirement benefits, and then after they retire tell
9 them, Oh, no, we won't. So going in they know what
10 the lay of the land is, correct, or have the
11 opportunity to know; is that right?

12 A. Well, I haven't made a direct inquiry yet.
13 I've got a few more years to go, I hope.

14 Q. And you have no knowledge of what company
15 policy or practice is in accurately advising its
16 employee work force as to their retirement benefits?

17 A. I wouldn't want to testify here to what that
18 is. Mr. Browning will. He's the head of our HR
19 department.

20 Q. There's been some testimony that, on the
21 part of UtiliCorp officials, that the public interest
22 will be served with approval of the merger by the
23 creation of new jobs within the state of Missouri.
24 Are you familiar with that?

25 A. I believe Mr. Green indicated that there

1 would be some jobs created in the state of Missouri,
2 yes.

3 Q. Now, are you aware that the merger plan
4 calls for the elimination of about 270 jobs,
5 bargaining unit and non-bargaining unit, offset by an
6 additional 60 new jobs for a net loss of about 210 or
7 211 jobs? Have you heard that testimony?

8 A. Positions, yes.

9 Q. Positions?

10 A. Positions.

11 Q. Correct. Other than these 60 additional
12 positions contemplated in the merger plan, are there
13 other existing plans that call for the additions of
14 other jobs, or are we speculating that there may be
15 jobs in the future?

16 A. Well, at this time UtiliCorp always has
17 openings. Mr. Green talked about some other
18 opportunities this morning. But beyond that, I
19 couldn't testify.

20 Q. Openings are not new positions, though,
21 correct? Openings are filling vacancies that are
22 created by attrition, retirement, quit, discharge, et
23 cetera?

24 A. That's correct.

25 Q. That's what you're referring to?

1 A. As the industry grows, there's always
2 changes, but I can't testify to what they'll be.

3 Q. And there's no plans right now calling for
4 additional positions over and above the normal
5 complement of employees?

6 A. Not that I'm aware of.

7 Q. Have there been any jobs or positions
8 eliminated from among the UtiliCorp employee work
9 force as a result of this merger or are they all
10 Empire?

11 A. I believe they're all Empire at this point,
12 but I'm not aware of any.

13 Q. So that when there are duplicative
14 activities between employees of UtiliCorp and
15 employees of Empire, including duplicative activities
16 of bargaining unit employees at Empire and employees
17 of UtiliCorp in similar positions, whether unionized
18 or not, that duplication has in all cases been
19 resolved in favor of retention of a UtiliCorp employee
20 and in favor of the elimination of the position of the
21 Empire employee; is that correct?

22 A. You'll have to ask Mr. Browning on all
23 positions. I couldn't testify to that.

24 MR. JOLLEY: I have no other questions.

25 THE WITNESS: Thank you.

1 JUDGE WOODRUFF: Empire Retirees?

2 MR. DEUTSCH: No questions of this witness.

3 JUDGE WOODRUFF: All right. And Natural

4 Resources?

5 MS. WOODS: No questions. Thank you.

6 JUDGE WOODRUFF: Praxair and Springfield are

7 not here. Public Counsel?

8 MR. MICHEEL: Yes, I have questions, your

9 Honor.

10 CROSS-EXAMINATION BY MR. MICHEEL:

11 Q. Is it correct, Mr. McKinney, that the

12 regulatory plan proposed here has a ten-year duration?

13 A. That's correct.

14 Q. And is it correct the first five years of

15 that plan there's a rate moratorium for Empire?

16 A. That's correct.

17 Q. Is it correct that the rate moratorium has

18 certain what I call kick-out clauses or kick-out

19 provisions if certain events occur?

20 A. You could phrase them that way. There's

21 provisions in my testimony on where we could petition

22 to move out of it.

23 Q. Is it correct that the filing based on one

24 of those events would not necessarily lead to the end

25 of the regulatory plan?

1 A. That's correct, it wouldn't necessarily end.

2 Q. Focusing on your surrebuttal testimony, I'm
3 looking at page 13, sir. And I believe you're
4 responding to a question about concerns relating to
5 the ability to file complaints, and you state, No.
6 UtiliCorp's request only pertains to the Commission
7 and the Commission's Staff.

8 A. That's correct.

9 Q. So the only people that UtiliCorp is seeking
10 to bring under their moratorium is the Commission and
11 the Commission Staff; is that correct?

12 A. That's correct. We would like everybody to
13 come under, but we cannot ask for that. If you would
14 so like to sign up, we'd like to talk to you about it.

15 Q. Well, why don't you see me afterwards and
16 I'll give you our answer?

17 A. I think I know.

18 Q. So just so I can put a fine point on this,
19 all you're seeking to bind is the Commission and the
20 Commission Staff; is that correct?

21 A. That is correct.

22 Q. So in other words, if the Commission felt
23 that -- or the Commission Staff came to the Commission
24 and said, Empire was overearning, can we file a
25 complaint case, the Commission would be required to

1 say no; is that correct?

2 A. That's correct.

3 Q. Or if the Commission felt perhaps that
4 Empire was overearning and said -- it could not direct
5 its Staff to investigate the rates of Empire; is that
6 correct?

7 A. That's correct. If I might expand on that
8 answer?

9 Q. No.

10 A. Fine.

11 Q. I'm sure Mr. Swearngen will have you expand
12 once it's his turn.

13 Is it correct during the ten-year regulatory
14 plan that UCU is asking the Commission to hold
15 Empire's capital structure at a 47.5 debt level and a
16 52.5 equity level?

17 A. My regulatory plan -- or the regulatory plan
18 filed says we will take the regulatory -- excuse me --
19 the capital structure as ordered in the premoratorium
20 rate case. Mr. Fancher is recommending that capital
21 structure in our rate case, but we don't know for sure
22 how that'll come out, but we are recommending that.

23 Q. And that be held steady for ratemaking
24 purposes for the ten years of the regulatory plan; is
25 that correct?

1 A. Yes, it will.

2 Q. And then the capital structure would be
3 60/40 as it related to recovery of the acquisition
4 premium; is that correct?

5 A. That's correct.

6 Q. And that would be held constant for ten
7 years under the plan; is that correct?

8 A. That's correct.

9 Q. It's also correct that as part of the plan,
10 the regulatory plan, you're requesting that the
11 Commission within the context of this merger case
12 allow the requested treatment of the assigned merger
13 premium; is that correct?

14 A. Would you repeat that? I'm sorry.

15 Q. Yes. Within the context of this merger
16 proceeding, you're requesting that the Commission
17 approve the requested treatment of the assigned merger
18 premium; is that correct?

19 A. That's correct.

20 Q. And is it correct, within the context of
21 this merger proceeding, that for the allocation of
22 corporate and intra-business unit costs to MPS, that
23 you're requesting that the Empire factors be excluded
24 from the methodology for the ten years on the
25 regulatory plan; is that correct?

1 A. For Missouri Public Service, that's correct.

2 MR. MICHEEL: Thank you, Mr. McKinney.

3 THE WITNESS: Thank you.

4 JUDGE WOODRUFF: Staff?

5 MR. DOTTHEIM: Yes, thank you.

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. Good afternoon, Mr. McKinney.

8 A. Good afternoon.

9 Q. If I could direct you to page 8 of your

10 direct testimony.

11 A. Yes.

12 Q. And respecting your testimony on that page,

13 is it correct that the proposed five-year rate

14 moratorium for Empire will not include Empire's water

15 operations?

16 A. That is correct.

17 Q. Does that mean that Empire's water rates can

18 be increased over the five-year period for which there

19 is a rate moratorium for Empire's electric rates?

20 A. Yes. The rates -- the water operation is

21 not impacted in any regard by the regulatory plan.

22 Q. Do you know if there are any plans for a

23 water rate case within the next five years?

24 A. We have not made an analysis of those as of

25 this point in time. During due diligence, at that

1 point Empire was selling the water operations to
2 another company, and so when we were evaluating Empire
3 to make our bid, it was assumed the water properties
4 would be sold to another party.

5 That transaction has since not gone forward.
6 So the water properties will come with it. I don't
7 believe the water properties at this time are earning
8 a very good return. It will be my responsibility to
9 take a look at that and determine after the merger is
10 closed if a rate case is needed, and at that point in
11 time we'll take a look and we'll make that
12 determination.

13 Q. Will Empire's water operations be assigned
14 some portion of the UtiliCorp corporate allocations to
15 be charged to Empire after the merger?

16 A. Yes.

17 Q. Is it possible that being included in the
18 overall corporate allocation process may lead to an
19 increase in cost of service for Empire's water
20 operations?

21 A. We haven't made that evaluation. Anything
22 is possible. It's very possible that it'll result in
23 a decrease. Like I said, we have not made that
24 analysis, so I can't judge either way.

25 Q. Mr. McKinney, if I could direct you on

1 page 8, lines 16 and 17 --

2 A. Yes.

3 Q. -- wherein you state, The rates of the water
4 operations will not be increased as a result of the
5 merger.

6 A. Says none of the costs of the transaction.
7 On line 16 it says, UtiliCorp will ensure none of the
8 costs of the transaction will be assigned to the water
9 operation, and the rates of the water operation will
10 not be increased as a result of the merger.

11 Q. And where you say the rates of the water
12 operations will not be increased as a result of the
13 merger, you're referring specifically, will not be
14 increased as a result of the costs of the merger
15 transaction?

16 A. Basically, yes. Like I said, I made no
17 evaluation of the synergies. The water operation will
18 enjoy synergies, but we're not going to be assigning
19 any premium there because the premium wasn't based on
20 that. So the net -- I can't tell you what the net
21 will be at this time.

22 Q. The corporate allocation process will change
23 as a result of the merger, will it not?

24 A. Yes. It will be different than it is today.

25 Q. Therefore, the provision that the water

1 operations, the rates of the water operations will not
2 be increased as a result of the merger does not
3 encompass any change in corporate allocations as a
4 result of the merger?

5 A. No. There's A&G, customer accounting costs
6 being allocated to water operations today that would
7 continue. Today there are costs assigned by Empire.
8 In the future there'll be costs assigned by UtiliCorp.
9 I don't consider those costs created that way.

10 We have to bill the customers. Empire today
11 sends bills out, and they send a cost over there for
12 that. UtiliCorp will do the same. I have not made a
13 comparison of what those costs will be, so I can't say
14 they will be higher or lower.

15 Q. Mr. McKinney, I'd like to refer you to your
16 surrebuttal testimony, page 25.

17 A. Yes.

18 Q. And I'd like to refer you to line 4 where
19 you state, do you not, It is not essential to
20 determine any specific tracking system now?

21 A. That is correct.

22 Q. Is there any other aspect of the proposed
23 regulatory plan for which you believe it is not
24 essential to receive a Commission determination in
25 this merger proceeding?

1 A. I don't believe the Commission has to
2 determine today what the total level of synergies will
3 be. That's upon us to bring to the Commission in that
4 post-moratorium rate case. So there are other items,
5 yes.

6 Q. Anything other than the item you just named?

7 A. The final premium will be different than
8 what we're looking at today. That will be based on
9 stock prices. So that will be a little bit different.
10 Synergies, of course, will change. The tracking
11 mechanism, of course, it's incumbent upon us to bring
12 in at a later time. Off the top of my head this
13 quick, that's about the three main things that I'd
14 consider.

15 Q. Are there present projections for Missouri
16 Public Service to file any rate increase proceedings
17 within the next five years?

18 A. Yes. We've notified the Staff last week and
19 in casual conversation this week that we're looking at
20 one at this very present time.

21 Q. And is that an electric or a gas or both?

22 A. It's electric, and gas is one of the main
23 drivers the way gas prices have gone up.

24 Q. Does it also relate to the gas operations of
25 Missouri Public Service?

1 A. No, not at this time. On the gas side we
2 have a PGA, and so that's not causing a general
3 increase like it is on electric.

4 Q. Other than the one possible rate increase
5 which you just referred to for the electric operations
6 in Missouri Public Service, are there any projections
7 for later in that five-year period, the next five
8 years, for there to be a Missouri Public Service
9 electric rate increase case?

10 A. Yes. I believe when I testified in St. Joe
11 I indicated there would be two. The first one may end
12 up -- we're going to have conversations with the Staff
13 and with the Office of the Public Counsel on filing
14 mechanisms. There can be one case or two cases
15 depending on how we can possibly agree on filing it,
16 because right now we have these gas prices coming
17 through and a power agreement that we need to address.

18 In 2001, 2002 we have a new purchase
19 agreement coming in from a power plant, the Aries
20 power plant, and then that contract will expire in
21 about four years, and that'll probably, depending on
22 power prices and the structure of the industry, may
23 cause another case.

24 Q. Would you agree that indirect recovery of a
25 portion of the merger premium is effectuated by

1 UtiliCorp's frozen capital structure proposal?

2 A. Yes, that's its intent.

3 Q. Would you agree that indirect recovery of a
4 portion of the merger premium is effectuated by
5 UtiliCorp's frozen corporate allocators proposal?

6 A. The premium? Part of the premium will be
7 recovered, yes.

8 Q. I'd like to refer you in part back to your
9 surrebuttal testimony, page 12.

10 A. Yes.

11 Q. And I'd like to refer you on line 16 where
12 it's that bold-faced heading, Rate Moratorium.

13 A. Yes.

14 Q. Is the moratorium that UtiliCorp/Empire are
15 seeking with your proposed regulatory plan solely a
16 rate moratorium? And by that I mean is it intended
17 that the Commission cannot on its own motion or the
18 Staff cannot on its own engage in an investigation
19 regarding the operation, for example, of the Missouri
20 Public Service or Empire generating units?

21 A. No. There's no intent to stop any of those
22 type activities.

23 Q. The intent under the regulatory plan is to
24 only stop Commission and Staff activity regarding rate
25 investigations, rate complaint cases?

1 A. Formal actions, yes.

2 Q. I'd like to refer you to your direct
3 testimony again, page 9.

4 A. Yes.

5 Q. And I'm going to -- and I'm looking at in
6 particular lines 11 through 17 where you make
7 reference to the moratorium language in the
8 Stipulation and Agreement in Case No. EM-97-515.

9 A. Yes.

10 Q. I have a copy of that Commission Order to
11 which a copy of the Stipulation and Agreement is
12 attached, and I'd like to ask you to direct me to what
13 paragraph or paragraphs you're referring to.

14 A. I don't have that with me. If you have one,
15 I'd be happy to. This might take me just a moment.
16 Excuse me.

17 Q. Maybe if I could be of assistance, if I
18 might direct you to page 7 of the attached Stipulation
19 and Agreement, the section denominated 11, rate case
20 moratorium.

21 A. Yes, I think you had the page that you were
22 asking me to find.

23 Q. And what I handed you was a copy of the
24 Commission's September 2, 1999 Order Approving
25 Stipulation and Agreement in Case No. EM-97-515?

1 A. I believe so.

2 Q. Mr. McKinney, I'd like to direct you in that
3 same document to page 20.

4 A. All right.

5 Q. And I'd like to direct you to Section
6 No. 18, the Commission's Rights, which states,
7 Acceptance of this Stipulation and Agreement by the
8 Commission shall not be deemed as constituting an
9 agreement on the part of the Commission to forego
10 during the above-identified periods the use of any
11 discovery, investigative or other power which the
12 Commission presently has.

13 For example, nonsignatories to this
14 Stipulation and Agreement may file or request or
15 encourage or assist in any filing of a request for an
16 earnings investigation on Westar, and in response or
17 on its own motion the Commission may direct the Staff
18 to conduct an earnings investigation of Westar.

19 There's nothing in this Stipulation and
20 Agreement is intended to impinge or restrict in any
21 manner the exercise by the Commission of any statutory
22 right, including the right of access to information or
23 any statutory obligation. Nothing in this Stipulation
24 and Agreement is intended to impinge, restrict or
25 limit in any way Public Counsel's discovery powers,

1 including the right to access information and to audit
2 and investigate matters related to Westar or its
3 successors.

4 Did I read that section accurately?

5 A. Yes, you did.

6 Q. The language that UtiliCorp/Empire are
7 looking for approval from the Commission respecting
8 the regulatory plan as far as a moratorium, that does
9 not include the language in paragraph Section 18 that
10 I just read, does it?

11 A. No, it does not.

12 Q. In fact, that language would be specifically
13 excluded, would it not, under the regulatory plan?

14 A. Not entirely. We're not restricting Public
15 Counsel in any way.

16 MR. DOTTHEIM: If I could have a moment,
17 please?

18 JUDGE WOODRUFF: Certainly.

19 BY MR. DOTTHEIM:

20 Q. Mr. McKinney, I'm going to hand you another
21 document, the Stipulation and Agreement in Case
22 No. ER-99-313 and Case No. EM-97-515. Mr. McKinney,
23 I'd like to direct you to paragraph -- or Section 2 on
24 page 3.

25 A. All right.

1 Q. Okay. And this Stipulation and Agreement is
2 executed respecting, and I'm looking at page 9, Kansas
3 City Power & Light Company, the Staff of the Missouri
4 Public Service Commission and the Office of the Public
5 Counsel, is it not?

6 A. Yes, it is.

7 Q. And again, the utility that is involved is
8 Kansas City Power & Light, is it not?

9 A. That's correct.

10 Q. In looking at paragraph 2, is that paragraph
11 of the nature that UtiliCorp/Empire are looking in the
12 way of language for purposes of the regulatory plan?
13 Let me read that section, it's just a paragraph, into
14 the record.

15 2, signatories to this Stipulation and
16 Agreement will not file any case with the Commission
17 or encourage or assist in any -- excuse me -- or
18 encourage or assist in filing any case with the
19 Commission requesting, (i) a general increase or
20 decrease in KCPL's Missouri retail electric rates or
21 (ii) rate credits or rate refunds respecting KCPL's
22 Missouri retail electric rates prior to the earlier of
23 September 1, 2001 or the closing of the Western
24 Resources/KCPL merger unless there is the incurrence
25 of a significant unusual event such as an act of God,

1 a significant change in federal or state tax law, a
2 significant change in federal or state utility law or
3 regulation, or an extended outage or shutdown of a
4 major generating unit/units which has a major effect
5 on KCPL or its successors.

6 Would that language be consistent with the
7 language that UtiliCorp/Empire are seeking from the
8 Commission in the regulatory plan that it has
9 proposed?

10 A. Well, that language under paragraph 2 and
11 the language under paragraph 11 in the other
12 stipulation are very similar, and they are similar to
13 the language we're processing.

14 Q. And I'd just like to refer you to one last
15 paragraph, and that's paragraph 4 in that same
16 document on page 4, and let me read that into the
17 record.

18 4, Acceptance of this Stipulation and
19 Agreement by the Commission shall not be deemed as
20 constituting an agreement on the part of the
21 Commission to forego during the above-identified
22 periods the use of any discovery, investigative or
23 other power which the Commission presently has. For
24 example, nonsignatories to this Stipulation and
25 Agreement may file or request or encourage or assist

1 in any filing of or request for an earnings
2 investigation of KCPL, and in response or on its own
3 motion, the Commission may direct the Staff to conduct
4 an earnings investigation of KCPL.

5 There's nothing in this Stipulation and
6 Agreement is intended to impinge or restrict in any
7 manner the exercise by the Commission of any statutory
8 right, including the right of access to information or
9 any statutory obligation.

10 Nothing in this Stipulation and Agreement is
11 intended to impinge, restrict or limit in any way
12 Public Counsel's discovery powers, including the right
13 to access information and to audit and investigate
14 matters related to KCPL or its successors.

15 The language that I just read in paragraph 4
16 would not be consistent, would it, with the language
17 that UtiliCorp/Empire are seeking from the Commission
18 in the proposed regulatory plan?

19 A. No. We didn't address a number of those
20 items. We didn't try to impinge the Commission or the
21 Public Counsel in some of their investigatory powers.

22 All we've asked the Commission to do in this
23 case is not to launch an earnings investigation during
24 the five-year moratorium. We didn't try to impinge
25 any of their other investigatory rights. We didn't

1 try to impinge Public Counsel.

2 Q. Or what you're also seeking is during that
3 five-year period that the Staff of the Commission not
4 engage in any investigation of Empire's rates or in
5 the filing of earnings complaint case?

6 A. On the electric side, as we talked earlier.

7 Q. Yes.

8 A. Purely electric.

9 Q. If I could have a moment, please.

10 Mr. McKinney, I have one other question for
11 you. If I could refer you to your surrebuttal
12 testimony, page 7, lines 3 to 5.

13 A. Yes.

14 Q. And I'd like to refer you to the sentence,
15 In other words -- again, lines 3 to 5. In other
16 words, the status quo will be maintained at least for
17 the immediate future with no change in rates or
18 conditions of service.

19 Mr. McKinney, do you define not detrimental
20 to the public interest as maintaining the status quo?

21 A. Yes, if there's no change, I believe that
22 does. I can only speak as a layman. If there's no
23 harm, there's no detriment, status quo is no harm.

24 Q. For what period of time must the status quo
25 be maintained in order for there not to be a detriment

1 to the public interest?

2 A. Oh, we've asked for in our case that there
3 be a five-year period of time moratorium that we are
4 maintaining the status quo of rates.

5 After that, there will be a rate review. I
6 can't predict at this time what will happen in that,
7 other than we are committing to a three-year cost of
8 service reduction. There will be changes that happen
9 in the future. None of us can speculate today for
10 sure what's going to be happening out in the future.

11 MR. DOTTHEIM: Thank you, Mr. McKinney.

12 THE WITNESS: Thank you.

13 JUDGE WOODRUFF: We'll come up for questions
14 from the Bench. Commissioner Schemenauer?

15 COMMISSIONER SCHEMENAUER: Thank you.

16 QUESTIONS BY COMMISSIONER SCHEMENAUER:

17 Q. Good afternoon, Mr. McKinney.

18 A. Good afternoon.

19 Q. I just have a few questions, and we're
20 talking about the overall regulatory plan and nothing
21 really specific, I guess.

22 In the overall regulatory plan, if the
23 Commission adjusted some of your -- some of the things
24 that you want in your plan or deleted some or added
25 some, would that mean the deal's off or could you

1 consider turning it off?

2 A. No. As I said in my testimony, and I want
3 to make sure it's clear, that if the Commission does
4 want to make changes to the plan, of course they have
5 that right and of course we will review those when we
6 make our final determinations.

7 We're hopeful the Commission will ensure
8 that the deal stays economically feasible as we have
9 presented it. We'll look at any change the Commission
10 would like us to look at.

11 Q. The rate moratorium in your direct testimony
12 on page 8 where you're requesting that we tie the
13 Staff's hands and not let them investigate UtiliCorp
14 or Empire for the five years, even though you say OPC
15 could file a case, we couldn't have our staff assist
16 them in investigating whether or not a rate complaint
17 case is justified?

18 A. That's what we requested, that's correct.

19 Q. Also, you have some other back doors, I
20 guess, depending on acts of God, power failures,
21 change in federal or state tax laws. And I assume any
22 change in federal or state utility law would mean a
23 restructuring law went into place so you wouldn't
24 be -- I mean, you could change your rates?

25 A. Legislation may require us to under

1 restructuring. We may have to unbundle. The
2 Legislature may require something else that would
3 mandate by law. Of course, we'd have to abide by the
4 state statutes.

5 Q. But if any of these occurrences come to
6 pass, you would have the option to initiate some
7 action. However, the Staff or the Commission would
8 not have any options; is that right? Is that how it's
9 laid out to you?

10 A. That's correct.

11 Q. Does that seem logical from the Commission's
12 standpoint that they would want to do that?

13 A. I can't speak for what the Commission would
14 want to do, I've learned a long time ago.

15 Q. Would you want to do it if you were on the
16 other side? I mean if you were entering into the
17 deal, would you want your hands tied but not your
18 partner's hands? I mean, it just seems to me like
19 it's kind of a one-way deal there, but you did say
20 it's not a drop-dead issue, correct?

21 A. That's correct.

22 COMMISSIONER SCHEMENAUER: That's all I
23 have.

24 QUESTIONS BY JUDGE WOODRUFF:

25 Q. I have a question, and it also concerns the

1 rate freeze, the moratorium, and it's triggered by
2 something you mentioned earlier, that MPS might have
3 to come in for a rate increase because of the
4 increasing gas costs.

5 What happens if a couple years from now
6 suddenly the natural gas prices again go through the
7 roof, double or triple, would UtiliCorp have a right
8 to come back in for a rate increase under those
9 circumstances?

10 A. For which division, Empire or --

11 Q. For Empire.

12 A. No. We would be frozen.

13 Q. So no matter how high the natural gas prices
14 went or coal costs, whatever --

15 A. That's correct.

16 Q. -- you'd still be frozen?

17 JUDGE WOODRUFF: Okay. That's the only
18 questions I had.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: Okay. Back to recross from
21 questions from the Bench, beginning again with IBEW?

22 MR. JOLLEY: No questions.

23 JUDGE WOODRUFF: Retirees?

24 MR. DEUTSCH: No questions.

25 JUDGE WOODRUFF: Natural Resources?

1 MS. WOODS: No questions.

2 JUDGE WOODRUFF: Praxair and Springfield are
3 not here. Public Counsel?

4 MR. MICHEEL: No questions.

5 JUDGE WOODRUFF: Staff?

6 MR. DOTTHEIM: No questions.

7 JUDGE WOODRUFF: Any redirect?

8 MR. SWEARENGEN: Just one, your Honor.

9 REDIRECT EXAMINATION BY MR. SWEARENGEN:

10 Q. Mr. McKinney, Mr. Micheel was asking you
11 about the moratorium earlier and you wanted to expand
12 on your answer and he wouldn't let you. Do you
13 remember the question?

14 A. Unfortunately, I don't.

15 (Laughter.)

16 Q. Do you remember what you wanted to say?

17 A. No, I don't.

18 MR. SWEARENGEN: That's all I have. Thank
19 you.

20 JUDGE WOODRUFF: Thank you. You may step
21 down.

22 (Witness excused.)

23 Next witness.

24 MR. SWEARENGEN: We're up to Mr. Fancher.

25 (Witness sworn.)

1 JUDGE WOODRUFF: You may inquire.

2 MR. SWEARENGEN: Thank you. We have Fancher
3 direct, which is Exhibit 8. We have Fancher
4 supplemental direct, which is Exhibit 9. We have
5 Fancher surrebuttal testimony, a nonproprietary
6 version, which is Exhibit 10. And we have Fancher
7 surrebuttal testimony, the HC version, which is
8 Exhibit 10HC.

9 (EXHIBIT NOS. 8, 9, 10 AND 10HC WERE MARKED
10 FOR IDENTIFICATION.)

11 ROBERT FANCHER testified as follows:

12 DIRECT EXAMINATION BY MR. SWEARENGEN:

13 Q. Mr. Fancher, you have in front of you four
14 pieces of testimony, your direct testimony, Exhibit 8,
15 your supplemental direct testimony, Exhibit 9, your
16 surrebuttal testimony, two versions of that, the
17 nonproprietary version which is Exhibit 10 and the
18 highly confidential version which is Exhibit 10HC; is
19 that correct?

20 A. That's correct.

21 MR. SWEARENGEN: I would offer those
22 exhibits into evidence at this time and tender
23 Mr. Fancher for cross-examination.

24 JUDGE WOODRUFF: Okay. Mr. Fancher will be
25 back again for other issues?

1 MR. SWEARENGEN: That's correct. I
2 understand that this is the regulatory plan - overall
3 issue.

4 JUDGE WOODRUFF: Yes. Okay. For
5 cross-examination, then, we'll begin with IBEW.
6 CROSS-EXAMINATION BY MR. JOLLEY:

7 Q. Mr. Fancher, I've been referred to several
8 subsequent witnesses, and I'm not sure to which
9 witness I was referred on what issue, so let me take a
10 shot on a question with you.

11 We heard some testimony about a severance
12 package that Mr. Myron McKinney will receive in the
13 event of termination of his position if the merger is
14 approved. Can you tell me how many individuals in
15 executive positions or other positions at Empire
16 District will likewise receive that type of severance
17 package, maybe not that much, maybe not that many
18 years, but how many received severance packages?

19 A. There are five officers of the company that
20 have a contract that calls for three years of
21 severance pay. There are approximately 20 department
22 heads, which is the next level below vice president,
23 that have individual contracts that call for two weeks
24 of severance per year of service.

25 Q. So as to the five executives, do you know

1 what the three-year payout will entail?

2 A. I do not.

3 Q. Are you receiving one?

4 A. Yes, I am.

5 Q. What will you receive over the course of

6 three years?

7 A. It'll be three years times my annual salary

8 at the current time.

9 Q. Can you share that with us?

10 A. Yes. My current salary is \$127,000.

11 Q. And are the other four individuals

12 comparably paid to your salary?

13 A. Some would be higher, some less, but it

14 would be in that range, yes.

15 Q. How long have you worked for Empire?

16 A. 29 years.

17 Q. During that 29 years, have you become

18 familiar with the fact that Empire distributes to its

19 employees during the course of their employment the

20 various retirement benefits, an explanation of the

21 retirement benefits they can expect upon their

22 retirement?

23 A. We have an employee handbook, I believe.

24 Q. And it outlines those retiree benefits?

25 A. Yes. And I believe there are individual

1 booklets also on the retirement plan, health care
2 benefits, that type of thing.

3 Q. And you would acknowledge, would you not,
4 that employees who make the decision to retire have
5 taken into account, relied upon the benefits that have
6 been promised to them by Empire?

7 A. I think they take into account what the plan
8 calls for at the time they retire, yes.

9 Q. And with the expectation, wouldn't there be,
10 that those retiree health benefits would continue to
11 remain in effect?

12 A. I think with the hope that they'd continue
13 to remain in effect.

14 Q. Are you saying the hope but not the
15 expectation?

16 A. Well, I'm not sure what the difference is.

17 Q. Okay.

18 A. Each of the plans states in the plan that it
19 can be changed at any time by the company.

20 Q. Hasn't, in fact, the history been that to
21 the extent that retirees pay a portion of their
22 benefits, that portion tracks a percentage that is
23 applicable to the bargaining -- to other employees,
24 bargaining unit and non-union?

25 A. State that again. I'm sorry.

1 Q. As retiree health benefits have been
2 modified over the course of time -- strike that.

3 Do retirees at Empire currently pay a
4 portion of the premium cost of their retiree health
5 benefits?

6 A. Yes, that is correct.

7 Q. And isn't it true that the changes over the
8 course of time in their contribution, their own
9 personal contribution to the retiree health benefit,
10 has tracked that same -- any increases that have been
11 made applicable to employees for their health
12 benefits?

13 In other words, if the union and non-union
14 health benefit personal contribution goes from \$20 to
15 \$22 a month, that same percentage of increase would be
16 made applicable to retiree health coverage?

17 A. I'm not sure that's exactly true. It's
18 probably in the same ballpark, but they don't
19 necessarily track each other as far as the changes
20 every year.

21 Q. Okay.

22 A. It's based on the previous year's experience
23 by group. So one group might change at a different
24 level than the other.

25 Q. And would you agree that the retiree health

1 benefits and retirement benefits are a form, in fact,
2 of deferred compensation that employees earn as they
3 provide their service over the course of time to
4 Empire?

5 A. I don't know that I would agree with that.

6 Q. Do you disagree with it?

7 A. I don't know that I would disagree with it.

8 Q. You don't have an opinion?

9 A. I just haven't thought about it.

10 Q. Would you agree that retirement benefits and
11 retiree health benefits are one of the inducements and
12 attractive incentives that Empire has made available
13 in recruiting and bringing on board skilled, trained,
14 competent, capable employees?

15 A. I think the entire compensation package
16 which includes benefits is important, yes, but it's
17 the whole range of those things.

18 Q. And certainly that -- would you agree that
19 retirement is important to employees?

20 A. Yes, it is.

21 Q. And the earning and accumulation and accrual
22 of those benefits when that day comes when he or she
23 retires?

24 A. Absolutely.

25 Q. And so current employees, in fact, who have

1 been there from on an average of 16 -- well, in the
2 case of bargaining unit, 16 years on average and up to
3 25, 30, 35 years, would you agree that they have the
4 legitimate expectation that those benefits will be
5 made available to them when they retire, this year,
6 next year, the closer they get into retirement age?

7 A. I'm not sure I agree with going that far. I
8 think they -- they expect certain things based on
9 where they're at at the time, but I don't think
10 there's any of those things that you can guarantee
11 continue exactly the way they were.

12 Q. If I'm 52 or 53 years old and I've been
13 working at Empire for 25 years and I know that for
14 those 25 years all retirees have gotten a retirement
15 package that includes retiree health benefits, that
16 retirees pay a small portion of the premium but Empire
17 bears the majority portion of that cost, wouldn't you
18 acknowledge that I have an expectation that when I get
19 there in three years from now when I'm 55 or seven
20 years from now when I get there at age 60, that's
21 going to be there for me?

22 A. Again, I would say that it's more a hope.

23 Q. But you can't really distinguish between
24 hope and expectation, as you indicated earlier?

25 A. Well, it depends. Hope is more I'd love to

1 have it that way. Expectation might be, yeah, it's
2 going to be that way. There's a difference.

3 Q. To your knowledge, has Empire ever advised
4 individual employees, advised employees of that
5 difference, that they shouldn't have the expectation
6 that these retirement benefits are going to be there
7 when they retire?

8 A. I wouldn't believe -- of course, I'm not
9 involved in that.

10 Q. You're not aware of any such?

11 A. I'm not involved in that end of the
12 business.

13 Q. Do you get the same retirement benefits that
14 non-executive personnel get upon retirement?

15 A. Yes, I will.

16 Q. Have you ever been advised, then, that those
17 benefits may not be there, Mr. Fancher, when you
18 retire?

19 A. Well, in my position I'm aware of the policy
20 that it can be changed, yes. So my knowledge might be
21 a little different than the average employee.

22 Q. When you say you're aware that the policy
23 can be changed, what are you referring to?

24 A. Well, as I stated earlier, in all of the
25 plans it says that this can be changed by the company.

1 Q. And it has been changed by the company?

2 A. And it has been changed. We didn't used to
3 charge any premium at all. We now do.

4 Q. And it's been changed periodically to adjust
5 the portion of premium paid by retirees?

6 A. Yes.

7 Q. But generally tracking that same kind of
8 historical benchmark that it goes up a couple of
9 percent or a couple of dollars?

10 A. That's true.

11 MR. JOLLEY: I have no other questions.

12 JUDGE WOODRUFF: Retirees?

13 MR. DEUTSCH: Yes.

14 CROSS-EXAMINATION BY MR. DEUTSCH:

15 Q. Mr. Fancher?

16 A. No "r". Mr. Fancher.

17 Q. Fancher.

18 A. Yes.

19 Q. I'm sorry. I'm Jim Deutsch. Nice to meet
20 you.

21 This hope that you talk about, help me out
22 with that expectation. Do you have a hope or an
23 expectation that you're going to get your parachute if
24 this merger goes through?

25 A. I have a contract that states that I will

1 get it. There's a difference.

2 Q. And can you direct me to the writing where
3 I'd find it in the record or elsewhere that tells the
4 EDE employees that they won't get the subsidy that
5 they're getting right now in the future?

6 A. No, I didn't say that. I said that it says
7 in the plan that it can be changed. It doesn't say
8 that it will be changed. It says that it can be.

9 Q. Wouldn't you say that, given the history of
10 EDE starting in the '70s paying all of the costs of
11 the plan, and then I think it was probably in the '90s
12 that they started a copayment system where the subsidy
13 for a lot of retirees is like 90 percent, does that
14 indicate to you that they shouldn't -- they should
15 have more than simply a hope?

16 Where do they glean the evidence that
17 they're going to lose their subsidy and have to pay a
18 hundred percent of their own health care costs?

19 A. There was no indication that that would
20 happen. I agree with you.

21 Q. I just wanted to get that straight. Also
22 with regard to the premium, you are aware, aren't you,
23 that those premiums -- and, of course, they don't
24 change that often. They have, but they haven't
25 adjusted the premium, the copayment, have you, in

1 recent years?

2 A. We adjust it every year.

3 Q. You adjust it based upon what cost the plan
4 called for, but as far as the retiree pays 10 percent,
5 that 10 percent remains the same, it's just maybe a
6 larger number?

7 A. Right. That's correct.

8 Q. You don't change the 10 percent very
9 regularly, do you?

10 A. No. It's been in that ballpark.

11 Q. Been in that precise ballpark since about
12 '93, hasn't it?

13 A. Well, not exactly, because we take a number,
14 we take approximately 10 percent and look at that
15 number, round it off.

16 Q. I'm talking about the 10 percent, not the
17 number. I know the number moves because health care
18 costs go up. We'd like them to go down, but they move
19 around.

20 A. Right.

21 Q. But the number is different, but the
22 10 percent isn't different?

23 A. The 10 percent is approximately 10 percent.
24 It's not exactly 10 percent.

25 Q. Okay. Aren't you aware that that 10 percent

1 and the amount of the subsidy has been included in,
2 for instance, collective bargaining agreements?

3 A. That 10 percent, yes, it is.

4 Q. So do you think an employee who sees that
5 after every negotiation he's still got a subsidy
6 coming in that's mentioned in the collective
7 bargaining agreement, is there anything there that
8 would give them some kind of a hope rather than an
9 expectation that that's what they're going to get?

10 A. Well, for the bargaining unit employees,
11 during the term of that contract, yes, they can expect
12 that.

13 Q. Going back to what Mr. Jolley was asking
14 you, historically, don't all of the other benefits for
15 non-bargaining unit employees and retirees basically
16 track that course of events, that you bargain with the
17 employees, come up with what you've got and apply it
18 to everybody?

19 A. That is not true. There have been instances
20 in which we've instituted things in the company that
21 are benefits prior to the bargaining unit accepting
22 those. So the company non-union employees do not just
23 get the benefits that are negotiated by the bargaining
24 unit.

25 Q. Well, you lost me there.

1 A. Well, what you said was the bargaining unit
2 collectively bargains benefits and then the other
3 employees get what they agreed to, and I'm saying that
4 is not true.

5 Q. Okay. I misspoke if I said that. What I'm
6 saying is, regardless of when the negotiation took
7 place, that generally the retirement and health care
8 and other benefits for all your other employees
9 generally track along the same lines over years of
10 time to what it is that your union employees have
11 negotiated or will negotiate?

12 A. I disagree with that.

13 Q. How?

14 A. Well, what you said was that they negotiate
15 something and everybody else gets that.

16 Q. I didn't say that.

17 A. That's what I understood you to say.

18 Q. Let me try it again.

19 A. Okay. Try it again.

20 Q. 1993, say there's a collective bargaining
21 agreement and it's 10 percent. That would apply at
22 some time there or thereafter and has to the non-union
23 and other people, including yourself as a member of
24 the retirement scheme, to everybody else?

25 A. That is not true.

1 Q. How is that untrue?

2 A. That was instituted prior to that bargaining
3 agreement, and the union wanted it to be in the
4 contract after it was instituted.

5 Q. Okay. Well, let's do it that way, then.
6 You made the change, the union agreed to it, but
7 everybody followed the same basic approach, no matter
8 who it was that agreed?

9 A. They didn't follow the approach. The
10 approach was made before it was in the contract. What
11 you're doing is putting things out of order with what
12 actually happened.

13 Q. Okay. You said 10 percent. The union said,
14 We want that in the contract, and you gave everybody
15 else what?

16 A. We gave everybody 10 percent --

17 Q. Really?

18 A. -- prior to it being in the contract.

19 Q. Why?

20 A. Okay. Because we were going from zero up to
21 10 percent, but it wasn't negotiated in the contract
22 first.

23 Q. Okay. Our disagreement then seems to be
24 with regard to the presence of the collective
25 bargaining agreement. So let's just take that out.

1 A. Okay.

2 Q. Let's say there is no collective bargaining
3 agreement. Don't you treat everybody pretty much the
4 same with regard to the percentage of subsidies paid
5 to your employees for their health care benefits on
6 the retirement plan?

7 A. Yes. We attempt to do that. We try not to
8 give benefits to one group that the other doesn't get.
9 What I'm saying is that it's not negotiated in the
10 collective bargaining agreement and everybody else
11 just gets what they negotiate. That's what I'm
12 saying.

13 That's one example. We increased from zero
14 percent to 10 percent for everyone, and the union
15 wanted that in the collective bargaining agreement in
16 a written form.

17 Q. What year was that?

18 A. It was back in that time frame.

19 Q. Were you in that negotiation?

20 A. I've never been in union negotiations.

21 Q. So the scenario you outlined to me is what
22 you know from someone else who was involved telling
23 you about it?

24 A. Well, that's what I know from meetings in
25 which we've discussed the policy. Being an officer of

1 the company at the time, I would have been involved in
2 the policy setting.

3 Q. And the policy that you're talking about is
4 whether to set the amount of the subsidy or whether to
5 put it in the collective bargaining agreement?

6 A. Well, at that time, the initial step was
7 that we were going from zero premium up. We did not
8 charge employees for health care prior to that time.

9 Q. That's right.

10 A. And health care costs were going up, so we
11 instituted a deal to charge.

12 Q. Right. And the union then wanted that in
13 the contract?

14 A. Yes.

15 Q. And who was --

16 A. It was already applied to the other
17 employees.

18 Q. Do you know the name of who it was that told
19 you that they wanted that in the contract?

20 A. Well, it was part of the negotiations that
21 year.

22 Q. You weren't in the negotiations?

23 A. No.

24 Q. But you know that that's what happened?

25 A. That's true.

1 Q. You know it because?

2 A. Well, because the officers who were involved
3 in the negotiations are in meetings in which I am in,
4 and that's discussed.

5 Q. So they told you?

6 A. That's correct.

7 MR. DEUTSCH: That's all I have, Judge.

8 JUDGE WOODRUFF: It's time for a break.

9 Let's come back at 3:15.

10 (A recess was taken.)

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

12 I believe we were up to cross-examination.

13 We were up to Natural Resources.

14 MS. WOODS: I have no questions. Thank you.

15 JUDGE WOODRUFF: Praxair and Springfield are
16 not here. Public Counsel?

17 CROSS-EXAMINATION BY MR. MICHEEL:

18 Q. Hello, Mr. Fancher,

19 A. Hello.

20 Q. I guess Mr. Deutsch and Mr. Jolley had asked
21 you some questions about the officer severance
22 packages, and I just wanted to follow up on that.

23 MR. MICHEEL: May I approach the witness,
24 your Honor?

25 JUDGE WOODRUFF: You may.

1 BY MR. MICHEEL:

2 Q. Let me ask you to look at this copy of Data
3 Request No. 1 submitted in this case, and I've got it
4 open to a page called Summary of Costs to Achieve
5 Synergies Transition and Transaction Costs there. If
6 you could look at line 2 of that document. Tell me
7 what number you see there.

8 A. I see \$1,406,000.

9 Q. Thank you.

10 In your surrebuttal testimony, Mr. Fancher --
11 do you know, Mr. Fancher, if that number that you read
12 is related to the five officer level positions?

13 A. That number was calculated by UtiliCorp
14 personnel. I'm not familiar with the derivation of
15 that number.

16 Q. Thank you.

17 In your surrebuttal testimony, sir, at
18 page 3, you discuss projected rate cases; is that
19 correct?

20 A. That's correct.

21 Q. Is it correct that the company had projected
22 a rate case filing in 1999?

23 A. Originally, prior to the merger discussions,
24 in the projection we had done in 1998, we had
25 projected a rate case to be filed in 1999, to be

1 completed in the year 2000, followed by one filed in
2 2000 to be completed in year 2001.

3 Q. And you did not file the 1999 rate case, so
4 that projection did not come true; is that correct?

5 A. That's correct.

6 Q. And you are indeed going to file what we'll
7 call the premoratorium rate case; is that correct?

8 A. That is correct.

9 Q. So that projection is going to come true; is
10 that correct?

11 A. That is correct.

12 Q. And we don't know whether or not you're
13 going to be filing the 2002 or 2003 rate case, do we,
14 Mr. Fancher?

15 A. That depends on whether there's a merger or
16 not.

17 Q. Or any other type of interceding event;
18 isn't that correct?

19 A. That's correct. If the revenues were
20 significantly greater than what we projected, yes.

21 Q. So sometimes in -- at least in, for example,
22 the projection you had for the '99 case, sometimes
23 those projections don't come true; isn't that correct?

24 A. Well, there's special circumstances there.
25 We filed a merger in May of 1999, and in part of the

1 discussions with the Staff they said that to file a
2 case in 1999 and be processing that at the same time
3 as a merger case would significantly impact the merger
4 case. So we didn't file the case for that very
5 reason, not because we didn't need the money.

6 Q. Does the Staff control whether or not you
7 can file a rate case with this Commission,
8 Mr. Fancher?

9 A. Well, in this particular case, it was the
10 discussion of the impact on the merger case. So no,
11 we decided not to file the case because of that
12 impact.

13 Q. And it's Empire District Electric in its
14 sole discretion who decides when and if it's going to
15 file a rate case; isn't that correct, Mr. Fancher?

16 A. That was correct prior to the merger
17 agreement.

18 Q. And under the merger agreement you have no
19 rights to file a rate case at the present time?

20 A. We would file a rate case only with the
21 concurrence of our merger partner.

22 MR. MICHEEL: Thank you very much.

23 JUDGE WOODRUFF: Staff?

24 MR. DOTTHEIM: Yes, thank you.

25 CROSS-EXAMINATION BY MR. DOTTHEIM:

1 Q. Good afternoon, Mr. Fancher.

2 A. Good afternoon.

3 Q. Mr. Fancher, I'd like to ask you several
4 questions relating to your surrebuttal testimony,
5 pages 2 and 3.

6 On page 3 where you have a discussion of
7 projected rate cases, you mention Empire's projection
8 provided to UtiliCorp during the due diligence review.
9 Did you participate in the due diligence review?

10 A. Not directly. We provided documents for
11 UtiliCorp to review.

12 Q. Do you recall in what time frame, time
13 period the due diligence activities took place?

14 A. In the fall of 1998.

15 Q. And when would the financial projections
16 have been performed that were involved in the due
17 diligence review?

18 A. Probably earlier in 1998.

19 Q. Mr. Fancher, again in respect to your
20 surrebuttal testimony, I'd like to direct you to your
21 Schedule RBF-1, page 1 of -- page 1 of 7.

22 A. Did you say page 1?

23 Q. Yes, sir.

24 A. Is that HC? I've got the two separated
25 here. Okay. Page 1.

1 Q. I do not see an HC on that -- on that page.

2 A. That page is not stamped HC.

3 Q. Okay. I'd like to direct you to the line
4 rate relief.

5 A. Yes.

6 Q. Which states, I believe, Rate Relief: None
7 allowed through 2000. A \$15 million case effective
8 10/2001, 10.50 percent ROE driver in 2003 and beyond.
9 Could you explain that entry on page 1 of 7 of your
10 schedule?

11 A. Basically, this is a guidance to the person
12 running the model. And so the first sentence says,
13 None allowed through 2000, means that in the model
14 it'll show no rate relief in 2000, and it'll show a
15 case effective in October of 2001 of \$15 million
16 related to State Line combined cycle.

17 For the years beyond 2001, the model will
18 try to achieve a 10 1/2 percent return on equity in
19 those years rather than putting in a discrete case
20 each year. It shows the rate relief that would be
21 required to hit that return on equity.

22 Q. Okay. Thank you. Pardon me a moment.

23 Mr. Fancher, I'd like to refer you to page
24 3, which is marked highly confidential. I'm sorry. I
25 should have thought of this earlier while we were on

1 break or really before break. I'm not certain that I
2 can do this without going into the numbers, but let me
3 see if I can.

4 A. Maybe I can help. If you're only discussing
5 the rate relief line, then that's not highly
6 confidential.

7 Q. Okay. I am only going to be discussing the
8 rate relief line, and there is one other line. It's
9 the return on equity line, the third line from the
10 bottom.

11 A. That one we probably shouldn't discuss
12 openly.

13 Q. Well, let me ask you --

14 MR. DOTTHEIM: Can we go off the record a
15 moment?

16 JUDGE WOODRUFF: All right.

17 (Discussion off the record.)

18 JUDGE WOODRUFF: Let's go back on the
19 record.

20 While we were off the record, counsel for
21 the Staff had discussions, private conversations with
22 the staff for -- counsel for the companies and with
23 the witness concerning how, I presume how to proceed
24 without having to go in-camera; is that correct?

25 MR. DOTTHEIM: That is correct.

1 JUDGE WOODRUFF: And were you able to make a
2 resolution to that?

3 MR. DOTTHEIM: I think, and I know
4 Mr. Fancher will tell me if I go too far. But I think
5 based upon what we've discussed, that we should be
6 able to accomplish this without going in-camera.

7 JUDGE WOODRUFF: Very good. You may
8 proceed, then.

9 BY MR. DOTTHEIM:

10 Q. Mr. Fancher, again, if I can refer you to
11 your Schedule RBF-1, page 3 of 7.

12 A. Yes, I have it.

13 Q. I'd like to refer you to the line Rate
14 Relief where numbers are shown for each of the years
15 2000 to 2004, and I think you've indicated that the
16 numbers for those years on that line are not highly
17 confidential?

18 A. They are not.

19 Q. And the number that is shown, the rate
20 relief that is shown for 2000 is zero?

21 A. That's correct.

22 Q. And the number that is shown for rate relief
23 for 2001 is 3.125?

24 A. That's correct.

25 Q. And that 3.125, is that the additional

1 revenue requirement, the additional revenues that
2 would be sought or assumed to be awarded in a rate
3 case?

4 A. Yes. The numbers in 2001 and 2002 would be
5 the result of what's called in here the premoratorium
6 rate case, which would take effect in October of 2001.
7 So you'd have part of a year in 2001 and you'd have
8 the full year in 2002.

9 Q. And if I can refer you to the column 2003
10 and 2004, there are numbers in those columns, and if
11 it's not highly confidential, which I think you've
12 indicated, let me indicate the numbers for those
13 columns. Excuse me. I think I mentioned for 2001 is
14 3.125, and that would be millions?

15 A. That would be millions of dollars, yes.

16 Q. And for 2002, the number is 15 million?

17 A. That's correct.

18 Q. For 2003, the number is 23.705 million?

19 A. That's correct.

20 Q. And for 2004, the number would be
21 27.592 million?

22 A. Yes. And those are cumulative numbers in
23 2003 and '4 and include the rate relief that's shown
24 in 2002.

25 Q. And for -- and I can refer you back to

1 page 1 of 7 where there is the reference 10.50 percent
2 ROE driver in 2003 and beyond. Is that 10.5 percent
3 ROE the driver for the numbers that are shown for the
4 columns 2003 and 2004 for page 3 of 7 of your
5 schedule?

6 A. That's correct.

7 Q. And when you say cumulative, could you
8 explain what you mean by cumulative, for example, from
9 2003 to 2004?

10 A. It might be easier to go back and show 2003,
11 which is the first year in which the return on equity
12 is the driver. Shows an increase of 23.7 million.
13 That includes the fact that there was a case in 2002
14 or 2001 which generated an annual increase of
15 15 million. So the additional rate relief beyond the
16 first rate case would be \$8.7 million.

17 Q. And again, 2004 is cumulative also?

18 A. Yes. Would be approximately \$4 million,
19 little less.

20 MR. DOTTHEIM: Thank you, Mr. Fancher.

21 JUDGE WOODRUFF: We will come up to
22 questions from the Bench. Commissioner Schemenauer?

23 COMMISSIONER SCHEMENAUER: Thank you.

24 QUESTIONS BY COMMISSIONER SCHEMENAUER:

25 Q. Good afternoon, Mr. Fancher.

1 A. Good afternoon.

2 Q. I just have a few questions. If the rate
3 moratorium as requested by UtiliCorp is approved, does
4 that mean that any increase in rates proposed by
5 Empire must be approved with no investigation by
6 Staff?

7 A. No. The rate moratorium means that after
8 the premoratorium rate case there would be no rate
9 proposals for the next five years.

10 Q. The premoratorium rate case, does that
11 preclude Staff from doing any work on that rate case?

12 A. Absolutely not.

13 Q. And is that clear in your testimony
14 anywhere?

15 A. I think it's clear in the testimony that
16 that's expected to be a regular rate case proceeding.

17 Q. That would occur after the decision is made
18 in the merger case?

19 A. Well, we will actually -- we expect to file
20 that case November the 1st of this year. So the case
21 will be in process when the Order comes out on the
22 merger.

23 Q. So if the Order on the merger approved
24 UtiliCorp's requirement that Staff not be involved in
25 any, it wouldn't preclude them from finishing that

1 case?

2 A. No. It's expected in the plan that we have
3 filed that that would be a rate -- a fully
4 participated rate case with all parties involved.

5 Q. Okay. Now, that rate case is being
6 generated because of the construction of the State
7 Line combined cycle generating unit that you expect to
8 come on line in June --

9 A. That's correct.

10 Q. -- of next year?

11 Will this plant be producing additional
12 power for Empire?

13 A. We will -- yes, it will be for Empire's
14 requirements. We need that plant on line whether the
15 merger takes place or not.

16 Q. And you need it to replace power that you're
17 presently purchasing?

18 A. Well, there will be some smaller purchase
19 contracts that end June the 1st of next year, but we
20 needed the plant regardless of that, primarily for our
21 load growth.

22 Q. You needed it primarily because of what?

23 A. Our customer growth and the demands that
24 they place on the system have grown over the years.

25 So we --

1 Q. So you're not replacing a generating unit
2 that's presently on line?

3 A. We are not.

4 Q. And you're not replacing large purchases of
5 power that you're making to take care of your load?

6 A. No. That's not the primary purpose.

7 Q. So you're speculating that you need that to
8 take care of future growth in your area?

9 A. We're taking -- we're not speculating. We
10 need that to take care of growth that has already
11 occurred.

12 Q. Well, how are you satisfying that growth if
13 it's already occurred and you don't have the plant on
14 line?

15 A. Some short-term purchases for the last few
16 years.

17 Q. Okay. So in effect it is replacing purchase
18 power and then providing for future demands on power.
19 You're going to build it so you have some reserve.

20 A. Well, it's replacing some short-term
21 purchases. When we made this decision a few years
22 ago, we tried to look at the possibility of purchasing
23 on a long-term contract to supply that load and, quite
24 frankly, we just didn't get the offers for people to
25 sell us power.

1 Q. Okay. Will the new plant, if it's going to
2 have some excess capacity, will you be selling power
3 off line when peak demands are being experienced by
4 other utilities?

5 A. On an economy basis, we would do that any
6 time if we have power available at peak. This plant
7 will have a small amount above our needs for the first
8 year and after that will not have any excess.

9 Q. Okay. So did you have -- did Empire have
10 the option to build this plant and put it on line as a
11 merchant plant rather than a base plant?

12 A. We could build a merchant plant. The
13 problem is we needed the power. Empire load needs the
14 power.

15 Q. If you build it as a merchant plant and you
16 purchase power from it, would you need a rate case?

17 A. I think we would. Somehow we have to have
18 the capacity payment, whether it's in our own plant or
19 purchased. We have to have that capacity payment
20 included in rates.

21 Q. Okay. I have one -- let's see. I have one
22 question on your Schedule RBF-1 on page 6. I don't
23 think it's confidential. I want to ask you about
24 something that's not on that page. Okay?

25 A. Okay. I'm not sure I have the right page

1 here that we're not going to refer to.

2 Q. It's the tax detail.

3 A. A tax detail?

4 Q. Page 6 of 7 on RBF-1. It's highly
5 confidential.

6 A. Okay. I'm probably not going to be able to
7 answer too many tax questions.

8 Q. I didn't see any deferred income tax amount
9 there, and you're showing the accelerated tax
10 depreciation and straight line depreciation. There's
11 a difference between the two that would be a result of
12 the tax, and you'd defer the tax because you're paying
13 it -- you're not paying it now but you will pay it
14 later?

15 A. Yes. Page 6 is a detail of the tax
16 calculation itself.

17 Q. Okay. So --

18 A. Showing deductible items and so forth.

19 Q. But it didn't indicate any deferred tax
20 amounts, right?

21 A. That's probably somewhere else in the
22 system, not on this particular page.

23 Q. And then one last question. On page 5 of
24 your direct testimony, you indicate that, that Empire
25 positions that are vacant, and I presume as a result

1 of job eliminations due to this merger, will be
2 included in the cost of service study in the
3 premoratorium case as if they were filled. And can
4 you explain that a little bit to me on the rationale
5 for that?

6 A. Yes. We have had a number of people leave
7 the company after the merger was announced because
8 they either didn't want to face the uncertainty for
9 the next year and a half or so or were in a position
10 that they felt was going to be eliminated. Even
11 before the transition teams had done their work we had
12 some people leave. At the current time, we have about
13 60 vacant positions. At least 40 of those are
14 directly related to the merger.

15 What we have proposed in the premoratorium
16 rate case is to show the salaries for those positions
17 as if those people were there because that, in effect,
18 is gaining the early synergies of the merger. And if
19 you don't show those as being filled, you're
20 automatically flowing through some synergies in the
21 premoratorium rate case, which is what we didn't want
22 to do.

23 Q. If the rate case doesn't go through, are you
24 going to fill those positions?

25 A. If the rate case --

1 Q. I'm sorry. If the merger case doesn't go
2 through, would Empire fill those positions?

3 A. Yes. In fact, we've been trying to fill
4 them. The problem that we have now in attracting new
5 employees is that, why would I go to work for a
6 company for a few months and then lose my job? So
7 we've had trouble filling the positions. It's not
8 that we don't want to fill those positions at this
9 time.

10 Q. Even the 40 that are vacant as a result of
11 the merger, you would -- you're still trying to fill
12 those?

13 A. Well, when I say as a result of the merger,
14 individuals left because we announced the merger. We
15 didn't want them to leave.

16 Q. But you're telling me if the merger fails,
17 you would -- you wouldn't use a two-man crew, you'd go
18 back to a three-man crew, you'd go back to staffing
19 the way it was before the merger was announced; is
20 that correct?

21 A. Well, yes. These positions don't have
22 anything to do between the choice of a two-man or a
23 three-man crew. These positions are, for example, the
24 controller of the company left. So that's a position,
25 yes, we have filled that, but the person that filled

1 that position left a vacancy where they were, and all
2 of those positions need to be filled for a continuing
3 operation.

4 Q. So the 60 vacancies that are -- 60 or more
5 that have currently occurred, none of those are
6 linemen or electricians?

7 A. No, sir. There have been some linemen that
8 have left, electricians. There have been bargaining
9 unit people that have left also.

10 Q. But there's no vacant positions for those
11 people. You've hired replacements, is that what
12 you're telling me?

13 A. No, sir. We have some vacant positions
14 there also.

15 Q. Okay. But those vacancies won't be filled
16 if the merger goes through, but if the merger doesn't
17 go through, you would hire replacements in those
18 positions?

19 A. I can't guarantee that in every position
20 that we would in either case. The ones that I'm
21 familiar with we would need to replace, in the finance
22 area we'd certainly need to replace those people that
23 left. If the merger closes, then I think the
24 positions that are vacant will be compared to where
25 the eliminations are going to occur.

1 Q. Then as a result of this regulatory
2 agreement, I guess, what you're indicating on page 5
3 of your direct is that the Staff when they look at
4 labor costs to determine a rate increase, that they
5 look at all your positions as if they've been filled
6 all along and not that they're vacant in order to come
7 to a predetermined figure for a rate increase --

8 A. That's correct.

9 Q. -- in this case?

10 A. And that would set the base for the
11 moratorium.

12 Q. Okay. And then the synergies or the
13 savings, I guess, that are currently being experienced
14 by Empire, will they fit into the formula any place in
15 this rate case?

16 A. The savings due to those vacancies?

17 Q. Yes.

18 A. No. What we're trying to -- what we're
19 trying to say is that those are a part of the
20 synergies, and, therefore, to get the base that would
21 occur prior to synergies, then we need to show those
22 as if they were filled.

23 Q. So the synergies will include the savings in
24 labor costs prior to the merger date; is that what
25 you're telling me?

1 A. Well, if we didn't show those salaries for
2 those positions, we would have, in fact, flowed
3 through 60 positions of the 270 already.

4 Q. I understand that. But my question, I
5 guess, is, the savings that have already occurred and
6 are currently occurring to the company because of the
7 vacancies, will they be offset against future
8 synergies or the rate case or anywhere?

9 A. No. I may not be understanding your
10 question, but --

11 Q. Your company's saving money because you
12 don't have people in those positions now, right?

13 A. That's correct.

14 Q. And those savings won't be reflected in the
15 rate case or the future synergies; is that correct?

16 A. That's correct.

17 Q. Okay. That was my question.

18 COMMISSIONER SCHEMENAUER: Thank you.
19 That's all I have.

20 QUESTIONS BY JUDGE WOODRUFF:

21 Q. I have some questions about the health
22 benefits issue. Can you tell me how Empire currently
23 handles the health premiums for their current
24 employees? Do they pay a hundred percent of the
25 premium?

1 A. No. The 10 percent number that was
2 mentioned is approximately correct.

3 Q. So right now you're paying 90 percent --
4 Empire's paying 90 percent?

5 A. That's correct.

6 Q. Will that change after the merger with
7 UtiliCorp?

8 A. Well, for those people that remain employees
9 of UtiliCorp, yes, that will change.

10 Q. What does UtiliCorp do for their employees?

11 A. I couldn't answer that.

12 Q. Do you know if they pay a hundred percent of
13 the premium or none of the premium for current
14 employees?

15 A. I do not know.

16 Q. Another question is, the retired employees
17 for Empire, are they under a different risk pool or
18 are they all grouped together with the current
19 employees?

20 A. The calculation is different for each group.
21 We have -- for the retirees we have two groups, I
22 believe, under 65 and those over 65 as a separate
23 calculation, and it's based on the experience for the
24 prior year.

25 Q. So presumably health insurance for the

1 retirees is going to be more expensive than for the
2 general employees or the current employees?

3 A. It could be.

4 Q. Presuming older people have more health
5 problems?

6 A. Right. But it's based on the expenses for
7 that group. They're not lumped in with current
8 employees. It's a lump sum calculation.

9 Q. Okay. That's my question.

10 JUDGE WOODRUFF: Okay. Back to recross,
11 then. IBEW has left for the day, I believe. Empire
12 Retirees?

13 MR. DEUTSCH: No questions.

14 JUDGE WOODRUFF: Okay. Natural Resources?

15 MS. WOODS: No questions.

16 JUDGE WOODRUFF: Praxair and Springfield are
17 also gone for the day. Public Counsel?

18 MR. MICHEEL: Yes.

19 RE CROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Mr. Fancher, I think Commissioner
21 Schemenauer was asking you some questions regarding
22 the premoratorium rate case. Do you recall those
23 questions?

24 A. Yes, I do.

25 Q. And he asked you specific questions about

1 the vacancy positions; is that correct?

2 A. Yes, he did.

3 Q. Are there any other preconditions to the
4 premoratorium rate case that the company's asking to
5 be decided in this merger proceeding?

6 A. There's a number of things that are listed
7 in the premoratorium rate case in the regulatory plan,
8 yes.

9 MR. MICHEEL: Thank you very much,
10 Mr. Fancher.

11 JUDGE WOODRUFF: Staff?

12 MR. DOTTHEIM: No questions.

13 JUDGE WOODRUFF: Thank you. Redirect?

14 MR. SWEARENGEN: No redirect. Thank you.

15 JUDGE WOODRUFF: You may step down.

16 (Witness excused.)

17 Next witness?

18 MR. SWEARENGEN: Mr. Siemek.

19 JUDGE WOODRUFF: Welcome back, Mr. Siemek.

20 I believe you were sworn yesterday.

21 THE WITNESS: Yes, I was.

22 JUDGE WOODRUFF: You're still under oath.

23 MR. SWEARENGEN: And we tender Mr. Siemek on
24 the issue of regulatory plan - overall.

25 JUDGE WOODRUFF: All right.

1 Cross-examination. Again, IBEW has left. Retirees?

2 Mr. Deutsch, did you have any questions?

3 MR. DEUTSCH: Yes, I think I do.

4 VERN SIEMEK testified as follows:

5 CROSS-EXAMINATION BY MR. DEUTSCH:

6 Q. Hi, Mr. Siemek.

7 A. Good afternoon.

8 Q. I just wanted to try to clarify something.

9 Could you open your testimony, I think, to Schedule
10 VJS-2.

11 A. Yes.

12 Q. First of all, line 2, VJS-2, officers
13 severance/retention 1,406,000. Could you tell me what
14 that is?

15 A. That represents the expected payments to the
16 officers of Empire for the change in the control or
17 the severance contracts that they have in place with
18 the Empire board of directors.

19 Q. Okay. And then line 12, curtailment costs
20 for retiree medical plan, 2,732,000. What is that?

21 A. That represents the special expense to
22 the -- to the FAS 106 retirement costs as a result of
23 changes in the plan and changes in the -- as I
24 understand it, changes in the number of eligible
25 employees.

1 Q. What are those changes to the FAS 106
2 account?

3 A. Well, given the fact that there are roughly
4 200 net positions being reduced, the population for
5 the calculation of retiree medical plans changes
6 substantially, and the -- and the changes that were
7 agreed to in the purchase agreement also affect the
8 calculation, I believe. That information was provided
9 to me by Mr. Browning. These calculations were
10 provided by Mr. Browning.

11 Q. Is that 2.7 million a cost that is going to
12 be taken out of the FAS 106 account?

13 A. No. It's a -- as I understand it, it's an
14 accrual.

15 Q. An accrual of a liability?

16 A. Well, you're treading on -- I'm treading on
17 thin ice to expand on my explanation. I can attempt
18 to explain it to you as I understand it, but the more
19 definitive answer would probably come from
20 Mr. Browning. It is not a cash payment, if that
21 answers your question.

22 Q. I was just trying to figure out if that is
23 an amount of money that you're going to have to spend
24 in order to make a change to reduce the benefits of
25 the employees and retirees in your EDE system

1 currently after the merger?

2 A. It's -- I think the answer to that is no, it
3 is not an amount that you have to spend.

4 Q. Do you know how much you have to spend, if
5 at all, to achieve that result of reducing, changing
6 the benefit system?

7 A. No. I don't believe you spend any money to
8 do that.

9 Q. Why is it listed under transition/
10 transaction costs?

11 A. Well, because it's a special expense that
12 occurs, again from my understanding, because you are
13 changing the calculation, the accounting calculation
14 of benefits, of retiree medical costs in the future
15 over the entire life of the liability. I am not sure
16 I can explain it in any more detail.

17 Q. I'll take it up with Mr. Browning.

18 A. All right.

19 Q. Turn to Schedule VJS-4. This appears to be
20 the other side of the equation, Empire District
21 synergies, Benefits and Payroll Taxes. Lines 1 and 2,
22 retiree medical bargaining plan, and then right below
23 that, line 2, retiree medical non-bargaining plan.
24 It's got a series of numbers under what appear to be
25 the years 2001 through 2010.

1 Is this an effort to track cost savings as a
2 result of the merger of the companies and the
3 transition of the Empire employees and retirees into
4 the UCU health care plan?

5 A. It includes that impact. It also, I
6 believe, includes the impact of the reduced number of
7 employees, as I mentioned earlier.

8 Q. Could you explain this exhibit to me? For
9 instance, retiree non-bargaining plan, who is in that
10 line? What is that composed of?

11 A. Well, these are actually -- this is actually
12 information from Mr. Browning's direct testimony. I'm
13 not sure if that's Schedule RBB-6 or RBB-8. I don't
14 have the cross-reference with me.

15 Q. Do you know who those retirees in the
16 non-bargaining plan are?

17 A. I would have to defer to Mr. Browning, but I
18 presume it is the employees that are not covered by
19 the IBEW contract.

20 Q. Would it also include retirees?

21 A. Oh, I'm sorry. I believe it includes both
22 active employees and retired employees.

23 Q. And would those numbers under there, for
24 instance a negative 2,310,000 for 2001, as far as
25 synergies, does that mean that it would -- it's not a

1 synergy?

2 A. That's correct. It's a negative synergy or
3 a cost, an accounting -- an accrual cost in that
4 instance.

5 Q. But then following after that, starting in
6 2002, there appear to be costs listed ranging from
7 1.58 million in 2002 up to 2.84 million in 2010 that
8 are cost synergies?

9 A. 2.848, yes. That's correct.

10 Q. Does this represent that those are the
11 yearly costs that will be saved by having the retirees
12 and the non-bargaining plan employees pay 100 percent
13 of their health insurance premiums?

14 A. I don't think it could be exactly described
15 that way. There are other -- there are other things
16 that impact that line, for example the number of
17 employees because of the position reductions. There
18 is a reduction in the level of cost for retiree
19 medical costs in the future. If you --

20 Q. You're not going to lose any retirees as a
21 result of the merger?

22 A. No, but --

23 Q. I hope you're not.

24 A. I hope not also. This covers the retiree
25 medical -- retiree medical costs for all current and

1 future retirees of Empire and the non-bargaining --
2 under the non-bargaining plan.

3 If there are 50 less current employees
4 because of position eliminations, then future costs of
5 the retiree medical plan would be less because there
6 would be 50 less people in that plan. That's what I
7 was trying to point out.

8 Q. Okay. But this is your projection of what
9 the savings would be? Regardless of the number of
10 retirees or employees after the merger, this is your
11 projection of what the savings from the merger would
12 be by having, as I understand it, both employees and
13 retirees go to the UCU health care plan where a
14 hundred percent of the health care costs are paid by
15 the employee or the retiree?

16 A. Well, the specifics of your question I
17 probably would need to defer to Mr. Browning.

18 MR. DEUTSCH: Okay. I don't have any other
19 questions, your Honor.

20 JUDGE WOODRUFF: Thank you. Natural
21 Resources?

22 MS. WOODS: No questions.

23 JUDGE WOODRUFF: Public Counsel?

24 MR. MICHEEL: Yes, your Honor.

25 CROSS-EXAMINATION BY MR. MICHEEL:

1 Q. Mr. Siemek, could you turn to your
2 Schedule VJS-2, and I believe Mr. Deutsch also talked
3 with you about this schedule. On line 6 there you
4 have a number of severance payments for non-officer
5 key employees; is that correct?
6 A. Yes.
7 Q. And that amount is what?
8 A. \$998,000. I'm sorry. \$998,800.
9 Q. So those are the 22 employees that
10 Mr. Fancher had talked about earlier; is that correct?
11 A. I believe that's correct.
12 Q. So you have the five officers and directors
13 shown on line 2 and then the 22 managers shown on line
14 6; is that correct?
15 A. Yes.
16 MR. MICHEEL: Thank you, Mr. Siemek.
17 JUDGE WOODRUFF: Staff?
18 MR. DOTTHEIM: No questions.
19 JUDGE WOODRUFF: Come up to the Bench.
20 Chair Lumpe?
21 QUESTIONS BY CHAIR LUMPE:
22 Q. Mr. Siemek, on the discussion about the
23 medical payments for the retirees, there was some
24 discussion this morning, I think, and somewhere in the
25 testimony that someone said that that was a deal

1 breaker if you did not address the medical care of the
2 retirees and so a compromise was arrived at.

3 Since the pension plans for the retirees was
4 grandfathered, what would have been the difference in
5 cost of grandfathering instead of coming to the
6 compromise that you did?

7 A. I'm sorry.

8 Q. Is that anywhere in here?

9 A. No, it's not. That would have been -- if it
10 was calculated, would have been part of the
11 negotiation team discussions, and I do not have any
12 information that would tell me what that cost would
13 be.

14 Q. So I really wouldn't -- there's nowhere that
15 you know of that number might be that if you had
16 grandfathered the medical for the retirees as opposed
17 to the phase-out?

18 A. I can't -- there's nowhere that I know of
19 that that information would be. It would --

20 Q. Is there any way of calculating it?

21 A. Well, it's -- I can tell you that it
22 probably is less than \$18 million or -- sorry --
23 \$19 million.

24 Q. And the compromise, what was that?

25 A. I'm sorry. That represents the compromise.

1 Q. The compromise is less than 19 million?

2 A. And the only reason I can say that is
3 because on my schedule that we -- that Mr. Deutsch and
4 I just discussed, there's a total synergies amount
5 that represents retiree medical synergies. That's
6 \$20 million, and some part of that is from the
7 compromise, and some cost that was charged against
8 that is from the compromise, but I don't have detailed
9 information.

10 Q. If 20 million were the synergies, would it
11 be too simplistic to say that whatever less than
12 19 million is, I don't know what that number is, plus
13 20 million, is that what you're suggesting? I mean,
14 if synergies from that one item are 20 million, then
15 could I draw that conclusion?

16 A. Not very accurately.

17 Q. Okay.

18 A. The 20 million already represents the
19 compromise. So the synergies would have been a higher
20 number without the compromise, and I don't know what
21 that information was either. I can just refer to the
22 20 million to say that that's probably the closest to
23 a number that I would have access to. So it can give
24 you perhaps a general range, but it could be anywhere
25 from 10 to \$30 million, and I don't know that.

1 Q. All right. And you wouldn't be able to
2 calculate that?

3 A. I would not. You need to be an actuary to
4 calculate this kind of information.

5 CHAIR LUMPE: Thank you.

6 JUDGE WOODRUFF: Commissioner Schemenauer?

7 COMMISSIONER SCHEMENAUER: No questions.

8 JUDGE WOODRUFF: I have no questions. So
9 recross based on questions from the Bench, beginning
10 with Empire Retirees?

11 RECROSS-EXAMINATION BY MR. DEUTSCH:

12 Q. Going back to the question Chair Lumpe was
13 asking, you said 10 to \$30 million. You're not
14 talking about, like -- that's over, what, ten years?

15 A. That's over the ten years that's covered by
16 this schedule.

17 Q. So on an annual basis it -- yeah. And I
18 understand. It's becoming very clear to me,
19 Mr. Siemek, that you don't really -- you put the
20 numbers down, but I'll have to look elsewhere for my
21 details.

22 But I just want to get clear that when we're
23 talking about dollars of synergy, we're talking about
24 perhaps \$10 million in synergies over a period of time
25 which the company projects that it may achieve

1 \$383 million in savings and synergies for comparative
2 purposes?

3 A. Perhaps 10, perhaps 30.

4 Q. Perhaps a larger amount?

5 A. Right.

6 Q. Some amount, though?

7 A. Right.

8 Q. That would indicate that -- \$10 million
9 sounds like a lot of money to me, but the comparative
10 number as to what portion of those employee and
11 retiree health insurance premiums represents a savings
12 compared to the total savings from the merger is
13 something on a scale of 10 million as opposed to
14 380 million?

15 A. Perhaps is 10 million.

16 Q. Am I right about the 383 million or is that
17 going to be lower than --

18 A. Let me refresh my memory.

19 Q. Well, that was from somebody else's
20 testimony. I don't know that it was from yours. I'll
21 leave that go.

22 MR. DEUTSCH: No further questions.

23 JUDGE WOODRUFF: Okay. Natural Resources?

24 MS. WOODS: Nothing. Thank you.

25 JUDGE WOODRUFF: Public Counsel?

1 MR. MICHEEL: No.

2 JUDGE WOODRUFF: Staff?

3 MR. DOTTHEIM: No questions.

4 JUDGE WOODRUFF: All right. Redirect?

5 MR. SWEARENGEN: No redirect. Thank you.

6 JUDGE WOODRUFF: Mr. Siemek, you may step

7 down.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 JUDGE WOODRUFF: And I believe that

11 completes UtiliCorp's information on the regulatory

12 plan - overall; is that correct?

13 MR. SWEARENGEN: That is correct.

14 JUDGE WOODRUFF: All right. For Staff then?

15 MR. DOTTHEIM: Staff would call as its first

16 witness on regulatory plan - overall Mr. Mark L.

17 Oligschlaeger.

18 JUDGE WOODRUFF: And Mr. Oligschlaeger, you

19 were sworn yesterday. So you're still under oath. Is

20 he tendered for cross-examination?

21 MR. DOTTHEIM: Yes. I'm sorry. At this

22 point I'd like to tender Mr. Oligschlaeger for

23 cross-examination.

24 JUDGE WOODRUFF: Okay. For

25 cross-examination, then, starting with Natural

1 Resources?

2 MS. WOODS: No questions. Thank you.

3 JUDGE WOODRUFF: IBEW is not here anymore,
4 Retirees?

5 MR. DEUTSCH: No questions of this witness.

6 JUDGE WOODRUFF: Praxair and Springfield are
7 not here today. Public Counsel?

8 MR. COFFMAN: No questions.

9 JUDGE WOODRUFF: UtiliCorp?

10 MR. SWEARENGEN: I have a few. Thank you,
11 your Honor.

12 MARK L. OLIGSCHLAEGER testified as follows:

13 CROSS-EXAMINATION BY MR. SWEARENGEN:

14 Q. Mr. Oligschlaeger, the issue here is
15 regulatory plan - overall; is that correct?

16 A. Yes.

17 Q. Once again, let's make sure. Is it your
18 understanding that, under the proposed regulatory
19 plan, the rate levels at which the present Empire
20 customers will receive service during the five-year
21 rate moratorium period will be set in what we've been
22 talking about here as the premoratorium rate case?

23 A. That's my understanding.

24 Q. And to make it clear, is it your
25 understanding that the Staff and everybody else that

1 wants to will be able to participate fully in that
2 premoratorium rate case?

3 A. That's my understanding as well.

4 Q. That the moratorium which would prevent
5 UtiliCorp from filing a rate case and which would
6 prevent the Staff from bringing a complaint against
7 the Empire rates would not take effect until that
8 premoratorium rate case has been decided. Is that
9 your understanding?

10 A. Yes, it is.

11 Q. Is it true that representatives of Empire
12 have had discussions with representatives of the Staff
13 about the timing of the filing of that premoratorium
14 rate case?

15 A. Yes.

16 Q. Would you agree that at one time Empire was
17 considering filing that case perhaps as early as
18 August or September of this year?

19 A. The date September 1st sticks out in my
20 mind.

21 Q. Were you a participant in any of those
22 discussions concerning the timing of the filing of
23 that case?

24 A. I was in some discussions, not all.

25 Q. Is it your understanding that, based on

1 those discussions, the anticipated filing date for
2 that case will now be around the first of November?

3 A. That is my understanding of the current
4 plans.

5 Q. If that happens, if the Empire District
6 Electric Company does file tariffs designed to
7 increase its electric rates sometime around the first
8 of November of this year, when would you anticipate
9 that that case would be decided?

10 A. It would have to be decided within the
11 11-month operation of law period, which would run
12 approximately to October 1st of 2001.

13 Q. And then, as I think you have indicated,
14 those rates would be in effect for five years if the
15 proposed regulatory plan is adopted which includes the
16 five-year rate moratorium; is that true?

17 A. That's true, with the exception of the
18 so-called kick-out clauses or back door clauses which
19 were discussed by some witnesses earlier, if those
20 would happen to be implemented or take effect.

21 Q. There would also be the possibility, would
22 there not, that someone such as the Office of Public
23 Counsel or some other proper party could bring a
24 complaint against those rates during that period of
25 time which would lead to a change in those rates?

1 A. I believe they would retain that right, yes.

2 Q. Then once again under the post-moratorium
3 rate case, is it your understanding that UtiliCorp is
4 proposing a \$3 million minimum cost of service
5 reduction?

6 A. That is part of their regulatory plan.

7 Q. And that would be for years six through ten
8 after the closing of the merger; is that not correct?

9 A. Under their proposal, yes.

10 Q. Would you characterize that \$3 million
11 reduction in cost of service as a benefit?

12 A. If it were -- if it were to be possible to
13 accurately track merger savings and merger costs in
14 order to determine whether the \$3 million provision
15 would need to be kicked in, so to speak, or not, it
16 would be a benefit. My own belief is that it will not
17 be possible a tracking mechanism to effectively
18 enforce the minimum \$3 million benefit.

19 Q. You and I have been doing this too long, for
20 too many years, because that was going to be my very
21 next question. I was going to refer you to page 32 of
22 your testimony where you say that the process of
23 guaranteeing a certain level of merger benefits can
24 only work if UtiliCorp can, in fact, track merger
25 savings, and that's your testimony; is that right?

1 A. That is correct.

2 Q. If UtiliCorp could, in fact, track merger
3 savings, would you concede that its proposed
4 regulatory plan could work?

5 A. That would not change my mind certainly
6 about the overall recommendation that the overall
7 regulatory plan should be rejected. I think there's
8 still plenty of other things wrong with that plan.

9 However, if it were possible to track merger
10 savings accurately and to impute costs -- or impute
11 into costs of service some level of minimum merger
12 benefit guarantees, obviously that would be better
13 than the situation we face now.

14 Q. Your real view, though, your real opinion is
15 that it's impossible to track merger savings, or
16 nearly impossible?

17 A. Nearly or practically impossible is how I
18 would express it.

19 Q. And is that because it would require a
20 comparison between actual financial results achieved
21 after a merger and compare those to what those
22 financial results would have been for the entity if
23 the merger had not been completed?

24 A. That is one aspect of the problem. The
25 other aspect is the difficulty in determining what

1 impact exactly the merger had on the actual financial
2 results.

3 Q. My memory is from the UtiliCorp/St. Joe
4 merger case that you raised the possibility that the
5 rates which would result in the post-moratorium rate
6 case in that proceeding would be higher if the merger
7 would be approved than they would have been for
8 St. Joe otherwise. Do you recall that testimony?

9 A. That's certainly my belief, yes.

10 Q. Would that also be your testimony in
11 connection with the proposed UtiliCorp/Empire merger,
12 in other words, that rates for Empire's customers in
13 the future will be higher than they would have been if
14 the merger does not take place?

15 A. Yes. Our analysis of the merger, estimated
16 merger costs and savings would suggest that result,
17 and the lack of an effective tracking mechanism makes
18 the difficulty in making sure that costs actually
19 don't increase due to the merger a problem. You can't
20 be sure that costs won't increase.

21 Q. During the course of the hearing in the
22 St. Joe/UtiliCorp merger case, you made a statement,
23 and I think I'm quoting you accurately here, I think
24 you said, To make any kind of hard and fast finding in
25 terms of actual savings exceeding actual costs, we

1 would have to put forward some evidence of what the
2 likely stand-alone cost of St. Joe Light & Power
3 Company would be. Do you recall making that
4 statement?

5 A. I'm sorry. Can you read that again?

6 Q. To make any kind of hard and fast finding in
7 terms of actual savings exceeding actual costs, we
8 would have to put forward some evidence of what the
9 likely stand-alone costs of St. Joe Light & Power
10 Company would be.

11 A. Yes, I recall making that statement.

12 Q. Would that also be true in this case with
13 respect to savings exceeding costs with respect to the
14 Empire/UtiliCorp merger?

15 A. Yes. The tracking problem works both ways,
16 against either the company in asserting merger savings
17 and the Staff in asserting a merger shortfall in a
18 future rate proceedings.

19 Q. And to do that, either for the company to do
20 it or the Staff to do it, you would say that, in the
21 case of Empire, five years after the post-moratorium
22 rate case we'd have to look back and see what would
23 have happened to Empire had the merger not occurred?

24 A. To do it correctly, yes, I believe you would
25 have to do that.

1 Q. And I think you also said in the St. Joe
2 case that that would be an exercise in speculation.
3 Do you recall that testimony?

4 A. Yes.

5 Q. And would you make the same statement in
6 this case with respect to the UtiliCorp/Empire merger?

7 A. Yes.

8 Q. So in other words, even though you're
9 arguing in this case that the costs will exceed the
10 benefits of the transaction, whether or not rates
11 under an Empire stand-alone company will be lower in
12 five years in the future or higher if the merger does
13 not occur cannot be demonstrated or proven with
14 reasonable accuracy; would you agree to that?

15 A. Yes.

16 Q. You can't prove it now, that the rates will
17 be higher for Empire in the future if the merger
18 occurs?

19 A. No. That's obviously dependent upon future
20 events.

21 Q. And five years from now, you won't be able
22 to prove it either because you would have to speculate
23 as to what would have happened with respect to a
24 stand-alone Empire?

25 A. Once again, that's one of the reasons why

1 it's practically impossible to track the actual
2 financial impact of a merger.

3 MR. SWEARENGEN: That's all I have. Thank
4 you.

5 JUDGE WOODRUFF: All right. Questions from
6 the Bench, Chair Lumpe?

7 CHAIR LUMPE: I have no questions.

8 JUDGE WOODRUFF: Commissioner Schemenauer?

9 COMMISSIONER SCHEMENAUER: I have a few.

10 QUESTIONS BY COMMISSIONER SCHEMENAUER:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. In your rebuttal testimony on page 11,
14 you're discussing the regulatory plan, and I think
15 that's what you're up here to talk about. On line 12
16 through the bottom of the page, you're talking
17 about -- you're talking about the regulatory plan as
18 proposed. On line 15, they're proposing that Empire
19 be allowed to recover 50 percent of the acquisition
20 premium for the return of any rate base return on this
21 amount. Now, 50 percent of the acquisition premium
22 would be 135 million?

23 A. Based on the --

24 Q. The 270 that they gave us?

25 A. -- current estimate. Now, there will also

1 by year five there will be, as I understand it, five
2 years worth of amortization applied to the original
3 balance of the acquisition adjustment.

4 Q. Okay. Now, when I talked about the
5 acquisition adjustment yesterday, I think we concluded
6 that, in addition to the 270 million, there's
7 \$29 million worth of interest on the acquisition
8 premium annually?

9 A. A carrying cost?

10 Q. Yes.

11 A. The company is seeking recovery of that
12 carrying cost or at least 50 percent of it. I'm not
13 familiar with the \$29 million quantification.

14 Q. I think it was in Mr. Siemek's schedule. I
15 asked him about it. So then 50 percent that they're
16 wanting to recover would be 135 million plus five
17 years worth of interest at 29 million a year less
18 the -- less 50 percent of that.

19 And then they want -- they're also asking on
20 line 17, they want an amortization of the transaction
21 costs and costs to achieve, both without rate base
22 treatment. That's \$33 million, I think is what
23 Mr. Siemek said these costs to achieve were. So that
24 would also be in this post-moratorium rate case?

25 A. As I understand it, they're proposing a

1 ten-year amortization of the, what they call the costs
2 to achieve, what the Staff would call both transaction
3 costs and costs to achieve. Five years of that
4 amortization would run before rates would reflect that
5 actual amortization in the post-moratorium rate case.

6 Q. So half of it would be gone?

7 A. Right.

8 Q. Already amortized?

9 A. Amortized.

10 Q. And so the trade-off on this is this
11 \$3 million reduction a year for the ratepayers?

12 A. That is what they purport will be the
13 benefit flow to customers in each of years six through
14 ten if they're -- assuming that a tracking system is
15 in place to actually enforce or make that possible.

16 Q. So the company is stating that the synergies
17 from the merger will offset 50 percent of the
18 acquisition premium and the amortization of the
19 transaction in cost to achieve, that all those will be
20 offset to synergies, and then in addition the
21 ratepayers would receive a \$3 million decrease?

22 A. As I understand the way the plan would work,
23 they would retain enough synergies to directly recover
24 50 percent of a return of and a return on the
25 acquisition adjustment. The ten-year amortization of

1 costs to achieve, and actually, to be totally
2 accurate, I think some of the costs to achieve are
3 actually proposed to be amortized over 40 years.

4 And after you take those into account, plus
5 the fact that the increased level of corporate
6 allocated costs that will go to Empire customers as a
7 result of this merger, what is left is the 3 million
8 per year that is allegedly available to go to
9 customers as of year six.

10 And that's -- as has been explained in
11 testimony, that's approximately -- if customers
12 actually get the 3 million per year for years six
13 through ten, that will be 3 percent of the total
14 merger savings that would be available over the
15 ten-year period with the company retaining in effect
16 the other 97 percent.

17 Q. So why wouldn't the post-moratorium rate
18 case just be to take the rates that were set at the
19 premoratorium rate and reduce them by \$3 million a
20 year and forget about everything else?

21 A. As I understand the proposal, it -- or the
22 company is taking the possibility that their
23 non-merger revenue requirement may change up or down,
24 and that would possibly increase the rate reduction
25 that might otherwise go to customers or it might

1 offset the rate reduction associated with the 3
2 million cause for even a rate increase.

3 Q. So there's really no guarantee that
4 customers will see a \$3 million rate decrease; it's
5 just whatever the rate increase was, it could be
6 reduced by 3 million?

7 A. Their minimum benefit is a purported
8 guarantee of a revenue requirement benefit. They do
9 not guarantee it will ever come in the form of a rate
10 decrease.

11 Q. That's what I was trying to get out.

12 MR. SCHEMENAUER: I think that's all I have.

13 Thank you.

14 QUESTIONS BY JUDGE WOODRUFF:

15 Q. I have a question about the tracking system
16 and the \$3 million cost reduction that's guaranteed in
17 years six through ten. It's been referred to as a
18 guarantee, but now you're testifying that the tracking
19 system has to be functioning and workable before that
20 guarantee kicks into effect. Can you explain that to
21 me?

22 A. Sure. Conceptually how the company's
23 proposal works is the assumption that we will be able
24 to go in the year five post-moratorium rate case,
25 examine test year financial results, determine what

1 the impact of the merger has been, specifically what
2 the merger savings incurred to date has been, compare
3 that to the target level of the \$3 million of minimum
4 merger savings, and if there's a shortfall of actual
5 merger savings, net merger savings compared to the
6 target, then they would propose to impute in effect
7 additional savings into the test year to give the
8 customers the benefit of that \$3 million in merger
9 savings whether the company's actually achieved that,
10 in fact, or not.

11 Now, the problem with that is that assumes a
12 very black and white situation that we can see the
13 difference between actual savings and the \$3 million
14 and adjust the numbers so that the \$3 million is
15 reached one way or the other.

16 The reality is, any effort to track merger
17 savings at best will give you answers that are very
18 much shades of gray in which it will be, I think it's
19 clear, subject to much dispute by the parties in terms
20 of whether this merger savings was actually created as
21 a result of the merger, whether it could have been
22 created by the companies on a stand-alone basis,
23 whether the benchmark perhaps was something that was
24 appropriate, whether it -- whether the benchmark
25 itself reflected the abilities of the companies to

1 improve or become productive over time on a
2 stand-alone basis.

3 There's any number of possible disputes and
4 disagreements associated with post-merger estimates of
5 actual merger savings achieved.

6 Q. Now, suppose they come in in that five --
7 that post-moratorium rate case and the Commission at
8 that time decides that, Sorry, you've not met your
9 burden of proof. You haven't proven any merger
10 savings. The Commission finds that it's zero. Do the
11 ratepayers get the \$3 million?

12 A. Under their proposal, they would get the
13 \$3 million, or at least that's how I interpret it.
14 You might ask the company witnesses.

15 Q. Okay. So it is guaranteed to that extent?

16 A. To that extent. Now, there are other
17 scenarios. I think we saw, it was alluded to
18 yesterday in the Kansas proceeding at West Plains, the
19 parties had very different estimations of actual
20 merger savings associated with the Centel acquisition
21 that UtiliCorp made a number of years ago. The KCC
22 had to make decisions of who had the best evidence and
23 so on, and I assume the result was pretty much
24 somewhere they split it down the middle or divided the
25 baby, so to speak.

1 Now, the problem is, once again, without
2 hard and fast evidence or knowledge of what actual
3 merger savings has been, what the KCC did in effect
4 was a guess, and that guess could be materially
5 different than the actual level of merger savings
6 achieved, and whether that guess was below the level
7 of actual savings achieved or above it, in other
8 words, it could go either in favor of the company or
9 against the company.

10 But the problem is any determination -- I
11 think the determination the KCC made last year or the
12 determination the Missouri Commission will make in the
13 future under this plan is subject -- you can never be
14 certain or you can never be even sure with any degree
15 of confidence that the judgment that this Commission
16 would make would actually even come close to actual
17 merger savings achieved, which by definition is a
18 number that's unknown.

19 Q. Is that a problem more for the Commission
20 five years from now than it is for the Commission
21 today?

22 A. You can probably make some fairly
23 intelligent guess in terms of some immediate merger
24 impacts immediately after a merger closes, because
25 employee positions will be reduced and so on.

1 As you go out further in time, once again,
2 because we've seen the trends of companies over time
3 reducing their employee levels, then you become -- I
4 think by definition you have become less and less sure
5 that some level of employee reductions, just to use
6 that for an example, could not have been achieved by
7 the company on a stand-alone basis.

8 JUDGE WOODRUFF: Commissioner Simmons, would
9 you like an opportunity to ask questions of this
10 witness?

11 COMMISSIONER SIMMONS: I don't have any
12 questions. Thank you, sir.

13 JUDGE WOODRUFF: Thank you. I have no other
14 questions. So we'll go back to recross based on
15 questions from the Bench, and Natural Resources?

16 MS. WOODS: Nothing, thank you.

17 JUDGE WOODRUFF: The Retirees?

18 MR. DEUTSCH: No questions.

19 JUDGE WOODRUFF: And Praxair and Springfield
20 are not here. Public Counsel?

21 MR. COFFMAN: Yes, just one.

22 RE CROSS-EXAMINATION BY MR. COFFMAN:

23 Q. Mr. Oligschlaeger, in your answers to
24 Commissioner Schemenauer you were discussing your
25 understanding of the acquisition premium costs. Are

1 you familiar with Schedule VJS-1 of Mr. Siemek's
2 direct testimony?

3 A. Yes, I am.

4 Q. Do you have a copy of that with you?

5 A. I'm there.

6 Q. Okay. And if I could direct you to Roman
7 Numeral VI, the premium costs as that's broken down in
8 one, two, three there under Roman Numeral VI. Do
9 those line items refer to the components of the
10 acquisition premium costs as estimated by the company
11 and to which you were referring in your answers to
12 Commissioner Schemenauer?

13 A. Yes.

14 Q. And just if you could briefly describe your
15 understanding of line 1 there, return on premium, what
16 does that reflect?

17 A. It reflects inclusion of the premium in rate
18 base or what Commissioner Schemenauer referred to as
19 carrying costs.

20 Q. And the first column, that shows the
21 estimate in years one through five, and the second
22 column estimates for years six through ten; is that
23 correct?

24 A. Yes.

25 Q. And why would the amount in the second

1 column be slightly less?

2 A. Because once you begin amortizing the
3 premium, and I believe the company's proposing a
4 40-year amortization period, every year you would take
5 the amount of the annual amortization and reduce the
6 rate base component by that amount. So it's a
7 declining cost.

8 Q. If you could just briefly describe what you
9 understand lines 2 and 3 to be.

10 A. Okay. Line 2, amortization of premium,
11 reflects again the amortization -- the proposed
12 amortization of the acquisition adjustment balance
13 over 40 years. Line 3 reflect non-tax-deductibility
14 of the premium, reflects the fact that the -- as I
15 understand it, the current IRS code does not allow the
16 company to deduct the premium amortization for tax
17 purposes.

18 Therefore, to give it rate -- what they're
19 proposing to give full rate recovery of 50 percent of
20 the premium, if that makes sense, you have to factor
21 up the amount of the annual amortization by
22 approximately 60 percent in order to allow the company
23 to recover the additional income taxes associated with
24 the premium.

25 Q. Thank you for that clarification.

1 MR. COFFMAN: That's all that I have.

2 JUDGE WOODRUFF: And for UtiliCorp?

3 MR. SWEARENGEN: Just a couple.

4 RECROSS-EXAMINATION BY MR. SWEARENGEN:

5 Q. Mr. Oligschlaeger, in response to several
6 questions from the Bench you talked about again how
7 difficult it will be in that post-moratorium rate case
8 to measure what you would call merger savings.

9 Would you agree that most of the forecasted
10 merger savings in this case are in the areas of joint
11 dispatch and off-system sales from the company's
12 standpoint?

13 A. Just looking -- well, I'm still turned to
14 Schedule VJS-1 attached to Mr. Siemek's direct
15 testimony. Just looking at the category one operating
16 costs on that schedule, I believe it reflects that
17 approximately half the total savings is in the
18 so-called dispatching and generation savings category.

19 Q. And how much is that amount? Let me ask you
20 this question. The number that sticks in my mind is
21 approximately \$100 million. Does that sound correct?

22 A. Actually, over the ten years, the total
23 estimated savings for dispatching and generation would
24 be in excess of that and probably closer to
25 200 million.

1 Q. If the Commission would determine now in
2 this merger case that any savings in these areas, in
3 the area of joint dispatch and off-system sales, would
4 be considered merger related, wouldn't that eliminate
5 the measurement of those savings as an issue in that
6 rate case five years from now?

7 A. I'm sorry. Again, could you repeat that?

8 Q. If the Commission in this case would decide
9 that any savings in the area of joint dispatch and
10 off-system sales would be considered merger related,
11 wouldn't that solve the problem of measuring those
12 costs, those savings in the post-moratorium rate case
13 five years from now?

14 A. Well, yes, if the Commission were to direct
15 the parties to assume that those are merger related,
16 that would, I guess, solve a problem -- solve the
17 problem in a sense.

18 Q. And likewise, if benchmarks are established
19 now in this merger case for other areas of cost so
20 that they could be measured five years from now in the
21 post-moratorium rate case, wouldn't that solve the
22 problem with respect to those areas of cost as well?

23 A. Yeah. And like the earlier example
24 reflecting the dispatching and generation savings, it
25 would solve the problem of agreement on a mechanical

1 process. I would still state it does not solve the
2 real problem of the ability to measure merger savings
3 after the fact.

4 MR. SWEARENGEN: Okay. Thank you. That's
5 all I have.

6 JUDGE WOODRUFF: Any redirect?

7 MR. DOTTHEIM: Yes.

8 REDIRECT EXAMINATION BY MR. DOTTHEIM:

9 Q. Mr. Oligschlaeger, you've been asked --

10 JUDGE WOODRUFF: Your microphone.

11 BY MR. DOTTHEIM:

12 Q. Mr. Oligschlaeger, you've been asked a
13 number of questions regarding the \$3 million guarantee
14 and the post-moratorium rate case. In particular,
15 Mr. Swearengen asked you to assume that tracking would
16 work.

17 Does the Staff have any concerns about the
18 \$3 million guarantee in addition to tracking?

19 A. As stated in my rebuttal testimony, the
20 \$3 million over five years represents what is clearly
21 an immaterial and insignificant amount of total merger
22 savings over the ten-year period that would be covered
23 by the regulatory plan.

24 I've stated in testimony, if the Commission
25 would embark on an approach of trying to determine

1 what share of merger savings should go to customers,
2 in the past we have suggested that a minimum of
3 50 percent over a period of time should go to
4 customers unless there are weighty reasons of public
5 interest that would suggest some other outcome.

6 MR. DOTTHEIM: One moment, please.

7 BY MR. DOTTHEIM:

8 Q. Mr. Oligschlaeger, if I could direct you to
9 Schedule VJS-1 in regards to some questions that you
10 received from Mr. Coffman, and I'd like to direct you
11 to the line vi, premium costs and the lines below
12 that, one, two, three and four. Are those average
13 annual costs in those lines?

14 A. Yes. There are two columns on
15 Schedule VJS-1. The first column represents average
16 amounts over the first five years, the second column
17 average amounts over the second five years or years
18 six through ten.

19 Q. Those are not total costs, then, are they?

20 A. No. They are average annual costs.

21 MR. DOTTHEIM: One moment, please. No
22 further questions.

23 JUDGE WOODRUFF: All right. Thank you. You
24 may step down.

25 (Witness excused.)

1 Go ahead and call your next witness.

2 MR. DOTTHEIM: The Staff calls as its next
3 witness Mr. Cary Featherstone.

4 (Witness sworn.)

5 MR. DOTTHEIM: At this time I'd like to have
6 marked as Exhibit No. 702 the rebuttal testimony of
7 Cary G. Featherstone.

8 (EXHIBIT NO. 702 WAS MARKED FOR
9 IDENTIFICATION.)

10 JUDGE WOODRUFF: You may inquire.

11 CARY FEATHERSTONE testified as follows:

12 DIRECT EXAMINATION BY MR. DOTTHEIM:

13 Q. Mr. Featherstone, do you have any
14 corrections to make at this time to your rebuttal
15 testimony that's been marked as Exhibit No. 702?

16 A. Yes. I just have one that I know of. Staff
17 counsel pointed out that page 36, line 15, I got the
18 names wrong. It should be, instead of Robert, it
19 should be Richard Green, who is chief executive
20 officer and chairman of the board of UtiliCorp United,
21 Inc. That's the only one I have that I know of.

22 MR. DOTTHEIM: I tender Mr. Featherstone for
23 cross-examination.

24 JUDGE WOODRUFF: Do you offer 702 also?

25 MR. DOTTHEIM: Yes. I also offer Exhibit

1 No. 702.

2 JUDGE WOODRUFF: Okay. Cross-examination

3 then. Natural Resources?

4 MS. WOODS: No questions.

5 JUDGE WOODRUFF: IBEW has left for the day.

6 Retirees?

7 MR. DEUTSCH: No questions.

8 JUDGE WOODRUFF: Praxair and Springfield are

9 also not here today. Public Counsel?

10 MR. COFFMAN: No questions.

11 JUDGE WOODRUFF: UtiliCorp?

12 MR. SWEARENGEN: No questions.

13 JUDGE WOODRUFF: We'll come up to questions

14 from the Bench. Chair Lumpe?

15 CHAIR LUMPE: I have no questions.

16 JUDGE WOODRUFF: Commissioner Simmons?

17 COMMISSIONER SIMMONS: I have no questions.

18 Thank you, sir.

19 JUDGE WOODRUFF: I have no questions either,

20 so there's no recross or redirect. You may step down.

21 (Witness excused.)

22 Let's try our luck on the next one, then.

23 MR. DOTTHEIM: The Staff calls as its next

24 witness on regulatory plan - overall Steven Traxler.

25 JUDGE WOODRUFF: And Mr. Traxler, you were

1 sworn yesterday, so you're still under oath. You may
2 inquire.

3 MR. DOTTHEIM: I tender Mr. Traxler for
4 cross-examination.

5 JUDGE WOODRUFF: Okay. Natural Resources?

6 MS. WOODS: No questions.

7 JUDGE WOODRUFF: Retirees?

8 MR. DEUTSCH: Yes.

9 STEVEN TRAXLER testified as follows:

10 CROSS-EXAMINATION BY MR. DEUTSCH:

11 Q. Hi, Mr. Traxler. Your rebuttal testimony,
12 turn to page 23.

13 A. I'm at 23.

14 Q. Could you take us through here? I think
15 maybe you have some answers that I've been looking
16 for, and I think they're in here, but you're going to
17 have to decipher it for me because I'm not too bright.

18 First of all, you begin by discussing the
19 FAS 106 account using the information made available
20 to you from the company through Data Requests, and you
21 discuss a feature that came up during my examination
22 of Mr. Siemek concerning what this \$2.7 million in
23 planned curtailment costs are. Could you explain to
24 me exactly what that is?

25 A. Yes, sir, I can. FASB 106 makes provision

1 in the curtailment section to provide for an
2 additional expense recognition for what we would call
3 an abnormal event. In essence, we're talking about
4 the fact that we have a significant number of
5 employees who were expected to work longer at Empire
6 but as a result of merger are actually retiring.

7 So what's happening is the fact that the
8 accrual for FASB 106, let's assume, for those people
9 is being accrued on an assumption they're going to
10 work for 20 years and then the benefits won't actually
11 start being paid until after the 20 year in service
12 date. In this instance, we're talking about a
13 situation where that 20-year time frame is being
14 reduced to 15 years.

15 So the benefits become payable at a much
16 earlier date, and that was not expected in the initial
17 accrual. That requires an increase in the liability
18 to reflect the fact that we have to start paying these
19 benefits sooner than was expected prior to the merger.

20 What in effect you have is a trade-off
21 between medical costs that were initially assumed to
22 be paid as employee medical costs in the income
23 statement, those are reduced by 2.7, but the
24 post-retirement benefit costs for medical costs go up
25 by 2.7 because of the timing of the early retirements.

1 Q. And does the company recognize this
2 trade-off in its calculation of its costs and its
3 benefits with regard to this 2.7 million? Are they
4 taking it out of both sides?

5 A. They should be, yes, and I'm confident
6 that's occurred.

7 Q. The 2.7 million as an additional expense,
8 would that be something included in rates?

9 A. The curtailment -- the curtailment under
10 FASB 106 requires recognition when the event occurs.
11 Under normal accounting, as soon as we know that that
12 event occurs -- let's say the retirement takes place
13 in 1999. The requirement for recognition of the
14 initial cost of liability takes place in that year.

15 Now, if we had a rate case with a test year
16 of that year, 1999, there would be some consideration.
17 However, if we have a test year after 1999, we do not
18 go back and try to capture costs that occurred in a
19 previous year, if that answers your question, if
20 that's clear.

21 Q. That's clear. Thank you.

22 Maybe you can tell me, and I unfortunately
23 don't have a copy of one of your schedules. I know
24 it's yours because I can see everything but the
25 number, but it looks like this (indicating), and it's

1 attached to your testimony. Could you identify for me
2 which schedule that is?

3 A. Yes, sir. That's Schedule SMT-4.

4 Q. Thank you. What is that -- referring you to
5 Schedule SMF-4, what does that show?

6 A. That is a comparison to Mr. Browning's
7 projections for the cost reduction, synergies if you
8 will. On line 1, the employee benefit cost head count
9 reductions. No. 2 is the reduction in FASB 106
10 post-retirement benefits, and that gives a total
11 savings for those years of 11.525, 11,525,737 in
12 column F, line 3.

13 Q. That's over five years?

14 A. That's correct.

15 Q. And could you tell me from this or from
16 whatever other information that I've been searching
17 for, can you tell me what the -- what is it that the
18 company saves by phasing out the subsidy that they --
19 that the Empire District currently pays for health
20 insurance on behalf of its retirees and employees, I'd
21 like to know that, but particularly the retirees if
22 you know what that is?

23 A. That question can better be answered on work
24 papers supporting Mr. Siemek's schedules, which I
25 have, which will give you the entire impact over the

1 entire ten-year time frame.

2 Q. That's on one of Mr. Siemek's schedules?

3 A. It's actually something that -- it wouldn't
4 be in testimony. It's work papers that I have
5 available to support those schedules that I can refer
6 to to answer your question.

7 Q. Please refer to those.

8 A. Okay. If you refer to Schedule SMT-2, let's
9 tie this in with their total projections in this area
10 in my testimony. Line No. 6, you seek conversion to
11 UtiliCorp benefits.

12 Q. Yes.

13 A. Column A, 50,030,000, that is a total
14 projected savings from conversion to benefits for the
15 entire ten-year time frame for the company. If you
16 look at column C, the 28,450,000 is the amount for
17 years six through ten. Now, I'm going to give you by
18 category what makes up the 50 million.

19 Q. Now, 50 million you mentioned is total?

20 A. Total for ten years.

21 Q. For our benefits curtailment?

22 A. Benefits conversion.

23 I'll give you all the categories that make
24 up total 50 million.

25 Q. Proceed.

1 MR. DOTTHEIM: Excuse me. Maybe this has
2 been established, but schedule --

3 JUDGE WOODRUFF: Your microphone. We can't
4 hear you.

5 MR. DOTTHEIM: Excuse me. I don't know if
6 this has already been established, but Schedule SMT-2
7 is marked highly confidential.

8 THE WITNESS: It's not a highly confidential
9 schedule.

10 MR. DOTTHEIM: Okay. Excuse me. I'm
11 working from a copy where all the copies, regardless
12 of whether they contained highly confidential
13 information or not, are stamped highly confidential.
14 Again, the only page that's highly confidential is
15 page 70, now that I recall that.

16 THE WITNESS: That's correct.

17 MR. DOTTHEIM: Excuse me. I'm sorry.

18 JUDGE WOODRUFF: You may proceed.

19 THE WITNESS: The reduction in retiree
20 medical for bargaining plan employees or former
21 bargaining plan members is 1,504,000 for the years
22 2001 through 2010.

23 The reduction for the -- reduction in
24 retiree medical for the non-bargaining former employee
25 retirees for that same time frame is 18,420,000.

1 The pension cost reduction for non-bargaining plan in
2 total, this would be in total, pension costs
3 non-bargaining, 9,441,000. Pension cost reductions
4 for bargaining plan, 3,533,000.

5 There's a line entitled all other benefits.
6 This includes the current additional benefits for
7 employees only in the health -- for medical costs,
8 401K plan, stock contribution. That reduction is
9 estimated to be 4,655,000.

10 And then the reduction resulting from
11 payroll tax savings from the head count reductions is
12 included on the schedule, and that's part of the
13 50 million, is reflected to be 7,276,000. Those will
14 total to the 50 million on the front schedule.

15 BY MR. DEUTSCH:

16 Q. Okay. Just to be clear, then, for the
17 medical coverage non-bargaining, 18,420,000?

18 A. For the retiree portion. That's retiree
19 only.

20 Q. Okay. And that is a ten-year total?

21 A. That's correct.

22 Q. And do you happen to know what the total
23 ten-year savings in synergies number that the company
24 is proposing they will come up with is?

25 A. That's the 50 million that I referred to

1 earlier.

2 Q. Total for everything, not just --

3 A. That's correct. That's the 50 million we
4 were just talking about. That's the components of the
5 50 million on Mr. Siemek's schedule and my schedule
6 from the entire savings from benefits conversion.

7 Q. Right. And now I would like you to compare
8 that to total savings from everything.

9 A. Oh, I see.

10 Q. I couldn't remember if that was in your
11 testimony that I saw that. If you don't know, that's
12 fine.

13 A. We have it right here on the schedule. That
14 question could be answered depending on your
15 definition of total savings. Let me give you an
16 answer based on SMT-2 and see if that satisfies your
17 question.

18 If you look at line No. 18, column A, the
19 company expects a net savings prior to any recognition
20 of the acquisition premium, in other words the
21 difference between merger savings and merger costs
22 excluding premium recovery, of 176,166,000. Okay. Of
23 that amount -- for benefits conversion is 50,030,000.
24 So of the amount available for them to recover the
25 acquisition premium as requested, of the 176, 50

1 million of that comes from benefits conversion.

2 MR. DEUTSCH: Thank you. No further
3 questions.

4 JUDGE WOODRUFF: And Praxair and Springfield
5 are not here. Public Counsel?

6 MR. COFFMAN: No questions.

7 JUDGE WOODRUFF: And UtiliCorp?

8 MR. SWEARENGEN: No questions. Thank you.

9 JUDGE WOODRUFF: Questions from the Bench.
10 Chair Lumpe?

11 QUESTIONS BY CHAIR LUMPE:

12 Q. Mr. Traxler, see if I understand this. You
13 said that the benefits from the non-bargaining
14 retirees medical was 18 million?

15 A. 18,420,000 over a ten-year time frame.

16 Q. From the retirees that are in the bargaining
17 unit, was that a million something?

18 A. 1,504,000.

19 Q. 504. Okay. And are these -- are these the
20 ones that are recognized? Do you remember the
21 question I asked Mr. Siemek about what would have been
22 the figure if they had grandfathered them? Is that
23 figure recognized in here?

24 A. You're talking about specifically with
25 regard to retirees only?

1 Q. Yes.

2 A. Let me think for a minute and see if that
3 question can be answered in a general answer based on
4 the information we have here.

5 Q. Let me ask you this. Does this represent
6 the compromise, these numbers, for retirees' medical?

7 A. No. This represents the --

8 Q. This represents the --

9 A. -- additional reduction in benefits of those
10 employees after the compromise. They are going to
11 incur additional costs as a result of benefit
12 reductions.

13 Q. So these are the savings --

14 A. That's correct.

15 Q. -- that if they had given the retirees the
16 grandfathering? All right. Thank you.

17 A. I think that's -- that was going to be my
18 answer. I think that's an accurate answer to your
19 question, that basically since these are the benefits
20 being reflected as a synergy available to justify this
21 merger, that the 20 million does, in fact, represent,
22 if it was grandfathered, the retirees would not be
23 incurring this kind of an increase. That's the
24 reduction benefit synergy, if you will.

25 CHAIR LUMPE: Thank you.

1 JUDGE WOODRUFF: Commissioner Simmons?

2 COMMISSIONER SIMMONS: I have no questions.

3 Thank you.

4 JUDGE WOODRUFF: Move to recross. To save

5 some time, does anyone have any recross?

6 (No response.)

7 All right. Seeing none. Any redirect?

8 MR. DOTTHEIM: No redirect.

9 JUDGE WOODRUFF: All right. Mr. Traxler,

10 you can step down, then.

11 (Witness excused.)

12 And this is a good stopping point for today.

13 Before we do go off the record, I notice the next

14 witness is listed as Mr. Proctor and there's also a

15 note on here that he's not available to testify. How

16 is that going to be handled?

17 MR. DOTTHEIM: We need to resolve that

18 matter. At one time we had discussed having

19 Dr. Proctor made available for cross-examination a

20 subsequent week after this week if any of the parties

21 wanted to conduct cross-examination or if the

22 Commissioners or the RLJ wanted to conduct

23 cross-examination. We haven't discussed that this

24 week, but, of course, we need to.

25 JUDGE WOODRUFF: Well, let's take that up

1 first thing tomorrow morning then and we'll deal with
2 that.

3 Anything else before we go off the record?

4 All right. Off the record, then

5 WHEREUPON, the hearing of this case was
6 recessed until 8:30 a.m., September 13, 2000.

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